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TO: Robert F. Poffenberger, Director of Community Planning and Development,
5HD

FROM: Ronald Farrell, Acting Regional Inspector General for Audit, 5AGA

SUBJECT: The State of Indiana's Administrator Lacked Adequate Controls Over the State's HOME Investment Partnerships Program and American Dream Downpayment Initiative-Funded First Home/PLUS Program

HIGHLIGHTS

What We Audited and Why

We audited the State of Indiana's (State) HOME Investment Partnerships Program (Program). The audit was part of the activities in our fiscal year 2010 annual audit plan. We selected the State based upon our analysis of risk factors relating to Program grantees in Region V's jurisdiction. Our objectives were to determine whether the Indiana Housing and Community Development Authority (Authority), the administrator of the State's Program, complied with the U.S. Department of Housing and Urban Development's (HUD) requirements in its use of Program and American Dream Downpayment Initiative (Initiative) funds to provide interest-free second mortgage loans to home buyers through the State's First Home/PLUS program and its use of recapture provisions for First Home/PLUS activities (activity).

What We Found

The Authority did not comply with HUD's requirements in its use of Program and Initiative funds to provide interest-free second mortgage loans to home buyers through the State's First Home/PLUS program and its use of recapture provisions for activities. It (1) lacked sufficient documentation to support that homes

purchased under the First Home/PLUS program met HUD's property standards requirements, (2) did not implement appropriate recapture provisions for all of the activities reviewed, (3) did not ensure that the State's Program was reimbursed for Program or Initiative funds used for activities in which the ownership of homes was later transferred through foreclosures, and (4) did not reimburse the State's treasury account for Program funds used for activities that were later terminated. As a result, (1) it was unable to support its use of more than \$803,000 in Program or Initiative funds, (2) its Program was not reimbursed more than \$130,000 in Program or Initiative funds used for 32 activities in which the ownership of the homes was later transferred through foreclosures, and (3) its treasury account was not reimbursed more than \$8,000 in Program funds used for activities that were terminated. Further, the Authority is at risk of being required to reimburse the State's Program additional non-Federal funds if the ownership of additional homes acquired under the First Home/PLUS program is transferred through foreclosures.

What We Recommend

We recommend that the Director of HUD's Indianapolis Office of Community Planning and Development require the State to (1) provide sufficient supporting documentation or reimburse its Program more than \$803,000 from non-Federal funds, (2) reimburse its Program more than \$130,000 from non-Federal funds for activities in which ownership of the homes was transferred through foreclosures, (3) reimburse its treasury account more than \$8,000 from non-Federal funds for the activities that were terminated, (4) revise its consolidated plan and action plan to include the recapture provisions the Authority uses for the First Home/PLUS program or require the Authority to revise the recapture provisions it uses for the First Home/Plus program to comply with the recapture provisions in the State's consolidated plan and action plan, and (5) implement adequate procedures and controls to address the findings cited in this audit report. These procedures and controls should help to ensure that over the next year, the State appropriately recaptures Program and/or Initiative funds and/or reimburses its Program from non-Federal funds for nearly \$124,000 in Program and/or Initiative funds used for homes acquired under its First Home/PLUS program in which ownership would be transferred due to foreclosures.

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 our discussion draft audit report and/or supporting schedules to the executive director of the Authority, the chairman of the board, and/or HUD's staff during the audit. We held an exit conference with the Authority's executive director on January 6, 2011.

We asked the Authority's executive director to provide comments on our discussion draft audit report by January 10, 2011. The executive director provided written comments, dated January 7, 2011. The executive director generally disagreed with our findings, but partially agreed with our recommendations. The complete text of the written comments, along with our evaluation of that response can be found in appendix B of this audit report.

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BACKGROUND AND OBJECTIVES

The Program. Authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act (Act), as amended, the HOME Investment Partnerships Program (Program) is funded for the purpose of increasing the supply of affordable standard rental housing; improving substandard housing for existing homeowners; assisting new home buyers through acquisition, construction, and rehabilitation of housing; and providing tenant-based rental assistance. The American Dream Downpayment Assistance Act established a separate funding formula for the American Dream Downpayment Initiative (Initiative) under the Program to provide downpayment assistance, closing costs, and rehabilitation assistance to eligible first-time home buyers.

The State. The Indiana Housing and Community Development Authority (Authority) administers the State of Indiana’s (State) Program. The Authority was created in 1978 by the Indiana General Assembly and is a quasi-public financially self-sufficient statewide government agency. It is governed by a seven-member board of commissioners (board) consisting of the State’s lieutenant governor, the State’s treasurer, and the Indiana Finance Authority’s public finance director. The board includes four other members appointed to 4-year terms by the State’s governor. Its mission is for every resident of the State to have the opportunity to live in safe, affordable, good-quality housing in economically stable communities. The Authority’s Program and Initiative records are located at 30 South Meridian Street, Indianapolis, IN.

The following table shows the amount of Program and Initiative funds the U.S. Department of Housing and Urban Development (HUD) awarded the State for program years 2006 through 2010.

Program year	Program funds	Initiative funds
2006	\$15,482,872	\$335,426
2007	15,519,476	316,513
2008*	15,012,167	<u>127,867</u>
2009	16,710,924	
2010	<u>16,699,875</u>	
Totals	<u>\$79,425,314</u>	<u>\$779, 806</u>

* Program year 2008 was the last year HUD awarded Initiative funds to the State.

The First Home/PLUS Program. As of September 25, 2009, the State's First Home/PLUS program provides qualified households an interest-free loan for 6 percent (10 percent for disabled households) of the purchase price or appraised value of the property, whichever is less, not to exceed \$7,500 (\$14,999 for disabled households), for downpayment assistance and closing costs. The Authority uses Program or Initiative funds to pay for the downpayment assistance and closing costs and secures the interest-free loan through a second mortgage. The interest-free loan for downpayment assistance and closing costs can only be provided in conjunction with a government-insured first mortgage through the State’s First Home program. A participating lender performs a preliminary review to determine whether a household and a property meet

HUD's requirements and qualify for the First Home and First Home/PLUS programs. A participating lender then submits the information to the Authority for approval. The Authority reviews the information and assigns a reservation number and date for an approved loan. The reservation date assigned to a loan is the date the participating lender submitted the information to the Authority. U.S. Bank National Association (U.S. Bank), the master servicer for the Authority's First Home Program, purchases the government-insured first mortgage from the participating lender within 30 days of the loan's closing.

Our objectives were to determine whether the Authority complied with HUD's requirements in its use of Program and Initiative funds to provide interest-free second mortgage loans to home buyers through its First Home/PLUS program and its use of recapture provisions for First Home/PLUS activities (activity).

RESULTS OF AUDIT

Finding 1: The Authority Lacked Adequate Controls Over the First Home/PLUS Program To Ensure That Activities Met HUD's Property Standards Requirements

The Authority did not comply with HUD's requirements in its use of Program and Initiative funds to provide interest-free second mortgage loans to home buyers through the State's First Home/PLUS program. It lacked sufficient documentation to support that homes purchased under the First Home/PLUS program met HUD's property standards requirements. This weakness occurred because the Authority lacked adequate procedures and controls over the State's First Home/PLUS program to ensure that it appropriately followed HUD's requirements. As a result, it was unable to support its use of more than \$803,000 in Program or Initiative funds for activities without sufficient documentation to demonstrate that homes met HUD's property standards requirements.

The Authority Lacked Sufficient Documentation To Support Its Use of More Than \$800,000 in Program and/or Initiative Funds

We reviewed 64 of the 1,106 activities in which the Authority drew down and disbursed Program or Initiative funds from July 1, 2008, through March 31, 2010. The Authority used \$307,262 in Program or Initiative funds for the 64 activities.

HUD's regulations at 24 CFR (Code of Federal Regulations) 92.251(a)(2) state that housing acquired with Program funds must meet all applicable State and local housing quality standards and code requirements. If there are no such housing quality standards or code requirements, the housing must meet HUD's housing quality standards. HUD's regulations at 24 CFR 92.508(a) state that a participating jurisdiction must establish and maintain sufficient records to demonstrate that each activity meets the property standards of 24 CFR 92.251. Section 92.508(c)(4) states that written agreements must be retained for 5 years after the agreement terminates. HUD's regulations at 24 CFR 92.612(b) state that housing assisted with Initiative funds must meet the property standards contained in 24 CFR 92.251. HUD's regulations at 24 CFR 92.616(i) state that the record-keeping requirements contained in 24 CFR 92.508 apply to activities assisted with Initiative funds.

HUD's HOMEfires, volume 6, number 2, states that pursuant to 24 CFR 92.504(a), a participating jurisdiction is responsible for managing the day-to-day

operations of its Program, including compliance with property standards applicable to Program units. They must perform inspections of Program units purchased with Program or Initiative funds. Participating jurisdictions may not rely on independent inspections performed by any party not under contract to the participating jurisdiction. Third parties such as consumer inspectors or Federal Housing Administration (FHA) appraisers are not contractually obligated to perform the participating jurisdictions' obligations. Their inspections cannot be used to determine compliance with Program or Initiative property standards requirements.

Contrary to HUD's requirements, the Authority lacked sufficient documentation to support that homes for 9 of the 64 activities reviewed met HUD's property standards requirements. It used \$48,391 in Program or Initiative funds for the nine activities. All nine of the activities involved the purchase of new construction homes. The Authority's single family director said that the Authority did not have inspections performed on any of the new construction homes purchased under the First Home/PLUS program. It relied on FHA compliance or occupancy inspections performed by the cities or counties where the new construction homes were located. Therefore, we reviewed an additional 129 activities in which the Authority used Program or Initiative funds from July 1, 2008, through May 11, 2010, to assist in the purchase of new construction homes under the First Home/PLUS program. The Authority also lacked sufficient documentation for the additional 129 activities to support that it used \$755,054 in Program and Initiative funds for homes that met HUD's property standards requirements. The table in appendix D of this report shows the 138 activities for which the Authority did not have sufficient documentation to support that homes met HUD's property standards requirements.

Further, the Authority had inspections for the remaining 55 activities we initially selected for review. The inspections were performed by third-party inspectors. However, the Authority could not provide contracts with the inspectors that were effective at the time that the inspectors inspected 23 of the homes. The Authority used \$91,086 in Program or Initiative funds for the 23 activities.

The Authority Lacked Adequate Procedures and Controls

The weaknesses regarding the Authority's lacking sufficient documentation to support that activities met HUD's property standards requirements and contracts with inspectors were effective at the time that the inspectors inspected homes occurred because the Authority lacked adequate procedures and controls over its First Home/PLUS program to ensure that it appropriately followed HUD's requirements.

As previously stated, the Authority did not have inspections performed on any of the new construction homes purchased under the First Home/PLUS program because it relied on FHA compliance or occupancy inspections performed by the cities or counties where the new construction homes were located. Further, the Authority's staff attorney stated that HUD's regulations at 24 CFR 200.170(a)(1) require FHA compliance inspections on all FHA-insured single-family new construction. The Authority was not aware that HUD's HOMEfires, volume 6, number 2, prohibited participating jurisdictions from relying on independent inspections, such as FHA compliance inspections, performed by any party not under contract to the participating jurisdiction.

The Authority's single family director stated that once the Authority executed current contracts with the inspectors it discarded the prior contacts with the inspectors. The assistant single family director and a single family underwriter were not aware that HUD's regulations at 24 CFR 92.508(c)(4) required written agreements to be retained for 5 years after the agreements terminated.

Conclusion

As previously mentioned, the Authority lacked adequate procedures and controls over its First Home/PLUS program to ensure that it appropriately followed HUD's requirements. It was unable to support its use of more than \$803,000 in Program or Initiative funds for the 138 activities without sufficient documentation to demonstrate that homes met HUD's property standards requirements.

Recommendations

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

- 1A. Provide sufficient supporting documentation or reimburse its Program from non-Federal funds, as appropriate, for the \$803,445 in Program or Initiative funds used for the 138 activities for which it did not have sufficient documentation to demonstrate that the homes met HUD's property standards requirements.
- 1B. Implement adequate procedures and controls to ensure that all homes are inspected by the Authority or a third party contracted by the Authority to ensure that the homes meet HUD's property standards requirements and it maintains sufficient documentation to support that inspections are conducted in accordance with HUD's requirements.

- 1C. Implement adequate procedures and controls to ensure that the Authority maintains all contracts with third-party inspectors for at least 5 years after the contracts terminate.

Finding 2: The Authority Lacked Adequate Controls Over the First Home/PLUS Program To Ensure That Appropriate Recapture Provisions Were Used for Activities

The Authority did not comply with HUD's requirements in its use of recapture provisions for activities. It did not implement appropriate recapture provisions for all 64 of the activities reviewed, did not ensure that the State's Program was reimbursed for Program or Initiative funds used for activities in which the ownership of homes was later transferred through foreclosures, and did not reimburse the State's treasury account for Program funds used for activities that were later terminated. These weaknesses occurred because the Authority lacked adequate procedures and controls over the State's First Home/PLUS program to ensure that it appropriately followed HUD's requirements. As a result, the State's Program was not reimbursed more than \$130,000 in Program or Initiative funds used for 32 activities in which the ownership of homes was later transferred through foreclosures, and the State's treasury account was not reimbursed more than \$8,000 in Program funds used for activities that were terminated. Further, the Authority is at risk of being required to reimburse the State's Program additional non-Federal funds if the ownership of additional homes acquired under the First Home/PLUS program is transferred through foreclosures. Based on our sample, we estimate that over the next year, the State will not recapture Program and/or Initiative funds and/or reimburse its Program from non-Federal funds for nearly \$124,000 in Program and/or Initiative funds used for homes acquired under its First Home/PLUS program of which ownership would be transferred due to foreclosures.

The Authority Did Not Implement Appropriate Recapture Provisions for Its Activities and Did Not Reimburse the State's Program From Non-Federal Funds

We reviewed 64 of the 1,106 activities in which the Authority drew down and disbursed Program or Initiative funds from July 1, 2008, through March 31, 2010. The Authority used \$307,262 in Program or Initiative funds for the 64 activities.

HUD's regulations at 24 CFR 91.220 state that if a participating jurisdiction intends to use Program funds for home buyers, it must state the guidelines for resale or recapture, as required in 24 CFR 92.254, in its action plan. HUD's regulations at 24 CFR 92.254(a)(4) state that Program-assisted housing must meet HUD's affordability requirements. Section 92.254(a)(5) states that to ensure affordability, a participating jurisdiction must impose either resale or recapture provisions that comply with the standards of section 92.254(a)(5) and include those provisions in its consolidated plan. Section 92.254(a)(5)(ii) states that in establishing its recapture provisions, the participating jurisdiction is subject to the limitation that when the recapture provision is triggered by a voluntary or

involuntary sale of the housing unit and there are no net proceeds or the net proceeds are insufficient to repay the Program investment due, the participating jurisdiction can only recapture the net proceeds, if any. HUD's regulations at 24 CFR 92.612(c) state that housing assisted with Initiative funds must meet the affordability requirements contained in 24 CFR 92.254(a).

HUD's HOMEfires, volume 5, number 2, states that for Program-assisted home-buyer projects with recapture provisions, the amount of Program funds required to be repaid in the event of foreclosure is the amount that would be subject to recapture under the terms of the written agreement with the home buyer. If the recapture agreement requires the entire amount of the Program investment from the home buyer or an amount reduced pro rata based on the time the homebuyer has owned and occupied the housing measured against the affordability period, the amount required by the agreement is the amount that must be recaptured by the participating jurisdiction for the Program. If the participating jurisdiction is unable to recapture the funds from the household, it must reimburse its Program in the amount due pursuant to the recapture provisions in the written agreement with the home buyer.

The State's consolidated plan for 2005 through 2009 and action plan for 2009 state that the amount to be recaptured is based on a pro rata shared net sale proceeds calculation. If there are no proceeds, there is no recapture. Any net sale proceeds that exist would be shared between the recipient and the beneficiary based on the number of years of the affordability period that have been fulfilled, not to exceed the original Program investment.

Contrary to HUD's requirements and the State's consolidated plan and action plan, the Authority did not ensure that it implemented appropriate recapture provisions for all 64 of the activities reviewed. The Authority's mortgage revenue bond program guides, dated March 2007 and January 2010, state that the First Home/PLUS program offers downpayment assistance in the form of a loan secured by a second mortgage to certain qualified borrowers. For all loans reserved after May 2, 2007, there is no loan forgiveness associated with the second mortgage if the borrower refinances or sells the home. The second mortgage is due and payable immediately. Further, the promissory notes, which were secured by second mortgages, between the Authority and the home buyers required the home buyers to repay the entire amount of downpayment assistance at or before maturity of the loan. The promissory notes define maturity as the sale of the property, the payoff or refinancing of the first mortgage on the property, or the home buyer's changing his or her principal place of residence from the property purchased under the First Home/PLUS program. The promissory notes did not contain language that limited the amount of Program or Initiative funds the Authority could recapture to the net proceeds from the sale of the property.

U.S. Bank issued foreclosure notices for the homes of 3 of the 64 activities in which the Authority drew down and disbursed Program or Initiative funds from

July 1, 2008, through March 31, 2010. Ownership for two of the homes had been transferred through the foreclosure process as of August 31, 2010. The Authority did not receive any net proceeds from the sale of the homes or reimburse the State's Program for the \$7,000 in Program funds used for the two homes. Therefore, we reviewed an additional 100 activities in which Program or Initiative funds were reserved through the State's First Home/PLUS program after May 2, 2007, and U.S. Bank had issued foreclosure notices for the homes or referred the homes for foreclosure as of August 31, 2010. Ownership for 30 of the homes had been transferred through the foreclosure process as of September 30, 2010. The Authority did not receive any net proceeds from the sale of the homes or reimburse the State's Program for the \$123,326 in Program or Initiative funds used for the 30 homes. The table in appendix E of this report shows the activity number, the date of closing, the date Program or Initiative funds were drawn down for the activity in HUD's Integrated Disbursement and Information System (System), the date the home was transferred through foreclosure, and the amount of assistance provided for the 32 homes.

The Authority Did Not Reimburse the State's Treasury Account More Than \$8,000 in Program Funds Disbursed for Two Terminated Activities

HUD's regulations at 24 CFR 92.503(b)(2) state that any Program funds invested in a project that is terminated before completion, either voluntarily or otherwise, must be repaid by a participating jurisdiction in accordance with section 92.503(b)(3). Section 92.503(b)(3) states that if the Program funds were disbursed from the participating jurisdiction's treasury account, the funds must be repaid to the participating jurisdiction's HOME investment trust fund treasury account (treasury account).

The Authority disbursed \$8,300 in Program funds from its treasury account for two activities that were later terminated. However, it did not reimburse its treasury account from non-Federal funds for the more than \$8,000.

The Authority disbursed \$3,500 in Program funds on July 1, 2009, to Nichols Mortgage Services (Nichols Mortgage) for activity number 25061. The activity was terminated on July 23, 2009, when Nichols Mortgage informed the Authority that it would transfer the \$3,500 in Program funds to another lender to provide the home buyer with the interest-free loan for downpayment assistance and closing costs or would return the funds to the Authority. Nichols Mortgage was dissolved on August 7, 2009, and did not inform the Authority that it transferred the \$3,500 in Program funds to another lender or return the funds to the Authority. The Authority's staff attorney stated that a new lender would have had to resubmit the household and property information to the Authority for approval and the

Authority would have assigned a new reservation number and date for the approved loan. The Authority did not receive household and property information from another lender and did not approve an interest-free loan for downpayment assistance and closing costs for the household through another lender. However, the Authority inappropriately reported activity number 25061 as completed in HUD's System. Further, the Authority provided \$4,745 in Program funds to a different household for an interest-free loan for downpayment assistance and closing costs to purchase the same property under activity number 25562. As of December 17, 2010, the Authority had not reimbursed the State's treasury account for the \$3,500.

The Authority disbursed \$4,800 in Program funds on November 5, 2009, to Bank of America for activity number 25781. The activity was later terminated because the loan did not meet the requirements of the First Home/PLUS program and U.S. Bank would not purchase it. On March 23, 2010, the Authority sent a letter to Bank of America requesting the repayment of the nearly \$5,000 by April 9, 2010. On July 20, 2010, we asked the Authority whether the Program funds had been recaptured for activity number 25781. The Authority's loan system specialist said that the Program funds had not been recaptured. Therefore, on August 11, 2010, the Authority sent another letter to Bank of America requesting the repayment of the nearly \$5,000 by August 23, 2010. On December 13, 2010, the Authority received a check, dated November 15, 2010, from Bank of America for the nearly \$5,000. However, as of December 17, 2010, the Authority had not reimbursed the State's treasury account for the nearly \$5,000.

The Authority Lacked Adequate Procedures and Controls

The weaknesses regarding the Authority's not implementing appropriate recapture provisions for its activities, not ensuring that the State's Program was reimbursed for Program or Initiative funds used for activities in which the ownership of the homes was later transferred through foreclosures, and not ensuring that the State's treasury account was reimbursed for Program funds used for an activity that was later terminated occurred because the Authority lacked adequate procedures and controls over the State's First Home/PLUS program to ensure that it appropriately followed HUD's requirements.

The Authority's chief financial officer said that before May 2007, the Authority forgave loans under the First Home/PLUS program at 20 percent per year over a 5-year affordability period as long as the home buyers lived in the homes. In May 2007, the Authority eliminated the 5-year affordability period and started requiring home buyers to repay the entire loan due to (1) home buyer's refinancing the first mortgages on their homes in the fourth or fifth year of the affordability period, repaying the Authority a small portion of the loan, and

keeping the remaining equity and (2) the uncertainty of future Program funding and the need to build up Program income. However, the Authority did not ensure that the State incorporated the revised recapture provisions in its consolidated plan or action plan. The chief financial officer said that the Authority inadvertently omitted the revised recapture provisions from the consolidated plan and action plan.

The Authority did not track activities to determine whether ownership was transferred through foreclosures. U.S. Bank handled this process and reimbursed the Authority for net proceeds, if any, from the sale of the homes. Further, the Authority did not reimburse the State's Program for the Program and Initiative funds used for the homes. The Authority's single family director stated that the Authority was not aware that the recapture provisions contained in its written agreements with the home buyers required it to do so. When the Authority changed the recapture provisions in May 2007, requiring the full recapture of Program and Initiative funds, it did not intend or foresee that requiring the full recapture would trigger an obligation on its part to recapture funds from the households or reimburse the State's Program as a result of a transfer of ownership due to foreclosure.

The Authority's staff attorney stated that the Authority had not reimbursed the State's treasury account for the nearly \$5,000 in Program funds disbursed for activity number 25781 since the Authority did not receive Bank of America's repayment for the funds until December 13, 2010, and it takes time to process the reimbursement.

Conclusion

As previously mentioned, the Authority lacked adequate procedures and controls over the State's First Home/PLUS program to ensure that it appropriately followed HUD's requirements. It did not (1) implement appropriate recapture provisions for all 64 of the activities reviewed, (2) ensure that the State's Program was reimbursed for the more than \$130,000 in Program or Initiative funds used for the 32 activities in which the ownership of the homes was later transferred through foreclosures, and (3) reimburse the State's treasury account for the more than \$8,000 in Program funds disbursed for activity numbers 25061 and 25781 that were later terminated. Further, the Authority is at risk of being required to reimburse the State's Program additional non-Federal funds if the ownership of additional homes acquired under the State's First Home/PLUS program is transferred through foreclosures. If the State implements adequate procedures and controls over its First Home/PLUS program to ensure compliance with HUD's requirements regarding homes acquired under the First Home/PLUS program in which ownership is transferred due to foreclosures, we estimate that over the next year, the State will appropriately recapture Program and/or Initiative funds and/or reimburse its Program from non-Federal funds totaling nearly

\$124,000. Our methodology for this estimate is explained in the Scope and Methodology section of this audit report.

Recommendations

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

- 2A. Revise its consolidated plan and action plan to include the recapture provisions the Authority uses for the First Home/PLUS program or require the Authority to revise the recapture provisions it uses for the First Home/PLUS program to comply with the recapture provisions in the State's consolidated plan and action plan. If the State revises its consolidated plan and action plan, it needs to submit the consolidated plan and action plan to HUD for approval.
- 2B. Reimburse its Program \$130,326 from non-Federal funds for the 32 activities in which ownership of the homes was transferred through foreclosures.
- 2C. Implement adequate procedures and controls to ensure that if the ownership of additional homes acquired under its First Home/PLUS program is transferred through foreclosures, the State recaptures the entire amount of the Program or Initiative funds used for the activities through the receipt of net proceeds from the sales of the homes and/or reimburses its Program for the Program or Initiative funds provided to the home buyers as appropriate. The procedures and controls should include but not be limited to tracking all activities in which Program or Initiative funds were reserved through the State's First Home/PLUS program after May 2, 2007, including the remaining activities for which U.S. Bank issued foreclosure notices for the homes or referred the homes for foreclosure as of August 31, 2010, to determine whether ownership of the homes is transferred through foreclosures and recapturing the entire amount of the Program or Initiative funds used for the activities. This measure will ensure that over the next 12 months, the State will appropriately recapture Program and/or Initiative funds and/or reimburses its Program from non-Federal funds totaling at least \$123,768.
- 2D. Reimburse its treasury account from non-Federal funds for the \$8,300 in Program funds the Authority inappropriately disbursed for activity numbers 25061 and 25781.

SCOPE AND METHODOLOGY

To accomplish our objectives, we reviewed

- Applicable laws; HUD's regulations at 24 CFR Parts 35, 85, and 92; HUD's "Building HOME: A Program Primer"; HUD's HOMEfires, volume 5, numbers 2 and 5, volume 6, number 2, and volume 9, number 2; and HUD's Office of Community Planning and Development Notice 07-06.
- The State's data from HUD's System, consolidated plan for 2005 through 2009, action plans for 2008 and 2009, and consolidated annual performance and evaluation report for 2008.
- The Authority's accounting records, audited financial statements for 2007 and 2008, single audits for 2007 and 2008, Program data, activity files, contracts with inspectors, policies and procedures, and organizational chart.
- HUD's files for the State and data in HUD's Neighborhood Watch/Early Warning System.

We also interviewed the Authority's employees, U.S. Bank's employees, Program participants, and HUD's staff.

Finding 1

We statistically selected 64 of the 1,106 activities in which the Authority drew down and disbursed Program or Initiative funds from July 1, 2008, through March 31, 2010, to determine whether the Authority used Program and Initiative funds for eligible activities. The 64 activities totaled \$307,262 in Program or Initiative funds. Our sampling criteria used a 90 percent confidence level, 50 percent error rate, and precision of plus or minus 10 percent. The Authority lacked sufficient documentation to support that homes for 9 of the 64 activities reviewed met HUD's property standards requirements. All nine of the activities involved the purchase of new construction homes. Therefore, we reviewed an additional 129 activities in which the Authority used Program or Initiative funds from July 1, 2008, through May 11, 2010, to assist in the purchase of new construction homes under the First Home/PLUS program.

Finding 2

We statistically selected 64 of the 1,106 activities in which the Authority drew down and disbursed Program or Initiative funds from July 1, 2008, through March 31, 2010, to determine whether the Authority implemented appropriate recapture provisions for its activities. The 64 activities totaled \$307,262 in Program or Initiative funds. Our sampling criteria used a 90 percent confidence level, 50 percent error rate, and precision of plus or minus 10 percent. Ownership for two of the homes had been transferred through the foreclosure process as of August 31, 2010. The Authority did not receive any net proceeds from the sale of the homes or reimburse the State's Program for the

\$7,000 in Program funds used for the two homes. Therefore, we reviewed an additional 100 activities in which Program or Initiative funds were reserved through the State’s First Home/PLUS program after May 2, 2007, and U.S. Bank issued foreclosure notices for the homes or referred the homes for foreclosure as of August 31, 2010. Ownership for 30 of the homes had been transferred through the foreclosure process as of September 30, 2010. The Authority did not receive any net proceeds from the sale of the homes or reimburse the State’s Program for the \$123,326 in Program or Initiative funds used for the 30 homes. Further, the homes for 13 of the activities had a delinquent, pre-foreclosure acceptance plan, special forbearance, or bankruptcy court clearance status as of August 31, 2010. In addition, one of the homes involved a conventional mortgage that was not FHA-insured. The remaining 57 activities totaled \$213,597 in Program or Initiative funds.

To estimate the number of homes in foreclosure that would result in a sale and transfer of ownership within the next year, we modeled the rates of conversion for homes in foreclosure to sale and transfer of ownership within the State of Indiana. Loans for the homes in foreclosure were grouped and modeled by the year of origination as the year of origination has been shown to affect the length of time in foreclosure before a resale and transfer of ownership. Sale and transfer of ownership patterns for homes in foreclosure from 2008 were used to model 2009 loans for the homes in foreclosure as these two years showed the same probability distribution and the data for 2008 was more complete. To model the rates of conversion to sale and transfer of ownership, we used histories from more than 881 foreclosed Indiana loans from HUD’s FHA databases to create a declining probability distribution (i.e., a survival curve) for the State of Indiana. The curve was compared with similar profiles from 26,408 United States loans. This curve modeled the percentage of homes in foreclosure (S) which remained unsold at a given number of months after going into foreclosure. Using this information, we estimated for each of the State’s 57 homes in foreclosure as of August 31, 2010, a home’s likelihood of surviving foreclosure to a certain point in time without going to sale and transfer of ownership. The probability of going to sale and transfer of ownership was then multiplied times the amount of Program or Initiative funds disbursed for each of the 57 homes. The total funds at risk were summed to quantify the total amount of Program funds at risk. To estimate the probability that an individual home would go to sale and ownership would be transferred, the survival at the time of observation (S_{curr}) was compared with the survival probability 1 year from August 31, 2010 (S_{futr}), and the likelihood of sale and transfer of ownership (P_{sale}) was computed as follows:

$$P_{sale} = \left(1 - \frac{S_{futr}}{S_{curr}}\right)$$

Based on our modeling, we estimated that over the next year, the State will not recapture Program and/or Initiative funds and/or reimburse its Program from non-Federal funds for \$123,768 of the \$213,597 in Program or Initiative funds used for the 57 homes acquired under its First Home/PLUS program of which ownership would be transferred due to foreclosures. This estimate is presented solely to demonstrate the amount of Program and/or Initiative funds that could be put to better use over the next year on eligible activities if the State implements our recommendation.

In addition, we relied in part on data maintained by the Authority for its First Home/PLUS down payment assistance program, data in HUD's Neighborhood Watch System, and selected data from HUD's Single Family Data Warehouse. Although we did not perform detailed assessments of the reliability of the data, we performed a minimal level of testing and found the data to be adequately reliable for our purposes.

We performed our onsite audit work from April through July 2010 at the Authority's office located at 30 South Meridian Street, Indianapolis, IN. The audit covered the period July 2008 through March 2010 and was expanded as determined necessary.

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

Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about 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 objectives:

- Effectiveness and efficiency of operations - Policies and procedures that management has implemented to reasonably ensure that a program meets its objectives.
- Reliability of financial reporting - Policies and procedures that management has implemented to reasonably ensure that valid and reliable data are obtained, maintained, and fairly disclosed in reports.
- Compliance with 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:

- The Authority lacked adequate procedures and controls to ensure that (1) it used Program or Initiative funds for activities in accordance with HUD's requirements, (2) it implemented appropriate recapture provisions for activities, (3) the State's Program was reimbursed for Program or Initiative funds used for activities in which the ownership of the homes was later transferred through foreclosures, and (4) the State's treasury account was reimbursed for Program funds used for an activity that was later terminated (see findings 1 and 2).

APPENDIXES

Appendix A

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

Recommendation number	Ineligible 1/	Unsupported 2/	Funds to be put to better use 3/
1A		<u>\$803,445</u>	
2B	\$130,326		
2C			\$123,768
2D	<u>8,300</u>		
Totals	<u>\$138,626</u>	<u>\$803,445</u>	<u>\$123,768</u>

- 1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or Federal, State, or local policies or regulations.
- 2/ 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.
- 3/ Recommendations that funds be put to better use are estimates of amounts that could be used more efficiently if an Office of Inspector General (OIG) recommendation is implemented. These amounts include reductions in outlays, deobligation of funds, withdrawal of interest, costs not incurred by implementing recommended improvements, avoidance of unnecessary expenditures noted in preaward reviews, and any other savings that are specifically identified. In this instance, if the State implements our recommendation it will appropriately recapture Program and/or Initiative funds and/or reimburse its Program from non-Federal funds.

Appendix B


AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

Comments 1, 2,
and 3

Comments 1, 2,
and 3



ihcda
Indiana Housing & Community Development Authority

January 7, 2011

VIA OVERNIGHT MAIL AND E-MAIL (BowenB@hudoig.gov)
Brent Bowen
Assistant Regional Inspector General for Audit
United States Department of HUD-Office of Inspector General
77 West Jackson Boulevard, Room 2646
Chicago, Illinois 60604

Re: Discussion Draft Audit Report on OIG's Audit of State of Indiana's HOME Investment Partnerships Program ("HOME")

Dear Mr. Bowen,

Indiana Housing and Community Development Authority ("IHCDA" or "we") is in receipt of the discussion draft audit report of HUD's Office of Inspector General ("OIG" or "you") dated December 27, 2010. As the State of Indiana's administrator of HOME funds, IHCDA has carefully reviewed the discussion draft audit report, and welcomes the opportunity to provide comment. Please consider this letter to be our official response.

Per your request, our comments will indicate our agreement or disagreement with each specific finding contained in the discussion draft. We will also provide an explanation supporting why we agree or disagree with these findings. Also per your request, these comments address each recommendation and state how it will be implemented or why it is not necessary; or, we will present an alternative action and show how the alternative action will correct the problem which the recommendation was designed to fix.

We begin our response with OIG's Finding 1.

OIG Finding 1: IHCDA Lacked Adequate Controls Over the First Home/PLUS Program to Ensure that Activities Met HUD's Property Standards Requirements



IHCDA Response to Finding 1: DISAGREE

OIG premises its conclusion in Finding 1 – that IHCDA lacked adequate controls over First Home/PLUS – on the assertion that IHCDA could not provide sufficient documentation to support its use of HOME funds in 138 cases. The comments which follow will demonstrate that this premise is incorrect, misleading and does not support Finding 1. The comments will further show that even if HUD determines that IHCDA lacked documentation, such lack of documentation does not give rise to Recommendation 1A (repayment of HOME funds), as this lack of documentation neither placed the HOME funds in jeopardy, nor caused HUD or the HOME funds recipient any damage.


Argument 1: The inspections conducted on the properties met HUD's property standards requirements, as set out in HUD regulations 24 CFR 92.251(a)(2) and 24 CFR 92.612(b).

HUD regulations setting property standards which must be maintained for properties receiving HOME funds for acquisition can be found at 24 CFR 92.251(a)(2) (for HOME) and 24 CFR 92.612(b) (for the

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American Dream Downpayment Initiative (“DREAM”) funds, which IHCD received through 2008). Section 92.251(a)(2) of Title 24 states that all housing receiving HOME funds for acquisition “must meet all applicable State and local housing quality standards and code requirements”. If there are no such housing quality standards and code requirements, the housing must meet the housing quality standards in 24 CFR 982.401. Properties funded by DREAM are subject to the same requirements pursuant to 24 CFR 92.612(b).

In this case, OIG does not dispute that State and local housing quality standards and code requirements exist. Therefore, IHCD is responsible for ensuring that properties met all applicable State and local housing quality standards and code requirements prior to providing HOME funds in the form of downpayment assistance (“DPA”).

Keep in mind the related fact that all properties receiving HOME funds in the form of DPA must be insured by the Federal Housing Administration (“FHA”). For new construction to become FHA-insured, a HUD FHA inspector must complete an inspection and HUD Compliance Inspection Report Form 92051. FHA inspectors must meet the following qualifications:

1. Have a minimum of three (3) years experience in one or more construction related fields;
2. Must be equipped with familiarity, experience and understanding of all aspects of residential construction techniques and methods, particularly as related to new construction and/or repairs of a structural nature;
3. Possess an inspector’s state or local license or certification;
4. Read and fully understand FHA’s inspection requirements, and any updates to those requirements, including:
 - i. HUD Handbook 4905.1 REV-1 (Requirements for Existing Housing, One to Four Family Units);
 - ii. HUD Handbook 4910.1 (Minimum Property Standards for Housing);
 - iii. HUD Handbook 4145.1 REV-2 (Architectural Processing and Inspections for Home Mortgage Insurance);
 - iv. HUD Handbook 4150.1 REV-1 (Valuation Analysis for Home Mortgage Insurance);
 - v. HUD Handbook 4150.2 CHG-2 (Valuation Analysis for Home Mortgage Insurance for Single Family One- to Four- Unit Dwellings);
 - vi. Permanent Foundations Guide for Manufactured Housing issued by Mortgagee Letter 97-36;
 - vii. Applicable local, State, or Council of American Building Officials code(s); and
 - viii. HUD requirements at 24 CFR 200.926; and
5. Pass HUD’s examination for inspectors.

Given the qualifications of the FHA inspectors, IHCD in certain instances – particularly with new construction – relied on the FHA inspection to verify compliance with HUD property standard requirements.

It is important to note what the discussion draft report does not assert. First, it does not allege that the inspectors were not qualified to complete the inspections for properties receiving DPA; as it is, FHA inspectors conduct countless State and local housing quality standard and code requirement inspections for HUD every year in the State of Indiana. Second, the report does not assert that any of the 138

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properties that received DPA lack evidence that the inspection requirements of 24 CFR 92.251(a)(2) or 24 CFR 92.612(b), as applicable, were met.

Therefore, based on the facts set forth above and the discussion draft report's failure to allege any substantive deficiencies with regard to the inspectors or inspections conducted on the 138 properties, the inspections conducted on the properties met HUD's property standards requirements set out in 24 CFR 92.251(a)(2) and 24 CFR 92.612(b).

Argument 2: IHCD's reliance on FHA inspection reports prevented unnecessary waste of HOME funds.

As stated in Argument 1 above, each of the 138 properties in question was inspected as part of the DPA funding process. The discussion draft report questions neither the qualifications of the inspectors nor the accuracy of the inspections. As communicated to the OIG auditors, IHCD's intent in not conducting inspections on properties that had recently been inspected by an FHA inspector was to prevent unnecessary duplication of efforts and waste of HOME funds. In other words, because HUD's own FHA inspectors conduct new construction inspections according to HUD's property standards requirements, IHCD saw little to no incremental value in sending an "IHCD inspector" to the same property to conduct the same inspection. On the other hand, the costs of doing so were clear: extra expense of HOME funds, delayed closings, and the possible negative public perception of government duplication and waste.

During the on-site portion of the audit, OIG provided some justification for the requirement that an IHCD inspector inspect the property, regardless of whether an FHA inspection had occurred. Specifically, OIG suggested to IHCD that an FHA inspector contracted by another party, like the participating lender, could be improperly influenced by that other party. OIG presented no evidence to give credence to this being anything more than a hypothetical. Even assuming that HUD's own FHA inspectors were improperly influenced on each of the 138 properties in question – a highly unlikely assumption – we find it hard to make the leap that had these inspectors been under contract with IHCD, they would have been deterred from acting unlawfully. A person willing to accept a bribe to falsify an inspection report would do so whether he/she is an FHA inspector employed by HUD and contracted by a private lender or a State-licensed inspector contracted by IHCD. In short, we find this explanation of the benefits of duplicate inspections dubious and unquantifiable.

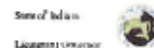
On the other hand, we can easily quantify the cost in HOME funds if IHCD were required to conduct a second inspection on a property for which an FHA inspection recently occurred. If, using a conservative estimate, a home inspection in Indiana costs \$250.00, IHCD would have spent \$34,500.00 to provide duplicate inspections for the 138 properties. Given that the files contain a proper inspection or occupancy report, IHCD strongly believes that taxpayers would view the expenditure of this \$34,500.00 as an unnecessary duplication of efforts and government waste at its finest. Granted, \$34,500.00 pales in comparison to the millions IHCD receives in HOME funds every year; consider, however, that had IHCD spent this \$34,500 on a duplicate inspection, approximately nine (9) families would not have received DPA. These are nine (9) families that may not have had the opportunity to make their dream of a first home a reality.

Barring a more sound justification for how a duplicate inspection benefits the homebuyer or results in a cost-savings to HUD or IHCD, IHCD views duplicate inspections as adding negligible benefits at the cost of thousands in taxpayer dollars. **Therefore, not only did IHCD not jeopardize HOME funds**

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by using FHA inspectors, but IHCD A prevented waste of federal funds by not requiring a second, duplicate inspection of the same property.

Argument 3: OIG's reliance on *Homefires* was misplaced in the context of an audit.

The discussion draft relies on the fact that one of the editions of the HUD official policy newsletter, *Homefires*, states that "PIs may not rely on independent inspections performed by any party not under contract to the PI." (*Homefires* vol. 6, no. 2).

While IHCD A finds the *Homefires* to be a valuable tool in better understanding HOME, the *Homefires* does not impose an obligation of compliance on IHCD A nor should OIG rely on it when conducting audits. There are three ways to create an obligation: by statute, by contract or by caselaw. *Homefires* is neither statute nor regulation. The IHCD A-HUD HCME contract requires compliance with the State's Consolidated Plan/Application, the HUD regulations and that contract, but is silent as to *Homefires*. Because the contract is silent, the *Homefires* obligations cannot be read into the contract under the parol evidence rule of contracts. Finally, IHCD A has been unable to find any federal or State caselaw holding that the *Homefires* newsletter carries the weight of law or that PIs are bound by the opinions contained therein. As such, IHCD A asserts that *Homefires* imposes no legal obligations on IHCD A, and OIG erroneously used it in conducting the audit.

As such, one must refer to the statute and regulations to see whether they contain a similar prohibition on independent inspections. This policy statement is not reflected in either the HOME enabling statute (Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended), or the corresponding HOME regulations at 24 CFR 92 as amended. **Therefore, as demonstrated in Argument 1, IHCD A properly relied on 24 CFR 92.251(a)(2) (for HOME) and 24 CFR 92.612(b) (for DREAM) when ensuring that the 138 properties met the HUD property standards requirements.**

OIG Recommendations 1

The discussion draft presents three (3) recommendations to HUD's Indianapolis Field Office of Community Planning and Development as a result of Finding 1, and, per your direction, we will respond to each individually.

Recommendation 1A: IHCD A should provide sufficient supporting documentation or reimburse its HOME program from non-federal funds for the \$803,445 used for the 138 properties for which sufficient documentation did not exist to show that the properties met HUD's property standards requirements.

Response to 1A: IHCD A disagrees with Recommendation 1A. For the purposes of responding to this Recommendation, we will assume the facts in the worst possible light to us. In other words, we will assume that all of OIG's assertions are true, including that *Homefires* obligated IHCD A to use direct contract or staff inspectors, regardless of whether a property had recently been FHA-inspected. The question then is, even under this worst of scenarios, what are HUD's damages from IHCD A's use of FHA inspections?

OIG believes the damages to be \$803,445.00. The sole premise of OIG's reasoning is that the inspections for the 138 properties were not conducted by an inspector in a direct contractual relationship with IHCD A. Therefore, the logic goes, IHCD A lacks adequate controls and must repay the HOME funds on

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these properties. In other words, the form in which the inspectors received the work, and not the substance of the work itself, substantiates the request for \$803,445.00.

IHCEA disagrees. OIG's leap from premise to conclusion is one of faith without some intermediary supporting premises. Namely, a sound argument concluding that IHCEA lacked adequate controls should be based on three premises: (a) that the work was not done in accordance with the *Homefires*; (b) the substance of the work done – the inspection itself – was deficient, and (c) as a result of this deficiency, IHCEA erroneously invested HOME funds. The combination of the three premises would show a clear line of reasoning that IHCEA put HOME funds at risk, leading to Finding 1 and the resulting demand for repayment of \$803,445.00. Even assuming that the discussion draft establishes premise (a) – which IHCEA believes it does not – the draft provides nothing to support premises (b) or (c).

This is not to say that OIG did not attempt to prove premises (b) and (c) while conducting the audit. During the on-site portion of the audit, OIG conducted walk-throughs of approximately ten (10) randomly chosen homes that had received DPA. The purpose of these walk-throughs was to identify conditions that might suggest an inadequate preliminary inspection. OIG indicated that if the walk-through raised questions as to the adequacy of the inspection, OIG would bring in a HUD inspector to re-inspect the home and determine whether, in retrospect, the original inspection was deficient. Following the walk-throughs, none of the homes were designated for further inspection. Thus, the audit was unable to show any homes received deficient inspections.

Nor can IHCEA recall ever having received a complaint about a deficient First Home/PLUS inspection, either from a homebuyer or HUD.

Without establishing premises (b) and (c), we can only conclude that IHCEA properly expended its HOME funds and owes \$0.00 to HUD. We anticipate that you will argue that merely establishing premise (a) is enough to trigger damages. Our response is two-fold. First, our arguments to Finding 1 show that premise (a) has not been established. Therefore, no damages accrue. Second, even if premise (a) has been established, what are HUD's damages? It is a principle of law that a party is entitled to remedies commensurate with the damages suffered. In the absence of proof of injury, an aggrieved party is entitled to recover only nominal damages (See *Carey v. Piphus*, 435 U.S. 247 (1978)). Injury for HUD would be an investment of HOME funds on non-eligible properties. In other words, a mispending of HOME funds would require a showing had an IHCEA-contracted inspector completed the inspections, these properties would not have received HOME funds. We have every reason to believe that this is not the case, and that regardless of who conducted the inspections and the number of inspections conducted, these properties were HOME eligible.

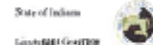
Even if HUD attempted to collect HOME funds on behalf of homeowners whose properties only received an FHA inspection, their potential damages are the amount of harm caused and expenses incurred in remedying items that should have been identified by a proper inspection. To IHCEA's knowledge, no First Home/PLUS homebuyer has been adversely affected by not receiving a duplicate inspection, and as such, this amount is \$0.00. **Based on the facts above, neither HUD nor the homebuyers suffered harm as a result of any technical breach of obligations which might have been imposed by the *Homefires* newsletter, and as such, IHCEA's liability is \$0.00.**

However, in response to comments made by OIG during the audit, IHCEA implemented changes to its inspection process. Beginning on July 12, 2010, IHCEA began requiring that an IHCEA-contracted inspector inspect all properties applying for DPA. IHCEA continues to have concerns about the

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negligible value and perceived wastefulness of requiring a duplicate inspection, but recognizes this as a concern of OIG.

Recommendation 1B: IHCDCA should implement adequate procedures and controls to ensure that all properties are inspected by IHCDCA or an IHCDCA contractor, and that sufficient documentation is maintained to support that inspections are conducted in accordance with HUD's requirements.

Comment 7

Response to 1B: IHCDCA has already implemented Recommendation 1B. Beginning on July 12, 2010, IHCDCA began requiring that an IHCDCA-contracted inspector inspect all properties applying for DPA. IHCDCA's current procedure is to maintain copies of all files and supporting documentation, including completed inspections, with the file. IHCDCA will continue to do so with the inspection reports from the IHCDCA-contracted inspectors.

Comment 8

Recommendation 1C: IHCDCA should implement adequate procedures and controls to ensure that it maintains all contracts with inspectors for at least five (5) years after contract termination.

Response to 1C: IHCDCA agrees with Recommendation 1C. The IHCDCA General Counsel is scheduled to provide training on 24 CFR 92.616(i) to the First Home/PLUS program staff on January 12, 2011. The Single Family Director has, since the start of the audit, provided training to the First Home/PLUS program staff on this topic as well. IHCDCA welcomes any supplementary records retention training by the HUD Indianapolis Field Office.

Comment 9

On the topic of records retention, we respectfully request that you revise the final audit report to indicate that it was not the policy of IHCDCA or its First Home/PLUS program to discard prior year contracts once current contracts were executed. The discussion draft implies that this was the case. In reality, one employee in charge of maintaining inspection contracts took this action without consulting the Single Family Director or IHCDCA Executive Management. As of November 12, 2010, this employee no longer works for IHCDCA.

We move now to OIG Finding 2.

Comments 10 and 11

OIG Finding 2: IHCDCA Lacked Adequate Controls Over the First Home/PLUS Program to Ensure That Appropriate Recapture Provisions Were Used for Activities

IHCDCA Response to Finding 2: DISAGREE

OIG premises its conclusion in Finding 2 – that IHCDCA lacked adequate controls over First Home/PLUS – on the assertion that IHCDCA did not implement appropriate recapture provisions. The comments which follow will demonstrate that this premise is incorrect, misleading and does not support Finding 2. The comments will further show that even if HUD determines that IHCDCA did not have the appropriate recapture provisions, such lack of recapture provisions does not give rise to Recommendation 2B (repayment of Program funds).

Comment 4

Argument 1: OIG's reliance on *Homefires* was misplaced in the context of an audit.

The discussion draft relies on the fact that one of the editions of *Homefires* states that "If the recapture agreement requires the entire amount of the HOME investment from the homebuyer... the amount

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required by the agreement is the amount that must be recaptured by the PJ for the HOME program.” (Homefires vol. 5, no. 2)

We have already argued as to the non-binding nature of Homefires, and we will spare you any repetition here. If we refer to only the binding documents – the statute and regulations – to see whether they contain a requirement that the PJ repay the difference between the full HOME investment and the amount requested, we find that they do not.

To the contrary, the regulations impose a net proceeds limitation on recapture (24 CFR 92.254(a)(5)(ii)). Thus even if Homefires applies to IHCDA, neither the HOME statute nor regulations support the distinctions the Homefires makes regarding implementing recapture provisions in the case of foreclosure. **Therefore, IHCDA is not obligated to repay the difference between the full HOME investment and the amount requested in the written agreement.**

Argument 2: IHCDA’s First Home/PLUS loan documents do not indicate full recapture in the event of foreclosure, and as such, IHCDA is not liable for repayment.

The First Home/PLUS Note requires the repayment of the full amount of DPA on “Maturity”, which is defined as sale of the property, the payoff or refinancing of the first mortgage on the property, or the borrower’s changing his/her principal place of residence from the property. The Note does not specifically address what repayment, if any, is required upon foreclosure or deed-in-lieu of foreclosure. Had IHCDA intended to require a full recapture for foreclosure, the Note would have spoken on this issue.

Referring to the Homefires on which OIG relies, we see that “the amount of HOME funds required to be repaid in the event of foreclosure is the amount that would be subject to recapture under the terms of the written agreement with the homebuyer.” In this case, the written agreement – the Note – is silent on the amount the homebuyer must repay in the event of foreclosure. If there is no written agreement that controls, the amount subject to recapture should revert to the State’s controlling program document. In this case, that document is the State’s consolidated plan. Under the State’s consolidated plan from 2005 through 2009, the amount of HOME funds to be recaptured is based on a pro rata shared net sale proceeds calculation. Therefore, foreclosures do not trigger full recapture, but are rather calculated on a pro rata shared net sale proceeds basis. **Because there were no net sale proceeds for the 32 properties listed in the discussion draft, IHCDA has no obligation to repay HUD.**

Argument 3: IHCDA’s removal of the forgivability period from the First Home/PLUS loan documents was directed at voluntary sale and refinancing, and resulted in a recycling and more efficient use of HOME funds.

On May 2, 2007, IHCDA revised the First Home/PLUS loan documents to remove the forgivability period. Prior to May 2, 2007, the loan balance was forgivable 20% per year, over a period of five (5) years. IHCDA observed that many homebuyers were refinancing the first mortgages on their homes in years four (4) and five (5), repaying IHCDA a small portion of the HOME funds, and keeping the remaining equity. By removing the forgivability period for payoff or refinancing of first mortgages, IHCDA believed it had created an innovative way to stretch the HOME funds.

For example, imagine a homebuyer receiving \$5,000 in DPA and refinancing in year four (4). Prior to May 2, 2007, the homebuyer would repay 20%, or \$1,000, in HOME funds to IHCDA. After May 2,

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2007, IHCD A would receive the full \$5,000 from the homebuyer, thus providing IHCD A with funding enough to provide another homebuyer with DPA, without the need to tap new HOME funds. As a result, IHCD A has been able to serve more families with the same amount of HOME funds.

The May 2, 2007 revisions did not contemplate a similar full repayment in the event of foreclosure. This change would have been contrary to the interests of a foreclosed homebuyer, and would not have advanced the goal of recycling HOME funds, as the second mortgagee rarely receives any funds, let alone a full payoff, in a foreclosure.

Further, because the loan documents do not request full recapture of funds in a foreclosure, it was not reasonable for IHCD A to anticipate that it had somehow created a new obligation to repay HUD all HOME investments on a foreclosed property. Clearly, IHCD A would never have created a plan that would be so contrary to its own self-interest and financial well-being.

Please be clear; the draft discussion report does not allege that IHCD A put any HOME funds in jeopardy as a result of this plan. There is no allegation that HOME funds should not have been provided to these 32 properties. There is no allegation of any pattern of illicit behavior here, nor malicious intent. This is simply a case of IHCD A identifying a gap in the HOME fund system, and creating a good faith, innovative solution for the sole purpose of being a better steward of HOME funds. To require IHCD A to repay \$130,326.00 would send a clear message to all PJs that stewardship of funds is not a goal of HUD. **Therefore, IHCD A should not be penalized for creating a program in accordance with HUD statute and regulations that more efficiently used HOME funds.**

OIG Recommendations 2

The discussion draft presents four (4) recommendations to HUD's Indianapolis Field Office of Community Planning and Development as a result of Finding 2, and, per your direction, we will respond to each individually.

Recommendation 2A: IHCD A should revise its consolidated plan and action plan to include the recapture provisions it uses for the First Home/PLUS program, or revise the First Home/PLUS program documents to conform to the consolidated plan and action plan.

Response to 2A: IHCD A agrees with Recommendation 2A. IHCD A is in the process of revising its First Home/PLUS documents. Under the new First Home/PLUS documents, net proceeds language will be used, rather than full recapture language. Without the full recapture language, IHCD A will not have the obligation to repay HUD the full amount of HOME funds invested. These changes will necessitate changes to the consolidated plan and action plan, and after making such changes, IHCD A will submit the plans to HUD for approval.

On January 3, 2011, IHCD A's Staff Attorney delivered a draft of the revised First Home/PLUS documents to John Dorgan, HUD CPD Senior Representative, for review and comment. This delivery of documents followed meetings IHCD A conducted with Mr. Dorgan and others on the same subject on July 15, 2010, August 11, 2010 and November 8, 2010.

Recommendation 2B: IHCD A should reimburse its HOME program \$130,326.00 from non-federal funds for 32 properties which transferred through foreclosure.

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EQUAL OPPORTUNITY EMPLOYER AND HOUSING AGENCY



Ref to OIG Evaluation

Auditee Comments

Comments 10,
11, and 12

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Response to 2B: Recommendation 2B is not necessary given the arguments set forth above.

Recommendation 2C: IHCDCA should implement adequate controls and procedures to ensure that it receives notice of future foreclosures and recaptures the entire amount of HOME funds provided for such properties.

Comment 14

Response to 2C: Recommendation 2C is not necessary given the forthcoming changes to the First Home/PLUS documents, as well as changes to the system by which IHCDCA is notified of foreclosures.

With regard to the foreclosure notification system, the Single Family Director now receives notice from IHCDCA's foreclosure attorneys of any First Home/PLUS foreclosures. Further, IHCDCA's software system provider is creating additional foreclosure-related data fields on the IHCDCA system, so that the master service can provide IHCDCA with more information on foreclosures.

Comment 13

Regarding the First Home/PLUS document revisions, as stated above, IHCDCA is replacing the full recapture language with net proceeds language, thus eliminating the obligation to repay HUD the full amount of HOME funds invested on a going-forward basis. On January 3, 2011, IHCDCA's Staff Attorney delivered a draft of the revised First Home/PLUS documents to John Dorgan, HUD CPD Senior Representative, for review and comment. This delivery of documents followed meetings IHCDCA conducted with Mr. Dorgan and others on the same subject on July 15, 2010, August 11, 2010 and November 8, 2010.

Comment 15

For loans originated between May 2, 2007 and the date of change of the First Home/PLUS documents, IHCDCA plans to petition HUD for a waiver from potential repayment. IHCDCA would anticipate using many of the same arguments as set forth above in its waiver request.

If HUD were to decline to issue a waiver, and were to indicate that IHCDCA would continue to face liability for loans originated after May 2, 2007 that fall into foreclosure, IHCDCA would issue amendments for the purpose of changing all post-May 2, 2007 loans from full recapture to net proceeds. Amending all such loans will involve considerable time and staff resources, but IHCDCA is determined not to face continued exposure to liability for actions taken for the purpose of being better, more efficient stewards of HOME funds.

Comment 16

Recommendation 2D: IHCDCA should reimburse the State's Treasury account \$8,300.00 for two (2) properties (file nos. 25781 and 25061) for which funds were inappropriately disbursed.

Response to 2D: IHCDCA agrees with Recommendation 2D. Contrary to the discussion draft, IHCDCA did not receive the \$4,800.00 check for file #25781 until December 13, 2010. (Bank of America approved the check on November 15, 2010, but did not mail until early December. Bank of America indicated that this is standard processing time for checks. OIG staff is aware of this, and we respectfully request that the final audit report reflect the correct dates). Because the HOME funds were originally drawn from IHCDCA's HOME Investment Trust Fund local account, IHCDCA repaid the funds to the local account on January 5, 2011, in accordance with 24 CFR 92.503(b)(3).

Comment 17

On file #25061, IHCDCA does not anticipate receiving funds, and as such will reimburse the \$3,500.00 in non-federal funds to the State's HOME local account.

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Thank you again for providing us with the opportunity to comment on the discussion draft. Please do not hesitate to contact me at (317) 234-3873 or ssciwert@ihcda.in.gov with any questions or requests for further information.

Best regards,



Sherry Seiwert
Executive Director of Indiana Housing and Community Development Authority

SS/mjw

cc: The Honorable Becky Skillman, Lieutenant Governor, State of Indiana (Chairman of the Board for the Indiana Housing and Community Development Authority)

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EQUAL OPPORTUNITY EMPLOYER AND HOUSING AGENCY



OIG Evaluation of Auditee Comments

- Comment 1** HUD's HOMEfires, volume 6, number 2, states that pursuant to 24 CFR 92.504(a), a participating jurisdiction is responsible for managing the day-to-day operations of its Program, including compliance with property standards applicable to Program units. They must perform inspections of Program units purchased with Program or Initiative funds. Participating jurisdictions may not rely on independent inspections performed by any party not under contract to the participating jurisdiction. Third parties such as consumer inspectors or FHA appraisers are not contractually obligated to perform the participating jurisdictions' obligations. Their inspections cannot be used to determine compliance with Program or Initiative property standards requirements.
- Comment 2** The Authority did not have inspections performed on any of the new construction homes purchased under the First Home/PLUS program. It relied on FHA compliance or occupancy inspections performed by the cities or counties where the new construction homes were located. Further, the Authority did not monitor the inspections to ensure that the new construction homes met HUD's property standards requirements.
- Comment 3** Contrary to HUD's requirements, the Authority lacked sufficient documentation to support that new construction homes for 138 activities met HUD's property standards requirements.
- Comment 4** HOMEfires is HUD's official policy newsletter for the Program that answers specific policy questions. Its purpose is to clarify and explain how Program regulations should be interpreted and applied. Therefore, participating jurisdictions are required to follow the requirements contained in HOMEfires.
- Comment 5** As a result, the Authority was unable to support its use of more than \$803,000 in Program or Initiative funds for activities without sufficient documentation to demonstrate that homes met HUD's property standards requirements.
- Comment 6** We randomly selected eight activities completed from April 1, through June 30, 2010. We were only able to conduct walkthroughs of seven of the eight homes. Further, only 6 of the new construction homes for the 138 activities were completed during this period. However, none of the six new construction homes were selected through our random sample.
- Comment 7** The Authority did not provide documentation to support that it had third-party contracted inspectors inspect all homes purchased under the First Home/PLUS program as of July 12, 2010. If the Authority implements this procedure, it should improve the Authority's management of the State's Program.

- Comment 8** The Authority's commitment to training, if fully implemented, should improve its retention of all contracts with third-party inspectors for at least 5 years after the contracts terminate.
- Comment 9** We are not implying that it was the Authority's policy to discard prior contracts with the inspectors. The audit report includes statements from the Authority's single family director that once the Authority executed current contracts with the inspectors, it discarded the prior contracts with the inspectors and the assistant single family director and a single family underwriter were not aware that HUD's regulations at 24 CFR 92.508(c)(4) required written agreements to be retained for 5 years after the agreements terminated.
- Comment 10** HUD's HOMEfires, volume 5, number 2, states that for Program-assisted home-buyer projects with recapture provisions, the amount of Program funds required to be repaid in the event of foreclosure is the amount that would be subject to recapture under the terms of the written agreement with the home buyer. If the recapture agreement requires the entire amount of the Program investment from the home buyer or an amount reduced pro rata based on the time the home buyer has owned and occupied the housing measured against the affordability period, the amount required by the agreement is the amount that must be recaptured by the participating jurisdiction for the Program. If the participating jurisdiction is unable to recapture the funds from the household, it must reimburse its Program in the amount due pursuant to the recapture provisions in the written agreement with the home buyer.
- Comment 11** Contrary to HUD's requirements and the State's consolidated plan and action plan, the Authority did not ensure that it implemented appropriate recapture provisions for all 64 of the activities reviewed. U.S. Bank issued foreclosure notices for the homes of 3 of the 64 activities in which the Authority drew down and disbursed Program or Initiative funds from July 1, 2008, through March 31, 2010. Ownership for two of the homes had been transferred through the foreclosure process as of August 31, 2010. The Authority did not receive any net proceeds from the sale of the homes or reimburse the State's Program for the \$7,000 in Program funds used for the two homes. Therefore, we reviewed an additional 100 activities in which Program or Initiative funds were reserved through the State's First Home/PLUS program after May 2, 2007, and U.S. Bank had issued foreclosure notices for the homes or referred the homes for foreclosure as of August 31, 2010. Ownership for 30 of the homes had been transferred through the foreclosure process as of September 30, 2010. The Authority did not receive any net proceeds from the sale of the homes or reimburse the State's Program for the \$123,326 in Program or Initiative funds used for the 30 homes. As a result, the State's Program was not reimbursed more than \$130,000 in Program or Initiative funds used for 32 activities in which the ownership of homes was later transferred through foreclosures.

Comment 12 The promissory notes, which were secured by second mortgages, between the Authority and the home buyers required the home buyers to repay the entire amount of downpayment assistance at or before maturity of the loan. The promissory notes define maturity as the sale of the property, the payoff or refinancing of the first mortgage on the property, or the home buyer's changing his or her principal place of residence from the property purchased under the First Home/PLUS program. The promissory notes did not contain language that limited the amount of Program or Initiative funds the Authority could recapture to the net proceeds from the sale of the property. The 32 homes were sold through the foreclosure process. Therefore, the loans reached maturity due to the sale of the properties, and the Authority was required to recapture the entire amount of Program or Initiative funds used for activities through the receipt of net proceeds from the sales of the homes and/or reimburse its Program for the Program or Initiative funds provided to the home buyers as appropriate.

Comment 13 The Authority's commitment to revising the recapture provisions it uses for the First Home/PLUS program to comply with the recapture provisions in the State's consolidated plan and action plan, if fully implemented, should improve the Authority's management of the State's Program.

Comment 14 The Authority's commitment to revising the recapture provisions it uses for the First Home/PLUS program will not be applicable to activities reserved through the State's First Home/PLUS program after May 2, 2007, through the date the Authority revises the recapture provisions. Therefore, for these activities in which ownership of homes acquired under the Authority's First Home/PLUS program is transferred through foreclosures, the State must recapture the entire amount of Program or Initiative funds used for activities through the receipt of net proceeds from the sales of the homes and/or reimburse its Program for the Program or Initiative funds provided to the home buyers as appropriate.

Comment 15 If the Authority is able to amend its promissory notes with the home buyers for those activities reserved through the State's First Home/PLUS program after May 2, 2007, through the date the Authority revises the recapture provisions and the promissory notes include appropriate language limiting the amount of Program or Initiative funds the Authority could recapture to the net proceeds from the sale of the properties, the State should not be required to reimburse its Program from non-Federal funds for the sale of homes through foreclosure.

Comment 16 We revised the report to state the following:

- On December 13, 2010, the Authority received a check, dated November 15, 2010, from Bank of America for the nearly \$5,000. However, as of December 17, 2010, the Authority had not reimbursed the State's treasury account for the nearly \$5,000.

- The Authority's staff attorney stated that the Authority had not reimbursed the State's treasury account for the nearly \$5,000 in Program funds disbursed for activity number 25781 since the Authority did not receive Bank of America's repayment for the funds until December 13, 2010, and it takes time to process the reimbursement.

The Authority did not provide documentation to support that it reimbursed the State's local account \$4,800 for activity number 25781. Further, the Authority drew down the \$4,800 in Program funds for activity number 25781 from its treasury account. Therefore, the State should reimburse its treasury account for the \$4,800 in Program funds the Authority inappropriately disbursed for activity number 25781.

Comment 17 The State should reimburse its treasury account from non-Federal funds for the \$3,500 in Program funds the Authority inappropriately disbursed for activity number 25061.

Appendix C

HUD'S REQUIREMENTS AND THE STATE'S AND THE AUTHORITY'S POLICIES

Finding 1

HUD's regulations at 24 CFR 92.251(a)(2) state that housing acquired with Program funds must meet all applicable State and local housing quality standards and code requirements. If there are no such housing quality standards or code requirements, the housing must meet HUD's housing quality standards.

HUD's regulations at 24 CFR 92.504(b) state that before disbursing any Program funds to any entity, the participating jurisdiction must enter into a written agreement with that entity. Before disbursing any Program funds to any entity, a State recipient, subrecipient, or contractor, which is administering all or a part of the Program on behalf of the participating jurisdiction, must also enter into a written agreement with that entity. The written agreement must ensure compliance with the requirements of 24 CFR Part 92.

HUD's regulations at 24 CFR 92.508(a) state that a participating jurisdiction must establish and maintain sufficient records to enable HUD to determine whether it has met the requirements of 24 CFR Part 92. The participating jurisdiction must maintain records demonstrating that each activity meets the property standards of section 24 CFR 92.251. Section 92.508(c)(4) states that written agreements must be retained for 5 years after the agreement terminates.

HUD's regulations at 24 CFR 92.612(b) state that housing assisted with Initiative funds must meet the property standards contained in 24 CFR 92.251.

HUD's regulations at 24 CFR 92.616(e) state that the requirements regarding participating jurisdiction responsibilities and written agreements contained in 24 CFR 92.504 apply to Initiative funds, with the modification that the written agreement is not required to cover any Program requirement that is not applicable to Initiative funds.

HUD's regulations at 24 CFR 92.616(i) state that the record-keeping requirements contained in 24 CFR 92.508 apply to Initiative funds.

HUD's HOMEfires, volume 6, number 2, states that pursuant to 24 CFR 92.504(a), a participating jurisdiction is responsible for managing the day-to-day operations of its Program, including compliance with property standards applicable to Program units. Participating jurisdictions must perform inspections of Program units purchased with Program or Initiative funds. Participating jurisdictions may not rely on independent inspections performed by any party not under contract to the participating jurisdiction. Third parties such as consumer inspectors or FHA appraisers are not contractually obligated to perform the participating

jurisdictions' obligations. Their inspections cannot be used to determine compliance with Program or Initiative property standards requirements.

Finding 2

Section 215(b) of Title II of the Act, as amended, states that housing that is for homeownership shall qualify as affordable housing under Title II of the Act only if the housing is subject to resale restrictions that are established by the participating jurisdiction and determined by HUD's Secretary to be appropriate to (1) allow for the later purchase of the property only by a low-income household at a price which will provide the owner a fair return on investment and ensure that the housing will remain affordable to a reasonable range of low-income home buyers or (2) recapture the Program investment to assist other persons in accordance with the requirements of Title II of the Act, except when there are no net proceeds or when the net proceeds are insufficient to repay the full amount of the assistance.

HUD's regulations at 24 CFR 91.200(a) state that a complete consolidated plan consists of the information required in section 91.220.

HUD's regulations at 24 CFR 91.220(l)(2)(ii) state that the action plan must include the guidelines for resale or recapture, as required in 24 CFR 92.254, if a participating jurisdiction intends to use Program funds for home buyers.

HUD's regulations at 24 CFR 92.254(a)(4) state that Program-assisted housing must meet the affordability requirements for not less than the applicable period beginning after activity completion. Home ownership activities that receive less than \$15,000 in Program assistance must remain affordable for at least 5 years. Section 92.254(a)(5) states that to ensure affordability, the participating jurisdiction must impose either resale or recapture requirements that comply with the standards of section 92.254(a)(5) and include the provisions in its consolidated plan. HUD must determine that they are appropriate. Section 92.254(a)(5)(ii) states that a participating jurisdiction's recapture provisions must ensure that the participating jurisdiction recoups all or a portion of the Program assistance to the home buyers if the housing does not continue to be the principal residence of the household for the duration of the period of affordability. The participating jurisdiction may structure its recapture provisions based on its program design and market conditions. In establishing its recapture provisions, the participating jurisdiction is subject to the limitation that when the recapture provision is triggered by a voluntary or involuntary sale of the housing unit and there are no net proceeds or the net proceeds are insufficient to repay the Program investment due, the participating jurisdiction can only recapture the net proceeds if any. The recaptured funds must be used to carry out Program-eligible activities in accordance with the requirements of 24 CFR Part 92.

HUD's regulations at 24 CFR 92.502(c)(3) state that a participating jurisdiction must disburse Program funds, including Program income and recaptured Program funds, in its HOME investment trust fund local account (local account) before requesting Program funds from its treasury account. Section 92.503(c) states that Program funds recaptured in accordance with 24 CFR 92.254(a)(5)(ii) must be deposited in the participating jurisdiction's local account and used in accordance with the requirements of 24 CFR Part 92.

HUD's regulations at 24 CFR 92.503(b)(2) state that any Program funds invested in a project that is terminated before completion, either voluntarily or otherwise, must be repaid by a participating jurisdiction in accordance with section 92.503(b)(3). Section 92.503(b)(3) states that if the Program funds were disbursed from the participating jurisdiction's treasury account, the funds must be repaid to the participating jurisdiction's treasury account. If the Program funds were disbursed from the participating jurisdiction's local account, the funds must be repaid to the participating jurisdiction's local account.

HUD's regulations at 24 CFR 92.612(c) state that housing assisted with Initiative funds must meet the affordability requirements contained in 24 CFR 92.254(a).

HUD's regulations at 24 CFR 92.616(d) state that the requirements regarding Program income, repayments, and recaptured funds contained in 24 CFR 92.503 apply to Initiative funds, except that the Program income and recaptured funds must be deposited into a participating jurisdiction's local account and used in accordance with Program requirements.

HUD's HOMEfires, volume 5, number 2, states that for Program-assisted home-buyer projects with recapture provisions, the amount of Program funds required to be repaid if the ownership of the housing is conveyed pursuant to a foreclosure sale is the amount that would be subject to recapture under the terms of the written agreement with the home buyer. If the recapture agreement provides for shared net proceeds, the amount subject to recapture is based on the amount of net proceeds, if any, from the foreclosure sale. If the recapture agreement requires the entire amount of the Program investment from the home buyer or an amount reduced pro rata based on the time the home buyer has owned and occupied the housing measured against the affordability period, the amount required by the agreement is the amount that must be recaptured by the participating jurisdiction for the Program. If the participating jurisdiction is unable to recapture the funds from the household, the participating jurisdiction must reimburse its Program in the amount due pursuant to the recapture provisions in the written agreement with the home buyer. Regardless of the terms of its written agreements, it is important that the participating jurisdiction establish mechanisms to ensure that it will be notified of pending foreclosures so that it can attempt to recoup some or all of the Program subsidy.

HUD's HOMEfires, volume 5, number 5, requires a participating jurisdiction to select either resale or recapture provisions for its Program-assisted home-buyer projects. The participating jurisdiction may select resale or recapture provisions for all of its home-buyer projects or resale or recapture provisions on a case-by-case basis. However, the participating jurisdiction must select whether resale or recapture will be imposed for each home-buyer project at the time the assistance is provided. A participating jurisdiction may adopt any one of four options in designing its recapture provisions. All of the options the participating jurisdiction will employ must be identified in its consolidated plan and approved by HUD.

The State's consolidated plan for 2005 through 2009 and action plan for 2009 state that the amount of Program funds to be recaptured is based on a pro rata shared net sale proceeds calculation. If there are no proceeds, there is no recapture. Any net sale proceeds that exist would be shared between the recipient and the beneficiary based on the number of years of the affordability period that have been fulfilled, not to exceed the original Program investment.

Page 11-1 of the Authority's mortgage revenue bond program guides, dated March 2007 and January 2010, state that the First Home/PLUS program offers downpayment assistance in the form of a loan secured by a second mortgage to certain qualified borrowers. For all loans reserved after May 2, 2007, there is no loan forgiveness associated with the second mortgage if the borrower refinances or sells the home. The second mortgage is due and payable immediately.

Appendix D

SCHEDULE OF ACTIVITIES WITH INSUFFICIENT DOCUMENTATION TO SUPPORT THAT HOMES MET HUD'S PROPERTY STANDARDS REQUIREMENTS

<i>Activity number</i>	<i>Assistance amount</i>	<i>Activity number</i>	<i>Assistance amount</i>	<i>Activity number</i>	<i>Assistance amount</i>	<i>Activity number</i>	<i>Assistance amount</i>
23381	\$3,500	24417	\$3,500	24770	\$3,500	25810	\$6,854
23842	3,500	24418	3,500	24771	3,500	25835	5,000
23853	3,500	24427	14,999	24772	11,490	25859	5,000
23891	3,500	24437	11,900	24781	3,500	25860	6,000
23936	3,500	24439	3,500	24807	3,500	25875	7,500
23951	3,363	24448	3,500	24902	3,500	25898	5,000
23957	14,999	24464	13,399	24935	3,500	25912	6,612
23963	3,500	24471	3,500	24962	3,500	25913	7,500
23971	3,500	24472	3,500	25012	3,500	25919	7,500
23982	3,500	24498	3,500	25048	5,000	25970	5,000
23999	3,500	24520	13,503	25065	3,500	25999	5,000
24003	3,500	24550	3,500	25090	5,000	26012	7,500
24037	3,500	24562	3,500	25223	5,000	26025	7,500
24042	3,500	24563	3,500	25251	5,000	26045	7,350
24047	3,500	24568	3,500	25413	5,000	26054	5,000
24062	3,500	24596	3,500	25424	5,000	26071	7,410
24067	13,500	24601	3,500	25512	5,000	26112	4,300
24068	11,513	24603	3,500	25515	5,000	26115	7,500
24069	3,500	24604	3,500	25517	5,000	26169	7,500
24090	3,500	24617	3,500	25530	5,000	26203	7,500
24107	3,500	24623	3,500	25554	12,190	26247	6,894
24119	5,000	24626	3,500	25569	5,000	26276	7,500
24160	3,500	24627	3,500	25575	5,000	26299	7,033
24169	13,434	24628	3,500	25707	5,000	26311	6,240
24216	14,999	24656	14,000	25714	14,200	26335	6,400
24228	3,500	24657	3,500	25716	5,000	26374	7,500
24348	3,500	24678	3,500	25752	7,500	26375	7,500
24352	3,500	24708	3,500	25765	5,000	26383	6,780
24369	3,500	24709	3,500	25768	7,407	26384	7,500
24376	3,500	24711	3,500	25774	13,400	26416	6,896
24377	3,500	24731	10,000	25785	7,011	26441	5,200
24383	3,500	24751	3,500	25789	13,304	26451	7,383
24392	3,500	24752	2,584	25801	5,000	26493	6,796
24406	3,500	24753	2,847	25802	5,000	Totals	\$803,445
24410	14,256	24766	14,999	25807	7,500		

Appendix E

SCHEDULE OF ACTIVITIES IN WHICH OWNERSHIP OF HOMES WAS TRANSFERRED THROUGH THE FORCLOSURE PROCESS

Activity number	Date of closing	Date of drawdown	Date of transfer	Amount of assistance
22419	June 29, 2007	July 11, 2007	July 20, 2010	\$10,100
22445	July 13, 2007	July 13, 2007	June 17, 2010	3,500
22451	July 20, 2007	July 19, 2007	June 24, 2010	2,600
22480	July 30, 2007	July 27, 2007	July 21, 2010	3,500
22527	Aug. 3, 2007	Aug. 3, 2007	Apr. 15, 2010	3,500
22538	Aug. 6, 2007	Aug. 9, 2007	June 16, 2010	3,500
22635	Aug. 17, 2007	Aug. 21, 2007	Feb. 23, 2010	3,500
22649	Aug. 17, 2007	Sept. 17, 2007	June 29, 2010	2,975
22503	Aug. 24, 2007	Aug. 31, 2007	June 29, 2010	3,500
22836	Sept. 20, 2007	Sept. 17, 2007	Aug. 19, 2010	8,300
22952	Oct. 12, 2007	Feb. 7, 2008	Aug. 10, 2010	3,500
22936	Oct. 16, 2007	Oct. 15, 2007	May 4, 2010	3,500
23018	Oct. 29, 2007	Dec. 12, 2007	May 12, 2010	9,300
23013	Nov. 9, 2007	Nov. 9, 2007	Mar. 16, 2010	3,500
23235	Jan. 8, 2008	Jan. 17, 2008	Apr. 15, 2010	3,500
23367	Jan. 15, 2008	Feb. 12, 2008	Aug. 16, 2010	3,500
23321	Jan. 29, 2008	Jan. 31, 2008	Apr. 8, 2010	3,500
23407	Feb. 19, 2008	Mar. 3, 2008	Aug. 10, 2010	3,500
23463	Mar. 14, 2008	Apr. 2, 2008	Mar. 4, 2010	3,500
23503	Apr. 1, 2008	Apr. 3, 2008	May 4, 2010	3,500
23672	Apr. 25, 2008	May 19, 2008	June 8, 2010	3,500
23599	Apr. 30, 2008	Apr. 30, 2008	May 10, 2010	8,500
23610	May 8, 2008	June 5, 2008	June 18, 2010	3,500
23789	June 6, 2008	July 24, 2008	Aug. 19, 2010	3,500
23897	June 30, 2008	June 27, 2008	June 15, 2010	3,500
24213	Aug. 22, 2008	Sept. 24, 2008	Aug. 5, 2010	3,500
24336	Aug. 28, 2008	Sept. 4, 2008	Apr. 15, 2010	3,375
24522	Oct. 27, 2008	Oct. 29, 2008	Aug. 11, 2010	1,176
24559	Nov. 6, 2008	Nov. 6, 2008	July 21, 2010	3,500
24747	Nov. 25, 2008	Dec. 23, 2008	July 29, 2010	3,500
24708	Nov. 26, 2008	Dec. 15, 2008	June 17, 2010	3,500
24836	Feb. 20, 2009	Feb. 26, 2009	Aug. 5, 2010	3,500
Total				<u>\$130,326</u>