



Issue Date	August 27, 2008
Audit Report Number	2008-NY-0002

TO: Kim Kendrick, Assistant Secretary, Office of Fair Housing and Equal Opportunity, E

John P. Harrison for

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

SUBJECT: Weaknesses in the Office of Fair Housing and Equal Opportunity's 2007 Award Process for the Fair Housing Initiative Program, National-Based Media Campaign

HIGHLIGHTS

What We Audited and Why

In response to an Office of Inspector General (OIG) hotline complaint,¹ we performed a limited review of HUD's Office of Fair Housing and Equal Opportunity's 2007 award process for the Fair Housing Initiatives Program, Education and Outreach Initiative, national-based program, media campaign as well as its fiscal year 2005 and 2006 national Education and Outreach Initiatives program. The objectives of the review were to generally determine whether the Office of Fair Housing and Equal Opportunity complied with the requirements of 42 U.S.C. (*United States Code*) Chapter 45, Subpart I, Section, 3616a(d), entitled Fair Housing Initiatives Program, Education and Outreach, when it published the 2007 Fair Housing Initiatives Program notice of funding availability for the national Education and Outreach Initiative national-based media campaign, awarded the grant for the 2007 national media campaign, and administered the national education and outreach program activities in 2005 and 2006.

What We Found

The limited scope work conducted to address the complaint disclosed that the Office of Fair Housing and Equal Opportunity generally complied with the requirements of 42 U.S.C. Chapter 45, Subpart I, Section, 3616a(d); however, it issued the 2007 Fair Housing Initiatives Program notice of funding availability

¹ The complaint allegations were addressed in a separate memorandum to the OIG Hotline.

with an error related to applicant eligibility, and it did not fully document criteria to determine eligibility of the applicant awarded the 2007 Education and Outreach Initiative national program media campaign. This condition occurred because the Office of Fair Housing and Equal Opportunity broadly defined who was eligible to apply for the media campaign component by including for-profit entities and did not develop specific criteria or obtain a legal definition to support its designation of applicants as nonprofit organizations representing groups protected under the Fair Housing Act. As a result, the notice of funding availability may have been confusing to potential applicants, and there was no assurance that the grant award was made to an eligible organization under the Fair Housing Initiatives Program statute. Additionally, the Office of Fair Housing and Equal Opportunity lacked a policy regarding whether a portion of each fiscal year's Education and Outreach Initiative funds were to be used for a national program for Fair Housing Month activities.

What We Recommend

We recommend that the Assistant Secretary, Office of Fair Housing and Equal Opportunity, (1) strengthen its internal control procedures regarding the development of future super notices of funding availability to ensure that notice language complies with statutory requirements, (2) obtain guidance on the meaning of a nonprofit organization representing groups of persons protected under the Fair Housing Act, (3) make a determination whether the nonprofit organization awarded the 2007 media campaign is a nonprofit organization representing groups of persons protected under the Fair Housing Act, (4) establish procedures to ensure proper designation of organizations as nonprofit organizations representing groups of persons protected under the Fair Housing Act, and (5) develop policy on whether funds from each fiscal year's Fair Housing Initiatives Program appropriation is intended to be used for a national program specifically for annual Fair Housing Month activities.

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

Auditee's Response

We discussed the results of our review with auditee officials during the audit and at an exit conference on July 29, 2008. We provided a draft report to the auditee on July 25, 2008 and requested their written comments by August 12, 2008, which we received on August 15, 2008. The auditee generally agreed with the finding and has begun implementing corrective action to address our recommendations. The complete text of the auditee's response, without attachments, along with our evaluation of that response, can be found in appendix A of this report.

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BACKGROUND AND OBJECTIVES

The Office of Fair Housing and Equal Opportunity's mission is to create equal housing opportunities for all persons in America by administering laws that prohibit discrimination in housing on the basis of race, color, religion, sex, national origin, age, disability, and familial status. The Fair Housing Initiatives Program provides funding to public and private entities formulating or carrying out programs to prevent or eliminate discriminatory housing practices. The program is authorized under Section 561 of the Housing and Community Development Act of 1987 (42 U.S.C. (*United States Code*) 3616a, P. L. 100-242), as amended by the Housing and Community Development Act of 1992, and regulations at 24 CFR (*Code of Federal Regulations*) Part 125.

The Fair Housing Initiatives Program supports projects and activities designed to enhance compliance with the Fair Housing Act through four initiatives: Fair Housing Organizations, Private Enforcement, Education and Outreach, and Administrative Enforcement. The Education and Outreach Initiative provides funding to state and local governments and nonprofit organizations for initiatives to foster understanding of equal opportunity in housing and compliance with the Fair Housing Act. Regulations at 42 U.S.C. Chapter 45, Subpart I, Section 3616a, authorize the Secretary of Housing and Urban Development, through contracts with one or more qualified fair housing enforcement organizations, other fair housing enforcement organizations, and other nonprofit organizations representing groups of persons protected under the Fair Housing Act [Title VIII of the Civil Rights Act of 1968 [42 U.S.C. 3601 et seq.]], to establish a national education and outreach program. This national program should be designed to provide a centralized, coordinated effort for the development and dissemination of fair housing media products, including both audio and video public service announcements; television, radio, and print advertisements; posters; pamphlets; and brochures.

The U.S. Department of Housing and Urban Development (HUD) published a super notice of funding availability in 2007 to solicit applicants to receive funding for various discretionary programs, including the Fair Housing Initiatives Program, Education and Outreach Initiative, national-based program, media campaign component. Two applications were received; one was determined not eligible, and the remaining applicant was awarded the funding.

The objectives of the review were to generally determine whether the Office of Fair Housing and Equal Opportunity complied with the requirements of 42 U.S.C. Chapter 45, Subpart I, Section 3616a(d), entitled Fair Housing Initiatives Program, Education and Outreach, when it published the 2007 Fair Housing Initiatives Program notice of funding availability for the national Education and Outreach Initiative media campaign, awarded the 2007 national media campaign, and administered the national education and outreach program activities in 2005 and 2006.

RESULTS OF AUDIT

Finding 1: Weaknesses Existed in the Office of Fair Housing and Equal Opportunity's Award Process for the Fair Housing Initiatives Program National-Based Media Campaign

The Office of Fair Housing and Equal Opportunity generally complied with the requirements of 42 U.S.C. Chapter 45, Subpart I, Section, 3616a (d); however, it issued the 2007 Fair Housing Initiatives Program notice of funding availability with an error related to applicant eligibility, and it did not fully document criteria to determine the eligibility of the applicant awarded the 2007 Education and Outreach Initiative national program media campaign. This condition occurred because the Office of Fair Housing and Equal Opportunity broadly defined who was eligible to apply for the media campaign component by including for-profit entities and did not develop specific criteria or obtain a legal definition to support its designation of applicants as nonprofit organizations representing groups protected under the Fair Housing Act². As a result, the notice of funding availability may have been confusing to potential applicants, and there was no assurance that the grant award was made to an eligible organization under the Fair Housing Initiatives program statute. Additionally, the Office of Fair Housing and Equal Opportunity lacked a policy regarding whether a portion of each fiscal year's Education and Outreach Initiative funds were to be used for a national program for Fair Housing Month activities.

Applicant Eligibility Incorrectly Defined

The Office of Fair Housing and Equal Opportunity did not ensure that applicant eligibility in the 2007 notice of funding availability for the national-based program media campaign was defined in accordance with the Fair Housing Initiatives statute (Section 3616a(d)(1)). Regulations at 42 U.S.C. Chapter 45, Subpart I, Section 3616a(d)(1), imply that eligible applicants are qualified fair housing enforcement organizations, other fair housing enforcement organizations, and other nonprofit organizations representing groups of persons protected under the Fair Housing Act. Contrary to regulations, the super notice of funding availability defined eligible applicants as including for-profit entities that carry out programs to prevent or eliminate discriminatory housing practices. We concluded that the statute is controlling and the policy requirements and general section of the super notice of funding availability required that eligible applicants meet all statutory and regulatory requirements applicable to any program for which they sought funding. Consequently, while the notice may have been confusing, no harm occurred.

² Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended, prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex, national origin, disability or familial status.

The Fair Housing Initiatives program division director stated that the eligibility definition was intended to apply to applicants in each of the initiatives under the Fair Housing Initiatives program. The director further stated that, while public or private for-profit entities are not eligible for funding under the Education and Outreach Initiative, national-based program, media campaign component, they would be eligible under the Education and Outreach Initiative, regional/local programs component. The division director also stated that the statute trumps information published in the super notice, although the notice contained errors in defining eligible applicants. Nevertheless, the director noted that corrective action had been taken to ensure that the draft 2008 notice of funding availability defines eligible applicants for the national-based program media campaign as qualified fair housing enforcement organizations, other fair housing enforcement organizations, and other nonprofit organizations representing groups of persons protected under the Fair Housing Act. We verified this correction in the final notice issued.

Applicant Eligibility Not Fully Documented

The Office of Fair Housing and Equal Opportunity did not ensure that the applicant awarded a cooperative agreement under the 2007 national media campaign met the Fair Housing Initiatives program statutory eligibility requirement of being a nonprofit organization representing groups of persons protected under the Fair Housing Act. Specifically, Fair Housing Initiatives Program staff relied upon the information provided in the application for the grant. The entity that was awarded the grant certified on its application that it was a nonprofit organized under Internal Revenue Code Section 501(c)(3) and reported that it was a national, multi-channel news and communications organization for ethnic media dedicated to bringing the voices of immigrant and ethnic minority communities into national discourse. Review of the applicant's Form 990 for tax year 2005 disclosed that it reported its primary exempt purpose as public education and community organizing. The Form 990 also listed the following accomplishments in 2005: (1) served more than 7,500 at-risk youth through its youth communication program; (2) channeled more than two million dollars in advertising into the ethnic media sector and increased the ethnic media's capacity to report on policy, health, and the environment; and (3) convened the first national expo of ethnic media in New York City.

Fair Housing Initiatives program staff concluded that a 501(c)(3) organization dedicated to working with and for diverse groups, such as those for whom the organization awarded the grant, met the criteria for representing groups of persons protected under the Fair Housing Act. However, program staff had not developed and could not identify a legal definition or other criteria used to support designation of such an organization as a nonprofit organization representing groups protected under the Fair Housing Act. Consequently, there is a question as

to whether such a media organization could qualify as an eligible applicant that represented groups protected under the Fair Housing Act. In response to this uncertainty, we requested that the Fair Housing Initiatives Program division director obtain legal guidance from the HUD General Counsel regarding the meaning of a nonprofit organization representing groups of persons protected under the Fair Housing Act. A response had not been received prior to the issuance of our draft report, but was subsequently received on August 18, 2008. HUD General Counsel advised that the Assistant Secretary for Fair Housing and Equal Opportunity has legal authority to interpret and apply the phrase “represent groups protected under the Fair Housing Act”.

Uncertainty Related to Funding of a National Program for Fair Housing Month Activities

We concluded that the Fair Housing Initiatives Program statute does not require HUD to fund annual National Fair Housing Month activities, but HUD may impose stricter requirements upon itself through interpretation of the statute. In a May 13, 2008, memorandum, the Associate General Counsel for Fair Housing concluded that interpretation of the statute would require that HUD annually fund a national program specifically for activities related to the annual National Fair Housing Month. However, based upon our further inquiry, the Associate General Counsel sought advice from HUD appropriation counsel, which reportedly concluded that the statute did not require HUD to fund this activity annually.

Nevertheless, the Director of the Office of Fair Housing and Equal Opportunity, Fair Housing Initiatives Program Division, stated that the Office of Fair Housing and Equal Opportunity did fund and produce a national education and outreach program in 2005 and 2006. Our review of the application for which the fiscal year 2004 national-based program media campaign award was made found that the award included promoting the 2005 National Fair Housing Month. Our review of fiscal years 2005 and 2006 Fair Housing Initiatives program funding found that no Education and Outreach Initiative funding was allocated to a national program specifically for Fair Housing Month activities.

While the statute may not require HUD to fund annual National Fair Housing Month activities, it gives HUD discretion to impose such a requirement upon itself if it so chooses. Without documentation as to HUD’s intention in this regard, we cannot conclude that the Office of Fair Housing and Equal Opportunity was required to use a portion of each fiscal year’s appropriation to fund a national program for Fair Housing Month.

Conclusion

The Office of Fair Housing and Equal Opportunity's 2007 Fair Housing Initiatives program notice of funding availability incorrectly defined eligible applicants for the national education and outreach media campaign because it broadly defined who was eligible to apply for the media campaign component by including for-profit entities. However, since the statute controlled who was determined to be eligible, other than possible confusion among applicants, there was no adverse effect. Additionally, the office did not fully document that the applicant awarded the 2007 national media campaign was a nonprofit organization representing groups protected under the Fair Housing Act. This condition occurred because the Office of Fair Housing and Equal Opportunity did not use specific criteria or a legal definition to support such a designation. As a result, there was no assurance that the grant award was made to an eligible organization under the Fair Housing Initiatives program statute.

Recommendations

We recommend that the Assistant Secretary, Office of Fair Housing and Equal Opportunity,

- 1A. Strengthen its internal control procedures regarding the development of future super notices of funding availability to ensure that notice language complies with statutory requirements.
- 1B. Obtain legal guidance on the meaning of a nonprofit organization representing groups of persons protected under the Fair Housing Act.
- 1C. Make a determination regarding whether the nonprofit organization awarded the cooperative agreement for the 2007 media campaign is a nonprofit organization representing groups of persons protected under the Fair Housing Act.
- 1D. Establish procedures to ensure proper designation of organizations as nonprofit organizations representing groups of persons protected under the Fair Housing Act.
- 1E. Develop policy on whether the Office of Fair Housing and Equal Opportunity intends to use a portion of each fiscal year's appropriation to fund a national program specifically for activities related to the annual National Fair Housing Month.

SCOPE AND METHODOLOGY

To address the complaint allegations and determine whether the Office of Fair Housing and Equal Opportunity complied with the requirements of 42 U.S.C. (*United States Code*) Chapter 45, Subpart I, Section, 3616a(d), entitled Fair Housing Initiatives Program, Education and Outreach, we reviewed Fair Housing Initiatives Program laws and regulations and Office of Fair Housing and Equal Opportunity files and applications for awards made for the fiscal years 2004 and 2007 Fair Housing Initiatives Program, Education and Outreach Initiative, national-based program, media campaign component. In addition, we obtained and reviewed Form 990, Return of Organization Exempt from Income Tax, of the nonprofit organization funded in 2007 for its tax years 2004, 2005, and 2006. We reviewed the entity's quarterly reports submitted to HUD and payments made by HUD for services the organization provided. We also interviewed officials of the Office of Fair Housing and Equal Opportunity to obtain an understanding of the internal controls over the Fair Housing Initiatives Program, Education and Outreach Initiative, national-based program, and obtained guidance from the Counsel to the OIG on the issues relating to compliance with 42 U.S.C. Chapter 45, Section 3616(a), Fair Housing Initiatives Program. Additionally, we discussed with HUD's Associate General Counsel for Fair Housing whether the statute required the Office of Fair Housing and Equal Opportunity to annually fund National Fair Housing Month activities.

We performed our review between January and March 2008 at the Office of Fair Housing and Equal Opportunity in Washington, DC, in accordance with generally accepted government auditing standards.

INTERNAL CONTROLS

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

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

Internal controls relate to management's plans, methods, and procedures used to meet its mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

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

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

We assessed the relevant controls identified above.

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

Significant Weaknesses

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

- The Office of Fair Housing and Equal Opportunity lacked adequate controls to (1) accurately define who was eligible to apply for the media campaign, and (2) develop specific criteria or obtain a legal definition to support its designation of applicants as nonprofit organizations representing groups protected under the Fair Housing Act (see finding 1).

Appendix A

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

ASSISTANT SECRETARY FOR
FAIR HOUSING AND EQUAL OPPORTUNITY

August 15, 2008

MEMORANDUM FOR: Edgar Moore, Regional Inspector General for Audit, 2AGA
FROM: *Kim Kendrick*
Kim Kendrick, Assistant Secretary for Fair Housing and Equal
Opportunity, E
SUBJECT: Response to Draft Audit Memorandum Report on Anonymous
Complaint: Fair Housing Initiatives Award Funds for the FY2007
National Program Media-Based Campaign Component

This responds to your July 25, 2008, request for comments on the Office of Inspector General's (OIG) draft Audit Report, "Weaknesses in the Office of Fair Housing and Equal Opportunity's 2007 Award Process for the Fair Housing Initiative Program, National-Based Media Campaign." We appreciate the opportunity to comment on your draft report.

Several years ago, the Office of Fair Housing and Equal Opportunity (FHEO) recognized that it could improve upon its national education and outreach media campaign initiatives. In previous years, FHEO only worked with the primary grant recipient and not directly with the subcontractor who had the media experience and was responsible for developing and marketing FHEO's message, including public service announcements, posters and billboards. However, to have better control over the outcome of the media products and to ensure that HUD's message was not distorted, FHEO determined that it could achieve its goals (and statutory requirements) by working directly with a media savvy organization. Such a relationship would give HUD ultimate control over the final product. FHEO believes that this direction, which is consistent with the relevant provisions of the Fair Housing Act, will attract organizations that can effectively educate the public nationwide about the Fair Housing Act and effectively communicate HUD's fair housing message without a filter.

We are pleased that the above subject report concluded that FHEO generally complied with the requirements of Section 561 of the Housing and Community Development Act of 1986, the Statutory Provision that authorizes the Fair Housing Initiatives Program (FHIP). In addition, the draft OIG report notes five recommendations; FHEO supports these recommendations and will take each of them for action. However, the OIG draft report also cites three weaknesses in FHEO's administration of the FY2007 FHIP award process for its National Program Media-Based Campaign Component which I will address, in turn, below.

(1) Applicant Eligibility Incorrectly Defined.

The OIG notes and FHEO acknowledges that the FY2007 FHIP Notice of Funding Availability (NOFA) mistakenly included the Regional/Local Community-Based Education

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Appendix A

AUDITEE COMMENTS AND OIG'S EVALUATION

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Auditee Comments

Comment 1

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and Outreach Initiative eligibility requirements for the National Program Media-Based Component. Specifically, the OIG report states, "Contrary to regulations, the super notice of funding availability defined eligible applicants as including for-profit entities that carry out programs to prevent or eliminate discriminatory housing practices." (Page 5 of the draft OIG report) The report also states that no harm occurred as a result of this administrative error.

FHEO has already taken actions to address this finding. The FY2008 FHIP NOFA, which was published in the Federal Register on May 12, 2008, (Attachment A) contains the appropriate national program language in the description of organizations eligible to participate in the National Program Media-Based Campaign Component. You will note that the FY2008 FHIP NOFA applicant eligibility requirements for the National Program Media-Based Campaign Component correctly states, "QFHOS, other fair housing enforcement organizations, and other non-profit organizations representing groups of persons protected under title VIII of the Civil Rights Act of 1968."

We have re-examined our procedures and have sought the guidance of the Office of Departmental Grants Management and Oversight to ensure that proper internal controls are in place. As a result, FHEO has established stronger internal controls to prevent such errors in the future and to ensure strict adherence to the FHIP statute and implementing regulations in the development of future NOFAs. In addition to the two FHIP staff persons who are assigned to review the various contents of the FHIP NOFA, another staff person is now solely dedicated to reviewing the NOFA for administrative errors during the Departmental clearance process and before publication. Further, the FY2009 FHIP NOFA will also be reviewed by two supervisory level employees and the Office of the General Counsel.

(2) Applicant Eligibility Not Fully Documented

The subject draft report notes, in part, that FHEO "had not developed and could not identify a legal definition or other criteria used to support designation of such an organization as a nonprofit organization representing groups of persons protected under the Fair Housing Act." (Page 6 of the draft OIG report) As a result, you call into question whether the applicant awarded the grant for the FY2007 FHIP National Program Media-Based Campaign Component satisfied the eligibility requirements. The report states that FHEO did not fully document that the applicant was a nonprofit organization representing groups of persons protected under the Fair Housing Act but relied only on the information provided by the applicant to make its determination of eligibility.

Comment 2

FHEO takes exception to this finding. FHEO believes that it reviewed sufficient documentation to ascertain that the organization awarded the grant met the eligibility requirement of a nonprofit organization representing groups of persons protected under the Fair Housing Act. Specifically, in accordance with FHEO's long standing procedures, and prior to submitting the application in question to the Technical Evaluation Panel for review, a FHIP staff person determined that the applicant provided documentation to certify that it is a 501(c)(3) nonprofit as designated by Section 501(c)(3) of the Internal Revenue Code. The designation by the Internal Revenue Service is nationally recognized as a method of

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AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

Comment 3

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determining whether an organization is a "nonprofit." In addition, FHEO requested a copy of a Dun & Bradstreet Report dated September 30, 2007, to verify that the applicant is, in fact, a nonprofit entity. Based upon FHEO's review, which took place in advance of awarding the grant to the Pacific News Service, there is no question that the organization at issue is a nonprofit as recognized by the Internal Revenue Service.

Further, the applicant's background clearly demonstrated that the organization represents groups for the benefit of a number of diverse ethnic minority groups and otherwise represented groups of persons protected under Title VIII of the Civil Rights Act of 1968, i.e., the Fair Housing Act. Most notably it represents the various African Americans, Asians, Hispanics, and persons with disabilities in major media outlets. The group in question is nationally renowned as acknowledged by its receipt of a 1997 Academy Award for Best Short documentary. Additionally, FHEO reviewed the applicant's submission and other outlets, e.g., Pacific New Service website to determine that the applicant serves both immigrant and ethnic minority communities. Clearly, these are groups protected by the Fair Housing Act. Finally, the FHIP NOFA required that the applicant subcontract with a Qualified Fair Housing Enforcement Organization. FHEO believes that this eligibility requirement is satisfied by the applicant's subcontract with the National Community Reinvestment Coalition, a recognized national fair housing organization, which represents groups of persons protected under Title VIII of the Civil Rights Act of 1968. In conclusion, there is no question that the applicant organization by itself, and in association with the subcontractor, is an organization that represents groups of persons protected under the Fair Housing Act.

Moreover, the August 8, 2008, Guidance on Meaning of 42 U.S.C. Section 3616(d)(1) of the FHIP statute (Guidance) memorandum from the Associate General Counsel for Fair Housing (Attachment B), recognizes the legal authority for the Assistant Secretary for FHEO to interpret and apply the phrase in question as she/he executes FHIP. Notwithstanding, the FY2007 FHIP NOFA (page 11508) defines Underserved Populations as "groups of individuals who fall within one or more of the categories protected under the Act who are: (1) of an immigrant population (especially racial and ethnic minorities who are not English speaking or limited English proficient)...." FHEO believes it used the correct interpretation in determining eligibility of the group at issue.

FHEO plans to use this OGC Guidance memorandum to support its eligibility determination in the FY2008 and future evaluations of applications under the national education and outreach component. We ask that your report reflect that we have already taken these actions.

(3) Uncertainty Related To Funding of a National Program for Fair Housing Month Activities.

On July 14, 2008, the Associate General Counsel for Fair Housing issued a memorandum to FHEO regarding the legal interpretation of the FHIP Statute's Education and Outreach Provisions. (Attachment C) This memorandum advised FHEO that the provisions requiring the Secretary to designate a portion of appropriation funds for annual

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AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

Comment 4

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Fair Housing Month activities solely applied to fiscal years 1993 and 1994 and that future expenditures were at the discretion of the Secretary.

While there is no longer a requirement for the Department to directly fund Fair Housing Month activities, all FHIP partners, as well as other fair housing partners and all HUD FHEO Regional and field offices are encouraged to coordinate and participate in Fair Housing Month activities. Attached to this document is a listing for FY2007 and FY2008 Fair Housing Month activities that took place across the country. (Attachment D) All FHEO offices and all FHIPs and Fair Housing Assistance Program partners undertake Fair Housing Month activities. Indeed, for the last three fiscal year's all of the organizations have utilized the same theme as HUD – "Fair Housing...It's Not an Option, It's the Law."

Conclusion

In conclusion, we appreciate the comments from the OIG on the award process of the FHIP National-Based Media Campaign Component. Your comments support what FHEO has already done to ensure that our award process has adequate documentation and safeguards. We believe the measures are appropriate and provide for a more effective program.

If you have any questions or need additional information, please contact Stephanie Waller, FHEO Audit Liaison Officer, at 20-402-6838 or Myron Newry, Director, FHIP Division, at 202-402-7095.

Attachments

OIG Evaluation of Auditee Comments

- Comment 1** The auditee agrees with the finding and has already taken actions that are responsive to our recommendation.
- Comment 2** The auditee takes exception to the finding that it had not developed or identified a legal definition or criteria to support designation of an applicant as a nonprofit organization representing groups of persons protected under the Fair Housing Act. Officials disagree with the statement that they did not fully document that the applicant was a nonprofit organization representing groups of persons protected under the Fair Housing Act and note that the applicant provided documents to certify that it is a 501(c) 3 nonprofit as designated by Section 501(c) 3 of the Internal Revenue Code. The report does acknowledged that the auditee verified the applicant's status as a nonprofit organization organized and operated under the provisions of Internal Revenue Code 501(c)(3); however, this verification ensures that the applicant is a nonprofit organization, but does not verify that the organization represents groups of persons protected under the Fair Housing Act.
- Comment 3** The auditee responds that the applicant's background clearly demonstrates that the applicant organization by itself and in association with the subcontractor is an organization that represents groups of persons protected under the Fair Housing Act. Further the auditee references an August 8, 2008 memo from the Associate General Counsel for Fair Housing providing guidance that recognizes the legal authority of the Assistant Secretary for Fair Housing and Equal Opportunity to interpret and apply the definition of an organization representing groups protected under the Fair Housing Act as it administers the Fair Housing Initiatives Program. Therefore, the auditee believes that it correctly interpreted the eligibility of the subject organization. Nevertheless, the actions taken by the auditee to obtain legal guidance on this issue are responsive to our recommendation.
- Comment 4** While HUD General Counsel determined that annual funding of annual fair Housing Month activities is at the discretion of the Secretary, the Assistant Secretary for Fair Housing and Equal Opportunity encourages all Fair Housing and Equal Opportunity regional and field offices, Fair Housing Initiative Program partners, and other fair housing partners to coordinate and participate in Fair Housing Month activities. This is responsive to our recommendation.