

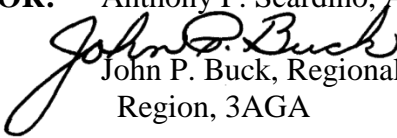


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Regional Inspector General for Audit

MEMORANDUM NO:
2009-PH-0802

September 23, 2009

MEMORANDUM FOR: Anthony P. Scardino, Acting Deputy Chief Financial Officer, F
FROM:  John P. Buck, Regional Inspector General for Audit, Philadelphia
Region, 3AGA
SUBJECT: Evaluation of the Final Front-End Risk Assessment for the Tax
Credit Assistance Program

INTRODUCTION

In accordance with our responsibility to provide oversight and audits of programs, grants, and activities funded by the American Recovery and Reinvestment Act of 2009 (Recovery Act) and administered by the U.S. Department of Housing and Urban Development (HUD), we performed a limited review of HUD's assessment of the risk for the Tax Credit Assistance Program (Program). Our objective was to determine whether HUD's front-end risk assessment¹ (assessment) of the Program complied with Office of Management and Budget (OMB) guidance for implementing the Recovery Act and applicable HUD requirements.

METHODOLOGY AND SCOPE

To accomplish our objective, we obtained and reviewed

- Public Law 111-5, the American Recovery and Reinvestment Act of 2009, dated February 17, 2009.
- OMB Bulletin 09-02, Budget Execution of the American Recovery and Reinvestment Act of 2009 Appropriations, dated February 25, 2009.
- OMB Memorandums M-09-10, M-09-15, and M-09-21 regarding initial and updated guidance for implementing the Recovery Act.
- HUD Handbook 1840.1, REV-3, Departmental Management Control Program.

¹ A front-end risk assessment is an assessment of a new or substantially revised program's or administrative function's susceptibility to waste, fraud, abuse, and mismanagement. It should address the mission, goals, and objectives of the program or function being assessed. In addition, it should contain suggested management controls for factors determined to have inherent risks to ensure proper delivery and administration.

- HUD Notice CPD [community planning and development]-09-03, Implementation of the Tax Credit Assistance Program.
- HUD's Streamlined FERA [front-end risk assessment] Process, dated March 2009.
- HUD's draft Program assessment, dated March 31, 2009, and HUD's final Program assessment, dated June 26, 2009.

We interviewed management and staff from HUD's Office of Affordable Housing Programs. We conducted the audit from April through September 2009 at our offices located in Richmond, Virginia, and Baltimore, Maryland. This was a limited scope review. Therefore, our work was not performed in accordance with generally accepted government auditing standards.

BACKGROUND

On February 17, 2009, President Obama signed the Recovery Act into law. The purpose of the Recovery Act was to jump-start the nation's economy, with a primary focus on creating and saving jobs in the near term. The Recovery Act appropriated \$2.25 billion under the HOME Investment Partnerships Program (HOME) heading for a grant program to provide funds for capital investments in low-income housing tax credit (LIHTC) projects. HUD awarded Program grants to state housing credit agencies, including the District of Columbia and the Commonwealth of Puerto Rico. These 52 agencies are the only eligible grantees for the Program. Although these funds were appropriated under the HOME heading, Program funds are not subject to any HOME requirements, other than the environmental review, and can only be used in LIHTC projects, which is a program administered through the U.S. Department of the Treasury. HUD awarded Program grants to facilitate development of projects that received or will receive LIHTC awards between October 1, 2006, and September 30, 2009. Since a major purpose of these funds is to immediately create new jobs or save jobs at risk of being lost due to the current economic crisis, the Recovery Act establishes deadlines for the commitment and expenditure of grant funds and requires state housing credit agencies to give priority to projects that will be completed by February 16, 2012. The Recovery Act did not include any set-aside funds for HUD to administer the program.

RESULTS OF REVIEW

HUD's final assessment of the Program generally complied with OMB guidance for implementing the Recovery Act and applicable HUD requirements.

OMB Requirements

HUD conducted its assessment in accordance with OMB guidance. OMB's implementing guidance for the Recovery Act discusses program-specific risks to be identified through the assessment process. Given the nature and purpose of the Recovery Act, the guidance requires that the following factors be emphasized:

- **Timeliness.** For every program step, it is critical to consider timing and whether the actions can be taken within the required timeframe.
- **Clear and measurable objectives.** All funds will be tracked to show results. It is critical to have clear and measurable outputs and outcomes and to have tracking mechanisms in place.
- **Transparency.** Information about how all funds are awarded, distributed, and used and what results are achieved must be available to the public.
- **Monitoring.** Workable plans for monitoring programs and related funds must be in place and must be carried out.
- **Reporting.** Identifying and tracking all funding under the Recovery Act is critical and must be reported on regularly.

HUD emphasized the factors identified above in the assessment and determined the following:

Timeliness. The timeframes for commitments and expenditures are short—all funds must be expended within three years (by February 16, 2012). HUD will track all financial data through its Integrated Disbursement and Information System (IDIS) monthly or more frequently if needed and inform grantees of their progress through monthly reports of drawdowns and units completed. State housing credit agencies may not be able to expend all of their Program funds within the three years, given the additional federal requirements many of these state housing credit agencies have not dealt with before. To ensure that funds will be expended before the deadline, the Recovery Act states that housing credit agencies shall give priority to projects that are expected to be completed within three years of enactment. Projects awarded LIHTC in fiscal years 2007, 2008, or 2009 are eligible for funding. Not less than 75 percent of Program funds must be committed by February 2010, 75 percent of the funds must be expended by February 2011, and 100 percent of the funds must be expended by February 2012. CPD Notice 09-03 includes this language. The notice also requires the state agencies to describe the procedures they will use to ensure that they will commit and expend their Program funds to meet the deadlines established in the Recovery Act. The state agencies must also specifically describe how they will redistribute funds to more deserving projects from projects that are not in compliance with deadlines established in the written agreement between the grantee and project owners.

Clear and measurable objectives. Although no clear outcomes or outputs for the Program have been defined by OMB, HUD has defined them based on IDIS data collection and the general goals of the Recovery Act. The Program objectives are clearly defined in the Recovery Act. HUD has identified the risk measures and how these measures will be evaluated. Outputs and outcomes will be tracked through IDIS. HUD will collect performance metrics through IDIS for all project-level Program activities. Although OMB has provided updated guidance for implementing the Recovery Act, detailed information on the data elements on which recipients will be required to report to comply with Section 1512 of the Recovery Act is continually being updated, making it difficult for HUD to effectively design and implement the Program within the timeframes management set and to disseminate accurate information to grantees in a timely manner. HUD has published and posted on the Program Web site a series of questions and answers and two Webcasts. In addition, HUD will continue to publish clarifications and additional guidance when they are made available. Grantees may not understand the difference

between the Program and Recovery Act requirements that HUD administers versus the LIHTC program administered through the Internal Revenue Service (IRS). HUD has provided initial guidance, which will refer grantees to the IRS for compliance issues and questions regarding the LIHTC program through the life of the Program.

Transparency. The Recovery Act has significant requirements for Program transparency. HUD has taken action to ensure that information is available to the public. It expects that the transparency requirements of the Recovery Act, including the requirement to publish both spending and recipient performance reports, should create accountability among its managers and grantees. HUD will use its reporting systems in place with IDIS to generate automated spreadsheets that provide early detection of problem grantees and data entry issues. Each state agency will be required to report to HUD information similar to the following:

- The total amount of Program funds received;
- The amount of Program funds expended or obligated to projects or activities, including unobligated balances; and
- A detailed list of all projects or activities for which Program funds were expended or obligated, including
 - The name of the project,
 - A description of the project,
 - An evaluation of the completion status of the project, and
 - An estimate of the number of jobs created and the number of jobs retained by the project.

Each state agency must post on its Web site a description of its competitive selection criteria for awarding Program funds to eligible projects. In addition, the grantee must identify all projects selected for funding and post the amount of each Program award on its site. State agencies must submit information about how they are meeting the Recovery Act accountability and transparency requirements. To implement this requirement, the state agency must make its project selection process and criteria available to the public and accept comments from the public for a period of not less than five days. The state agency must submit to HUD its Web site address set up for this purpose and a description of how it met the five-day comment period. It must also provide a description of how it plans to ensure that it will remain in compliance with these accountability and transparency requirements for the duration of the Program grant.

Monitoring. HUD has rated this factor as high risk. HUD does not have a monitoring plan for compliance with all of the federal requirements of the Recovery Act. It does not have the staff expertise to monitor Program projects for compliance and eligibility with LIHTC requirements, making it difficult to discern whether cost reasonableness and other requirements are being met. The Recovery Act did not provide set-aside funds for HUD to administer the program. HUD lacks the resources to perform on-site monitoring of Program projects. The IRS administers the LIHTC program and monitors for compliance with Section 42 of the Internal Revenue Code. If there are any compliance issues or questions, HUD will refer these to the IRS. HUD will conduct remote monitoring through IDIS data downloads of project-level data for Program funds committed and expended by grantees, as well as monitoring funds expended within the required

deadlines imposed by Congress. Remote monitoring will continue through the life of the program. In addition, HUD will require state agencies, through the grant agreement, to monitor projects and project owners for compliance with Section 42 of the Internal Revenue Code as well as all other federal requirements. To the extent possible, HUD will recommend the appropriate HUD program office to grantees for compliance issues and questions.

Reporting. HUD will use IDIS for reporting. HUD indicated that a number of state agencies may not be familiar with the requirements of IDIS and how to access the system. It has taken the necessary steps of identifying the risk and the risk mitigation techniques (what is in place) and has proposed a solution and a targeted resolution date. HUD has an IDIS training module on its HOME Web site and will develop, mail, and post operating instructions for new Program grantees on how to access and use IDIS. HUD is unsure whether IDIS can adequately segregate Program funds from HOME funds. However, this is only a risk when the Program grantee is the same as the HOME grantee. HUD has mitigated this risk by separating Program grants from other grant funds, including HOME, by creating a new source code in its accounting system and in IDIS. Therefore, grantees of both HUD and Program funds will be able to segregate reporting for their grants. The target completion date for this objective is September 30, 2009.

IDIS does not collect all of the required data elements of the Recovery Act. Therefore, HUD is developing a system called the Recovery Act Management and Performance System (RAMPS) to account for the various programs' systems not being able to capture all of the required reporting elements of the Recovery Act. If the interface between IDIS and RAMPS is not feasible, HUD will continue to require grantees to enter data into IDIS, while exploring other options to ensure that all required reporting elements are collected. The target completion date for RAMPS is September 30, 2009.

HUD Requirements

HUD followed the guidance in the streamlined assessment process and HUD Handbook 1840.1, REV-3, in assessing the risk for the Program. HUD properly assessed the risks and assigned risk ratings to the 11 factors that the guidance required it to consider. The following chart provides details.

| Factor | Risk rating |
|--|--------------------|
| Legislative | High |
| Organizational structure and staffing | Medium |
| Program objectives/performance measures | Medium |
| Program structure/administration | Medium |
| Coverage by written and other procedures | High |
| Systems | Medium |
| Funding/funds control and organizational checks and balances | Medium |
| Management attitude | Medium |
| Reporting and documentation | Medium |
| Monitoring | High |
| Special concerns or impacts | Medium |

In addition, HUD concluded that there were three inherent risks with the Program: it lacked formal written policies and procedures, it was participant-administered with no clear oversight, and it was a special interest program exhibited by Congress and White House officials.

RECOMMENDATIONS

Based on the results of this audit, there are no recommendations.

AUDITEE'S RESPONSE

We provided a discussion draft audit memorandum to the Assistant Chief Financial Officer for Financial Management and the Director of the Office of Affordable Housing Programs on September 3, 2009, and discussed it with them at an exit conference on September 9, 2009. They agreed with the content of the draft audit memorandum and declined to provide written comments.