



Issue Date March 21, 2011

Audit Report Number 2011-PH-1008

TO: Clifford Taffet, Director, Office of Affordable Housing, DGH
//signed//

FROM: John P. Buck, Regional Inspector General for Audit, Philadelphia Region,
3AGA

SUBJECT: The West Virginia Housing Development Fund, Charleston, WV, Generally Administered Its Tax Credit Assistance Program Funded Under the Recovery Act in Accordance With Applicable Requirements

HIGHLIGHTS

What We Audited and Why

We audited the West Virginia Housing Development Fund's (Fund) Tax Credit Assistance Program (Program) due to a complaint from the Recovery and Transparency Board. We also audited the Fund's Program because it was the only housing finance agency across the Nation that had not spent any of its Program funds. The funds were made available under the HOME Investment Partnerships Program (HOME)¹ for capital investments in low-income housing tax credit projects. Our objective was to determine whether the Fund administered its Program in accordance with the American Recovery and Reinvestment Act of 2009 (Recovery Act) and applicable U.S. Department of Housing and Urban Development (HUD) requirements.

What We Found

The Fund generally administered its Program in accordance with Recovery Act and HUD requirements. Specifically, it (1) met the required fund commitment

¹ Although Program funds were appropriated under the HOME program, funds are not subject to any HOME program requirements other than the completion of environmental reviews.

deadline, (2) selected and funded eligible projects, (3) executed written agreements that complied with requirements, (4) received and disbursed Program funds in a timely manner, (5) ensured that Davis-Bacon prevailing wage requirements were met, (6) completed environmental clearances and obtained HUD approval of requests for release of funds before executing written agreements, (7) met increased transparency and reporting requirements, (8) obtained lobbying certifications as required by the Recovery Act, and (9) met the required expenditure deadline. However, regarding the reporting of job creation information, the Fund did not report 38 full-time equivalents (FTE) created during the first three quarters of 2010.

What We Recommend

We recommend that HUD require that the Fund maintain the FTE data that were not reported until the Federal Government requests the information.

Auditee's Response

We provided a discussion draft audit report to the Fund on March 4, 2011, and discussed it with the Fund at an exit conference on March 14, 2011. The Fund provided written comments on the draft audit report on March 16, 2011. It agreed with the conclusions and recommendation in the report. The complete text of the auditee's response can be found in appendix A of this report.

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BACKGROUND AND OBJECTIVE

The West Virginia Housing Development Fund (Fund) is a component unit of the State of West Virginia created under the provisions of Article 18, Chapter 31, of the Code of West Virginia in 1931. It was established to develop and improve housing opportunities for West Virginians and is responsible for administering the State's low-income housing tax credit (LIHTC) program.

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (Recovery Act) into law. The purpose of the Recovery Act is to jump-start the Nation's ailing economy, with a primary focus on creating and saving jobs in the near term and investing in infrastructure that will provide long-term economic benefits. The Recovery Act appropriated \$2.25 billion under the HOME Investment Partnerships program (HOME) heading for a Tax Credit Assistance Program (Program) grant to provide funds for capital investments in LIHTC projects. The U.S. Department of Housing and Urban Development (HUD) awarded Program grants to the 52 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 Program funds were appropriated under the HOME heading, these funds are not subject to any HOME requirements other than the environmental review and can only be used in LIHTC projects, which are administered through the U.S. Department of the Treasury. HUD awarded grants to facilitate development of projects that received LIHTC awards between October 1, 2006, and September 30, 2009. On July 1, 2009, HUD awarded the Fund \$16.5 million in Program funds.

The Recovery Act imposed additional reporting requirements and obligation and expenditure requirements on the grant recipients. For example, the Fund was required to commit at least 75 percent of its grant funds by February 16, 2010. It was also required to demonstrate that project owners expended 75 percent of the grant funds by February 16, 2011, and expend 100 percent of the grant funds by February 16, 2012. Transparency and accountability are critical priorities in the funding and implementation of the Recovery Act.

Our objective was to determine whether the Fund administered its Program in accordance with the requirements of the Recovery Act and applicable HUD requirements.

RESULTS OF AUDIT

Finding: The Fund Generally Administered Its Program in Accordance With Applicable Requirements

The Fund generally administered its Program in accordance with Recovery Act and HUD requirements. Specifically, it (1) met the required fund commitment deadline, (2) selected and funded eligible projects, (3) executed written agreements that complied with requirements, (4) received and disbursed program funds in a timely manner, (5) ensured that Davis-Bacon prevailing wage requirements were met, (6) completed environmental clearances and obtained a HUD approval request for release for funds before executing written agreements as required, (7) met increased transparency and reporting requirements, (8) obtained lobbying certifications to ensure compliance with 24 CFR (Code of Federal Regulations) Part 87, and (9) met the required expenditure deadline. However, the Fund did not report 38 full-time equivalents (FTE) created for the first three quarters of 2010 as required. This condition occurred because the Fund misunderstood reporting requirements. It believed that since it had not disbursed funds to the Program developers, it was not necessary to report the FTEs. By not reporting the number of FTEs created, it did not provide the general public access to accurate information concerning the number of jobs created with Program funds.

The Fund Met the Required Commitment and Disbursement Deadlines

Under the Recovery Act and HUD's Office of Community Planning and Development (CPD) Notice CPD-09-03-REV,² the Fund was required to commit at least 75 percent of its Program grant of \$16.5 million by February 16, 2010. It was able to commit more than \$15.1 million, or 91.5 percent, of its Program funds by the required deadline. It allocated its grant funds for the acquisition, new construction, and rehabilitation of 15 projects located in the State of West Virginia. The Fund was also required to disburse at least 75 percent of its Program funds by February 16, 2011. As of February 15, 2011, the Fund had disbursed more than \$12.4 million, or 75 percent, to 13 projects. Therefore, it met the required commitment and disbursement deadlines.

² Revised July 27, 2009

The Fund Selected and Funded Eligible Projects

HUD Notice CPD 09-03-REV required that the Fund distribute Program funds competitively under the requirements of the Recovery Act and pursuant to its qualified allocation plan. The notice also provided that projects eligible to receive grant funds were rental housing projects that received an LIHTC award under Section 42(h) of the Internal Revenue Code of 1986 during the period October 1, 2006, to September 30, 2009. All of the projects for which the Fund awarded grant funds were eligible to receive Program grant funds, and a competitive process was used in accordance with its qualified allocation plan. The Fund awarded \$16.5 million in Program grant funds to 15 LIHTC projects owned by 9 Program developers for eligible activities including rehabilitation of rental units and the acquisition of projects that would provide low-income housing.

Written Agreements Complied With Program Requirements

HUD Notice CPD-09-03-REV required that the Fund execute legally binding written agreements with each project owner. The written agreement was required to set forth all of the Program and crosscutting Federal grant requirements applicable to the funding and make these requirements enforceable through the recordation of a restriction that was binding on all owners. The Fund executed written agreements with all 9 developers for 15 projects to set forth the requirements of the Program. All Program written agreements were signed and dated before Program funds were disbursed.

The Fund Received and Disbursed Funds in a Timely Manner

The Fund drew down \$12.4 million in grant funds from HUD's automated Line of Credit Control System and disbursed grant funds for eligible expenses within the 3-day requirement. Under the Recovery Act and HUD Notice CPD 09-03-REV, the Fund was required to disburse funds to eligible activities within 3 days of the receipt of Federal funds. HUD Notice CPD 09-03-REV also required that the Fund disburse funds after a request for release of funds was approved. The Fund disbursed the funds after approval was provided and within 3 working days as required.

The Fund Ensured That Davis-Bacon Prevailing Wage Requirements Were Met

Under the Recovery Act and HUD Notice CPD 09-03-REV, the Fund was required to ensure that contractors and subcontractors hired with Recovery Act funds were paid prevailing wages in compliance with the Davis-Bacon Act. The Davis-Bacon requirements apply prospectively to the construction project as of the date of the Program award. Requirements of 40 U.S.C. (United States Code) 3145 and 29 CFR Part 3 state that contractors and subcontractors working on covered projects must submit weekly certified payroll records to the grantee for all laborers and mechanics, identifying their job classifications, rate of pay, and daily and weekly hours worked. The Fund adequately ensured that its contractors and subcontractors met this requirement.

Environmental Clearances Were Completed and Requests for Release of Funds Were Approved as Required

Under HUD Notice CPD-09-03-REV, the Fund was required to complete an environmental clearance and obtain a HUD-approved request for release of funds or certified environmental determination for categorically excluded projects before executing written agreements with project owners. We reviewed the Fund's certified environmental clearances for all 15 projects and determined that the Fund ensured that all projects had environmental clearances performed before the execution of written agreements and the disbursement of Federal funds.

The Fund Met Increased Transparency and Reporting Requirements

Under the Recovery Act and HUD Notice CPD-09-03-REV, the Fund was required to post on its Web site, a description of its competitive selection criteria for awarding Program funds to eligible projects. The Fund was also required to identify all projects selected for funding and post the amount of each Program award on its Web site. It complied with these requirements.

The Fund Obtained Lobbying Certifications as Required

Under the Recovery Act and HUD Notice CPD 09-03-REV, the Fund was required to follow requirements set forth in 24 CFR Part 87. Regulations at 24 CFR Part 87 require that recipients of Federal contracts, grants, loans, or cooperative agreements, who receive more \$100,000 in funds, certify that they will not use appropriated funds to influence or attempt to influence an officer or employee of the Federal Government. The Fund obtained lobbying certifications from its Program contractors or subcontractors as required by 24 CFR Part 87.

The Fund Did Not Report Job Creation Data in a Timely Manner

Under the Recovery Act and Office of Management and Budget (OMB) Circular 10-08, the Fund was required to report the number of jobs created with its Program funds. FTEs were to be estimated by dividing the total number of hours worked and funded by the Recovery Act within the reporting period by the quarterly hours in a full-time schedule. The determined amount was to be reported as the number of jobs created for the specific period. We reviewed the Recovery Act Web site to determine whether the Fund complied with the additional reporting requirements associated with the Recovery Act. The Fund did not report job creation data in a timely manner. We reviewed the documentation collected and maintained by the Fund to determine the number of jobs to be reported. Based on documentation reviewed, 38 FTEs were created during the first three quarters of 2010. However, the Fund did not report the FTEs created during the first three quarters as required. When we asked Fund officials why they had not reported the data, they stated that they had not reported the data because they had not disbursed Program funds and had misinterpreted the requirements. After funds were disbursed for the fourth quarter ending December 31, 2010, the Fund reported that 18 jobs had been created during the 3-month period.

OMB Circular 10-08 requires that if a grantee has to make corrections to previous quarters on Recovery.gov, corrections can only be made for the preceding quarter if the current quarter has not ended. If the deadlines have passed, the grantee is required to maintain the FTE data until the Federal Government requests the information, and the Recovery Transparency Board will then determine how the information will be made available on Recovery.gov.

Recommendation

We recommend that the Director, Office of Affordable Housing, require the Fund to

- 1A. Maintain the FTE data that were not reported until the Federal Government requests the information.

SCOPE AND METHODOLOGY

We conducted the audit from November 2010 to February 2011 at the Fund's offices located at 814 Virginia Street East, Charleston, WV, and our offices located in Richmond, VA. The audit covered the period February 2009 through October 2010 but was expanded when necessary to include other periods.

To accomplish our objective, we reviewed

- Relevant background information;
- The Recovery Act;
- Policies and procedures related to the Program's award process, expenditures, and disbursements;
- Written agreements and environmental clearance determinations for Program award recipients; and
- Davis-Bacon wage records and lobbying certifications submitted by Program award recipients.

We conducted interviews with the Fund's staff. We conducted onsite reviews of rehabilitation work in progress for the Washington Manor and Littlepage Terrace developments where Program grant funds were being used. We non-statistically selected and reviewed a sample of 4 developers who developed 10 projects with funds totaling more than \$11.3 million in Program grant funds. The award amounts ranged from approximately \$94,000 to nearly \$5.5 million.

To achieve our audit objectives, we relied in part on computer-processed data in the Fund's database. Although we did not perform a detailed assessment of the reliability of the data, we did perform a minimal level of testing and found the data to be adequate for our purposes.

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 objective.

INTERNAL CONTROLS

Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

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

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

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

- Policies, procedures, and other management controls implemented to ensure that the Fund administered Program funds in accordance with the Recovery Act and HUD requirements.

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.

We evaluated internal controls related to the audit objective in accordance with generally accepted government auditing standards. Our evaluation of internal controls was not designed to provide assurance regarding the effectiveness of the internal control structure as a whole. Accordingly, we do not express an opinion on the effectiveness of the Fund's internal control.

APPENDIX

Appendix A

AUDITEE COMMENTS

West Virginia Housing Development Fund

March 15, 2011

Mr. John P. Buck
Regional Inspector General for Audit
U.S. Department of Housing and Urban Development
Office of Inspector General
Wanamaker Building,
100 Penn Square East, Suite 10205
Philadelphia, PA 19107-3380

Re: HUD OIG's Discussion Draft Audit Report on the West Virginia Housing
Development Fund's Administration of the Tax Credit Assistance Program

Dear Mr. Buck:

Thank you for the opportunity to respond to the Discussion Draft Audit Report that was transmitted to us via email on March 4, 2011 ("Audit Report"), and was prepared by the Office of the Inspector General ("OIG") of the United States Department of Housing and Urban Development ("HUD") with respect to the administration of the Tax Credit Assistance Program ("TCAP") by the West Virginia Housing Development Fund ("Housing Development Fund").

We are pleased that the OIG found that the Housing Development Fund generally administered the TCAP in accordance with the American Recovery and Reinvestment Act of 2009 and applicable HUD requirements. The Housing Development Fund has reviewed and is in agreement with the finding contained in the Audit Report.

The American Recovery and Reinvestment Act of 2009 ("Recovery Act") imposed short timeframes for the commitment and expenditure of TCAP funds. The Housing Development Fund met the required timeframes for both commitment and expenditure. The Housing Development Fund is pleased that the Audit Report verifies that the TCAP funds in West Virginia are being administered in accordance with Recovery Act and HUD requirements.

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Mr. John P. Buck
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In response to the finding that the Housing Development Fund did not report 38 full-time equivalents (“FTE”) created during the first three quarters of 2010, the Housing Development Fund will continue to maintain the FTE information until the Federal Government requests the information.

The Housing Development Fund would like to thank HUD for its administration of the TCAP and the OIG for their oversight to ensure proper use of taxpayer money. Finally, we appreciate the professionalism of the assigned OIG personnel in the execution of their duties.

Very truly yours,

West Virginia Housing Development Fund

Joe W. Hatfield
Executive Director