



Issue Date	January 27, 2000
Audit Case Number	00-NY-255-1004

TO: Michael F. Merrill, Director, Office of Community Planning and Development
Division, 2CD

FROM: Alexander C. Malloy, District Inspector General for Audit, 2AGA

SUBJECT: City of Troy
Homebuyers Incentive (HOME) Program
Troy, New York

We completed an audit of the City of Troy's Homebuyers Incentive Program which is funded by the HOME Program. The objective of the audit was to determine whether the City's Department of Planning and Community Development administered the program in compliance with applicable U.S. Department of Housing and Urban Development (HUD) regulations and requirements.

The audit showed that the City generally complied with program regulations and requirements pertaining to its HOME program. However, the audit also showed that the City has not complied with program requirements pertaining to potential conflicts of interest.

Within 60 days, please furnish this office, for each recommendation cited in the report, a status report on: (1) the corrective action taken; (2) the proposed corrective action and the date to be completed; or (3) why action is not considered necessary. Also, please furnish us copies of any correspondence or directives issued related to the audit.

Should you or your staff have any questions, please contact the Office of Inspector General (OIG), William H. Rooney, Assistant District Inspector General for Audit, at (212) 264-8000, extension 3976.

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Executive Summary

We completed an audit the City of Troy's HOME program. The primary objective of the audit was to determine whether the City of Troy's Department of Planning and Community Development managed its program efficiently and in accordance with the applicable requirements and regulations that pertain to the HOME program.

Deficiencies Found

Our audit disclosed that the City generally complied with HUD regulations and requirements in administering its HOME program. However, we found that the City did not have adequate controls over the approval and processing of all grants. Specifically, we found that the City did not disclose all relevant facts to HUD in awarding a \$27,500 HOME grant to the brother of the Deputy Mayor. In addition, the City did not seek HUD approval in the award of a \$10,000 grant to the Mayor's secretary.

We recommend that HUD require the City to provide all information pertaining to the award of these two grants so that a determination can be made as to whether the grants represent an eligible use of program funds. If found to be ineligible, HUD should require the City to repay the amounts from non-federal funds. In addition, the City should be required to implement adequate procedures to ensure that all potential conflicts of interest are processed in accordance with program regulations.

The results of the audit were discussed with City officials during the course of the audit and at an exit conference held on December 23, 1999, attended by:

City of Troy

Patrick T. Morphy, Corporation Counsel

Office of Inspector General

Thomas Cosgrove, Senior Auditor
Mary Rose Michaud, Senior Auditor
John Cameron, Senior Auditor

The City generally agreed with the finding and recommendations. The City's comments are included in Appendix A.

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Abbreviations

CFR	Code of Federal Regulations
HUD	Department of Housing and Urban Development
OIG	Office of Inspector General
TRIP	Troy Rehabilitation and Improvement Program, Inc.

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Introduction

The City of Troy (City) operates under a mayor/city council form of government. In 1991, the City entered into a Home Investment Consortium Agreement with the Town of Colonie and the City of Schenectady, which serves as lead agency, in order to receive funding under the HOME Investment Partnership Act (HOME). The City receives forty percent of the HOME funds awarded under the agreement. The funds are administered through the City's Department of Planning and Community Development. The Deputy Director of Planning, responsible for the day to day operations of the department is Walter VanDeloo, whose office is located at City Hall, One Monument Square, Troy, New York. The HOME program books and records are also located at City Hall. The City has contracted with the Troy Rehabilitation and Improvement Program, Inc. (TRIP) to assist in the administration of the HOME program. TRIP is located at 415 River Street, Troy, New York.

The HOME program was created under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990. The program has many purposes including expanding the supply of decent, safe, sanitary and affordable housing for very low and low income Americans. Activities which may be funded under HOME include acquisitions, rehabilitation, new constructions and resident-based rental assistance. In addition, assistance may be provided in a number of ways, including loans, advances, equity investments and interest subsidies. The program provides eligible low-income home buyers with financial assistance coupled with education and counseling. The financial assistance is in the form of a loan for closing costs, downpayment and/or principal reductions. The City forgives the loan at the end of 10 years if the homebuyer still resides in the house. The amount of assistance provided has varied over the life of the program.

Audit Objectives

The primary objective of the audit was to determine whether the City Department of Planning and Community Development managed its program efficiently and in accordance with the applicable requirements, laws and regulations that pertain to the HOME program.

Audit Scope and Methodology

We obtained background information by:

- Reviewing relevant HUD regulations, requirements, technical guides and consortium agreements.
- Examining records and reports maintained by the Buffalo Office of Community Planning and Development.
- Reviewing the City's accounting records, single audit reports, policies, and internal correspondence pertaining to the HOME program.

- Interviewing HUD's Buffalo Office of Community Planning and Development and the City Department of Planning and Community Development staff.

To accomplish our audit objectives, we:

- Obtained an understanding of the City's HOME program by interviewing City and TRIP staff.
- Reviewed operating policies, guidelines, handbooks, financial records, meeting minutes and correspondence files of the City.
- Obtained and reviewed contracts between the City and TRIP.
- Selected and tested a sample of City and TRIP processed grants for home buyer eligibility, file documentation, and loan amount eligibility.
- Reviewed and tested payments made by the City to TRIP.

We conducted the audit from January 28, 1999 to May 28, 1999 in accordance with generally accepted government auditing standards. The audit covered the City's HOME program from August 1, 1996 to January 31, 1999. We expanded the scope of our review as necessary.

We conducted the audit at the City's Department of Planning and Community Development

A copy of this report was provided to the Auditee.

Conflict of Interest May Have Occurred in the Home Program

Our review showed two instances where a conflict of interest may have occurred in the HOME Program. The conflicts of interest may have occurred because the City did not disclose all relevant facts to HUD in requesting an exception to the conflict of interest provisions in one case and failed to request an exception to the provisions in another case. As a result, HOME funds amounting to \$37,500 may have been improperly expended and are unsupported.

Criteria

Section 92.356 of the HOME regulations define a conflict of interest by stating that no prohibited person “who exercises or has exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision making process or may obtain a financial interest or benefit from a HOME assisted activity,...either for themselves or those with whom they have family or business ties, during their tenure or one year thereafter.” HOME regulations define a prohibited person as an employee, agent, consultant, officer, or elected official or appointed official of the participating jurisdiction or subrecipient receiving HOME funds.

Upon written request of the participating jurisdiction, HUD may grant exceptions to prohibited conflicts on a case by case basis. Exceptions are considered only after the participating jurisdiction provides a disclosure of the nature of the conflict. HUD considers all relevant factors in determining whether to grant an exception.

The details pertaining to the deficiencies associated with the two potential conflict of interest cases are discussed below.

Case 1

The brother of the City’s Deputy Mayor applied for a Home program grant in November 1996. In June 1997, the City requested HUD approval for an exception to the HOME conflict of interest provisions so that the grant could be made. HUD approved an exception in July 1997 based on the information provided. A grant in the amount of \$27,500, was subsequently awarded in November 1997 to assist the brother in his purchase of a home.

Request for Exception to
conflict of interest provisions

However, our review of the request for an exception to the conflict of interest provisions, along with a review of the City's processing of the grant disclosed various discrepancies. Some of the discrepancies include:

In the request for an exception from the City, HUD was informed that the property to be purchased was owned by the estate of the Deputy Mayor's father. Yet, the application file shows that the \$27,500 of grant assistance was used to purchase a home that was already owned by the Deputy Mayor, his brother (applicant), and two siblings, with each having a one-fourth ownership. Since the subject property was already partially owned by the applicant, we believe that the need for a grant to purchase the property was redundant. Our belief is also substantiated by the City's program guidelines which provide that eligible applicants must not currently own property in the City of Troy.

HUD was not advised that the Deputy Mayor attended two Home Program meetings prior to his brother's grant application. At the meetings, program issues were discussed that impact grant calculations. One of the issues eventually resulted in a program change that increased the grant by \$10,000 (\$17,500 base grant plus a \$10,000 bonus incentive).

The City's program guidelines were revised to provide an additional \$10,000 grant to first time homebuyers who purchased homes in certain census tracts. The additional grant, however, was not originally available for the census tract where the subject property was located. In fact, the grant was designated for the census tract where property was located after the Deputy Mayor's brother submitted an application. Neither the program revision nor the additional grant was disclosed to HUD.

Processing and Approval
Deficiencies

Apart from the above, additional deficiencies were noted in the City's processing and approval of the grant. They include:

- The program requires the applicant to submit recent W-2 forms, tax returns, paystubs and bank statements with the application. While the application was submitted in

November 1996, the tax returns and bank statements were not provided until March 1997.

- One of the tax returns provided shows one dependent for the applicant while the application shows two dependents. The file contains no resolution of the discrepancy and the City used two dependents in calculating the grant. If the family size includes only one dependent, the grant amount should be \$5,000 less.
- The objective of the City's HOME program is to promote homeownership in the City of Troy and the \$10,000 incentive bonus was implemented to increase homeownership in certain census tract. Since the property in question was already partially owned by the applicant, the grant award may not have met program objectives. Similarly, the \$10,000 bonus is also questionable, since it was intended to increase ownership in certain census tracts. Yet, the applicant occupied and partially owned the home at the time of the application.
- Finally, the applicant's ownership interest in the property was not considered from a program perspective or when calculating the grant amount. The applicant's equity position means that he was not only the buyer of the property, but also a seller. As a seller, the applicant stood to benefit from the grant in a way that may not have been intended by the program.

Case 2

In May 1997, the City awarded a HOME program grant of \$10,000 to the Secretary of the Mayor. HUD approval was not requested for an exception to the potential conflict of interest, and the City did not explain or document why HUD approval was not considered necessary. We believe that the position would appear to be covered by the conflict of interest regulations as a person having access to inside information.

More important, a review of the file shows that the applicant may not have been income eligible for the HOME grant. Income from a part time job was verified by the employer as \$3,318 per year which brought the total income to \$29,318 including \$26,000 from the individual's City employment. The

total made the applicant ineligible for a grant under the City's income guidelines. The part time income, however, was shown as only \$1,659 when the grant was calculated, making the applicant eligible for the \$10,000 grant. The file contained no explanation explaining why the amount verified was not used for grant computation purposes.

The deficiencies cited in this finding illustrate the City's lack of control over the HOME program. We believe that the City did not place adequate emphasis on ensuring that potential conflict of interest grants were processed with due professional care and in full compliance with the regulations. Unless effective controls are implemented to ensure that potential conflicts of interest cases are fully disclosed and properly processed, similar instances of noncompliance will occur.

Recommendations

We recommend that you:

- 1A. Reevaluate the decision that approved an exception to the conflict of interest involving the Deputy Mayor. Should the exception be rescinded, require the City to repay the \$27,500 to the program from non-federal funds.

- 1B. Require the City to explain and document the propriety of the \$10,000 grant awarded to the Mayor's Secretary. If it is determined that a conflict of interest exists, require that the \$10,000 be repaid from non-federal funds.

- 1C. Require the City to implement procedures to ensure that potential conflicts of interest cases are fully disclosed and processed in accordance with Section 92.356 of the HOME regulations.

Management Controls

In planning and performing our audit, we obtained an understanding of the management controls that were relevant to our audit. Management is responsible for establishing effective management controls. Management controls, in the broadest sense, include the plan of organization, methods, and procedures adopted by management to ensure that its goals are met. Management controls include the processes for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance.

Relevant Management Controls

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

- Policies and procedures to ensure that assistance was provided to eligible home buyers and properties in compliance with HUD HOME regulations.
- Administrative controls to ensure the validity and reliability of the Home program record keeping systems.
- Policies and procedures to ensure that HUD HOME funds were safeguarded to prevent waste, loss, and misuse.

Significant Weaknesses

A significant weakness exists if management controls do not give reasonable assurance that resource use is consistent with laws, regulations, and policies; that resources are safeguarded against waste, loss, misuse; and that reliable data are obtained, maintained, and fairly disclosed in reports. Based on our review, we believe the following item is a significant weakness as discussed in this report:

The City lacks controls to ensure that all potential conflict of interest cases are fully disclosed to HUD (Finding).

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Follow Up On Prior Audits

A prior audit of the City of Troy was performed by an Independent Auditor for the Year Ended December 31, 1997. The Independent Auditor's report contained two findings pertaining to the City's Home program. One finding recommended that the City establish procedures to ensure their monitoring of TRIP is properly documented. At the time of our review we found that the City had established procedures that included monitoring TRIP's performance. The second finding recommended that the City establish procedures to monitor and follow-up on all letters mailed to recipients regarding resale restrictions under the Home program. We found that the City had established procedures to follow-up on recipients regarding resale restrictions, and, at the time of our review, were in the process of taking legal action against certain grant recipients who were not in compliance with program regulations.

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Schedule of Unsupported Costs

<u>Finding Number</u>	<u>Unsupported</u> <u>1/</u>
1	<u>\$37,500</u>
TOTAL	<u>\$37,500</u>

1/ Unsupported costs are costs charged to a HUD-financed or insured program or activity and eligibility cannot be determined at the time of audit. The costs are not supported by adequate documentation or there is a need for a legal or administrative determination on the eligibility of the cost. Unsupported costs require a future 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.

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Auditee Comments



City of Troy
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Mark P. Pattison
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January 5, 2000

Mr. John A. Cameron
Senior Auditor
U.S. Department of HUD
Office of Inspector General
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Albany, NY 12203

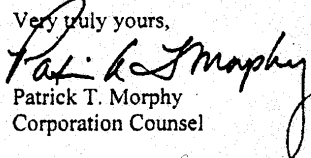
Re: City of Troy's Response to Office of Inspector General's Draft Audit Finding

Dear Mr. Cameron:

On behalf of the City of Troy, I am herein enclosing the City's response to the draft audit finding involving the City's Home Investment Partnership Program. Kindly include it in your report to HUD.

If you have any questions, please feel free to contact me. Thank you for your considerations.

Very truly yours,


Patrick T. Morphy
Corporation Counsel

**CITY OF TROY'S RESPONSE
TO HUD OFFICE OF INSPECTOR GENERAL
DRAFT AUDIT FINDING ON:**

**City of Troy
Homebuyers Incentive (HOME) Program
Troy, New York**

Recommendation 1A

The city concurs in the recommendation that HUD re-evaluate its decision that approved an exception to the conflict of interest rules involving the brother of the Deputy Mayor. The city fully supports the fundamental principles of the conflict of interest rules. Maintaining the public's confidence in its governmental institutions requires public officials to undergo a stricter scrutiny than the public at large. Nonetheless, the city firmly believes that HUD's conflict of interest rules were not intended to deny an opportunity to a private citizen merely because of his relationship to a public official. The city recognizes that this case presents HUD officials with issues that are not easy to resolve. However, the city has complete confidence that HUD will treat all affected parties fairly. The city supports the higher scrutiny recommended in this case and will continue to fully cooperate with HUD as it seeks to resolve whatever questions it deems necessary to reach a fair determination.

Recommendation 1B

The city concurs in the recommendation that HUD determine if the city should have requested a conflict of interest exception in the case of the Secretary to the Mayor. The City concedes that it did not sufficiently document its determination regarding the applicant's anticipated 1997 income. However, the city has documentation clearly showing that the applicant earned substantially less in 1997 than the city anticipated; and that she was eligible for the program. Additionally, the applicant did not have access to any insider information, and therefore, the city does not believe that an exception to the conflict rules was required. Regardless, the city believes that the case is one that fits squarely within the reason why HUD developed a process for requesting exceptions to its

conflict of interest rules. Consequently, the city will cooperate fully should HUD determine that it would prefer the case be treated under the stricter scrutiny of the conflict of interest exception.

Recommendation 1C

The city has already developed and implemented a policy designed to identify and resolve all conflict of interest issues pursuant to applicable HUD regulations. By separate letter addressed to Michael F. Merrill, Director Community Planning and Development Division, 2CD at HUD's Buffalo field office, the city is submitting a copy of the policy to HUD for its consideration.

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Distribution

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