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# AUDIT REPORT



WALLER, SMITH & PALMER, PC  
HUD CLOSING AGENT  
NEW LONDON, CONNECTICUT

2001-BO-1002

JANUARY 5, 2001

OFFICE OF AUDIT, NEW ENGLAND  
BOSTON, MASSACHUSETTS

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Issue Date January 5, 2001
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Audit Case Number 2001-BO-1002
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TO: Engram Lloyd, Director, Homeownership Center, 3AHH

A handwritten signature in black ink, appearing to read "William D. Hartnett".

FROM: William D. Hartnett, District Inspector General, Office of Audit 1AGA

SUBJECT: Waller, Smith & Palmer, P.C.  
HUD Closing Agent  
New London, Connecticut

We performed an audit of HUD's closing agent for Connecticut, Waller, Smith & Palmer, P.C. (WSP). The objective of our audit was to determine whether WSP complied with the terms of their closing agent contract and HUD regulations.

The report contains three findings: (1) HUD was overcharged for wire transfer and closing agent fees; (2) title insurance premiums are split, which is prohibited by WSP's closing agent contract and the Real Estate Settlement Procedures Act; and (3) WSP is not fulfilling all its closing agent contract requirements.

Within 60 days, please provide us 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 with copies of any correspondence or directives issued related to this audit.

If you have any questions, please contact our office at (617) 565-5259.



# Executive Summary

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We performed an audit of HUD's closing agent, Waller, Smith & Palmer, P.C. (WSP), as part of a nationwide effort to review closing agents. The primary purpose of our audit was to determine whether WSP complied with the terms of its closing agent contract and HUD regulations.

## Audit Results

HUD was overcharged \$20,347 for wire transfer and closing agent fees. WSP overcharged HUD \$1,960 to wire transfer the proceeds from 392 HUD property sales to the Department of the Treasury between March 16, 2000 and September 19, 2000. In addition, WSP overcharged HUD \$18,387 by improperly charging the full closing agent fee for 42 of a sample of 69 third party closings rather than the required 50 percent of the full fee.

Potentially HUD may have also been overcharged an additional \$58,905. We question \$54,540 in wire transfer fees charged during the period June 1, 1996 to March 15, 2000. We believe these fees were included in WSP's closing agent fee, resulting in duplication of cost, which is a violation of Section 8 of the Real Estate Settlement Procedures Act (RESPA). Further, WSP may have charged HUD an additional \$4,365 in excess of their closing agent fee for 27 closings, which occurred subsequent to their current contract.

Although prohibited by its contract, WSP collects a sixty percent title insurance premium fee split for each case whereby a title insurance policy was issued by WSP, on behalf of the specific title insurance company. In addition, WSP may be collecting duplicative fees for the same services required by both the closing agent contract and its agreements with title insurance companies. Section 8 of RESPA prohibits fee splitting and collecting unearned fees, including duplicative payments. Although RESPA allows fees to be collected for actual services rendered, WSP did not bill title insurance companies based on actual services rendered, but rather collected a fixed sixty percent fee for each title insurance policy issued. WSP staff advised that they believe Connecticut law permits them to collect a sixty percent fee for the issuance of a title insurance policy where WSP is the title insurance agent.

WSP did not comply with all of its closing agent contract requirements. Specifically, WSP did not always ensure that only allowable expenses were paid by HUD on the buyer's behalf. Furthermore, WSP did not deposit sales proceeds timely; wire sales proceeds to the Department of the Treasury timely; or submit a complete closing package to CitiWest New England, Inc., Management and Marketing Contractor for HUD.

### Recommendations

We are recommending the Homeownership Center direct and ensure that WSP complies with the terms of their closing agent contract and HUD regulations. We are recommending that the Homeownership Center require WSP to reimburse HUD a total of \$20,347 for overcharges related to wire transfer and closing agent fees for the period March 2000 to September 2000. Additional overcharges for wire transfers since September 19, 2000 should be calculated and reimbursed. Support for \$54,540 in wire transfer fees prior to March 15, 2000 should be obtained. Closing agent fees on the 27 closings occurring subsequent to the current contract effective date should also be reviewed. In addition, we are recommending the Homeownership Center require WSP to provide support for fees earned from title insurance companies and require WSP to claim only actual costs up to sixty percent of the premium to comply with regulations. Further, we are recommending the Homeownership Center instruct and ensure that WSP includes only allowable expenses in the amount HUD pays on the buyer's behalf. Finally, we are recommending that the Homeownership Center instruct and ensure that WSP submits a complete closing package to HUD's Designee, and comply with all sales closing requirements.

### Findings and Recommendations Discussed

We discussed the findings in this report with WSP staff during the course of the audit. On November 20, 2000, we provided WSP a copy of the draft audit report for comment. We received WSP's written response by letter dated December 7, 2000. Appropriate revisions were made where deemed necessary. We included WSP's pertinent comments in the Findings section of this report. Due to its voluminous content, WSP's entire response was forwarded to program staff under a separate letter. WSP's letter forwarding their response is included in Appendix C.

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Abbreviations

CFR	Code of Federal Regulations
CitiWest	CitiWest New England, Inc.
Contract	Closing Agent Contract
FHA	Federal Housing Administration
GTR	General Technical Representative
HOC	Homeownership Center
HUD	Department of Housing and Urban Development
HUD-1	HUD-1 Settlement Statement
M & M	Management and Marketing
OIG	Office of Inspector General
RESPA	Real Estate Settlement Procedures Act
U.S.C.	United States Code
WSP	Waller, Smith and Palmer

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# Introduction

The law office of Waller, Smith & Palmer, P.C. (WSP) contracted with the Department of Housing and Urban Development (HUD) to conduct closings of HUD's single-family properties for the State of Connecticut. Valerie Votto, Partner at WSP, is responsible for administering the closing agent contract with HUD. WSP's original contract was a three-year contract, effective May 27, 1996. Through contract amendments, the contract was extended to March 15, 2000. WSP's current closing agent contract is also a three year contract, effective March 16, 2000.

WSP has an indefinite quantity contract to provide closing services for single-family properties owned by HUD. The primary objectives of WSP's contracts are to ensure that: (1) the sale of all properties assigned under the contract close within the time stipulated by the Sales Contract; (2) accurate payments of all closing costs are made within three to five business days; (3) net proceeds from each sale are deposited into a non-interest bearing escrow account and wire transferred to HUD's account with the United States Treasury on the day of closing or the next banking day; and (4) complete and accurate closing packages are delivered to HUD or HUD's Designee within 2 business days after closing.

To conduct a closing, WSP's contracts required them as closing agent to:

- Establish individual property files and maintain the files by FHA case number;
- Coordinate with purchaser, broker, and if appropriate, mortgagee, to establish a firm closing date on or before the date specified in the Sale Contract;
- Administer all requests from brokers for extensions of sales closings, in writing;
- Perform a complete title search, which covers the preceding 10 years from the scheduled date of closing;
- Prepare all necessary documents at closing to provide a complete closing including a settlement statement (HUD-1), deed, note and mortgage, or deed of trust, if applicable;
- Explain all closing documents to the purchaser(s);
- Pay any allowable closing expenses which are due and payable at the time of closing from HUD's proceeds;
- On day of closing or next banking day, deposit sales proceeds, initiate the wire transfer, file the deed for record, obtain the bank's wire transfer confirmation, and submit a complete closing package to HUD's Designee; and

- Store title documents that are the property of HUD in a secure cabinet furnished by the closing agent.

WSP's original contract provided WSP would receive \$850 from HUD for each closing conducted for the first, two year options and \$900 for the third year option. If the closing was conducted by a third party, WSP would receive 50 percent or \$425 to \$450, to represent HUD at the closing.

WSP's current contract provides WSP would receive \$400 for each closing conducted. Although WSP's new contract states that WSP will be paid 50 percent of the fixed unit price for third party closings, we note that correspondence between HUD and WSP indicates that under certain circumstances, regardless of whether or not an attorney representing the buyer attended the closing, WSP expected to be paid the full fee and HUD agreed to allow the full fee.

As of September 19, 2000, WSP closed 4,028 HUD owned properties. According to the Philadelphia Homeownership Center, WSP received in excess of \$3.6 million in closing agent fees between May, 27 1996 and November 2, 2000. As noted in Appendix C, WSP disagrees with this figure.

HUD's monitoring report for WSP, dated June 3, 1999, cited WSP for not depositing and wiring the net proceeds to the Department of the Treasury within the required time frame and for not submitting closing packages to HUD timely. In addition, WSP was cited for overcharging HUD the full fee for third party closings and for not verifying that closing costs paid by HUD on the buyer's behalf were actual costs.

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#### Audit Objectives

The overall audit objective was to determine whether WSP complied with the terms of their closing agent contract and HUD regulations.

#### Audit Scope and Methodology

To accomplish our audit objective, we:

- Obtained and reviewed closing agent contracts, the Connecticut Title Insurance Act, HUD regulations, including the Real Estate Settlement Procedures Act (RESPA), and HUD Handbooks relating to real estate sales closing policies and procedures.
- Obtained and reviewed HUD's monitoring report for WSP, dated June 3, 1999 and Liquidated Damage Reports for July through September, 2000.
- Reviewed WSP's procedures for accounting of funds, cash receipts and disbursements.

- Selected a random sample of 98 closings (May 1996 to April 2000) and determined whether WSP:
  - ⇒ Deposited sales proceeds, wired the funds to the Department of the Treasury, and submitted closing packages within the specified time period in the contract.
  - ⇒ Supported title insurance premium received.
  - ⇒ Charged HUD for actual wire transfer fees.
  - ⇒ Ensured that only allowable costs were charged to HUD for costs paid on the buyer's behalf.
  - ⇒ Charged the correct closing agent fee.
- Selected a judgmental sample of 27 closings between May 15, 2000 and July 31, 2000, to determine whether WSP overcharged HUD for closing agent fees under WSP's current contract.
- Held discussions with appropriate WSP staff, the Philadelphia Homeownership Center, HUD Contracting Division, and the Connecticut and Massachusetts State Office of Housing staff.

We conducted the audit at WSP's offices located in Old Lyme, CT and New London, CT and covered the period between July 1, 1999 and July 31, 2000. Where appropriate, the review was extended to include other periods. Audit work was performed from August 2000 to October 2000.

Our audit was conducted in accordance with generally accepted government auditing standards.



# HUD Was Overcharged for Wire Transfer and Closing Agent Fees

HUD was overcharged \$20,347 for wire transfer and closing agent fees. Waller, Smith & Palmer, P.C. (WSP) overcharged HUD \$1,960 to wire transfer the proceeds from 392 HUD property sales to the Department of the Treasury between March 16, 2000 and September 19, 2000. In addition, WSP overcharged HUD \$18,387 by improperly charging the full closing agent fee for 42 of a sample of 69 third party closings rather than the required 50 percent of the full fee.

Potentially HUD may have been overcharged an additional \$58,905. We question \$54,540 in wire transfer fees charged during the period June 1, 1996 to March 15, 2000. We believe these fees were included in WSP's closing agent fee, resulting in duplication of cost, which is a violation of Section 8 of the Real Estate Settlement Procedures Act (RESPA). Further, WSP may have charged HUD an additional \$4,365 in excess of their closing agent fee for 27 closings, which occurred subsequent to their current contract.

## Wire Transfer Fees

WSP's original contract and modifications, effective May 27, 1996 and WSP's current contract, effective March 16, 2000, requires WSP to charge the actual cost for the wire transfer of sales proceeds to HUD and include it with settlement charges to the seller . . . and deduct the cost from the net proceeds due HUD.

## Wire Transfer Fees Overcharged

WSP overcharged HUD \$5 for each closing between March 16, 2000 and September 19, 2000. Actual wire fees charged to WSP by the bank were only \$10 for each wire transfer and WSP charged HUD \$15. Per WSP's records, as of September 19, 2000, WSP performed 392 closings between March 16, 2000 and September 19, 2000. Therefore, WSP overcharged HUD \$1,960 for wire transfer fees during this period.

## Wire Fees Were Included In Original Closing Agent Fee

Through review of WSP's solicitation for the original closing agent contract and discussion with WSP's officials, we believe the wire transfer fees were included in the closing agent fee. The closing agent fee (\$850) under the original contract for year one and two, consisted of among other things, \$25 for bank charges. The closing agent fee (\$900) for year three under the original contract consisted of, among other things, \$25 for bank

charges. Therefore, any additional charge to HUD for wire transfer fees during the period of May 27, 1996 to March 15, 2000 are questionable costs.

WSP charged HUD a \$15 wire transfer fee on each closing between June 1, 1996 and March 15, 2000 even though the cost of the wire transfer was included in the closing agent's fee calculation. Per WSP's records, as of September, 19, 2000, WSP performed 3,636 closings between June 1, 1996 and March 15, 2000. Therefore, WSP may have overcharged HUD an additional \$54,540 for wire transfer fees during this period. Furthermore, WSP may have received duplicative fees for wire transfers, which is a violation of Section 8 of RESPA.

RESPA Prohibits Unearned Fees

RESPA (12 U.S.C. 2607 and 24 CFR 3500.14) is a HUD consumer protection statute passed in 1974. One of its purposes is to eliminate kickbacks and referral fees that unnecessarily increase the costs of certain settlement services. RESPA section entitled "Prohibition against kickbacks and unearned fees" provides in part (c):

*"No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed. A charge by a person for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates this section."*

WSP Claims Wire Transfer Fees Were Not Inclusive

During a September 7, 2000 meeting with WSP, WSP acknowledged that the \$25 allotment for bank charges were for wire transfer fees. However, in a subsequent written response, WSP stated their belief was that the bank charge component of the solicitation was for internal administrative costs related to the banking requirements of the HUD contract. Although, no documentation was provided to support their belief.

Closing Agent Fees for Third Party Closings

WSP original and current contract contained clauses concerning the use of third-party closing agents. HUD considers third party closings as those which included the participation of

### Full Fee Charged for Third Party Closings

mortgagee's counsel. Foremost, the closing agent contracts limit WSP's fee to 50 percent of the full fee for third party closings. In a HUD monitoring report dated June 3, 1999, WSP was cited for charging the full original contract fee of \$900, when there was a third party closing agent involved. The report stated that "since the buyer's attorney acted as the Settlement Agent/third party closing agent, the Contractor was entitled to only \$450 per closing". As a result, WSP was required to immediately reimburse the government in the amount of the overcharge.

In our review of a sample of 98 closings between May 1996 and April 2000, we determined that 69 were conducted by a third party agent (mortgagee's attorney). WSP improperly charged the full fee, not 50 percent of the full fee, for 42 of the 69 closings (61 percent) resulting in \$18,387 in overcharges.

### HUD Allows Full Fee Under Certain Circumstances

Contrary to WSP's current contract, we note that correspondence between HUD and WSP indicated that under certain circumstances, regardless of whether or not a mortgagee attorney attended the closing, WSP is expected to be paid the full fee. HUD agreed to allow the full fee, based on a letter, dated February 16, 2000, from the New York Field Contracting Operations Office, which states:

*"This is to confirm our position that when you are in attendance at the closing, do all the preparation work for the HUD-1 Settlement Statement, and fulfill all other duties regarding the closing, that under this solicitation, that this is not a third party closing. This is regardless of the presence of a mortgagee's attorney."*

Some of WSP's contract requirements at closing are to 1) complete and execute the HUD-1 Settlement Statement (HUD-1); 2) pay any allowable closing expenses at the time of closing; and 3) explain all closing papers and documents to the buyer.

### WSP Not Fulfilling All Contractual Requirements

WSP may not be fulfilling all contractual requirements during a third party closing. In our review, we noted that WSP provided an incomplete HUD-1 to the mortgagee's attorney (buyer's expenses are not included and figures are not final), via a fax, and advises the attorney to please fax back the mortgagee's final HUD-1 and verify the closing credits.

Therefore, it cannot be said that WSP is completing the HUD-1.

In addition, a fax provided by WSP to the mortgagee's attorney also instructed the mortgagee's attorney that they are responsible for cutting all checks and providing copies of the same at the closing. Furthermore, the mortgagee's attorney explains all closing papers and documents to the buyer. In fact, during our review of the files we noted instances where the mortgagee's attorney would advise WSP to arrive at the closing later to give the mortgagee's attorney time to review the paperwork with the buyer and have the buyer sign all the necessary paperwork.

Closing Agent Fees  
Overcharged

WSP may have overcharged HUD \$4,365 for 27 closings performed between May 15, 2000, which is 60 days after the effective date of the current contract, and July 26, 2000 (See Appendix B). Per WSP's current contract, effective March 16, 2000, WSP receives a fixed fee of \$400 per closing. However, WSP overcharged HUD between \$25 and \$525 for these 27 closings.

WSP advised that their review of each closing file covering the current contract period, indicated that the closing agent fee did not exceed \$400. However, WSP needs to provide support for these 27 closings because our review indicated just the opposite.

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Auditee Comments

WSP indicates that the \$5 overcharge in wire fees from March 16, 2000 to September 19, 2000 was inadvertent. WSP also indicates that the original bank fee was \$15. However, through considerable growth in the relationship between WSP and the bank, the bank reduced the wire fee to \$10. WSP advised that the lower wiring fee derives entirely from actions taken by WSP to concentrate its banking relationship with the bank. As a result, WSP believes that the benefit of those actions should accrue to WSP.

WSP indicates in its response that "when WSP bid on its first HUD contract and was asked to comprise a fee structure, it understood that the bank charges component of the bids was for internal administrative cost relating to the banking

requirements associated with the execution of the HUD contract. Such services include those provided by the bookkeeper, oversight by the business manager, and special banking and financial related services necessitated by the live auction practice.” WSP responds that this bank charge was never considered the wire fee charged by a lending institution.

WSP responds that “as Settlement Agent, the lender’s (Mortgagee’s) attorney is responsible for the completion of all financing documents, including completion of the official HUD-1 Settlement Statement for the transaction. In addition the Mortgagee’s attorney is responsible for the correct distribution of the transaction’s proceeds.”

WSP further responds that “a Seller’s attorney does not explain financing documents to a buyer” and that “the buyer’s attorney has a duty to his client to ensure that the Buyer understands the intricacies of the financial portion of the transaction, and additionally, the responsibilities associated with purchasing a particular piece of real property.”

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## OIG Evaluation of Auditee Comments

WSP advised that the lower wiring fee derives entirely from actions taken by WSP to concentrate its banking relationship with the bank, and that as a result, WSP should benefit from those actions. WSP is HUD’s closing agent which holds the professional responsibility to pass any savings along to the government. Nevertheless, the closing agent contract provides for only actual cost associated with the wire transfer, and in this case, that would be the \$10 wire transfer fee.

WSP’s impression was that the bank charges component of the contract solicitation was for internal administrative cost relating to the banking requirements of the HUD contract. However, we note that WSP did not include the \$25 allotment on the administrative line item available in the solicitation, but chose to include it in the bank charge line item.

Based upon WSP’s response to work performed during third party closings, it is clearly shown that WSP does not do all the preparation work for the HUD-1 and does not perform all other duties regarding the closing. There may be some conflict between the duties required of a mortgagee attorney and HUD

closing agent. The duties required of WSP when there is a third party closing need to be defined, while recognizing that all contractual requirements may not be performed by the closing agent when a mortgagee's attorney is present. With that said, WSP may not be in compliance with HUD's February 16, 2000 letter, and therefore, would not be entitled to the current full closing agent contract fee during a third party closing.

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## Recommendations

We recommend that the Philadelphia Homeownership Center:

- 1A. Direct and ensure that WSP complies with their closing agent contract, in relation to wire transfer and closing agent fees.
- 1B. Require WSP to reimburse HUD a total of \$20,347 for overcharges; \$1,960 for ineligible wire transfer fees and \$18,387 for overcharged closing agent fees.
- 1C. Require WSP to reimburse HUD for any additional ineligible wire transfer fees on any other HUD closings processed after September 19, 2000.
- 1D. Determine whether wire transfer fees were included in the closing agent fee, during the original contract period of June 1, 1996 to March 15, 2000, and if so, recover the \$54,540 in overcharges.
- 1E. Fully define the duties required of WSP for third party closings, in order for WSP to receive its full contract fee.
- 1F. Require WSP to provide support that the correct closing agent fee was collected on the 27 closings, occurring subsequent to their current contract, and reimburse HUD for any overcharges.

## Title Insurance Premiums Are Split

Although prohibited by their contract, Waller, Smith & Palmer, P.C. (WSP) collected a sixty percent title insurance premium fee split for each case whereby a title insurance policy was issued by WSP, on behalf of the specific title insurance company. In addition, WSP may be collecting duplicative fees for the same services required by both their closing agent contract and their agreements with title insurance companies. Section 8 of the Real Estate Settlement Procedures Act (RESPA), prohibits fee splitting and collecting unearned fees, including duplicative payments. Although RESPA allows fees to be collected for actual services rendered, WSP does not bill title insurance companies based on actual services rendered, but rather collects a fixed sixty percent fee for each title insurance policy issued. WSP believes Connecticut State law permits them to collect a sixty percent fee for the issuance of a title insurance policy where they are the title insurance agent.

### Requirements Prohibit Title Insurance Premium Split

Section H - Special Contract Requirements; part H-9 of WSP's contract, effective March 16, 2000, provides the following:

*“An attorney, acting as a HUD sales closing agent, may not split or divide a title insurance premium in an amount keyed to the amount of the premium, but may charge a fee to the title insurance company for legal services actually rendered for title examination based on time and difficulty of the services performed.”*

RESPA is a consumer protection statute passed in 1974. One of its purposes is to eliminate kickbacks and unearned fees which increase the costs of settlement services to home buyers. Title 24 CFR 3500.14 (RESPA), Prohibition against kickbacks and unearned fees, provides in part (c):

*“No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed. A charge by a person for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates this section.”*

Title Insurance Premium Split

WSP receives sixty percent of the premium for each title insurance policy issued by WSP, on behalf of the specific title insurance company. However, WSP could not provide the total dollars received in title insurance premiums while serving as HUD's closing agent because their financial records are not maintained in a fashion which provides such information. WSP believes that the sixty percent fee is predetermined by Connecticut State statute. WSP further believes that as acting Title Insurance Agent, the abuses on the attorney fees charged by third parties are restrained, which is a benefit to HUD.

Requirements Prohibit Duplicate Fees

Included in Section B of WSP's original and current contract, WSP may not:

*Collect from any party, any fees for services required hereunder and associated with closings conducted under the contract above and beyond the unit price set forth in B.2 (a) (1). If the purchaser or purchaser's lender demands additional services, such as title examination and/or insurance, outside of the contract duties, and such services are performed by the contractor, the contractor must look outside of this contract for payment for those services.*

Furthermore, duplicative fees charged are considered unearned fees, and are a violation of Section 8 of RESPA.

Same Services Required by Contract

WSP's current closing agent contract requires a "lien and judgment" full title search covering the ten years preceding the scheduled closing date and resolution of any problems such as defects, liens, or encumbrances on the title prior to closing. The closing agent contract also requires WSP to conduct the closing and deposit all escrow and closing funds in a separate escrow account, record the deed, and pay all allowable closing expenses, such as unpaid property taxes, utility bills, and condo fees. These same duties are also required of WSP for their sixty percent split fee.

Title Insurance Company Illustrates Duties

A letter to WSP dated September 12, 2000, from Commonwealth Land Title Insurance Company, one of the insurance companies frequently used by WSP, provides that in connection with HUD closings, WSP will receive a commission of sixty percent of the gross premium. Per the letter, to earn

this commission WSP must in each instance perform 1) the evaluation of the title search to determine the insurability of title; 2) the clearance of underwriting objections; 3) the actual issuance of the policy or policies on behalf of Commonwealth; and 4) the actual closing. In connection with residential closings, WSP must record the requisite documents in the appropriate Land Records.

In addition, the agreement with Commonwealth Land Title Insurance Company and WSP, executed May 11, 1987, states that WSP must make payments out of escrow or closing funds for all obligations which constitute liens on the property and be responsible for the satisfaction of such liens. The agreement further states that all escrow or closing funds deposited with WSP must be deposited into a separate escrow account.

#### Potential Duplicative Fees

We noted that many of the services WSP provides to the title insurance companies for their sixty percent premium split are also a requirement of their closing agent contract with HUD. However, since WSP does not bill the title insurance companies based on actual services, but instead receives a sixty percent premium split, we could not determine the amount of duplicative fees paid to WSP.

#### Auditee Comments

WSP provides in its response that “Connecticut is a fixed-rate State for title insurance premiums. The rates are established in accordance with state statute and approved by the Insurance Department of the State of Connecticut. This structure, in many cases, keeps costs lower and predictable. Should an agent be required to be compensated for work done for title agent purposes on an hourly basis, the costs would be considerable higher, and inconsistent based on the expertise of the Title Insurance Agent performing the core services.”

In their response, WSP advised that “core title agent services include: the evaluation of the title search to determine the insurability of the title; clearance of underwriting objections; in some cases, the issuance of a title commitment; and in all cases the issuance of the title insurance policy or policies on behalf of the title insurance company.”

OIG Evaluation of  
Auditee Comments

Based on the Connecticut Title Insurance Act, we note that a division of the premium is allowed, not a percentage split of the premium. The statute further provides that a title insurance agent may not receive more than sixty percent of the premium. The statute does not provide that a title insurance agent is guaranteed sixty percent for each premium. The Connecticut Title Insurance Act does not prohibit reasonable payments for services *actually* rendered to the title agent in connection with the title insurance business, as does RESPA. Therefore, WSP should not automatically claim sixty percent of a title insurance premium, but rather support the fees earned and receive actual cost not to exceed sixty percent.

Section 38a-414 of the Connecticut Title Insurance Act, Prohibition on rebates and inducements, provides that “(c) Nothing in this section shall be construed as prohibiting reasonable payments for services actually rendered to either a title insurer or a title agent in connection with title insurance business.”

Section 38a-415 of the Connecticut Title Insurance Act, Division of premiums and charges, provides that “(a) Nothing in sections 38a-400 to 38a-425, inclusive, shall be construed as prohibiting the division of premiums and charges between or among a title insurer and its title agent. . . . (b) Notwithstanding subsection (a) of this section, for any title insurance policy issued after October 1, 1990, no title insurer shall pay to any title insurance agent or permit such agent to retain any amount exceeding 60 percent of the gross premium for any policy of the title insurer issued by such agent.”

As WSP illustrates in its response, the title search is part of the core title agent services. As mentioned previously, WSP’s closing agent contract requires a title search. We are not saying that all services provided by WSP as title insurance agent are duplicate. But we are saying that some of the services may be duplicate, and HUD needs assurances that WSP’s title agent scope of services are outside their closing agent obligations.



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Recommendations

We recommend that the Philadelphia Homeownership Center:

- 2A. Require WSP to identify and provide support for fees earned from title insurance companies.
- 2B. Ensure the services provided by WSP as title insurance agent are outside of their contractual obligations with HUD.



## Closing Agent Contract Requirements Not Fulfilled

Waller, Smith & Palmer, P.C. (WSP) did not comply with all of its closing agent requirements stipulated in its contract. Specifically, WSP did not always ensure that only allowable expenses were paid by HUD on the buyer's behalf. Furthermore, WSP did not deposit sales proceeds timely; wire sales proceeds to the Department of the Treasury timely; or submit complete closing packages to CitiWest New England, Inc.(CitiWest), Management and Marketing Contractor for HUD. As a result, HUD's Single Family closing process cannot operate efficiently.

### Eligibility Requirements

In Section B of WSP's original and current contract, WSP shall:

*Pay actual closing financing costs that are reasonable and customary for the area(s) covered by the contract (e.g. credit reports, inspection service fees, title search, title exam, surveys, etc.), not to exceed the amount specified on line 5 of the Sales Contract.*

More specifically, HUD Handbook 4310.5 REV-2 - Property Disposition Handbook-One to Four Family, Chapter 11 Sales Closings; Section III(11-17)(B) provides guidance on which buyers expenses, as shown on the HUD-1 Settlement Statement, can and cannot be charged.

*Expenses that are chargeable to HUD as long as the costs are actual, reasonable and customary for the area and only to the extent that funds requested in Item 5 of the Sales Contract are available, are as follows:*

- Fees charged by the lender to process, approve, and make the mortgage loan;
- Fee to establish a repair escrow account;
- Title charges;
- Government recording and transfer fees; and

- Pest inspection.

*Expenses that may not be charged to HUD:*

- Items required by lender to be paid in advance;
- Reserves deposited with lender; and
- Closing agent fee. Sellers fee is allowed to be charged to HUD, buyers fees is not allowed to be charged to HUD.

Costs Paid by HUD not in Accordance With Regulations

WSP included buyer expenses not allowed by HUD in the closing cost credit calculation. In eighteen (18) of a sample of twenty-nine (29) closings (62 percent), HUD agreed as part of the sale to pay a certain amount of closing costs on the buyer's behalf, as indicated on line 5 of the sales contract. We noted that in twelve (12) of the eighteen(18) closings (67 percent), the credit applied per the HUD-1 Settlement Statement (HUD-1) exceeded the total amount of allowable expenses. For the 18 cases, WSP allowed a total of \$42,524 in credits. Of the \$42,524, \$14,425 (34 percent) was for expenses such as prepaid items, reserves required by lender, and buyers attorney fees, not allowed to be paid by HUD.

Timeliness Requirements

In Section C of WSP's original and current contract, WSP must deposit the sale proceeds and wire the sale proceeds to the Department of the Treasury on or the next business day after the closing.

Requirements for the Submission of Closing Packages

Section C of WSP's original and current contract also provides that a complete closing package is to be submitted to HUD or HUD's Designee (CitiWest) no later than the second business day after the date of the closing. A complete closing package must include all of the following:

- The original HUD-1 plus one copy;
- A copy of the tax certificate or locally accepted proof that taxes were paid;
- The original dated wire transfer confirmation;
- A copy of the Special Warranty Deed; and

- The Contractor's (WSP) certification that all payments and deductions from the closing (including the Contractor's fee) have been paid from the funds deposited in the escrow account containing the closing proceeds, and a statement that all actions have occurred on time and no liquidated damages should be assessed or an estimation by the contractor of liquidated damages.

If WSP fails to perform the services within the time frame specified in both contracts, they will be assessed liquidated damages for each calendar day late, as specified in Section F of both the original contract and current contract. The Philadelphia Homeownership Center did not assess liquidated damages on WSP until August 2000, although, a monitoring report dated June 3, 1999, identified problems with untimely deposits, wire transfers of sales proceeds, and closing packages.

Timeliness Requirements  
Not Met

In our review, seven of a sample of thirteen cases (54 percent) had sales proceeds which were not deposited timely. Five of the seven were one day late and the remaining two were two days late. As a result of the late deposits, all thirteen of the wires were late by one or two days to the Department of the Treasury.

Incomplete Closing  
Packages Submitted

We determined that the HUD-1 and the wire transfer request were submitted to CitiWest within the 2-day requirement for nine of a sample of thirteen closed cases. The remaining four closed cases in our sample did not have a date identified on the cover letter, so we could not determine if the HUD-1 and wire transfer request were submitted timely.

Although in nine of the thirteen cases the HUD-1 and wire transfer request were submitted on time, there were no complete closing packages submitted. We were advised that WSP does not send a copy of the Special Warranty Deed, a copy of the tax certificate or proof that taxes were paid, or a certification that all payments and deductions from the closing have been paid from the proceeds and a statement that all actions have/have not occurred timely to CitiWest. WSP advised that they were unaware of the requirement and that if it is required, WSP will comply.

In addition, WSP sends wire transfer confirmations in bulk once a week to CitiWest. As stated in WSP's original and current contract, the original wire transfer confirmation is to be submitted, as part of the complete closing package, within 2 business days of the closing date. WSP should be complying with their contractual obligations.

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**Auditee Comments**

WSP stated that as a sales incentive to move existing inventory, the HUD Connecticut State Office (CSO) allowed any payment made by a buyer as an eligible closing cost. WSP indicated that numerous attempts to the CSO and the Philadelphia Homeownership Center to obtain written direction on allowable closing costs went unanswered.

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**OIG Evaluation of Auditee Comments**

CSO and Homeownership Center staff did acknowledge that additional closing expenses, besides the standard allowable expenses, may have been allowed. However, this does not preclude the fact that these cost were unallowable. No cost should be charged to HUD, outside the standard expenses, without the written guidance superseding any current published HUD regulations.

WSP did not respond to additional issues relating to timeliness requirements and incomplete closing packages.

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**Recommendations**

We recommend that the Philadelphia Homeownership Center:

- 3A. Instruct and ensure that WSP include only expenses allowed by HUD Handbook 4310.5 REV-2, in the amount HUD pays on the buyer's behalf from the line 5 amount in the sales contract.
- 3B. Instruct and ensure that WSP complies with its closing agent contract requirements, specifically to make deposits of sales proceeds and wire transfers to the Department of the Treasury within the prescribed time frame in their contract.

- 3C. Instruct and ensure that WSP submits a *complete* closing package to CitiWest as required within the specified time frame in their contract.
  
- 3D. Continue to assess WSP liquidated damages for untimely wires and incomplete closing packages per the formula in WSP's closing agent contract.



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# Management Controls

In planning and performing our audit, we considered management controls of Waller, Smith & Palmer, P.C (WSP), one of HUD's Connecticut Closing Agents, specifically as related to its closing agent responsibilities, in order to determine our auditing procedures and not to provide assurance on management controls.

Management controls embody a plan of organization and methods and procedures adopted by management to ensure that resource use is consistent with laws, regulations, and policies; that resources are safeguarded against waste, loss, and misuse; and that reliable data is obtained, maintained, and fairly disclosed in reports.

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## Relevant Management Controls

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

- Contractual requirements
- Policies and procedure of the sales and closing process
- Policies and procedures of receipts and disbursements

## Assessment Results

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, and misuse; and that reliable data is obtained, maintained, and fairly disclosed in financial statements and reports.

## Significant Weaknesses

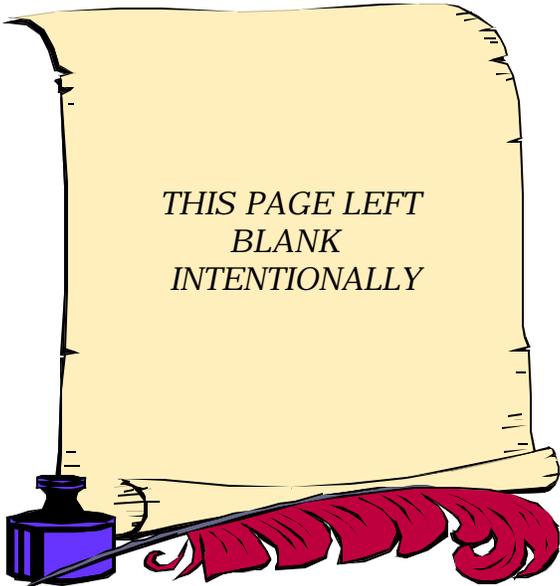
Our review identified significant weaknesses over WSP's ability to properly follow contractual requirements, policies and procedures of the sales and closing process, and policies and procedures of receipts and disbursements. Specific weaknesses were identified in all of the management control areas disclosed above. These weaknesses are described in the Findings section of this report.



# Ineligible and Unsupported Costs

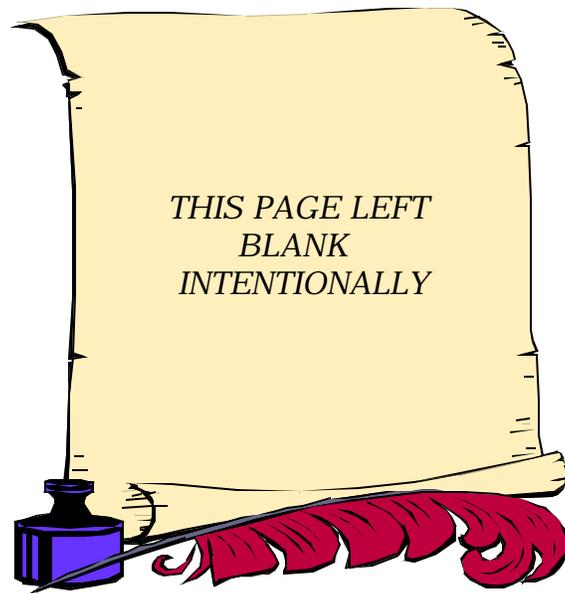
	Ineligible 1)	Unsupported 2)
Finding 1		
-Wire Transfer Fees	\$ 1,960	\$54,540
-Closing Agent Fees	\$18,387	\$ 4,365
<b>Total</b>	<b>\$20,347</b>	<b>\$58,905</b>

- 1) Ineligible amounts obviously violated law, contract, HUD or local agency policies or regulations, such as buying unneeded services or not depositing receipts.
- 2) Unsupported amounts do not obviously violate law, contract, policy, or regulation, but warrant being contested for various reasons, such as lack of satisfactory documentation to support eligibility and HUD approval.



# Schedule of Unsupported Closing Agent Fees

Sample No.	WSP File No.	Closing Date	Amount Charged	Unsupported Amount
1	4228	05/15/2000	\$425	\$ 25
2	4231	05/17/2000	\$425	\$ 25
3	3621	05/18/2000	\$425	\$ 25
4	4098	05/19/2000	\$425	\$ 25
5	4242	05/19/2000	\$425	\$ 25
6	3410	05/22/2000	\$425	\$ 25
7	4223	05/24/2000	\$425	\$ 25
8	4238	05/24/2000	\$425	\$ 25
9	4198	05/25/2000	\$425	\$ 25
10	3809	06/02/2000	\$425	\$ 25
11	4040	06/06/2000	\$425	\$ 25
12	4163	06/12/2000	\$425	\$ 25
13	4222	06/14/2000	\$425	\$ 25
14	3954	06/22/2000	\$425	\$ 25
15	3351	07/26/2000	\$425	\$ 25
16	4248	06/30/2000	\$425	\$ 25
17	4282	06/06/2000	\$445	\$ 45
18	4150	06/06/2000	\$470	\$ 70
19	4194	06/02/2000	\$500	\$ 100
20	4260	05/17/2000	\$850	\$ 450
21	3619	05/22/2000	\$850	\$ 450
22	4234	05/23/2000	\$850	\$ 450
23	4245	05/23/2000	\$850	\$ 450
24	4227	06/09/2000	\$850	\$ 450
25	4084	07/07/2000	\$850	\$ 450
26	4239	05/24/2000	\$925	\$ 525
27	4254	06/27/2000	\$925	\$ 525
<b>Total</b>				<b>\$4,365</b>



# Auditee Comments

TRACY WALLER 1962-1947  
 J. RODNEY SMITH 1908-1979  
 BROSSEY G. PALMER (RETIRED)

WILLIAM W. MINER  
 ROBERT P. ANDERSON, JR.  
 ROBERT W. HARRISON  
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\* ALSO ADMITTED IN MASSACHUSETTS  
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PLEASE REPLY TO  
**OLD LYME**

December 7, 2000

### VIA OVERNIGHT MAIL

Mr. Stephen D. King  
 U.S. Department of Housing and Urban Development  
 Acting District Inspector General  
 Office of Inspector General  
 Thomas P. O'Neill, Jr. Federal Building  
 10 Causeway Street, Room 365  
 Boston, MA 02222

Re: Audit: Waller, Smith & Palmer, P.C.

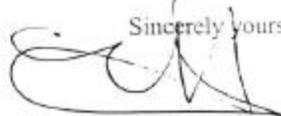
Dear Mr. King:

Enclosed please, once again, find Waller, Smith & Palmer, P.C.'s response to your report. We anticipate that the response will be incorporated into the Auditee's Response section of the report. Please inform us immediately if this is not the case. Again, Waller, Smith & Palmer, P.C. stands by its positions outlined in the correspondence previously forwarded to you on this matter. Our response is attached hereto and made a part hereof.

Please note that Waller, Smith & Palmer, P.C. has not received \$3.6 million in fees as noted on page 2 of the report. This stated amount is significantly higher than the reality, we have no idea how this figure was derived neither from the materials provided to us by the auditors nor from the materials the auditors reviewed at this office. At this juncture, Waller, Smith & Palmer, P.C. is unclear as to the future process associated with this report and would appreciate some guidance as to the appeals procedure available to it with regard to this matter.

If you require any additional information from this office, please do not hesitate to contact me.

Sincerely yours,



Valerie Ann Votto for  
 Waller, Smith & Palmer, P.C.

VAV/alm  
 Enc.



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Secretary's Representative, 1AS (2)

Appropriate Special Agent-In-Charge, 1AGI (1)

Primary Field Audit Liaison Officer, 3AFI (2)

Headquarters Audit Liaison Officer, DOT (2)

Departmental Audit Liaison Officer, FM, Room 2206 (2)

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The Honorable Joseph Lieberman, Ranking Member, Committee on Governmental Affairs, 706 Hart Senate Office Bldg., United States Senate, Washington, DC 20510 (1)

The Honorable Dan Burton, Chairman, Committee on Government Reform, 2185 Rayburn Bldg., House of Representatives, Washington, DC 20515 (1)

The Honorable Henry A. Waxman, Ranking Member, Committee on Government Reform, 2204 Rayburn Bldg., House of Representatives, Washington, DC 20515 (1)

Ms. Cindy Fogleman, Subcommittee on Oversight and Investigations, Room 212, O'Neill House Office Building, Washington, DC 20515 (1)

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Stanley Czerwinski, Associate Director, Resources, Community, and Economic Development Division, United States General Accounting Office, 441 G Street, NW, Room 2T23, Washington, DC 20548 (1)

Michael Flachta, Assistant Inspector General for Audits, Department of Veteran Affairs, Office of Inspector General (52A), 810 Vermont Avenue, NW, Washington, DC 20410 (reports on FHA and Single Family only).

The Honorable A. Waxman, Ranking Member, Committee on Government Reform, 2204 Rayburn Bldg., House of Representatives, Washington, DC 20515.