



Issue Date November 20, 2000
Audit Case Number 01-FW-222-1001

TO: Ronald C. Bailey  
Director  
Single Family Homeownership Center, 8AHH

***SIGNED***

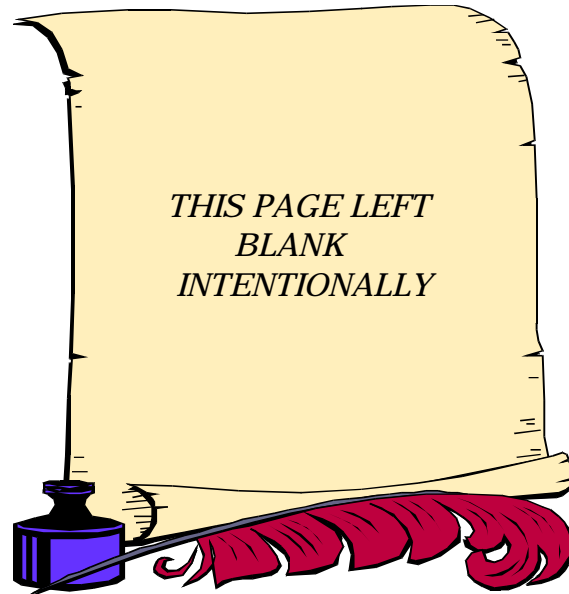
FROM: D. Michael Beard  
District Inspector General for Audit, 6AGA

SUBJECT: Albuquerque Title Company, Inc. Closing Agent Contract  
Albuquerque, New Mexico

We performed an audit of Albuquerque Title Company, Inc.'s Closing Agent contract. Our attached report contains two findings.

Within 60 days, please furnish this office, for each recommendation in this report, a status on: (1) 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.

If you have any questions, please contact Theresa A. Carroll, Assistant District Inspector General for Audit, at (817) 978-9309.



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# Executive Summary

We performed an audit of Albuquerque Title Company, Inc. (Albuquerque Title), a closing agent for HUD, as part of a nationwide effort to review closing agents. Our audit objective was to determine whether management controls were adequate to ensure the prevention of fraud, waste, and abuse. To meet this objective, we performed audit steps to determine whether Albuquerque Title complied with the terms and conditions of its closing agent contract. Overall, Albuquerque Title's controls were insufficient to ensure that it complied with its HUD contract. Instead, Albuquerque Title's overall performance as a closing agent was substandard. In addition, Albuquerque Title entered into its current contract knowing that it could not meet the contract's terms. Specifically, Albuquerque Title improperly allowed third parties to conduct closings because it could only perform closings in three New Mexico counties.

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## **Albuquerque Title's overall performance substandard.**

Albuquerque Title's overall performance as a closing agent was substandard. Albuquerque Title did not comply with all of the terms and conditions of its closing agent contract. Albuquerque Title did not: (1) table fund closings; (2) timely deposit or wire sales proceeds to HUD; (3) timely record Special Warranty Deeds; (4) properly request, document, compute, or collect extensions and extension fees; (5) ensure that all buyers received clear title; (6) charge HUD the correct wire fee; (7) exercise due diligence to detect and prevent administrative errors; and (8) maintain case files by FHA case number. Poor performance occurred because Albuquerque Title either did not follow its contract, did not understand HUD's procedures, or did not exercise due care to prevent errors. As a result, HUD has no assurance that Albuquerque Title properly conducted closings.

## **Third-party closing occurring.**

Even though its contract prohibited third-party closings, Albuquerque Title did not perform the closing in 51 (or 65 percent) of 79 files reviewed. Other title companies performed the closings because Albuquerque Title was only able to conduct closings in three New Mexico counties. Yet, Albuquerque Title collected its closing agent fee from HUD for all 51 closings. As a result, HUD paid \$7,650 in ineligible fees. Further, when another title company performed the closing, Albuquerque Title did not pay them for their services. Thus, the other title companies often required the purchasers to purchase title insurance as compensation.

Recommendations

The findings are systemic in nature. However, Albuquerque Title's contract with HUD has expired and they chose not to re-bid. Thus, we will make no recommendations about the contract. Yet, HUD needs to recover ineligible fees totaling \$7,904 and determine whether additional questioned fees are owed.

We conducted our exit conference with Albuquerque Title on April 9, 1999. We provided a copy of the draft report to Albuquerque Title on September 9, 2000. Albuquerque Title provided us with written comments on October 17, 2000, which are included in this final report.

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## Abbreviations

CFR	Code of Federal Regulations
GTR	Government Technical Representative
HUD	U. S. Department of Housing and Urban Development
OIG	Office of Inspector General
SAMS	Single Family Acquired Asset Management System

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# Introduction

## Background

Albuquerque Title Company Inc. (Albuquerque Title) contracted with the U.S. Department of Housing and Urban Development (HUD) to provide closing services for single family properties owned by HUD and located within the State of New Mexico. Albuquerque Title has served as a New Mexico closing agent for HUD in the past. The effective date of the current closing agent contract was November 1, 1998.

Albuquerque Title had an indefinite quantity contract<sup>1</sup>. The primary objectives of the contract were to ensure that: (1) properties closed within the time frame stipulated in the sales contract<sup>2</sup>; (2) prompt and accurate payment of all closing charges were made; (3) sales proceeds were wired to HUD's account with the U. S. Treasury on the day of closing or not later than the next banking day; (4) a complete and accurate closing package was submitted to HUD within 2 working days of closing; and (5) lenders "table fund" all closings so that the funds are available at the time of closing.

To conduct a closing, Albuquerque Title's contract required it as closing agent to:

- Establish and maintain individual property files in numerical sequence by FHA case number.
- Coordinate with purchaser, broker, and mortgagee to establish a firm closing date on or before the date specified in the sales contract.
- Review title information and clear routine title issues—convey clear title on all properties.
- Prepare and forward a HUD-1<sup>3</sup> and warranty deed to the HUD office for approval and execution 5 business days prior to closing.
- Explain all closing papers and documents to the purchaser at closing.
- Administer requests by brokers for extensions of sales closing date.
- Complete and execute the HUD-1.
- Prorate unpaid property taxes to the date of closing.

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<sup>1</sup> Contract number C-FTW-00113.

<sup>2</sup> Not to exceed a maximum 60 days.

<sup>3</sup> HUD uses the HUD-1 as its settlement statement in the sale of properties.

- Accept only cash, a certified check, a cashier's check, or money order.
- Deposit the sales proceeds and wire the proceeds due HUD on the day of closing or the next banking day. Further, obtain the bank's dated confirmation of the wire and verify that the correct amount of sales proceeds was wired.
- Record the deed on the day of closing or the next business day.
- Deliver the closing package to HUD no later than 2 business days after closing.

According to the information from HUD's Single Family Acquired Asset Management System (SAMS), Albuquerque Title closed 285 properties as a closing agent from January 2, 1997, to March 11, 1999. For each closing performed, HUD paid Albuquerque Title \$150 from the sales proceeds.

### **Audit Objective**

Our audit objective was to determine whether management controls were adequate to ensure the prevention of fraud, waste, and abuse.

### **Scope and Methodology**

We obtained background information by:

- Reviewing the Lubbock, Texas single family file on Albuquerque Title.
- Reviewing prior closing agent audit programs.
- Participating in a teleconference with KPMG regarding its findings for the fiscal year 1998 FHA Financial Statement Audit.
- Reviewing the KPMG briefing paper regarding the fiscal year 1998 FHA Financial Statement Audit.

To accomplish our audit objectives, we:

- Examined the closing agent contract and HUD's Property Disposition Handbook.
- Obtained from SAMS a listing of closings performed by Albuquerque Title from which we selected our sample of closings for audit testing. We judgmentally selected 100 closing files using a random number generator. However, due to time constraints and the unavailability of some files, we only reviewed 79 of the 100 files. Because the current contract began November 1, 1998,



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we included for review 41 closing files for the period of January 1997 through October 1998 from Albuquerque Title's previous closing agent contract with HUD.

- Interviewed HUD and Albuquerque Title staff regarding the closing process.
- Obtained an understanding of Albuquerque Title's closing process.
- Interviewed a supervisor from the New Mexico Department of Insurance, Title Insurance Division.
- Contacted 61 and interviewed 59 title insurance companies in New Mexico regarding table funding, recording deeds, and requirements for title insurance at closing.
- Obtained and tested 79 selected closing files for the following specific contractual and HUD Handbook requirements:
  1. The property closed timely and, if the property did not close timely, we documented the number of days late;
  2. The closing file contained an extension request and approval, if applicable;
  3. The correct extension fee was collected, if applicable;
  4. Only allowable expenses were paid;
  5. The sales proceeds were wired timely;
  6. The correct amount was wired;
  7. The Deed was recorded timely;
  8. The correct amount was collected for the taxing authority;
  9. Clear title was issued;
  10. The title insurance premium was not split;
  11. A Warranty Deed was prepared;
  12. Documents were forwarded to HUD timely;
  13. The selling amount on the sales contract and the settlement statement were identical;
  14. Closing costs for buyer were identical on both pages of the HUD-1; and
  15. The correct amount of extension fees were on the HUD-1, if applicable.

**Audit Period and Sites**

We conducted the audit at Albuquerque Title's office located at 2400 Louisiana Boulevard in Albuquerque, New Mexico in April 1999. In July 2000, we contacted HUD to determine whether it resolved the issue of table funding for New Mexico closings. The audit covered closings performed by Albuquerque Title from December 1997 through March 1999. Audit work also included closings performed under the prior contract that expired in October 1998. We conducted our audit in accordance with generally accepted government auditing standards.

# Albuquerque Title's Overall Performance was Substandard

**Albuquerque Title's overall performance as a closing agent was substandard.**

**Albuquerque Title did not comply with all of the terms and conditions of its closing agent contract. Specifically, Albuquerque Title did not: (1) table fund closings; (2) timely deposit or wire sales proceeds to HUD; (3) timely record Special Warranty Deeds; (4) properly request, document, compute, or collect extensions and extension fees; (5) ensure that all buyers received clear title; (6) charge HUD the correct wire fee; (7) exercise due diligence to detect and prevent administrative errors; and (8) maintain case files by FHA case number. Poor performance occurred because Albuquerque Title either did not follow its contract, did not understand HUD's procedures, or did not exercise due care to prevent errors. As a result, HUD has no assurance that Albuquerque Title properly conducted closings. Since the findings are systemic in nature, we recommend that HUD terminate its contract with Albuquerque Title.**

## Criteria

Albuquerque Title's closing agent contract stated that it, as contractor, would furnish the necessary services, personnel, material, equipment, and facilities to provide sales closing services for single family properties owned by HUD.

Albuquerque Title's contract duties included the following responsibilities:

- Ensure that lenders table fund<sup>4</sup> all closings so that the funds are available at the time of closing. Closing agents should not schedule or hold a closing unless the closing can be table funded by the lender<sup>5</sup>.
- Ensure that the net proceeds of each sale are deposited to a non-interest bearing escrow account<sup>6</sup>.
- Wire the proceeds to HUD's account on the day of closing or not later than the next banking day<sup>7</sup>.
- Charge HUD the actual wire cost to wire the sales proceeds to HUD and include the cost of the wire with settlement charges. Further, deduct the cost from the sales proceeds due HUD<sup>8</sup>.

<sup>4</sup> Table funding is defined as obtaining from the purchaser the amount due to close the sale and disbursing the proceeds at the time of closing.

<sup>5</sup> Section C.I.5

<sup>6</sup> Section C.I.3.

<sup>7</sup> Ibid.

<sup>8</sup> Section B.9.c.

- File the deed for record on the day of closing or the next business day<sup>9</sup>.
- Administer requests by brokers for extensions of sales closing date. Ensure requests are in writing and accompanied by the full non-refundable fee<sup>10</sup>.
- Review title information and convey clear title on all properties. Contractor must clear all title issues, i.e., past due taxes, water bills, demolition liens<sup>11</sup>.
- Pay from HUD's sales proceeds actual closing/financing costs not to exceed the amount specified in Line 5 of the sales contract<sup>12</sup>.
- Establish and maintain individual property files in numerical sequence by FHA case number<sup>13</sup>.

**Closings not table funded.**

Albuquerque Title did not table fund closings.

Albuquerque Title's president admitted that Albuquerque Title was unable to meet its contractual requirement to table fund. Further, Albuquerque Title personnel asserted that table funding was not a common practice in the State of New Mexico. According to Albuquerque Title, certain lenders will not fund a loan until they review the final closing papers after closing to ensure accuracy and salability. Additionally, some lenders will not fund until after recording the deed. However, Albuquerque Title's contract requires table funding of HUD closings. Thus, Albuquerque Title entered into a contract it could not perform. Albuquerque Title's failure to table fund closings led to late deposits, late wires, and delays in recording deeds as discussed later in this finding.

Albuquerque Title acknowledged that there was a table funding requirement under the contract. In correspondence with HUD in December 1998, Albuquerque Title indicated that its staff had contacted some of the larger mortgage companies who had reluctantly agreed to table fund. Yet, according to Albuquerque Title, smaller mortgage companies were not in the position to table fund. However, internal documentation contradicted this letter. In the internal document, titled 'Instructions to Title Companies Closing HUD Transactions,' Albuquerque Title stated

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<sup>9</sup> Section C.II.2.k.

<sup>10</sup> Section C.II.2.h.

<sup>11</sup> Section C.II.2.c.

<sup>12</sup> Section B.9.a.

<sup>13</sup> Section C.II.2.a.

“Mortgage Companies, if being used, are required to table fund the transactions with NO CONDITIONS!!”

HUD’s Government Technical Representative (GTR) in Lubbock stated that he had contacted several mortgage companies in New Mexico regarding the issue of table funding. The GTR further stated that the Real Estate Owned, Director in the Denver Homeownership Center had also done research on the issue of table funding. The GTR found that most of the mortgage companies contacted had no problem with table funding.

Additional audit work was conducted to determine whether other New Mexico title companies table funded closings. A supervisor in the Title Insurance Division of the New Mexico Department of Insurance said that there was no table funding requirement in the state. The supervisor stated that this had been a prominent issue recently and that some title companies have agreed to table fund. He stated, however, that a lender cannot be required by law to table fund, but a title company could probably require this as a condition of doing business with them.

Contact was made with 61 New Mexico title insurance companies to obtain information on table funding and closing practices. Of the 61 contacted, 59 title companies answered questions related to table funding. They defined table funding as having available funds<sup>14</sup>. To these companies, closing with available funds means that the buyer provides funds at closing and the deed is recorded after courthouse records have been checked. As a result, the sales proceeds are not disbursed at the closing table but at a later date. Thus, table funding is not occurring.

In conclusion, Albuquerque Title knew table funding was a requirement of its contract. Yet, Albuquerque Title closing files show that it did not meet this requirement. However, Albuquerque Title’s argument that table funding does not occur in New Mexico is correct. The title companies contacted stated that they do not disburse funds at the closing table, which by definition is table funding.

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<sup>14</sup> 13 New Mexico Administrative Code 14.1.7.4.1. defines available funds “as money-deposited in a depository account with a financial institution held in the name of and subject to the control of a title insurance agent, a title insurer, or third-party fiduciary for a real estate closing that can be disbursed immediately by cash withdrawal or cashier’s check without relying on the balance created by other deposits in the account not made as part of the real estate closing for which disbursements is being made.”

However, they could be required to do so as a condition of doing business. Thus, we will issue an internal memorandum to HUD to address this issue for future closing agent contracts in New Mexico.

**Sales proceeds not deposited or wired timely to HUD.**

In 49 (or 62 percent) of 79 closing files reviewed, Albuquerque Title did not timely deposit sales proceeds. Further, in 41 (or 52 percent) of these cases, Albuquerque Title did not timely wire sales proceeds to HUD. Albuquerque Title's contract required that on the day of closing or the next banking day that it deposit sales proceeds and wire those proceeds to HUD. As a result of Albuquerque Title not depositing and wiring the sales proceeds timely, HUD did not receive its funds timely.

Albuquerque Title maintained that table funding was the reason that it could not meet its contractual obligations of timely depositing and wiring sale proceeds. However, these requirements were clearly outlined in its current contract. Thus, Albuquerque Title entered into its current contract knowing it could not meet the terms.

**Special Warranty Deeds not recorded timely.**

In 53 (or 67 percent) of 79 closing files reviewed, Albuquerque Title did not record the Special Warranty Deeds timely. Of the 53 untimely deed recordings, Albuquerque Title recorded 16<sup>15</sup> and other title companies recorded 37. Albuquerque Title's contract required it to file the deed on the day of closing or the next banking day. The Special Warranty Deed is the document that conveys ownership of a property from seller to purchaser. Filing the Special Warranty Deed for record protects the rights of the purchaser and officially records ownership of the property in the purchaser's name. Albuquerque Title's untimely deed recording delayed immediate transfer of title in the public record. Until the deed was recorded, the public record still indicated that HUD owned the property. Thus, the deed was not effective against subsequent purchasers and HUD's interest in the closing was not protected.

**Extensions and fees not properly requested, documented, computed, or collected.**

In 9 (or 56 percent) of 16 files that did not close timely, Albuquerque Title did not properly request or document extensions of closing deadlines. Further, Albuquerque Title did not correctly compute or require the purchasers to pay the correct amount in extension fees. Albuquerque Title's

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<sup>15</sup> This represents 57 percent of the reviewed closings that Albuquerque Title performed.

contract required it to properly document, calculate, and collect extension requests and fees. Missing extension requests or poorly documented closing files occurred because Albuquerque Title personnel did not have a clear understanding of HUD's extension procedures. In addition, HUD stated Albuquerque Title's software program did not allow it to list extension fees on the settlement statement. Since Albuquerque Title did not properly request, document, calculate, or collect extension fees, HUD did not receive maximum return on the properties.

The nine problem files had a variety of extension request and fee problems. For example, in one of nine closing files reviewed, HUD granted an initial extension and the purchaser paid the extension fee. Yet, the sale closed 5 days after the approved extension date. In addition, the closing file contained no documentation of any further extension requests. The HUD-1 indicated that the purchaser paid an additional \$70 in extension fees at closing. However, based on extension fees of \$10 per day, the correct fee was actually \$50. In another closing file, there was an indication that the purchaser paid some amount of extension fees, but it was not sufficient for the number of days the closing was late. Further, the file contained no documentation of a closing deadline extension request.

**Buyers may not have received clear title.**

In eight cases, Albuquerque Title's closing files lacked documentation showing HUD conveyed clear title to the purchaser of the property at closing. However, Albuquerque Title's contract required conveying clear title on all properties. Seven files contained no title documentation, such as a title insurance binder, title commitment, title insurance policy, or copies of outstanding liens or judgments against the property. Thus, Albuquerque Title and HUD lacked knowledge of any potential title problems. For one additional file, Albuquerque Title did not clear title problems until after closing. The Vice President of Albuquerque Title stated that it paid the fees for outstanding title problems from HUD's sale proceeds; which it could not do until after closing. Further, the vice president stated that Albuquerque Title eventually cleared the title problems and indemnified the purchaser against liability for them. Yet, Albuquerque Title's contract required conveying a clear title.

**HUD overcharged for wire fee.**

Albuquerque Title charged more than its cost to wire sale proceeds to HUD. Because Albuquerque Title used the wrong amount for wire fees on the settlement statements, HUD paid an additional \$0.50 per closing. For the 79 closing files reviewed, Albuquerque Title overcharged HUD approximately \$40. Albuquerque Title may have also overcharged HUD an additional \$103 on the other 206 cases closed under its current contract.

**Lack of diligence causes administrative errors.**

Four additional files contained a variety of administrative errors caused by a lack of diligence. In two cases, Albuquerque Title did not ensure that the amount of closing costs that HUD agreed to pay did not exceed the amount agreed to in the sales contract. In another case, HUD paid more than the actual cost of the title insurance premium. In the final case, Albuquerque Title wired more funds than the actual sales proceeds to HUD. All of these items occurred because Albuquerque Title did not diligently review the documents and detect the errors. After deducting the overpayment to HUD, Albuquerque Title owes HUD and one purchaser \$89 and \$125, respectively for these errors.

**Closing files not maintained in FHA number order.**

Albuquerque Title did not maintain its closing files in order by FHA case number as required by its contract. Instead, it maintained all of its closing files by title policy General File number. Because Albuquerque Title did not maintain the closing files by FHA case number, it could not easily locate and retrieve HUD closing files. During our audit, Albuquerque Title was unable to locate 17 files.

Overall, Albuquerque Title's performance was substandard. Although some of the problems cited are not significant by themselves when viewed in total, Albuquerque Title's inability to fulfill significant portions of its contract becomes obvious.

**Auditee Comments**

Albuquerque Title stated it was never its intent to not comply with the contract. In addition, Albuquerque Title responded that after months of ongoing conversations with the Denver HUD office, the contract was amended regarding table funding on August 3, 2000. Further,



Albuquerque Title agreed that it would reimburse HUD for the overcharges on the wire fees.

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**OIG Evaluation of  
Comments**

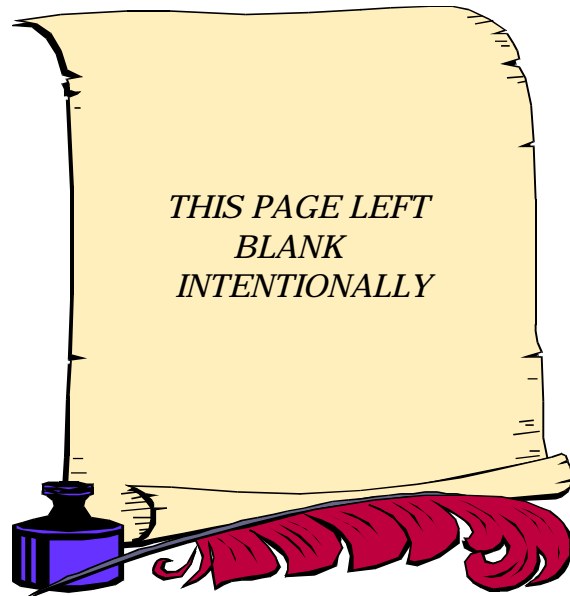
We stand by our original conclusions. Although Albuquerque Title may not have “intended” to violate its contract, the facts show that it did. However, Albuquerque Title’s contract expired on October 18, 2000. Since Albuquerque Title chose not to rebid on the contract, the recommendation regarding termination of the contract has been deleted.

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**Recommendations**

We recommend that the Director, Denver Homeownership Center to:

- 1A. Require Albuquerque Title to reimburse HUD \$40 for ineligible wire transfer fees on the 79 closing files reviewed.
- 1B. Determine the number of sales closed by Albuquerque Title as part of its closing agent contract with HUD. Then, require Albuquerque Title to reimburse HUD for any additional ineligible wire transfer fees on any other HUD closings, which potentially could be \$103.
- 1C. Require Albuquerque Title to repay HUD and one purchaser \$89 and \$125, respectively for administrative errors.



## Third-Party Closings Occurring

Even though its contract prohibited third-party closings, Albuquerque Title did not perform the closing in 51 (or 65 percent) of the 79 closing files reviewed. Albuquerque Title used third parties to close because New Mexico law does not allow it to conduct closings in counties where it lacks legal information regarding ownership of properties.<sup>16</sup> Thus, Albuquerque Title entered into this contract knowing that it would have to violate the contract terms to perform its closing agent duties. HUD paid Albuquerque Title its full fee of \$150 for each of the 51 files even though another title company conducted the closings. As a result, HUD paid \$7,650 in ineligible fees to Albuquerque Title for closings it did not perform.

Further, Albuquerque Title refused to reimburse third-party title companies that performed the closings. Since the third-party title companies were not paid, they often required the purchase of title insurance as compensation for their services. However, Albuquerque Title's contract stated that purchasers were not required to purchase title insurance. As a result, purchasers may have paid for unwanted title policies and title policies that HUD did not require.

### Criteria

Albuquerque Title's closing agent contract stated that third-party closings are not permitted under this contract.<sup>17</sup> Further, the contract stated "HUD does not require a title policy to close HUD properties. The contractor shall not influence the purchaser's decision to purchase a title policy. The purchase of a title policy is strictly at the purchaser's discretion. The choice of Title Company used shall be left to the purchaser, broker/agent or lender."<sup>18</sup>

### Third-party title companies closed 65 percent of the closings reviewed.

Of the 79 closing files reviewed, Albuquerque Title only closed 28 (or 35 percent). Third-party title companies throughout the State of New Mexico closed the remaining 51 cases (or 65 percent). Albuquerque Title used third-party title companies to perform closings because it could not close in counties where it did not maintain a title plant. Even though Albuquerque Title did not perform the closings, it collected its full \$150 closing fee from HUD for closings performed by other title companies.

<sup>16</sup> Albuquerque Title lacked a title plant for those counties. A title plant, also called "abstract plant" in some areas, is a geographically filed assemblage of title information that helps in expediting title examinations, such as copies of previous attorneys' opinions, abstracts, tax searches, and copies or take-offs of the public records.

<sup>17</sup> Section B.3

<sup>18</sup> Section C. II

**New Mexico law limits closings.**

According to state law, Albuquerque Title properly performed closings by allowing third-party closers to close in counties where it did not maintain a title plant. A New Mexico Department of Insurance, Title Insurance Division, supervisor stated that New Mexico state law mandates that only title companies and attorneys can perform real estate closings in New Mexico. Additionally, only title companies can close sales involving the purchase of a title insurance policy. Further, title companies can perform closings only in counties where they maintain a title plant. Albuquerque Title maintained title plants in only three New Mexico counties. As a result, Albuquerque Title delegated closings in counties where it did not have a title plant to other title companies. However, Albuquerque Title's contract prohibited the use of such third-party entities to close. By allowing third-party title companies to perform closings, Albuquerque Title violated its contract terms.

**Third party title companies not paid.**

Albuquerque Title did not pay the third-party title companies for their closing services. Fourteen of the 22 third-party title companies performing closings for Albuquerque Title said they required the home buyer to purchase title insurance as compensation for their services. As a result, purchasers may have paid for unwanted title policies that HUD did not require.

In conclusion, Albuquerque Title entered into a contract it could not perform since it only had a title plant in three New Mexico counties. Each closing performed by a third-party title company violated Albuquerque Title's contract. In addition, HUD paid Albuquerque Title for services it did not perform. For the 79 files reviewed, HUD improperly paid Albuquerque Title \$7,650 for 51 third-party closings. Further, purchasers of HUD homes that closed through third-party title companies were generally required to buy title insurance; an item HUD did not require to close.

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**Auditee Comments**

Albuquerque Title disagreed with our finding saying it used title companies in other counties to provide notary services not third-party closings. Further, Albuquerque Title asserted that it prepared all closing documents and handled all monies.

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**OIG Evaluation of  
Comments**

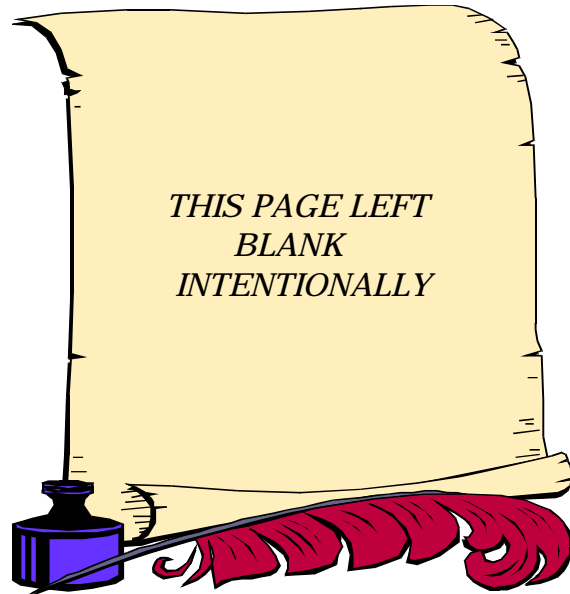
We disagree with Albuquerque Title's comments. Third-party closings are not permitted under Albuquerque Title's closing agent contract. HUD defines a third-party as anyone not under a HUD-authorized contractual arrangement. Further, HUD's Single Family Disposition Handbook requires mandatory physical representation of HUD's closing agent at closings. Albuquerque Title did not attend closings held by third-party closers. Albuquerque Title is correct in stating that they remitted all monies to HUD. However, the third-party title companies actually collected and handled the monies at closings they performed. In fact, part of the reason that Albuquerque Title did not remit monies to HUD timely is that the third-party closers did not wire the monies timely to Albuquerque Title.

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**Recommendations**

We recommend that the Director, Denver Homeownership Center to:

- 2A. Require Albuquerque Title to reimburse HUD \$7,650 for the closings performed in violation of the closing agent contract.
- 2B. Review other closings performed by Albuquerque Title under its current contract and recover the closing agent fee on those where it did not perform the closing.



# Management Controls

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**In planning and performing our audit, we obtained an understanding of the management controls 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.**

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## **Relevant Management Controls.**

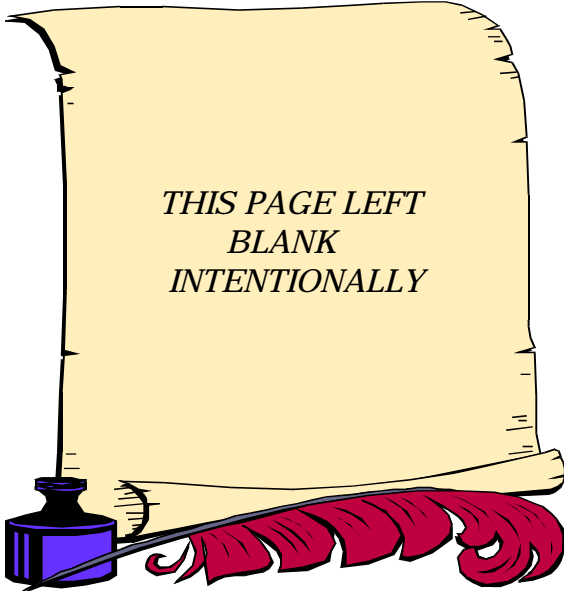
We determined the following management controls were relevant to our audit objectives:

- The closing agent contract's terms and conditions.
- Policies and procedures of the sales process established by HUD.
- Policies and procedures of the cash receipts and disbursements controls at the closing agent.

## **Significant Weakness.**

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 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:

- Albuquerque Title's noncompliance with its contract terms and conditions.



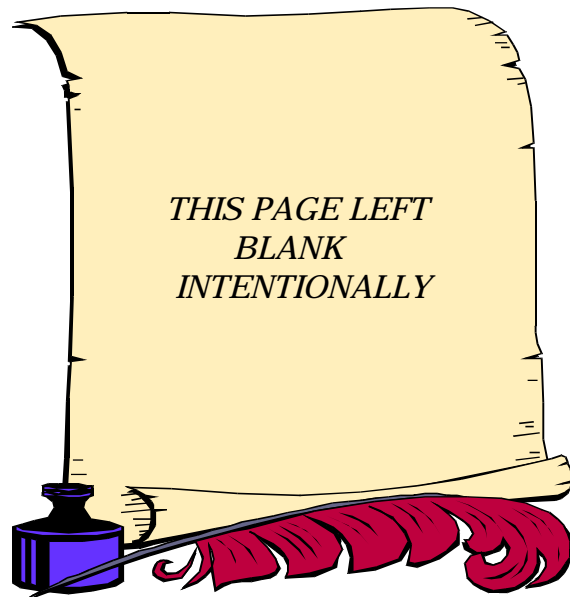


# Schedule of Questioned Costs

<u>Issue</u>	<u>Type of Questioned Costs</u>	
	<u>Ineligible</u> <sup>1/</sup>	<u>Unsupported</u> <sup>2/</sup>
1A Ineligible wire transfer fees	\$ 40	
1B Ineligible wire transfer fees on other HUD closings		\$103
1C Administrative errors	214	
2A Violations of closing agent contract	<u>7,650</u>	—
Totals	<u>\$7,904</u>	<u>\$103</u>

<sup>1</sup> Ineligible costs are costs charged to a HUD-financed or insured program or activity that the auditor believes are not allowable by law, contract, or federal, state, or local policies or regulations.

<sup>2</sup> Unsupported costs are costs questioned by the auditor because the 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 costs. Unsupported costs require a future decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation of Departmental policies and procedures.



# Auditee Comments

## Albuquerque Title Co. Inc.

A LANDAMERICA COMPANY

October 16, 2000

D. Michael Beard  
 District Inspector General for Audit  
 U.S. Department of Housing and Urban Development  
 Southwest District Office of Inspector General  
 819 Taylor Street Room 13A09  
 Fort Worth, TX 76102

Dear Mr. Beard,

Our office has reviewed the draft audit and would like to respond to some of the issues. The issue of table funding required on going dialogue with our office and the Denver HUD office. Since table funding is not a requirement or practice in this area in delayed closings. After months of ongoing conversations an amendment to our contract was finally done to change the requirement of table funding. Prior to this change when lenders would call certain departments of the HUD office they would be told that we could close without table funding, it took us months to get this corrected. The end result was the execution of modification number M0011 that was signed in August 3, 2000. This modification addressed the problems mentioned in this report regarding the filing of the deed and depositing of net proceeds. Although this modification was done very late in the contract I believe it shows that all parties recognized a problem with the conditions of the contract and corrected it.

Albuquerque Title used companies in other counties to provide notary services not third party closings. Albuquerque Title prepared all closing documents and all monies were handled through Albuquerque Title. Albuquerque Title Company has been handling the out of county transactions this way since we began the HUD contracts in 1991. This has been an equitable arrangement with the title companies that we use and no one was ever "forced" to buy title insurance because of this. The request for the fees to be reimbursed to HUD is inappropriate as we earned those fees in coordinating and preparing the closings.

In regard to the wire transfer overcharge of .50 per file, we were unaware of the fact that the bank was charging us less than we were charging HUD. Our analysis statements are based on the total amount of business that our company transacts with a bank. We will reimburse HUD for the .50 per file for the time period that we were charged the lesser rate.

Albuquerque Title Company began providing closing services to the US Department of HUD in 1991. There were times that due to the changes within your organization and the other providers that the service was not what HUD considered in compliance with the contract. It is our opinion that this report exaggerates some of the instances of non-compliance and does not take into consideration the ongoing dialogue this office had with the Denver HUD office to correct some of the problems. It was never our intent to not comply with the contract. The closing contract with Albuquerque Title Company will expire on October 18, 2000 and we chose not to bid to continue the contract.

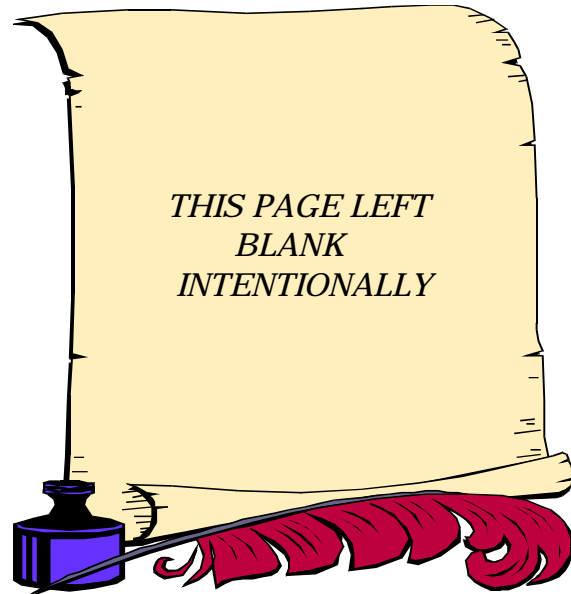
Sincerely,



Carolyn Monroe  
 President

Copy: Ronald C Bailey

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Albuquerque Title, Inc.