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April 6, 2001

2001-FW-1804

MEMORANDUM FOR: David Long
Director
Community Planning and Development Division, 6ID

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

SUBJECT: Congressional Inquiry
Neighborhood Housing Services, Inc.
Tulsa, Oklahoma

At the request of Congressman Steve Largent, we looked into allegations that Neighborhood Housing Services, Inc. (NHS) made against the City of Tulsa. NHS, through its attorney, alleged:

1. The City owes it over \$400,000 for expense reimbursements for carrying out the City's CDBG and HOME Programs and although NHS is fully entitled to these payments, the City will not pay NHS. The City requires additional documentation to pay NHS but will not specify what additional documentation is needed.
2. The City unfairly requires NHS to remit program income collected by NHS before it can pay anymore program expenses.
3. The City discriminated against NHS by withholding payments and requiring more documentation than required of other subrecipients. This situation is an orchestrated attempt to drive NHS out of business.
4. It is not acceptable to cancel the CDBG and HOME contracts for failure to reimburse program income funds when other nonprofit agencies are not also being required to make the same reimbursements to their program income accounts.

In completing our review, we talked to representatives of NHS, City officials, and HUD's Community Planning and Development staff in Oklahoma City, Oklahoma. We reviewed materials such as correspondence and payment requests provided by NHS, the City, and HUD. Our review covered the 1997, 1998, 1999, and 2000 program years.

If you have any questions, please call Jerry R. Thompson, Assistant District Inspector General for Audit, on (817) 978-9309.

SUMMARY

We could not validate the allegations against the City. NHS submitted reimbursement requests to the City but they lacked sufficient documentation to support full payment of each request. The City requested additional documentation, but NHS did not provide it. The City asked NHS to remit program income collected in accordance with the terms of the contract. Although NHS agreed it had collected program income and owed it to the City, NHS chose not to remit the funds to the City. We found no evidence to indicate the City discriminated against NHS by requiring more documentation than required of other subrecipients or to indicate an orchestrated attempt to run NHS out of business. In addition, we concluded the termination clause in the contract permits the City to terminate the contract when the City determines sufficient cause exists, such as not remitting program income in a timely manner.

BACKGROUND

NHS is a state chartered, private, nonprofit corporation. The Neighborhood Reinvestment Corporation created NHS to provide loans to homeowners in selected, older, established neighborhoods. Congress established the Neighborhood Reinvestment Corporation in 1978 to promote reinvestment in older neighborhoods by local financial institutions in cooperation with the community, residents, and local governments. NHS makes loans to homeowners within the Tulsa city limits to rehabilitate and preserve their neighborhoods and their homes. NHS secures loans with first, second, or third mortgages on the properties. In 1994, the City of Tulsa designated NHS as a Community Housing Development Organization. It is located at 502 S. Main Street, Suite 304, Tulsa, Oklahoma.

During the period reviewed, NHS had two HOME contracts, one for 1996 funds executed February 12, 1998, and one for 1997 funds executed March 4, 1999. In addition, NHS had one CDBG contract with the City for the 24th program year dated November 23, 1998. The HOME contracts were for NHS to provide downpayment/closing assistance and lease/purchase assistance for eligible properties. Each HOME contract requires NHS to act as a developer to purchase a maximum of five houses, and if required, rehabilitate homes selling in the range of mid \$30,000 to low \$40,000. The HOME contracts required NHS to arrange affordable financing with local lenders and resell the homes purchased to qualified buyers. The CDBG contract was to provide housing rehabilitation loans for approximately ten low- to moderate-income households. Under the contracts, the City would reimburse NHS for administrative expenses based on a percentage of program costs. The contracts required NHS to remit all program income to the City on a monthly basis. The City would use program income to fund future NHS program activities.

Under the 1996 HOME contract, the City awarded NHS \$232,525 to finance homebuyer program costs and a maximum of \$30,780 for administrative expenses. For the 1997 HOME contract, the City awarded \$178,533 for homebuyer program costs and \$30,067 for administrative expenses. The City awarded NHS \$246,779 in CDBG funds including a maximum of 15 percent for administrative expenses. The City paid the maximum administrative costs for the 1996 HOME contract. The 1996

HOME contract and the CDBG contract expired on September 30, 1999. The 1997 HOME contract was for the period October 1, 1998, through September 30, 2000. The City terminated this contract on February 11, 2000, because NHS failed to remit program income and provide required information.

RESULTS OF REVIEW

Allegation 1: The City owes NHS over \$400,000 for expense reimbursements for carrying out the City's CDBG and HOME Programs and although NHS is fully entitled to these payments, the City will not pay NHS. The City requires additional documentation to pay NHS but will not specify what additional documentation is needed.

Results: The allegation is not valid.

Based on our review of \$349,643 in unpaid requisitions provided by NHS and the City, NHS submitted \$155,745 in requisitions for HOME Program costs, \$56,733 in HOME Program administrative costs, \$83,983 in CDBG Program costs, and \$53,182 in CDBG administrative costs. The requisitions for program costs were not sufficiently documented for the City to pay the requests. The contracts between the City and NHS limit the amount of administrative cost under each contract to \$30,780 for the 1996 HOME contract, \$30,067 for the 1997 HOME contract, and \$32,189 for the CDBG contract. These amounts are generally consistent with HUD limitations on administrative costs for HOME and CDBG Programs. Based on the City's records, it has already paid the \$30,780 in administrative costs for the 1996 contract.

On August 13, 1999, NHS submitted a voucher for payment of expenses at the Northgate Housing Development Project. On August 24, the City returned it and asked for sufficient backup documentation so that the City could process the claim. On October 20 1999, NHS again requested reimbursement for rehabilitation costs on the project. On November 19, 1999, the City responded and said that the majority of charges against the six properties in the development were not documented and, based on an inspection of the six properties, listed serious deficiencies in the condition of each property. In addition, the request was for final payment when work was still uncompleted. NHS responded that it was a request for final payment and that work was still ongoing. Further, NHS said that it believed that the HOME contract was an "Advance Basis contract, and therefore projects did not have to be completed before submitted request for 'advance' funds." NHS was aware that the City funded projects on a reimbursement basis since March 1999.

Our review of the request for payment of \$130,345 in rehabilitation costs on the Northgate Housing Development showed that NHS did not fully document the costs claimed. NHS submitted invoices from its contractor for work performed at six houses. The invoices did not always show the work done on each house. For example, the description of the work was not specific and was very general, such as, "remodel and repair work," "miscellaneous equipment and material purchases," and "subcontractor invoice payment request, partial invoice." In addition, instead of preparing an invoice listing the work done at each site and the related costs, the contractor submitted an invoice with the total costs and allocated the costs among the six properties equally. In our opinion, such descriptions do not

adequately detail actual work done at each property. This method of allocating costs does not capture the actual costs associated with rehabilitating each property. HUD and the City accumulate actual costs by property.

The other HOME reimbursement request for \$25,400 was also unsupported. The City raised some issues about the request. NHS did not address the City's concerns in its response.

NHS had another outstanding reimbursement request for \$83,983 under the CDBG contract. After reviewing the reimbursement request, the City identified specific records needed to complete processing the request. In a November 19, 1999 letter, the City asked for a copy of the contract between one homeowner and the rehabilitation contractor. The City also asked specific questions about the work done by the contractor, the costs claimed, and copies of the owners release or final inspection signed by the owner and contractor. In reply, NHS said the rehabilitation work was not complete. They promised to provide the requested documentation when the contractors completed their work. NHS did not say anything about providing a copy of the requested contract.

Outstanding administrative expense requests for the HOME and CDBG Programs total \$109,915. NHS is entitled to only \$62,256 because this is the maximum administrative expense allowed under both contracts. The City has not paid those requests because NHS has not submitted program income as required and has refused to adequately document the program cost reimbursement requests. City officials do not want to spend anymore money on NHS until it provides a full accounting of the costs incurred for program operations as well as the program income due the City.

The City notified NHS about the documentation needed to verify program costs on November 16, 1998. The City sent NHS copies of the appropriate Office of Management and Budget Circulars governing grant costs. The contract specified that NHS must comply with the requirements in those circulars. Specifically, the City provided copies of:

OMB A-87, Principles and Standards for Determining Allowable Costs.

OMB A-110, Bonding and Insurance, Program Income, Cash Deposits, and Record Keeping.

OMB A-122, Cost Principles for Nonprofit Organizations.

OMB-133, Audit Requirements.

By letter dated April 8, 1999, the City sent NHS instructions on preparing reimbursement requests. The letter said, in response to a NHS letter:

“requirements have changed since the beginning of this program and in the past we've [the City] accepted requests without backup documentation. This is true, however mistakes in estimates, return of overages, and audit requirements have caused changes. ...my concerns are to assist Neighborhood Housing Services in completing HOME and CDBG housing activities as quickly and as efficiently as possible. ...please understand that each HOME request submitted must provide proof of cost. [The City] is required to verify monies going out to projects are real costs and in order to do that, real documentation must be provided.”

We believe the City showed it was willing to resolve the situation and pay NHS what it owes. However, NHS did not cooperate.

By letter dated April 20, 2000, the City proposed that NHS make specifically requested records available at one of its attorneys' office or another mutually acceptable site. The City also requested access to eight specifically identified houses so that it could inspect them. The City agreed to provide a photocopier so that it could make copies of the records. The City asked that the NHS Executive Director not attend to avoid the possibility of a confrontation between representatives of NHS and the City. In reply, NHS said that the Executive Director must attend. By letter dated May 2, 2000, the City agreed.

In a letter dated May 10, 2000, NHS said it would make the records available May 11 at 1:00 pm. NHS said the City must complete its review by 5:00 pm on May 12. The NHS required the City to complete its inspection of the houses by Monday morning, May 15. NHS also specified that the City pay all pending reimbursement requests by May 15 at 5:00 pm. In a letter dated May 11, NHS denied the City access to the records because an individual delivering the photocopier purportedly said that a new agency replacing NHS would be given the copies of the records. By contract, the City has access to NHS's HOME Program records. Denying the City access was a violation of the contract.

Allegation 2: The City unfairly requires NHS to remit program income collected by NHS before it can pay anymore program expenses.

Results: The allegation is not valid.

The HOME and the CDBG contracts specifically require NHS to remit program income to the City. The HOME contracts require NHS to remit all program income collected during the previous month to the City by the 5th workday of each month. The CDBG contract requires NHS to remit all program income received during each month to be remitted to the City by the 15th workday of the following month. As indicated above, the primary reason the City has not paid NHS the amounts requested is that the requests are not sufficiently documented to identify the work completed on the properties.

NHS admitted it owes program income to the City. On November 2, 1999, NHS indicated in a letter to the City it owed the City approximately \$146,800 but said it was unable to repay the entire amount immediately because it would put a severe strain on its mission and charter. The letter requested the City to permit NHS to pay the debt on or before December 10, 1999. Then, in its letter of December 9, 1999, NHS told the City it owed about \$106,000 in program income and would remit this on or before January 16, 2000. However, it did not remit the funds. The City also requested documentation to establish the accuracy of the amount of program income, but NHS did not provide this either.

Allegation 3: The City discriminated against NHS by withholding payments and requiring more documentation than required of other subrecipients. This situation is an orchestrated attempt to drive NHS out of business.

Results: We could not validate the allegation.

We could not find any evidence of discrimination or an orchestrated attempt to drive NHS out of business. The City of Tulsa appeared to apply the same documentation requirements to all subrecipients. The City's documentation requirements conform to federal government requirements in requiring adequate documentation for payments and income.

Our review of payment requests submitted by another subrecipient showed that its requests were adequately documented. In support of its reimbursement request, the subrecipient provided copies of the purchase settlement statement, a copy of the deed, the contract with the rehabilitation contractor, a detailed list of work to be performed, rehabilitation expenses listed by individual property, inspection reports on the property, and notarized requests from the contractor for payment of services rendered. We also examined a subrecipient remittance of program income. It was made within a month of the sale of the property. The level of documentation required equaled that required of NHS. The City withheld payments because NHS would not provide required documentation supporting its reimbursement requests. Withholding payments in this case is not discrimination. The City is accountable to HUD for the use of federal funds and must assure that they are used appropriately.

NHS filed a discrimination complaint with HUD's Office of Fair Housing and Equal Opportunity. That Office is investigating the complaint.

Allegation 4. It is not acceptable to cancel the CDBG and HOME contracts for failure to reimburse program income funds when other nonprofit agencies are not also being required to make the same reimbursements to their program income accounts.

Results: The allegation is not valid.

The City of Tulsa terminated the 1997 HOME contract on February 11, 2000. The 1996 HOME and CDBG contracts expired on September 30, 1999. The City terminated the contract because NHS failed to comply with the terms and conditions of the contract. Specifically, NHS did not provide information and payments required by the contract. The City was justified in terminating the HOME contract. Further, other subrecipients are required to remit program income on a monthly basis.

While the City terminated the contract on February 11, 2000, it reminded NHS as early as June 30, 1999, and again on October 14, 1999, that termination of the contract was possible if NHS did not comply with its terms. In that letter, the City officially notified NHS that it was in noncompliance with its contract. The City added that noncompliance could result in contract termination. Further, the City asked NHS to remit all program income generated and appropriate documentation supporting sales or rentals of HOME assisted properties. As indicated above, NHS admitted it owed the City program income but did not remit it.

The City terminated the contract as provided for in the contract. The contract states, "If, through any cause, Contractor or City shall fail to fulfill in a timely and proper manner their obligations under this contract, or if Contractor or City shall violate any of the covenants, agreements, or stipulations of this contract, City or Contractor shall thereupon have the right to terminate this contract by giving written notice of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by Contractor under this contract shall become property of City. Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder." The contract provides that the contractor shall remit to the City's Finance Department by the 5th working day after the end of each month, a check equal to the amount of program income received by Contractor during the previous month.

According to City records, NHS remitted HOME program income in December 1997, May 1998, and July 1999. NHS remitted no other HOME program income during the period October 1997 through June 2000. Except for the month of April 2000, the other subrecipient remitted program income each month during the same period. NHS remitted \$18,578 in HOME program income while the other subrecipient remitted almost \$4.6 million during the same period.

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