# AUDIT REPORT



### CITY OF CLEVELAND HEIGHTS HOUSING PRESERVATION PROGRAM

### CLEVELAND HEIGHTS, OHIO

2003-CH-1008 JANUARY 23, 2003

OFFICE OF AUDIT, REGION V CHICAGO, ILLINOIS



Issue Date January 23, 2003	
Audit Case Number 2003-CH-1008	

TO: Lana J. Vacha, Director of Community Planning and Development, Columbus Field Office

FROM: Heath Wolfe, Regional Inspector General for Audit, Region V

SUBJECT: City of Cleveland Heights Housing Preservation Program Cleveland Heights, Ohio

We completed an audit of the City of Cleveland Heights' Housing Preservation Program. The audit resulted from a complaint to our Hotline. The objectives of our audit were to determine whether the complainant's allegation was substantiated and whether HUD's rules and regulations were properly followed. The complainant alleged that the City misused funds for its Housing Preservation Program. HUD's Community Development Block Grant and HOME Programs funded the City's Housing Preservation Program. The audit resulted in four findings.

In accordance with HUD Handbook 2000.06 REV-3, within 60 days please provide us, for each recommendation without a management decision, 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 considered unnecessary. Additional status reports are required at 90 days and 120 days after report issuance for any recommendation without a management decision. Also, please furnish us copies of any correspondence or directives issued because of the audit.

Should you or your staff have any questions, please contact Edward Kim, Assistant Regional Inspector General for Audit, at (614) 469-5737 extension 8306 or me at (312) 353-7832.



## **Executive Summary**

We completed an audit of the City of Cleveland Heights' Housing Preservation Program. The audit resulted from a complaint to our Hotline. The objectives of our audit were to determine whether the complainant's allegation was substantiated and whether HUD's rules and regulations were properly followed. The complainant alleged that the City misused funds for its Housing Preservation Program. HUD's Community Development Block Grant and HOME Programs funded the City's Housing Preservation Program.

We found that the City did not follow HUD's, Cuyahoga County's, and/or the City's own requirements regarding the use of HUD funds (Community Development Block Grant and HOME). We also found that the City did not properly administer its funds for the Housing Preservation Program.

Units Did Not Meet The City's Housing Code And/Or HUD's Housing Quality Standards After Housing Assistance

The City Needs To Improve Its Contracting Process

The City of Cleveland Heights did not follow HUD's regulations, Cuyahoga County's contracts, and the City Council's Resolutions to ensure assisted houses met the City's Housing Code and/or HUD's Housing Quality Standards. The City inappropriately used \$8,924 of HOME funds to pay for rehabilitation work that was improperly performed or not provided. The City also did not include \$26,000 in housing rehabilitation work over in specifications for 15 houses to ensure they met the City's Code and/or HUD's Standards. The Rehabilitation Specialists for the City incorrectly certified that the housing rehabilitation services provided to 13 houses met the City's Housing Code or HUD's Housing Quality Standards when they did not.

The City of Cleveland Heights did not maintain an effective system of controls over its contracting process. The City failed to follow HUD's regulations, Cuyahoga County's contracts, and/or the City's requirements for full and open competition regarding the procurement of housing The City did not ensure that: rehabilitation services. sufficient quotations were received for small purchases; specifications for the housing rehabilitation contracts services: detailed the requested material and/or specifications allowed for equal product substitution when they named brand named specific products; and housing rehabilitation work was completed in a timely manner.

The City Provided Assistance To Households That Did Not Meet Eligibility Requirements

The City Needs To Establish Controls Over Promissory Notes, Mortgage Liens, And Hazard Insurance

Recommendations

The City of Cleveland Heights did not follow HUD's regulations, Cuyahoga County's contracts, and/or the City's requirements when it provided housing rehabilitation assistance to households participating in the Housing Preservation Program. The Program provides housing rehabilitation assistance (Short-Term Deferred, No Interest, and Deferred Loans), which is funded with Community Development Block Grant and HOME funds from HUD. The City used: (1) \$158,409 in HOME funds to assist 10 households that were delinquent on their City income taxes; (2) \$111.591 in HOME funds to assist seven households when the City lacked documentation to show the households were current on their City income taxes; (3) \$151,655 in HOME funds to assist 10 households that lacked sufficient equity in their home to secure the assistance; and (4) \$8,202 in HOME funds for one household without determining whether it had the ability to repay the assistance.

The City of Cleveland Heights did not follow HUD's regulations, City Council's Resolutions, and the City's procedures regarding promissory notes, mortgage liens, and property hazard insurance for households participating in the Housing Preservation Program. The Program provides housing rehabilitation assistance (Short-Term Deferred Loans, No Interest Loans, and Deferred Loans), which is funded with Community Development Block Grant and HOME funds from HUD. Of the 41 assisted households we reviewed, the City provided: (1) \$13,687 to two households without a promissory note to secure the assistance; (2) \$51,490 to 17 households but the assistance was not included in the promissory notes and/or the mortgage liens with the homeowner; and (3) \$139,769 to nine households without documentation to show that the assisted houses were protected by property hazard insurance or lacked enough insurance to cover the assisted property. The City also executed promissory notes and/or mortgage liens that exceeded the amount of the housing rehabilitation assistance provided to 23 households.

We recommend that HUD's Columbus Field Office Director of Community Planning and Development assure the City reimburses its Housing Preservation Program for the inappropriate use of HUD funds and implements controls to correct the weaknesses cited in this report.

We presented our draft audit findings to the City's Director of Law and HUD's staff during the audit. We held an exit conference with the Director of Law on August 20, 2002. The City disagreed that HUD funds were inappropriately used. The City agreed to improve its procedures and controls over the Housing Preservation Program.

We included paraphrased excerpts of the City's comments with each finding (see Findings 1, 2, 3, and 4). The complete text of the comments is in Appendix B with the exception of 88 attachments that were not necessary for understanding the comments. A complete copy of the City's comments with the attachments was provided to HUD's Columbus Field Office Director of Community Planning and Development.



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## Introduction

The City of Cleveland Heights established the Housing Preservation Program in 1978 to provide housing rehabilitation assistance to low and moderate-income individuals. The housing assistance was intended to correct items that did not meet the City's Housing Code and/or HUD's Housing Quality Standards. The Program consists of: (1) Deferred Loan; (2) No Interest Loan; (3) Short-Term Deferred Loan; (4) Exterior Paint; (5) Winterization; (6) Heights Home Improvements; (7) Apartment Renovation Rebate Program; and (8) Nuisance and Abatement Program.

The City uses Community Development Block Grant monies from HUD and HOME Program monies awarded to Cuyahoga County, Ohio from HUD to fund the Housing Preservation Program. HUD awarded the City a total of \$5,725,000 in Block Grant funds during for Fiscal Years 1998, 1999, and 2000. The City also received \$991,123 in HOME funds from Cuyahoga County between May 1, 1998 and January 1, 2001.

The City's Planning and Development Department administers its Community Development Block Grant Program. Within the Planning and Development Department, the Housing Preservation Office handles the day-to-day operations of the Housing Preservation Program. Richard Wong is the Director of the City's Planning and Development Department and Richard Wagner is the Manager of the Housing Programs.

The City was organized under the laws of the State of Ohio. A City Manager and a seven-member City Council govern the City. Robert Downey is the City Manager and was appointed by the City Council. John H. Gibbon, the City's Director of Law, was the City official who responded to requests for information and the draft findings during the audit. The City maintains its records for the Housing Preservation Program at City Hall. The City Hall is located at 40 Severance Circle, Cleveland Heights, Ohio.

#### Audit Objectives

Audit Scope And Methodology The objectives of our audit were to determine whether the complainant's allegation was substantiated and whether HUD's rules and regulations were properly followed.

We conducted the audit at HUD's Columbus Field Office and the City of Cleveland Heights' City Hall. We performed our on-site audit work between February 2001 and March 2002.

To determine whether HUD's rules and regulations were properly followed, we reviewed the City's: Community Development Block Grant Agreements with HUD for the period January 1, 1999 to October 31, 2001; HOME Program contracts with Cuyahoga County for the period May 1, 1998 to December 31, 2003; Standard Operating Procedures for the Housing Preservation Program; City Council Page 1 2003-CH-1008 Resolutions; audited financial statements; participants files for the Housing Preservation Program; and Administrative Code. We also reviewed: HUD's files for the City; Office of Management and Budget Circular A-87; and Title 24 of the Code of Federal Regulations Parts 24, 85, 92, and 570.

We interviewed: HUD's staff; City's officials and employees; and Housing Preservation Program participants. In addition, our Appraisal Construction Specialist inspected 16 houses that received housing rehabilitation assistance through the City's Housing Preservation Program to determine whether the houses met the City's Housing Code and/or HUD's Housing Quality Standards. The 16 houses were selected because the homeowners indicated that their housing rehabilitation work was performed incorrectly or was not provided.

The audit covered the period January 1, 1999 to January 31, 2001. This period was adjusted as necessary. We conducted our audit in accordance with Generally Accepted Government Auditing Standards.

We provided a copy of this report to the City's Director of Law and its City Manager.

## Units Did Not Meet The City's Housing Code And/Or HUD's Housing Quality Standards After Housing Assistance

The City of Cleveland Heights did not follow HUD's regulations, Cuyahoga County's contracts, and the City Council's Resolutions to ensure assisted houses met the City's Housing Code and/or HUD's Housing Quality Standards. The City inappropriately used \$8,924 of HOME funds to pay for rehabilitation work that was improperly performed or that was not provided. The City also did not include over \$26,000 in housing rehabilitation work in specifications for 15 houses to ensure they met the City's Code and/or HUD's Standards. The Rehabilitation Specialists for the City incorrectly certified that the housing rehabilitation services provided to 13 houses met the City's Housing Code or HUD's Housing Quality Standards when they did not. The problems occurred because the City lacked adequate controls to ensure houses met the City's Code and/or HUD's Standards after they received housing rehabilitation assistance. As a result, HOME funds were not efficiently and effectively used. HUD also lacks assurance that houses met the City's Housing Code and/or HUD's Standards after receiving housing rehabilitation assistance.

HUD's Regulations

County's HOME Contracts 24 CFR, Subpart F, Part 92.251 requires housing rehabilitated with HOME funds to meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion.

24 CFR Part 92.504(a) says the City is responsible for managing the day-to-day operations of its HOME program, ensuring that HOME funds are used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems arise.

24 CFR Part 24 allows HUD to take administrative action against rehabilitation specialists who violate HUD's requirements.

The HOME contracts for the period May 1, 1998 to December 31, 2003, between Cuyahoga County and the City of Cleveland Heights, required the City to: fully comply with all HOME Program requirements and regulations that HUD imposes or may impose; and ensure that all rehabilitation, improvements, and/or repairs meet the City's Housing Code. Page 6 of the May 1, 1998 to December 31, 2001 HOME contract also required the City to assure that residential units

#### City's Resolutions

Sample Selection And Inspection Results

HOME Funds Were Used To Pay For Rehabilitation Work That Was Improperly Performed Or Not Provided improved must be decent, safe, and sanitary and at a minimum meet HUD's Housing Quality Standards. Additionally, page 6 of the contract required the City to diligently enforce all terms and provisions of HUD's Housing Quality Standards and the City's Housing Code.

Resolutions 38-1998, 90-1999, and 80-2000 of Cleveland Heights' City Council required the City to comply with all HOME regulations during the administration of its Deferred Loan and No Interest Loan Programs. The Resolutions state the intent of the Programs is to correct violations of the City's Housing Code.

We selected a sample of 16 of the 46 housing units that received housing rehabilitation funds through the City of Cleveland Heights' Housing Preservation Program (Deferred Loan, No Interest Loan, and Short-Term Deferred Loan). HOME and Community Development Block Grant monies from HUD fund the Program. We selected the 16 houses to determine whether the City appropriately paid for housing rehabilitation work. The City executed housing rehabilitation contracts for the 16 houses between June 6, 1997 and April 5, 2001. The 16 houses were selected because the homeowners indicated to us that their housing rehabilitation work was performed incorrectly or was not provided. Between May 21, 2001 and June 14, 2001, our Appraisal Construction Specialist inspected the 16 houses.

We provided the inspection results to HUD's Columbus Field Office Director of Community Planning and Development and the City's Director of Law.

The City used \$8,924 of HOME funds to pay for housing rehabilitation work that was not provided (\$5,224) or was improperly performed (\$3,700). The improper work and/or the work that was not provided occurred at 13 of the 16 houses that we inspected. The City provided \$252,036 in housing rehabilitation assistance to the 16 houses. The City recorded property liens against 13 of the 16 houses for the housing rehabilitation that was incorrectly performed or not provided. The 13 houses received assistance through the City's Deferred Loan or No Interest Loan Programs.

Address of House	Work Not Provided	Work Improperly Performed
3401 Cedarbrook Road	\$2,350	\$150
3804 Kirkwood Road	535	0
983 Greyton Road	459	0
932 Roanoke Road	390	90
863 Greyton Road	375	30
3738 Woodridge Road	350	0
14642 Superior Road	300	0
3333 Cedarbrook Road	200	310
877 Helmsdale Road	175	0
3124 Whitehorn Road	60	0
2640 Mayfield Road	30	20
3590 Grosvenor Road	0	3,000
3754 Bainbridge Road	0	100
Totals	\$5,224	<u>\$3,700</u>

The following table shows the amount of work that was improperly performed or not provided for each house inspected.

The City established its Housing Preservation Program (Deferred Loan, No Interest Loan, and Short-Term Deferred Loan) to provide housing rehabilitation assistance to low and moderate-income homeowners in the City of Cleveland Heights. The housing assistance was intended to correct items that did not meet the City's Housing Code and/or HUD's Housing Quality Standards. Rehabilitation Specialists in the City's Housing Preservation Office were responsible for assuring that the housing rehabilitation work was provided in accordance with the housing rehabilitation contract and that it met the City's Code and/or HUD's Standards.

Our Appraisal Construction Specialist determined that the City's Rehabilitation Specialists did not assure that the housing rehabilitation work was performed correctly or even provided. The housing work that was not provided or was performed incorrectly related to such items as: top coat not installed on asphalt driveway; drip edge not installed behind gutters; handrail not secured to front steps; vent not sealed at chimney; window will not lock; and open wiring at electrical box. The following pictures show examples of housing

The driveway for the house at 3804 Kirkwood Road was not top coated as required by the contract.

Wiring was left open at an electrical box for the house at 983 Greyton Road.

rehabilitation work that was not provided or improperly performed.



The City's Rehabilitation Specialists were responsible for performing the housing rehabilitation inspections and authorizing payments to the contractors. They said they must have overlooked some items that we found to be improperly performed or not provided when they inspected the houses. The City's Rehabilitation Specialists incorrectly certified that the housing rehabilitation services provided to 13 houses through the City's Housing Preservation Program (Deferred Loan or No Interest Loan) met the City's Housing Code or HUD's Housing Quality Standards when they did not. The Manager of the City's Housing Preservation Program said no one from the City monitored the Rehabilitation Specialists' final inspections of the houses to ensure the housing rehabilitation work was completed according to the City's Code and/or HUD's Standards.

The City did not include over \$26,000 in estimated housing rehabilitation work in the specifications for 15 of the 16 houses we inspected. The rehabilitation work was needed to correct items that did not meet the City's Housing Code and/or HUD's Housing Quality Standards. The 15 houses were assisted under the City's Housing Preservation Program (Deferred Loan or No Interest Loan). The following tables show the items that needed to be corrected for each house inspected.

Address of House	Items Needing Correction				
3401 Cedarbrook Road	Rear exterior door for second floor is not reasonably weather tight.				
	No handrail for basement stairs and front steps.				
	Chimney flue vents not sealed.				
	Hot water heater's discharge line too close to floor to be effective.				
	Windows had broken sash ropes and inoperable locks.				
	Side exterior steps exceed eight inches, which presents a tripping hazard.				
	Concrete walk at side exterior door is cracking posing a tripping hazard.				
	Large openings in exterior wood siding allow rodents and vermin to enter.				
	Exterior paint is chipping and peeling badly.				
3804 Kirkwood Road	Inadequate number of smoke detectors.				
	Tree limbs endangering the roof and house.				
	Half bath on first floor lacks vent fan or window for ventilation, and a door for privacy.				
	Interior stairs do not have an adequate railing.				
	Front exterior door is not weather tight.				
983 Greyton Road	No handrail for basement stairs.				
	Carpet on basement stairs is torn which poses a tripping hazard.				
	Smoke detector in basement needs to be moved near boiler and hot water heater.				
	• Exterior drier vent is open which allows rodents and vermin to enter.				
	Drainpipe for kitchen sink is broken.				
932 Roanoke Road	Garage's wood siding near ground was not replaced and exterior grade was not lowered to prevent				
	rotting.				
	• Front walk is broken and/or is not even, which poses a tripping hazard.				
	• Disturbed asbestos located in basement, which poses a health hazard.				
	Electrical wiring outdated and open junction boxes pose a hazard.				
	Torn linoleum in kitchen poses a tripping hazard.				
	Shingles for exterior wood siding are defective.				
3738 Woodbridge Road	No handrail for side entry stairs.				
	• Several cover plates were missing for electrical switches and outlets, which poses a hazard.				
	Living room lacks a switch operated ceiling fixture or switch operated outlet.				
	Ceiling fixture in foyer was inoperable.				
	Right front bedroom has a defective wall switch.				

The City Did Not Include Housing Rehabilitation Work In Contracts' Specifications

Address of House (Continued)	Address of House (Continued)					
2640 Mayfield Road	Front steps were six feet wide, but only had one handrail, which poses a hazard.					
2010 Maynera Roua	<ul> <li>Drain line for washing machine lacks a sewer trap and sewer gas was present.</li> </ul>					
	<ul> <li>Outlet cover plate missing in basement, which poses a hazard.</li> </ul>					
	<ul> <li>Half bath lacks vent fan to the exterior or an operable window for ventilation.</li> </ul>					
863 Greyton Road	Basement bathroom lacks a window or fan for ventilation.					
	Wiring outdated from new electrical panel.					
	• Some windows had broken sash ropes and inoperable locks while other windows will not open.					
	Some interior doors missing hardware or were defective.					
14642 Superior Road	Driveway side exterior door lacks steps to ground, which is approximately two feet down.					
·	• Door trim for driveway side exterior door is missing and the wood around the door has chipping and peeling					
	paint.					
	• Garage has missing and broken windowpanes, electrical wiring is exposed, and outlets are missing plate					
	covers.					
3124 Whitehorn Road	• Step down from rear exterior door exceeds eight inches, which presents a tripping hazard.					
	Exterior wood siding had chipped and peeling paint.					
	Several windows had deteriorated sash ropes, inoperable locks, and were not weather tight.					
3333 Cedarbrook Road	• Exterior wood at gutter areas and soffits was rotted.					
	Guard railing for front porch was missing.					
	Debris in rear yard was not removed.					
	• Impervious finish floor not installed in half bath.					
	<ul> <li>Windows throughout, particularly on the first floor, had broken sash ropes and inoperable locks.</li> </ul>					
	<ul> <li>Ceiling fixtures were missing which left exposed electrical wiring posing a hazard.</li> </ul>					
	No handrail for interior stairs.					
	Carpet on stairs was torn which poses a tripping hazard.					
3000 Scarborough Road	Front service walk is uneven which presents a tripping hazard.					
2344 Grandview Avenue	Basement and attic stairs lack handrails.					
3490 Silsby Road	Electrical outlets in kitchen are not GFCI protected.					
	Exterior wood has excessive chipping and peeling paint, and was poorly caulked.					
3590 Grosvenor Road	• A wood panel on the garage door is not painted which exposes the wood to water penetration.					
3754 Bainbridge Road	<ul> <li>Windows had broken sash ropes and missing or inoperable locks.</li> </ul>					
	• No handrail for basement stairs, which poses a hazard.					
	• Electrical wiring outdated. Numerous electrical boxes in the basement should be merged into one system.					
	Taped knob and tube wiring needs to be replaced. Electrical outlets throughout house are not grounded.					
	No smoke detector in basement.					
	<ul> <li>Basement toilet needs to be removed and plumbing pipes properly capped.</li> </ul>					
	<ul> <li>Bracing for second floor deck railing is not secured and does not provide adequate security.</li> </ul>					

The City had the necessary HUD funds to ensure the items that needed to be corrected to the City's Housing Code and/or HUD's Housing Quality Standards were made. The following picture shows an example of the housing rehabilitation work that was not included in the contract specifications. The contract specifications for the house located at 3401 Cedarbrook Road did not include a handrail for the basement stairs.



The City's Rehabilitation Specialists said they must have overlooked some of the needed housing rehabilitation work when they prepared the contract specifications for the 15 houses. As a result, HUD lacks assurance that houses met the City's Housing Code and/or HUD's Housing Quality Standards after receiving rehabilitation assistance.

#### Auditee Comments

[Excerpts paraphrased from the comments provided by the City's Director of Law on our draft audit finding follows. Appendix B, pages 49 to 73 and 86 to 88, contains the complete text of the comments for this audit finding.]

HUD's Office of Inspector General is correct that the City is required to bring houses up to its Housing Code when performing rehabilitation work with HOME funds. However, the Office of Inspector General is incorrect in citing the City for failure to follow HUD's Housing Quality Standards when there are applicable local codes. The City has an applicable local housing code.

Although the Office of Inspector General's draft audit finding states that the City did not bring all houses up to the City's Housing Code, many of the specific violations cited in the draft audit finding pertain to a failure to adhere to HUD's Housing Quality Standards which is improper.

Most of the deficiencies cited by HUD's Office of Inspector General consist of conditions that do not constitute violations of the City's Housing Code. The City's Housing Page 9 2003-CH-1008 Code allows existing two-prong outlets to be replaced with the same type of outlet. The City's Code does not require existing electrical wiring, which is in otherwise good condition, to be upgraded to meet the standards applicable to new construction. Existing interior and exterior stairwells may generally be maintained without the installation of handrails. Existing steps, which may exceed the eight inch Housing Quality Standards step down requirement by an inch or two, may be repaired and maintained and do not need to be replaced.

HUD's Office of Inspector General was in error by citing violations of HUD's Housing Quality Standards when there were applicable local codes and in misinterpreting the local codes to require older houses to conform to the standards for new housing.

Another major deficiency of the Office of Inspector General's draft audit finding is the assumption that conditions, which existed in 2001 when they performed their housing inspections, also existed several years earlier when the housing work was written up and the contract work performed. For example, in several instances the Office of Inspector General cited flaking or peeling paint on homes and criticized the City for not requiring the houses to be repainted. In almost all instances, the specifications were written and the City's Rehabilitation Specialist determined the necessary repairs three to five years prior to the Office of Inspector General's inspections. In most cases, the work was completed at least two or three years prior to the Office of Inspector General's inspections. It is perfectly normal, and in fact, expected, for an older house with a competent paint job to be exhibiting some peeling after three to five years of northern Ohio weather.

The Office of Inspector General's draft audit finding is based totally upon the opinion of an inspector brought in from a different region of the country who appears to have no expertise or experience in interpreting local codes or Ohio law. This should not be construed as a personal criticism of the inspector, who may very well be an expert in HUD's Housing Quality Standards, but HUD's Housing Quality Standards are not applicable here.

#### OIG Evaluation Of Auditee Comments

The HOME contracts for the period May 1998 through December 2003, between Cuyahoga County and the City, required the City to ensure that all rehabilitation, improvements, and/or repairs meet the City's Housing Code. Page 6 of the May 1, 1998 to December 31, 2001 HOME contract also required the City to assure that residential units improved must be decent, safe, and sanitary, and at a minimum meet HUD's Housing Quality Standards. Additionally, page 6 of the contract required the City to diligently enforce all terms and provisions of HUD's Housing Quality Standards and the City's Housing Code.

As previously stated, page 6 of the May 1, 1998 to December 31, 2001 HOME contract required the City to diligently enforce all terms and provisions of HUD's Housing Quality Standards and the City's Housing Code. While our Appraisal Construction Specialist noted in his inspection report the installation of two-prong outlets for the home located at 863 Greyton Road, the outlets were not listed in the draft audit finding as an item needing correction. However, when over \$3,600 is spent to update the electrical system in a home, it would be prudent to ensure that all electrical work completed conforms to current applicable local codes.

Our Appraisal Construction Specialist inspected the homes in May and June 2001. The three homes cited in the draft audit finding for chipping and peeling paint were located at 3401 Cedarbrook Road, 3124 Whitehorn Road, and 3490 Silsby Road. Two of the three homes were completed in September 1999 and September 2000. The remaining home was not completed at the time of our inspection. Based upon the date for the earliest completed home, less than two years passed since the home was certified as having the rehabilitation work completed. This is well with in the City's expected three year period for a home to exhibit some paint peeling.

While we agree with the City with regards to our Appraisal Construction Specialist being an expert in HUD's Housing Quality Standards, we do not agree that HUD's Housing Quality Standards are not applicable. As previously stated, page 6 of the May 1, 1998 to December 31, 2001 HOME contract required the City to diligently enforce all terms and provisions of HUD's Housing Quality Standards and the City's Housing Code.

Recommendations We recommend that HUD's Columbus Field Office Director of Community Planning and Development assure the City of Cleveland Heights:

- 1A Ensures that the \$8,924 of housing rehabilitation work cited in this finding is completed correctly using non-Federal funds. If the City is unable to ensure the rehabilitation work is completed, then the City should reimburse its HOME Program from non-Federal funds the total amount of housing rehabilitation assistance that was provided to the applicable houses and release the applicable liens against the properties.
- 1B. Ensures that the housing rehabilitation work that was not included in the specifications for the 15 houses is performed. If the City is unable to ensure the rehabilitation work is completed, then the City should reimburse its HOME Program from non-Federal funds the total amount of housing assistance that was provided to the applicable houses.
- 1C. Establishes controls to ensure assisted houses meet the City's Housing Code and/or HUD's Housing Quality Standards after receiving housing rehabilitation assistance as required by HUD's regulations, Cuyahoga County's HOME contracts, and/or the City's Resolutions.

We also recommend that HUD's Columbus Field Office Director of Community Planning and Development:

1D. Takes administrative action against the City's Rehabilitation Specialists, if within six months their performance does not show significant improvement.

## The City Needs To Improve Its Contracting Process

The City of Cleveland Heights did not maintain an effective system of controls over its contracting process. The City failed to follow HUD's regulations, Cuyahoga County's contracts, and/or the City's requirements for full and open competition regarding the procurement of housing rehabilitation services. The City did not ensure that: sufficient quotations were received for small purchases; specifications for the housing rehabilitation contracts detailed the requested material and/or services; specifications allowed for equal product substitution when they named brand named specific products; and housing rehabilitation work was completed in a timely manner. The problems occurred because the City's top management did not exercise their responsibility to implement effective contracting controls. Furthermore, the City's Director of Law said the City did not have to follow its procurement requirements because the funds used for the housing rehabilitation work were Federal funds. As a result, HUD lacks assurance that its funds were used efficiently and effectively, and the City's procurement transactions were not subject to full and open competition.

HUD's Regulations

24 CFR Part 85.36(b)(1) requires grantees and subgrantees to use their own procurement procedures that reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards in 24 CFR Part 85.36.

24 CFR Part 85.36(b)(9) requires grantees and subgrantees to maintain records sufficient to detail the significant history of a procurement, such as the rationale for the method of procurement and the basis for the contract price. Part 85.36(c)(1) requires that all procurement transactions be conducted in a manner providing full and open competition.

24 CFR Part 85.36(d)(1) requires that when procurement by small purchase procedure is used, price or rate quotations will be obtained from a sufficient number of qualified sources.

24 CFR Part 85.36(d)(2) requires that when the sealed bid method is used, bids are to be publicly solicited and a firm-fixed-price contract awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest price. The sealed bid

County's HOME Contracts

City's Requirements

method is the preferred method for procuring construction services.

24 CFR Part 92.505(a) states the requirements of 24 CFR Part 85.36 are applicable to any governmental subrecipient receiving HOME funds.

The HOME contracts for the period May 1, 1998 to December 31, 2003, between Cuyahoga County and the City of Cleveland Heights, required the City to comply with 24 CFR Parts 85.36 and 92.

Prior to March 15, 1999, Section 171.02(a) of the City of Cleveland Heights' Administrative Code required that City contracts for personal services in excess of \$10,000 to be awarded to the lowest and best responsible bidder, after advertising for bids once a week for two to four weeks in a newspaper of general circulation in the City. Effective March 15, 1999, Section 171.02(a) of the Administrative Code changed the threshold amount to \$15,000. Section 171.02(a) of the City's Code also requires the City Manager or his designee, in the presence of one or more other City employees will publicly open all bids received.

Cleveland Heights' City Council Resolutions 38-1998, 90-1999, and 80-2000 require the City to comply with all HOME regulations during the administration of the City's No Interest and Deferred Loans. The Resolutions also require the City to administer its Loans in accordance with the Housing Preservation Program's Standard Operating Procedures.

Page 4 of the Housing Preservation Program's Standard Operating Procedures requires the City's Rehabilitation Specialist to contact three approved contractors by telephone and request the contractors to bid on the specifications for housing rehabilitation work. The Procedures also require that the bids will be opened at the time specified on the invitation. The bid process will be conveyed to the homeowner by telephone, and with their approval, the job will be awarded to the contractor who, in the opinion of the City's Rehabilitation Specialist and with the homeowner's approval, has the best bid. The best bid is defined as the lowest bid within 15 percent of the City's rehabilitation cost estimate. Sample Selection And Review Results

The Procurement Of Housing Rehabilitation Services Was Not Subject To Full And Open Competition

The City Did Not Follow Its Administrative Code Regarding The Procurement Of Housing Rehabilitation Services We selected a sample of housing rehabilitation contracts and purchase orders for 46 of 69 houses (67 percent) in which housing rehabilitation was completed or substantially completed through the City's Housing Preservation Program between January 1, 1998 and March 31, 2001. The 46 houses were selected because the housing rehabilitation was completed or substantially completed within two years of our March 2001 sample selection. We selected the 46 houses to determine whether the City followed HUD's and the City's procurement requirements. The City's Housing Preservation Office executed 75 housing rehabilitation contracts and/or purchase orders for the 46 houses between February 1997 and April 2001.

We provided schedules of our review results regarding the City's procurement transactions to HUD's Columbus Field Office Director of Community Planning and Development and the City's Director of Law.

The City did not follow HUD's regulations, Cuyahoga County's contracts, and/or the City's Administrative Code to publicly advertise the procurement of housing rehabilitation services. The City awarded 49 of the 75 (65 percent) contracts and/or purchase orders between February 1997 and September 2000 that we reviewed. HUD's regulations, the County's Contracts, and the City's Administrative Code required the City to award the contracts through full and open competition. However, the 49 contract awards were not subject to full and open competition.

The City awarded the 49 contracts totaling \$610,881 in HUD funds (Community Development Block Grant and HOME) using sealed bids and firm-fixed-price contracts. Since the City procured the services using the sealed bid method to award the contracts, the City was required by HUD's regulation to publicly advertise the contracts. However, the City did not publicly advertise the contracts.

The City did not publicly advertise 32 of the 75 (43 percent) housing rehabilitation contracts and/or purchase orders we reviewed as required by the City's Administrative Code. The 32 contracts totaled \$517,250 in HUD funds (Community Development Block Grant and HOME) and were awarded between June 1997 and

The City Did Not Obtain Sufficient Quotations For Small Purchases

Contract Specifications Did Not Detail The Required Services Or Material September 2000. The City was required by its Code to publicly advertise 22 contracts awarded prior to March 15, 1999 that exceeded \$10,000. On and after March 15, 1999, the City was required by its Code to publicly advertise 10 contracts that exceeded \$15,000. The advertisement was to occur for not less than two consecutive weeks in a newspaper of general circulation within the City.

The City obtained housing rehabilitation services through small purchase procedures without obtaining quotations from a sufficient number of qualified sources as required by HUD's regulation, the County's contracts, and/or the City's Standard Operating Procedures. Twenty-six small purchases were made between July 1997 and October 2000 totaling \$105,871 in HUD funds (Community Development Block Grant and HOME). HUD's Columbus Field Office of Community Planning and Development defines a sufficient number of qualified sources as three or more. The City only solicited a single quote for 25 of the 26 small purchases we reviewed. The City obtained two quotes for the remaining small purchase. Thus, the City was unable to show that the costs of housing rehabilitation services were reasonable.

The City did not ensure that contract specifications for housing rehabilitation services detailed the required services and/or material. The Rehabilitation Specialist for the City's Housing Preservation Office prepared the contract specifications. 24 CFR Part 85.36(c)(3) states procurement procedures will ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. However, the Rehabilitation Specialist's contract specifications did not always detail the scope of work, the quantity and quality of material, and the method of installation.

Our Appraisal Construction Specialist reviewed 19 contract specifications for housing rehabilitation services provided through the City's Housing Preservation Program to determine whether the cost of the services was reasonable. Seventeen of the 19 contract specifications were not specific enough to determine whether the cost of the services were reasonable. Our Appraisal Construction Specialist was unable to provide a cost estimate because the 17 contract specifications did not provide such items as: the number of linear feet for gutters; the quality of vinyl replacement windows; and the square footage of an asphalt driveway. Without detailed contract specifications, HUD and the City lack assurance that housing rehabilitation services were reasonable or addressed all items that needed to be repaired.

The City allowed contract specifications for housing rehabilitation services to contain brand name products without allowing for equal substitutions. 24 CFR Part 85.36(c)(1)(vi) states that specifying a brand name product instead of allowing an equal product to be offered restricts competition. Of the 75 contracts and/or purchase orders we reviewed, 22 (29 percent) contained at least one item that specified a brand name product without allowing for an equal substitution. The brand name products included such items as: Armstrong floor coverings; Cole Sewell storm doors; Delta faucets; Stanley steel doors; and American Standard toilets. Therefore, the City restricted competition by not allowing for equal substitutions.

The City did not ensure that the housing rehabilitation work was completed in a timely manner as required by the rehabilitation contracts. The housing rehabilitation work for 21 of the 75 (28 percent) contracts and/or purchase orders we reviewed were not completed within 30 days of the planned completion date. In addition, the timely completion of 28 contracts and/or purchase orders could not be determined since the City failed to issue a notice to proceed or did not include a scheduled completion date on the notice.

The City's failure to adhere to the required contracting procedures occurred because its top management lacked procedures and controls over the Housing Preservation Program. The Manager of the City's Housing Programs said no one from the City monitored the Program to ensure that procurement transactions HUD's met procurement regulations. Additionally, the City's Director of Law said the City's requirements were not applicable to the Program since it was funded with Federal funds. As a result, HUD lacks assurance that its funds were used efficiently and effectively, and the City's procurement transactions were not subject to full and open competition.

Contract Specifications Included Brand Name Products Without Allowing For Equal Substitutions

Housing Rehabilitation Work Was Not Completed Timely

Procurement Problems Existed Because The City Lacked Procedures And Controls Over The Program Auditee Comments [Excerpts paraphrased from the comments provided by the City's Director of Law on our draft audit finding follows. Appendix B, pages 74 to 80, contains the complete text of the comments for this audit finding.]

The City believes that its procurement procedures appropriately balance the need for competition and fair pricing with the equally important factors of efficiency, the need to avoid an excessive bureaucracy, and inclusion and encouragement of minority contractors. HUD's Office of Inspector General contends that Federal regulations and the City's Ordinances require the City to publicly advertise each home improvement contract. The City respectfully disagrees.

As noted by HUD's Office of Inspector General, 24 CFR Part 85.36(d)(2) does require public advertising. However, the City contends that this regulation is not applicable to the home improvement contracts in question, none of which exceed \$25,000. Instead, the relevant regulation is 24 CFR Part 85.36(d)(1) which describes small purchase procedures.

HUD's Office of Inspector General further asserts that the City was required to follow Chapter 171 of its Administrative Code that requires public advertising for contracts exceeding \$15,000, formerly \$10,000. However, these sections of the Codified Ordinances by their terms apply only to contracts for public work. The contracts in question are not contracts for public work, but rather private contracts between the homeowners and the contractors for rehabilitation to private residences. It is not necessary for the City even to execute these contracts. It is clear if one reviews the Chapter as a whole that it was never meant to apply to private rehabilitation contracts. The Office of Inspector General's interpretation is contrary to law and contrary to common sense. The City enacted the ordinances, and the City should be the ultimate arbiter of their interpretation.

HUD's Office of Inspector General cites several transactions in which only one price quotation was solicited, and one instance in which two bids were obtained

for small purchases. The Office of Inspector General indicates that these transactions were in violation of HUD regulations and the City's Standard Operating Procedures. The City explained that the Standard Operating Procedures were simply guidelines to educate staff on the operation of the programs and they should be interpreted with flexibility. However, the City agrees that in most instances more than one price quotation should be obtained under the HUD regulations.

The City does believe that some of its record keeping regarding procurement could be improved, and has addressed this issue in the new Guidelines it has adopted. Although the City believes it is permissible to obtain only one quote in emergency situations or other rare occasions, it would be preferable for the Rehabilitation Specialist to document in the file the reason for obtaining only one quote. Furthermore, if after several contractors have been called, a quote is received from only one, that fact should be documented in the file.

HUD's Office of Inspector General indicates that 17 of the contracts reviewed included specifications that were not specific enough to detail the scope of work, the quantity and quality of material, and the method of installation. The City feels that including measurements for the square footage of an asphalt driveway, number of linear feet of gutters, and the quality of vinyl replacement windows in the contract specifications is unnecessary. The contractors interested in submitting a quote for a job are required to go to the house and conduct their own inspections. Any competent contractor is going to insist upon conducting his own measurement to determine the quantities of material needed.

The Office of Inspector General's charge that contract specifications included brand name products without allowing for equal substitution is not correct. The City does allow for substitutions, and the contractors participating in the programs all know this. The City agrees that when specifications are written it would be preferable to use the specific words, or equal substitution.

HUD's Office of Inspector General indicates that 28 percent of the projects were not completed within 30 days

of the planned completion date. It is common knowledge that construction projects are seldom completed in a timely manner. One of the most common reasons for the delay is weather.

The examples identified by the Office of Inspector General do not establish that procurement problems existed. To the contrary, the files establish that the rehabilitation services in question were competently performed in a cost effective manner. The files do indicate that some improvement could be had in the area of documentation. The City believes it has addressed this matter in the attached guidelines that it prepared and implemented, but it also welcomes any suggestions from HUD's Columbus Field Office Director of Community Planning and Development to further its procedures.

#### OIG Evaluation Of Auditee Comments

The City awarded 49 contracts and/or purchase orders between February 1997 and September 2000 using sealed bids and firm-fixed-price contracts. Since the City chose to use the sealed bid method, the requirements of 24 CFR Part 85.36(d)(2) applies. 24 CFR Part 85.36(d)(2) requires that when the sealed bid method is used, bids are to be publicly solicited and a firm-fixed-price contract awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest price. The sealed bid method is the preferred method for procuring construction services. The requirements of 24 CFR Part 85.36(d)(2) do not contain any applicable dollar threshold such as Part 85.36(d)(1)does for small purchases. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11).

We agree that Chapter 171 of the City's Administrative Code applies only to contracts for public work. Consistent with HUD's Office of Community Planning and Development Notice 91-01,we contend that since the City procures the housing rehabilitation contract for Federally assisted rehabilitation services and materials, the contract is not a private contract, but a public contract. HUD further states on page 7-5 of its March 2002 Community Development Block Grant Training book that when a local entity selects the bidders and the winner of a rehabilitation contract, and then the local entity has the property owner sign the contract with the contractor, the critical decisions related to the procurement have been made by the local entity. The Federal rules apply when local government agencies, or their subrecipients or subgrantees, are making the critical decisions related to procurement. The contract is considered being for public work since the Federal rules apply.

We agree that any competent contractor will conduct his own measurements to determine the quantity and quality of materials needed to complete the housing rehabilitation work. However, 24 CFR Part 85.36(b)(9) requires the City to maintain records sufficient to detail the significant history of a procurement, such as the rationale for the method of procurement and the basis for the contract price. The basis for the contract price would include the quantity, quality, and type of materials needed to complete the housing rehabilitation work.

24 CFR Part 85.36(c)(1)(vi) states that specifying a brand name product instead of allowing an equal product to be offered restricts competition. Since the City agrees that when specifications are written it would be preferable to use the specific words, or equal substitution, these actions planned by the City, if fully implemented, should improve its procurement process.

The City needs to be cognizant that its housing rehabilitation contracts require the work to be completed in a timely manner. If delays are imminent, the City should ensure that the contracts are amended to reflect the expected completion dates.

The actions planned by the City, if fully implemented, should improve its procurement procedures.

Recommendations We recommend that HUD's Columbus Field Office Director of Community Planning and Development assure the City of Cleveland Heights: Page 21 2003-CH-1008

- 2A. Implements procedures and controls to ensure that the procurement of housing rehabilitation services meet HUD's regulations, Cuyahoga County contracts, and/or the City's requirements.
- 2B. Implements procedures and controls to ensure contract specifications for housing rehabilitation services meet HUD's regulation.
- 2C. Implements procedures and controls to ensure that housing rehabilitation work is completed in a timely manner as required by the housing rehabilitation contracts and/or the notice to proceed.

# The City Provided Assistance To Households That Did Not Meet Eligibility Requirements

The City of Cleveland Heights did not follow HUD's regulations, Cuyahoga County's contracts, and/or the City's requirements when it provided housing rehabilitation assistance to households participating in the Housing Preservation Program. The Program provides housing rehabilitation assistance (Short-Term Deferred, No Interest, and Deferred Loans), which is funded with Community Development Block Grant and HOME funds from HUD. The City used: (1) \$158,409 in HOME funds to assist 10 households that were delinquent on their City income taxes; (2) \$111,591 in HOME funds to assist seven households when the City lacked documentation to show the households were current on their City income taxes; (3) \$151,655 in HOME funds to assist 10 household without determining whether it had the ability to repay the assistance. The problems occurred because the City lacked supervisory controls over its Program to ensure only eligible households received housing rehabilitation assistance and that households could afford to repay the assistance. As a result, HUD funds were not used efficiently and effectively, and available funding assistance to eligible individuals was reduced.

Federal Requirements

24 CFR Part 92.504(a) states the City is responsible for managing the day-to-day operations of its HOME program, ensuring that HOME funds are used in accordance with all program requirements and written agreements.

24 CFR Part 570.501(b) requires recipients of Community Development Block Grant funds to ensure those funds are used in accordance with all program requirements.

24 CFR Part 85.22 requires that for each kind of organization receiving Federal grant funds, there is a set of Federal principles for determining allowable cost. For local governments, they must follow Office of Management and Budget Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments.

Office of Management and Budget Circular A-87, Attachment A, paragraph 2.a.(1), requires governmental units to administer Federal award programs efficiently and effectively with the application of sound management practices.

County's HOME Contracts

City's Requirements

The HOME contracts for the period May 1, 1998 to December 31, 2003, between Cuyahoga County and the City of Cleveland Heights, required the City to comply with 24 CFR Parts 85.22 and 92.

Cleveland Heights' City Council Resolutions 38-1998, 90-1999, and 80-2000 require the City to comply with all HOME regulations during the administration of its No Interest and Deferred Loans. The Resolutions also require the City to administer its Loans in accordance with the Housing Preservation Program's Standard Operating Procedures.

The City's Standard Operating Procedures for No Interest and Deferred Loans, page 3, require homeowners to be current on their City income taxes to qualify for housing rehabilitation assistance.

Page 3 of the City's Standard Operating Procedures for No Interest and Deferred Loans requires property values to be estimated using the market value obtained from the Cuyahoga County Auditor's Office and comparable property selling prices on the same street or nearby street. The Procedures state there must be enough equity in the property to cover the Loans.

Page 1 of the City's Standard Operating Procedures for No Interest Loans requires homeowners to have sufficient net income to make the monthly payment. Page 2 of the Procedures requires that documents verifying homeowners' income should be copied, placed in their file, and a complete household budget form should be filled out. A credit check on the homeowners must be ordered through a credit bureau. A slow to pay credit history might be a sign of difficult economic circumstances, or evidence of an over-extended credit behavior.

We selected a sample of 46 of the 69 households that received housing rehabilitation assistance through the City's Housing Preservation Program between January 1, 1998 and March 31, 2001. The 46 households were selected because their housing rehabilitation work was scheduled for completion between July 1998 and April 2001. We selected the 46 households to determine whether the City ensured

Sample Selection And Eligibility Review the households received housing assistance in accordance with HUD's and the City's eligibility requirements.

Page 3 of the City's Standard Operating Procedures for No Interest and Deferred Loans requires that homeowners must be current on their City income taxes at the time of application to qualify for housing rehabilitation assistance. However, the City's files only included documentation whether households were current on their City income taxes for less than six of the 46 households we reviewed. The files for the remaining households lacked documentation showing that the households were current on their City income taxes. The City provided housing rehabilitation assistance without obtaining documentation to show that over 40 households were current on their City income Therefore, we requested the City's Income Tax taxes. Division to provide documentation to determine whether all 46 households we reviewed were current on their City income taxes at the time they received the assistance.

The documentation provided by the City's Income Tax Division showed that 10 of the 46 households we reviewed were delinquent on their City income taxes at the time they received the housing rehabilitation assistance. The City provided the 10 households \$158,409 in HOME funds for their rehabilitation work. Two of the 10 households repaid their rehabilitation assistance in full. As of September 30, 2001, the remaining eight households owed \$127,180 on their rehabilitation assistance. The following table shows the eight households' property addresses, the type of housing assistance they received, when the assistance was awarded, the original amount of the housing assistance, and their outstanding loan amount as of September 2001.

Household's Property Address	Type Of Assistance	Award Date(s)	Original Loan Amount	Loan Balance
		6/17/99 and		
2640 South Taylor Road	Deferred	8/3/99	\$25,000	\$25,000
		8/31/99 and		
983 Greyton Road	Deferred	4/12/00	24,930	24,930
2990 Kensington Road	Deferred	8/28/98	19,775	19,775
3435 Monticello Boulevard	No Interest	11/10/99	18,968	15,807
932 Roanoke Road	No Interest	3/23/99	14,849	13,600
877 Helmsdale Road	No Interest	9/23/98	15,000	13,566
1087 Selwyn Road	No Interest	5/3/99	8,725	8,202
14642 Superior Boulevard	Deferred	12/21/98	<u>6,300</u>	<u>6,300</u>
Totals			<u>\$133,547</u>	<u>\$127,180</u>

The City Provided Assistance To Households Without Determining Whether They Were Current On Their Income Taxes Furthermore, the City's Income Tax Division lacked documentation for seven of the 46 households we reviewed to determine whether they were current on their City income taxes at the time of application. The City provided the seven households \$111,591 in HOME funds for housing rehabilitation assistance. As of September 30, 2001, the seven households owed \$110,379 on their rehabilitation assistance. The following table shows the seven households' property addresses, the type of housing assistance they received, when the assistance was awarded, the original amount of the assistance, and their outstanding loan amount as of September 2001.

Household's Property Address	Type Of Assistance	Award Date(s)	Loan Amount	Loan Balance
3804 Kirkwood Road	Deferred	2/7/00 and 8/8/00	\$24,597	\$24,597
964 Brunswick Road	Deferred	9/97, 3/9/98, and 12/2/98	21,176	21,176
3738 Woodbridge Road	No Interest	4/26/99 and 7/22/99	20,145	18,933
3394 Henderson Road	Deferred	4/6/99	18,492	18,492
3376 Kildare Road	Deferred	10/22/99	17,325	17,325
3490 Silsby Road	Deferred	4/13/00	5,781	5,781
2298 North Taylor Road	Deferred	10/6/99	<u>4,075</u>	<u>4,075</u>
Totals			<u>\$111,591</u>	<u>\$110,379</u>

Assistance Was Provided To Households That Lacked Sufficient Equity In Their Homes The City provided \$151,655 in HOME funds for housing rehabilitation assistance to 10 of the 46 households we reviewed, but the households lacked sufficient equity in their home to secure the assistance. Three of the 10 households repaid their housing rehabilitation assistance in full. As of September 30, 2001, the seven remaining households owed \$120,661 on their assistance. The following table shows the seven households' property addresses, the type of housing assistance they received, when their assistance was awarded, the amount of equity in the households' homes after the assistance, the original amount of their housing assistance, and their outstanding loan amount as of September 2001.

Household's Property Address	Type Of Assistance	Award Date(s)	Equity In Home	Assistance Amount	Loan Balance
		4/26/99,			
3401 Cedarbrook	Deferred	6/18/99, and 9/3/99	(\$26,964)	\$25,000	\$25,000
Road		4/0/00 1			
		4/9/99 and			
3800 Delmore Road	Deferred	6/23/99	(8,468)	24,925	24,925
2640 Mayfield Road	Deferred	3/18/99	(12,534)	16,898	16,898
3160 Yorkshire Road	Deferred	3/8/99	(14,853)	16,385	16,385
949 Selwyn Road	Deferred	1/15/99	(13,452)	15,685	15,685
877 Helmsdale Road	No Interest	9/23/98	(3,417)	15,000	13,566
1087 Selwyn Road	No Interest	5/3/99	(4,925)	8,725	8,202
Totals				<u>\$122,618</u>	<u>\$120,661</u>

Page 3 of the City's Standard Operating Procedures for No Interest and Deferred Loans states households must have enough equity in their homes to cover the housing rehabilitation assistance. However, the City provided assistance without determining whether 10 of the 46 households we reviewed had sufficient equity in their homes to cover the assistance. We obtained the value of the households' 10 homes from the Cuyahoga County Auditor's Office and the liens on the homes from the City's files. Based upon the value of the homes and the liens, the 10 households lacked sufficient equity in their homes to cover the assistance. The City's failure to determine whether the households had sufficient equity in their homes to cover the loans was not a sound management practice.

The City Lacked Documentation To Determine Whether Households Could Repay Their Assistance The City provided \$8,202 in HOME funds for one household without determining whether it had the ability to repay the assistance. We attempted to obtain the documentation during our audit. However, the household was unable to provide income and expense documentation to show it had the ability to repay the assistance.

The household owed \$8,202 in housing assistance as of September 30, 2001. The following table shows the household's property address, the type of housing assistance received, when the assistance was awarded, the original amount of the housing assistance, and the outstanding amount of the loan as of September 2001.

Property Address	Type Of Assistance	Award Date	Assistance Amount	Loan Balance
1087 Selwyn Road	No Interest Loan	5/3/99	\$ <u>8,725</u>	\$ <u>8,202</u>
Total			<u>\$8,725</u>	<u>\$8,202</u>

The City Lacked Controls Over Its Housing Program The City lacked controls over the Housing Preservation Program to ensure that only eligible households received housing rehabilitation assistance and the households could afford to repay their assistance. The Manager of the City's Housing Programs said no one from the City monitored the Program to ensure that only eligible households received housing assistance. Additionally, the City's Director of Law said the City did not have to follow its Standard Operating Procedures for the Program because the Procedures did not have official status and were never adopted. However, the City Council passed Resolutions requiring the assistance to be administered according the Program's Standard Operating Procedures. As a result, HUD funds were not used efficiently and effectively, and available funding assistance to eligible individuals was reduced.

Auditee Comments[Excerpts paraphrased from the comments provided by the<br/>City's Director of Law on our draft audit finding follows.<br/>Appendix B, pages 81 to 85 and 89 to 90, contains the<br/>complete text of the comments for this audit finding.]

HUD's Office of Inspector General cites the Standard Operating Procedures as the requirement that homeowners are required to be current in their City income taxes at the time of application to qualify for housing assistance under the Deferred Loan and No Interest Loan Programs. The City contends that the Standard Operating Procedures are not, and were not meant to be, mandatory requirements for the operation of the programs.

The Income Tax Ordinances for the City exempt Social Security payments and pensions from local income tax. Although parties who are exempt are required to file an exemption form with the City's Tax Department, many such persons are unaware of this requirement and do not file the form. HUD's Office of Inspector General contends that the City provided assistance to seven homeowners who lacked sufficient equity in their homes to support the loan. Unfortunately, the Office of Inspector General did not explain how they calculated the amount of equity in the homes. The City's practice is to first look at the tax value to see if it is adequate to support the loan. If not, the City obtains sales statistics for comparable properties in the neighborhood to calculate the market value. The City believes that this procedure was followed in the cases in question. However, the former Housing Counselor failed to document her conclusion that the properties' values supported the loans. The City has already taken steps to ensure that this problem will not arise in the future.

The purpose point of the Deferred Loan Program is to provide housing assistance to elderly and disabled person who cannot afford to make payments on conventional loans. The City relies solely on the equity in the home to achieve repayment at the time the homeowner sells or otherwise ceases to reside in the home. The homeowner is not required to make payments. The documentation required to be in the file would indicate that a person's income is *low* enough to qualify for the Deferred Loan Program. The file on the property at 1087 Selwyn Road contains extensive information regarding the homeowner's finances including tax records and a credit report.

Even prior to the Office of Inspector General's audit, the City recognized weaknesses in its management of its Housing Preservation Programs and implemented procedures to improve performance. In particular, the City became aware that a Housing Counselor had begun to deliberately ignore and evade Program standards. This was the person responsible for qualifying applicants and obtaining the necessary documentation. The City tried to work with the Housing Counselor to improve job performance, but the employee refused to comply with the Program rules and was eventually dismissed.

The City implemented procedures to ensure the proper operation of the Housing Preservation Programs. A Loan Review Committee consisting of the Housing Programs Manager, the Housing Counselor, the Rehabilitation Specialist, and the Development Planner or Assistant Director of Planning and Development now reviews every application to ensure that the applicant is qualified and the proper documentation is in the file.

The City drafted new Guidelines for the operation of the Programs that will include further controls to ensure both compliance with mandatory requirements and that good judgment is used in the application of discretionary standards. The City has been made aware of some weaknesses in its procedures and is working to correct them.

OIG Evaluation Of Auditee Comments The Cleveland Heights' City Council Resolutions 38-1998, 90-1999, and 80-2000 require the City to administer its Loans in accordance with the Housing Preservation Program's Standard Operating Procedures. The City's Standard Operating Procedures for No Interest and Deferred Loans, page 3, require homeowners to be current on their City income taxes to qualify for housing rehabilitation assistance. Adequate documentation should be included in the City's files to support its award of housing rehabilitation assistance.

> We calculated the equity in the seven homes cited in this finding that lacked sufficient equity to secure the housing assistance using the requirements in the City's Standard Operating Procedures. Page 3 of the City's Procedures for No Interest and Deferred Loans requires property values to be estimated using the market value obtained from the Cuyahoga County Auditor's Office and comparable property selling prices on the same street or nearby street. The Procedures state there must be enough equity in the property to cover the Loans. We obtained the seven homes' market value from the Cuyahoga County Auditor's Office and subtracted the outstanding liens against the homes. The net result was the seven homes lacked sufficient equity to secure the assistance provided by the City.

> At the time of our review, the file for the property at 1087 Selwyn Road did not contain the Household Information and Financial Budget Form as required on page 3, Section III.A.7, of the Deferred Loan Program Standard Operating

Procedures.	We	attempted	to	obtain	the	documentation
during our au	ıdit.					

The actions planned by the City, if fully implemented, should improve its Programs operations.

Recommendations We recommend that HUD's Columbus Field Office Director of Community Planning and Development assure the City of Cleveland Heights:

- 3A. Implements supervisory controls to ensure households that receive housing rehabilitation assistance are current on their City income taxes, have sufficient equity in their homes to cover the assistance, and have the ability to repay the assistance as required by the City's requirements.
- 3B. Indemnifies its Housing Preservation Program from non-Federal funds for the applicable amount of the \$127,180 in housing rehabilitation assistance provided to the eight households cited in this finding that were delinquent on their City income taxes, if the households default on their assistance.
- 3C. Provides documentation to support that the seven households cited in this finding who received \$111,591 in housing rehabilitation assistance were current on their City income taxes at the time of application. If the City cannot provide the necessary documentation, then the City should indemnify its Housing Preservation Program from non-Federal funds for the applicable amount of housing assistance, if the households default on their assistance.
- 3D. Indemnifies its Housing Rehabilitation Program from non-Federal funds for the applicable amount of the \$120,661 in housing rehabilitation assistance to the seven households cited in this finding that lacked sufficient equity in their homes, if the households default on their assistance.

3E. Provides income, expense, and credit history documentation to support that the household cited in this finding could afford to repay the \$8,202 in housing rehabilitation assistance. If the City cannot provide the documentation to show the household had the ability to repay its assistance, the City should indemnify its Housing Preservation Program from non-Federal funds for the applicable amount of housing assistance, if the household defaults on its assistance.

## The City Needs To Establish Controls Over Promissory Notes, Mortgage Liens, And Hazard Insurance

The City of Cleveland Heights did not follow HUD's regulations, City Council's Resolutions, and the City's procedures regarding promissory notes, mortgage liens, and property hazard insurance for households participating in the Housing Preservation Program. The Program provides housing rehabilitation assistance (Short-Term Deferred Loans, No Interest Loans, and Deferred Loans), which is funded with Community Development Block Grant and HOME funds from HUD. Of the 41 assisted households we reviewed, the City provided: (1) \$13,687 to two households without a promissory note to secure the assistance; (2) \$51,490 to 17 households but the assistance was not included in the promissory notes and/or the mortgage liens with the homeowner; and (3) \$139,769 to nine households without documentation to show that the assisted houses were protected by property hazard insurance or lacked enough insurance to cover the assisted property. The City also executed promissory notes and/or mortgage liens that exceeded the amount of the housing rehabilitation assistance provided to 23 households. The City lacked controls over the Program to ensure promissory notes, mortgage liens, and property hazard insurance were sufficiently placed on the assisted properties. As a result, HUD's funds were not used efficiently and effectively. Assisted households were also obligated to repay more in housing rehabilitation assistance than they received.

### HUD's Regulations

City's Resolutions And Procedures 24 CFR Part 570.501(b) requires the City to ensure that Community Development Block Grant funds are used in accordance with all program requirements.

24 CFR Part 92.504(a) says the City is responsible for managing the day-to-day operations of its HOME program, ensuring that HOME funds are used in accordance with all program requirements and written agreements.

Resolutions 38-1998, 90-1999, and 80-2000 of Cleveland Heights' City Council required the City to comply with all HOME regulations during the administration of its No Interest Loans, and Deferred Loans. The Resolutions also required the City to administer its Loans in accordance with the Housing Preservation Program's Standard Operating Procedures.

The City of Cleveland Height's Standard Operating Procedures for the Short-Term Deferred Loans, No Interest

Sample Selection And Schedules Provided

The City Did Not Execute Promissory Notes Loans, and Deferred Loans required the City to execute a promissory note with the household and file a mortgage lien on the property for the amount of the housing rehabilitation assistance provided. The City's Procedures also required the household to provide evidence of property hazard insurance at the time of application or prior to receiving the assistance.

We selected 41 of 69 (59 percent) households that received housing rehabilitation assistance through the City's Short-Term Deferred Loans, No Interest Loans, and Deferred Loans programs. We selected the 41 houses to determine whether the City ensured that: promissory notes and mortgage liens were executed to secure the rehabilitation assistance provided; and property hazard insurance existed to cover the assistance provided. The 69 households received assistance from the City between January 1, 1998 and January 31, 2001.

The City provided housing rehabilitation assistance to households without a promissory note to secure the assistance, executed promissory notes and/or mortgage liens for less or more than the amount of assistance provided, and awarded assistance to households without documentation to show the assisted houses were protected by property hazard insurance or lacked enough insurance to cover the assisted property. We provided our schedules of the review results to HUD's Columbus Field Office Director of Community Planning and Development and the City's Director of Law.

The City did not safeguard housing rehabilitation assistance provided under its Deferred Loan program. The City housing rehabilitation provided assistance to two households without executing a promissory note to secure the assistance. Promissory help secure a notes homeowners' obligation repay their to housing rehabilitation assistance. The two households are located at 3167 Sycamore Road and 3352 Euclid Heights Boulevard. The households received \$3,260 and \$10,427 in assistance, respectively. In February 1999, the homeowner for 3352 Euclid Heights Boulevard paid off the housing assistance he received from the City.

The City Failed To Secure \$51,490 In Housing Assistance

The City Provided Housing Assistance Without Documentation Of Hazard Insurance Or For Houses With Insufficient Insurance Contrary to the City's Standard Operating Procedures, the City executed promissory notes and mortgage liens for less than the full amount of housing rehabilitation provided. The City's Procedures required the City to record a promissory note and a mortgage lien for the full amount of the housing assistance provided.

The City provided \$312,322 in housing rehabilitation assistance to 17 of the 41 households. The assistance was to correct items that violated the City's Housing Code and/or HUD's Housing Quality Standards. However, the City did not execute promissory notes and/or mortgage liens for \$51,490 of the \$312,322 in assistance provided to the households.

The 17 households included: eight with promissory notes that were less than the assistance provided; and 15 with mortgage liens that were less than their assistance. The promissory notes or mortgage liens ranged between \$86 and \$8,623 less than the housing rehabilitation assistance provided. The households for 3352 Euclid Heights Boulevard and 3124 Whitehorn Road paid off their housing assistance in February 1999 and January 2002, respectively. Therefore, \$4,069 of the \$51,490 in unsecured assistance was repaid.

The City provided \$139,769 to nine households without evidence that the assisted houses were protected by sufficient property hazard insurance. The City's files lacked documentation to show that six of the nine households had sufficient hazard insurance at the time they received the housing rehabilitation assistance. The remaining three households provided documentation to the City at the time they received their assistance that showed their house had hazard insurance. However, the level of insurance was less than the amount of housing rehabilitation assistance provided by the City plus any outstanding liens against the houses

We contacted the nine homeowners to determine whether they had sufficient hazard insurance either at the time they received their assistance or as of May 31, 2001. Four of the nine homeowners provided us documentation that showed they had sufficient property hazard insurance as of May 2001; one homeowner paid off the housing assistance she received from the City in September 1999; and the The City Executed Promissory Notes And Mortgage Liens That Exceeded The Amount Of Housing Assistance

The City Lacked Controls Over The Program remaining four homeowners either could not provide documentation or declined to provide evidence that they had sufficient insurance at the time of their assistance or as of May 2001. The four homeowners who could not provide documentation or declined to provide evidence that they had sufficient hazard insurance received \$80,738 in housing assistance.

Contrary to the City's Standard Operating Procedures, the City executed promissory notes and mortgage liens in excess of the amount of housing rehabilitation provided to households. The City's Procedures required that promissory notes and mortgage liens were to be limited to the amount of housing assistance provided.

The City provided \$285,664 in housing rehabilitation assistance to 23 households. The City executed promissory notes and mortgage liens with the households to secure their assistance. However, the notes and/or liens exceeded the amount of housing rehabilitation assistance provided to the households.

The 23 households included: 20 with mortgage liens that exceeded the assistance provided; and 23 with promissory notes that exceeded the amount of assistance. The excessive promissory notes or mortgage liens ranged between \$1 and \$6,903. The City executed the notes and liens between June 1998 and October 2000. The households at 14668 Superior Boulevard, 1707-09 Glenmount Road, and 3658 Shannon Road paid off their housing assistance between September 1999 and August 2001.

The City lacked controls over the Housing Preservation Program to ensure promissory notes, mortgage liens, and property hazard insurance were sufficiently placed on the assisted properties. The City's Manager of Housing Programs said he was aware that the former Housing Counselor for the City failed to ensure that promissory notes, mortgage liens, and property hazard insurance were properly placed on the assisted properties. He said the City dismissed the Housing Counselor for failing to perform her duties in November 2000. However, the City has not taken action to implement the necessary controls over the Program as of May 2001. The City contends that it did not have to follow its Standard Operating Procedures for the Housing Preservation Program because the Procedures did not have official status and were never adopted or approved by the City Council, the City's Manager, or any Director of the City. However, the City's Manager of Housing Programs said the City managed its Short-Term Deferred Loans, No Interest Loans, and Deferred Loans according to the Housing Preservation Program's Standard Operating Procedures. In addition, City Council's Resolutions required the City to administer its Program in accordance with the Standard Operating Procedures. As a result, HUD funds were not used efficiently and effectively. Assisted households were also obligated to repay more in rehabilitation assistance than they received.

### Auditee Comments

[Excerpts paraphrased from the comments provided by the City's Director of Law on our draft audit finding follows. Appendix B, pages 91 to 99, contains the complete text of the comments for this audit finding.]

The Office of Inspector General's draft audit finding states that the City failed to obtain promissory notes for two households. The finding acknowledged that the loan for the Euclid Heights Boulevard property was repaid and is no longer an issue. The loan for the Sycamore Road property is in the amount of \$3,260 and outstanding. The file for the property evidences a mortgage lien and promissory note in the amount of \$2,016, the original estimated amount for the housing rehabilitation assistance. A change order was apparently issued during the construction process that increased the amount currently owed on the loan to \$3,260 plus interest. It is within the discretion of the City's staff to determine whether it is an appropriate use of City resources to secure a new promissory note and mortgage lien in order to secure the amount of the \$1,245 change order. The City is evaluating the implementation of a better procedure. The City secured a new promissory note and mortgage lien from the property owners.

The City's policy was to attempt to reasonably secure the housing rehabilitation loans under the Program taking all factors into consideration. The City is in the process of securing additional promissory notes and mortgage liens in order to address the issue.

The City has no mandatory requirement for a homeowner to have hazard insurance prior to receiving housing rehabilitation assistance. Further, requiring hazard insurance in the full amount of the loan plus other liens would not, in most instances, be reasonable. The land value is probably the most important component of the security interest so far as the City is concerned and should be taken into consideration when determining an amount of required hazard insurance. Nevertheless, the City obtained proof of hazard insurance on one property and is in the process of obtaining documentation of hazard insurance with regard to the other three properties.

The Office of Inspector General's draft audit finding states the City violated its requirements by executing several promissory notes and mortgage liens that exceeded the amount of the housing rehabilitation assistance provided. It is standard commercial practice to execute promissory notes and mortgage liens in an amount that exceeds the estimated amount of housing improvements. This prevents the need to execute new promissory and mortgage liens in the event of cost overruns or change orders. It does not prejudice the homeowner since they are never legally responsible for more than the loan amount. In the event the City was to execute new mortgage liens, it would lose its position of lien priority and substantially jeopardize its security interest. The City respectfully requests the Office of Inspector General reconsider its recommendation.

The Office of Inspector General's draft audit finding states the City lacks procedures and controls over its Program to ensure promissory notes, mortgage liens, and property hazard insurance were sufficiently placed on the assisted properties. The City replaced its former Housing Counselor and is reviewing whether additional procedures and controls are necessary.

OIG Evaluation Of Auditee Comments The City's Standard Operating Procedures for the Program required the City to execute a promissory note with the household and file a mortgage lien on the property for the amount of the housing rehabilitation assistance provided.

The City's Standard Operating Procedures for the Program required the City to execute a promissory note with the household and file a mortgage lien on the property for the amount of the housing rehabilitation assistance provided. The recommendation was revised.

The actions planned by the City, if fully implemented, should improve its promissory note and mortgage lien procedures.

Recommendations	We recom	mend that	HUD's	Columbus	Field	Office
	Director of Community Planning and Development assure					
	the City of	Cleveland H	eights:			

- 4A. Implements controls to ensure households that receive housing rehabilitation assistance meet its Standard Operating Procedures regarding promissory notes, mortgage liens, and property hazard insurance on assisted properties.
- 4B. Executes promissory notes and/or mortgage liens for the full amount of the housing assistance on the 15 (one without a promissory note that was not paid off and 14 whose promissory notes and/or mortgage liens were less than the total assistance provided) properties as required by its Standard Operating Procedures. If the City is unable to execute a promissory note and/or record a mortgage lien on the 15 properties, the City should sign an indemnification agreement for the applicable portion of the \$47,421 (\$51,490 less \$4,069).
- 4C. Requires the four properties cited in this finding that received housing rehabilitation assistance without property hazard insurance to provide evidence that they have hazard insurance or obtain the necessary insurance as required by the City's Standard Operating Procedures. If any of the four properties cannot provide evidence or obtain property hazard

insurance, the City should sign an indemnification agreement for the applicable portion of the \$80,738.

4D. Reduces the promissory notes and/or mortgage liens that exceeded the amount of housing rehabilitation provided to the 20 households cited in this finding.

## Management Controls

Management controls include the plan of organization, methods, and procedures adopted by management to ensure that its goals are met. Management controls include the processes for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance.

Relevant Management Controls We determined that the following management controls were relevant to our audit objectives:

- Program Operations Policies and procedures that management has implemented to reasonably ensure that a program meets its objectives.
- Validity and Reliability of Data Policies and procedures that management has implemented to reasonably ensure that valid and reliable data are obtained, maintained, and fairly disclosed in reports.
- Compliance with Laws and Regulations Policies and procedures that management has implemented to reasonably ensure that resource use is consistent with laws and regulations.
- Safeguarding Resources Policies and procedures that management has implemented to reasonably ensure that resources are safeguarded against waste, loss, and misuse.

We assessed all of the relevant controls identified above during our audit of the City of Cleveland Heights' Housing Preservation Program.

It is a significant weakness if management controls do not provide reasonable assurance that the process for planning, organizing, directing, and controlling program operations will meet an organization's objectives.

Based on our review, we believe the following items are significant weaknesses:

Significant Weaknesses

### <u>Program Operations</u>

The City: (1) did not ensure that assisted houses met the City's Housing Code and/or HUD's Housing Quality Standards after they received housing assistance; (2) failed to maintain an effective system of controls over its contracting process; (3) provided \$158,409 in HOME funds to assist 10 households that were delinquent on their City income taxes; (4) used \$111,591 in HOME funds to assist seven households when the City lacked documentation to show the households were current on their City income taxes; (5) awarded \$151,655 in HOME funds to assist 10 households that lacked sufficient equity in their home to secure the assistance; (6) provided \$8,202 in HOME funds for one household without determining whether it had the ability to repay the assistance; (7) awarded \$13,687 to two households without a promissory note to secure the assistance; (8) granted \$51,490 to 17 households but the assistance was not included in the promissory notes and/or the mortgage liens with the homeowner; and (9) provided \$139,769 to nine households without documentation to show that the assisted houses were protected by property hazard insurance or lacked enough insurance to cover the assisted property (see Findings 1, 2, 3, and 4).

• <u>Compliance with Laws and Regulations</u>

The City did not follow HUD's regulations to ensure: (1) assisted houses met the City's Housing Code and/or HUD's Housing Quality Standards; (2) full and open competition regarding the procurement of housing rehabilitation services; (3) participants were not delinquent on their City income taxes; (4) households had sufficient equity in their home to secure the assistance; (5) a household had the ability to repay its housing assistance; and (6) property hazard insurance and/or mortgage liens, deed restrictions, or covenants were placed on assisted properties (see Findings 1, 2, 3, and 4).

<u>Safeguarding Resources</u>

The City: (1) misused \$8,924 of HOME funds to pay for housing rehabilitation work that was improperly Page 42

performed or that was not provided; (2) improperly used \$158,409 in HOME funds to assist 10 households that were delinquent on their City income taxes; (3) lacked documentation to show that seven households were current on their City income taxes when they received \$111,591 in HOME funds; (4) misused \$151,655 in HOME funds to assist 10 households that lacked sufficient equity in their home to secure the assistance; (5) lacked documentation to show that one household had the ability to repay \$8,202 in HOME funds; (6) improperly used \$13,687 to assist two households without a promissory note to secure the assistance; (7) inappropriately used \$51,490 to assist 17 households but the assistance was not included in the promissory notes and/or the mortgage liens with the homeowner; and (8) lacked documentation to show that \$139,769 provided to nine households were protected by property hazard insurance or lacked enough insurance to cover the assisted property (see Findings 1, 3, and 4).



# Follow Up On Prior Audits

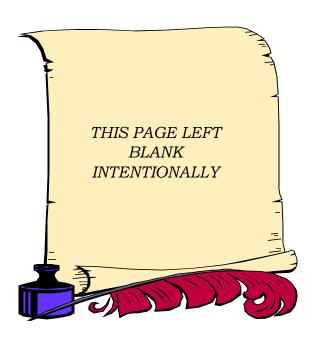
This is the first audit of the City of Cleveland Heights's Housing Preservation by the HUD's Office of Inspector General. The latest Independent Auditors' Report for the City covered the period ending December 31, 2001. The Report contained no findings.



Recommendation	Type of Questioned Costs				
<u>Number</u>	Ineligible 1/	Unsupported 2/			
1A	\$ 8,924				
3B	127,180				
3C		\$111,591			
3D	120,661				
3E		8,202			
4B	47,421				
4C	<u>80,738</u>				
Totals	<u>\$384,924</u>	<u>\$119,793</u>			

## Schedule Of Questioned Costs

- <u>1/</u> 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.
- 2/ Unsupported costs are costs charged to a HUD-financed or insured program or activity and eligibility cannot be determined at the time of the audit. The costs are not supported by sufficient documentation or there is a need for a legal or administrative determination on the eligibility of the cost. Unsupported costs require future decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of Departmental policies and procedures.



### Auditee Comments



March 14, 2002

HUD - OIG OFFICE OF AUDIT CHICAGO, ILLINOIS

2002 MAR 18 AM II: 35 RECEIVED

Heath Wolfe, District Inspector General for Audit, Midwest U.S. Department of Housing and Urban Development 77 West Jackson Boulevard, Suite 2646

Chicago, IL 60604-3507

Re: Response to Second Draft Audit Findings

Dear Mr. Wolfe:

Enclosed please find the response of the City of Cleveland Heights to the second draft audit findings of the Inspector General for Audit, HUD, as outlined in your correspondence of December 6, 2002 and accompanying materials.

If you have any questions or comments, or need any further information, please feel free to contact the undersigned at (216) 291-3810.

Very truly yours,

John H. Gibbon Director of Law

JHG:nw enc. CC w/enc.

Lana Vacha, Director of Community Planning and Development Ohio State Office, HUD

#### 40 SEVERANCE CIRCLE, CLEVELAND HEIGHTS, OHIO 44118

216 · 291 · 5775 FAX · 291 · 3731

#### RESPONSE OF THE CITY OF CLEVELAND HEIGHTS TO SECOND DRAFT AUDIT FINDING

In the second draft audit finding, it is alleged that the City:

- Used \$8,924 of HOME funds (out of \$252,036 spent) for work that was allegedly not provided (\$5,224) or improperly performed (\$3,700);
- Did not include an estimated \$26,000 in rehab work which was allegedly needed to bring the houses worked on up to Cleveland Heights Housing Code.

The City strongly disputes these allegations. In its response, the City will address general improper applications of law and improper findings which recur in the various reports generated by the Inspector General's Office (hereafter "IG"), and will then address the alleged deficiencies with respect to each individual property.

#### I) INTRODUCTION AND GENERAL OBSERVATIONS

(A) The IG improperly cited the City for violations of federal Housing Quality Standards since there are applicable local codes.

The IG is correct in stating that the City is required to bring houses up to local codes when performing rehabilitation work with HOME funds. The IG is incorrect, however, in citing the City for failure to adhere to federal Housing Quality Standards since the City need not apply the Housing Quality Standards when there are applicable local codes and the City of Cleveland Heights has an applicable local housing code. See 24 CFR Part 92, Section 92.251(a)(1).

Although the IG's official finding as set forth above is that the City did not bring all houses up to the "Cleveland Heights Housing Code", in fact many of the specific findings in the report pertain to a failure to adhere to federal Housing Quality Standards which is improper.

(B) Under the Cleveland Heights Housing Code, construction standards for new homes can not be applied to existing construction absent a serious safety hazard or a nuisance.

The City of Cleveland Heights has an extensive Housing Code which is applicable to single family homes in Cleveland Heights. (Chapter 1351 of the Codified Ordinances.) The City Code incorporates the Regional Dwelling House Code. Ohio courts have consistently held that existing construction is not subject to the standards of the Regional Dwelling House Code absent determination of a nuisance. Gates Co. v. Housing Appeals Board (1967), 10 Ohio St.2d 48.<sup>1</sup> Further, by its terms, the Regional Dwelling House Code applies only to *new* residential construction. [See Regional Dwelling House Code Section 1503.09 attached hereto as Exhibit "A".] Existing construction, including major systems such as electrical, plumbing and heating, are "grandfathered" in, and are allowed to be maintained, repaired and components replaced so long as they do not constitute a serious safety hazard or nuisance.

Most of the "deficiencies" cited by the IG in its draft report consist of conditions which do not constitute violations of the Cleveland Heights Housing Code because they are pre-existing conditions and they are not serious safety hazards or nuisances. For instance, the IG subjected the City to repeated criticism for not requiring owners to install new three-prong outlets in place of existing two-prong outlets and otherwise rewiring the houses. However, while the type of electrical wiring suggested by the IG would be required in new construction, it is not required by City Code. The majority of the single and two family housing in Cleveland Heights is between 50 and 75 years old. The standards cited by the IG would require most of them to have new wiring installed, as well as to be essentially reconstructed. As a practical matter, if the City Code incorporated *new construction standards*, as suggested by the IG, no one would purchase a house in Cleveland Heights. Every home purchase would require tens of thousands of dollars for renovation and rebuilding to be considered Code-conforming. As a legal matter, such a requirement would be unconstitutional.

Cleveland Heights City Code allows existing two-prong outlets to be replaced with the same type of outlet. It does not require existing electrical wiring, which is in otherwise good condition, to be upgraded to meet the standards which are applicable to new construction. Homeowners have lamps, not ceiling fixtures. Existing interior and exterior stairwells may generally be maintained without the installation of handrails. Existing steps, which may exceed the 8" "HQS" stepdown standard by an inch or two, may be repaired and maintained and do not need to be replaced. Basement bathrooms may be maintained without the installation of expensive exhaust systems. Although none of the above would be permitted in new construction, they do not constitute a serious safety hazard or a nuisance condition

The IG, thus, was in error both in citing for violations of the "Housing Quality Standards" when there were applicable local codes and in misinterpreting the local codes to require older houses to conform to the standards for new housing.

<sup>1</sup> In the <u>Gates</u> case, the Supreme Court held as follows: "In the absence of a determination that the continued use of improved real property without conforming to building standards subsequently adopted would constitute a nuisance, improvements necessary to comply with the new standards may not constitutionally be compelled by a public agency against the owner of such property."

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(C) The IG improperly failed to take into account the effects of normal deterioration from wear and tear in issuing citations for work performed several years before the IG's inspection.

Another major deficiency of the IG's report is that it assumes that conditions which existed in 2001 (when the IG inspector performed his inspections) also existed several years earlier when the jobs were written up and the contract work performed. For instance, in several cases the IG complains of flaking or peeling paint on homes and criticizes the City for not requiring the houses to be repainted. However, in almost all instances the specifications were written, and the City Rehab Specialist determined what needed to be repaired, *three to five years prior* to the time the IG did his inspections. In most cases, the job was completed at least two or three years prior to the IG's inspection. The fact that a house is exhibiting minor areas of peeling or flaking in 2001 does not mean that the house was peeling or flaking in 1998 or 1999. It is perfectly normal, and in fact, expected, for an older house with a competent paint job to be exhibiting some peeling after three to five years of northern Ohio weather. The IG's draft report is, therefore, in error in his failure to consider the effects of passage of time in his assessment of the efficiency of City Rehab Inspectors.

(D) The housing inspector relied upon by the IG appears to lack expertise in interpreting and applying the applicable local codes and Ohio law.

The IG's report and findings are based totally upon the opinion of an inspector brought in from a different region of the country who appears to have no expertise or experience in interpreting applicable local codes or Ohio law. This should not be construed as a personal criticism of the inspector (who may very well be an expert in federal Housing Quality Standards), but the federal Housing Quality Standards are not applicable here.

In contrast, the City's inspectors have extensive experience and training in construction and rehabilitation work in the Cleveland area, as well as interpretation and application of local and State Codes. As seen by the attached resume (Exhibit "B"), the City's Senior Rehabilitation Specialist, Joseph Tutolo, has been performing rehabilitation work in the cities of Cleveland Heights and Cleveland for the past twenty-six (26) years, in addition to possessing twelve (12) years construction trades experience. See Tutolo affidavit, Exhibit "C". Mr. Tutolo has received professional training in building maintenance, housing inspections, specifications writing and cost estimating, electrical inspectors, and plumbing design. He is certified by the State of Ohio as an Electrical Safety Inspector, and licensed as a Lead Risk Assessor and a Lead Abatement Contractor.

The City's other Rehabilitation Specialist, Douglas Dombroski, has spent the past eleven (11) years in rehabilitation work in the Cleveland area, with job responsibilities including property acquisition, code inspection and enforcement, preparation of specifications and cost estimating, and construction management. [See resume attached as Exhibit "D" and Dombroski affidavit, Exhibit "E".] He has attended several rehabilitation training courses sponsored by the Buckeye Area Development Corp. and the City of Cleveland. Mr. Dombroski is licensed by the State of Ohio as a Lead Risk Assessor and a Lead Abatement Contractor.

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The City Rehabilitation Specialists are highly-trained, experienced professionals who perform their jobs exceedingly well under sometimes difficult circumstances. The properties involved in HOME-funded programs have often been neglected for years. The Rehab Specialists must identify and prioritize actual and potential Code violations and determine the best methods of maintenance, repair or replacement. [See Wagner affidavit, Exhibit "F".] These technical questions must be balanced with legal concerns (the homeowners are often in Housing Court and under Court deadlines) as well as the homeowners' desires and funding limitations. This process necessarily involves judgment calls and it is essential that the Rehabilitation Specialists be able to exercise sound judgment within the law and the program requirements.

#### II) RESPONSES WITH RESPECT TO EACH PROPERTY

The following are the City's rebuttal to each of the IG's findings with respect to each house:

#### 3490 Silsby Road, Marcinia Allen, owner:

Complaint: The IG acknowledges the work that was done in the year 2000 under the HOME-funded contract was completed. The complaint is, "The exterior wood has excessive chipping and peeling paint and poor caulking application. It is not known when it was last painted. Probably less than two years."

Response: The house was lasted painted in 1997 under the Deferred Loan program. Inspection was made and the job was approved in 1997. In October, 1999 a contract was signed for the second Deferred Loan project, which was funded with HOME monies At that time, and in 2000 when the project was completed, there was not sufficient chipping or peeling or poor caulking to constitute a Code violation.

Complaint: "The condition of the driveway indicates that the City is not consistent in its exterior inspections. This one would fall into the category of replacement compared to others observed."

Response: In October of 1999, when the City authorized the HOME-funded project, the City recognized that the driveway would need to be repaired or replaced in the next few years, although its condition did not constitute a Code violation at that time. The City discussed the situation with the owner, who declined to have the driveway included in the project. The owner indicated that she would have the work performed privately. The City will talk to the owner to ensure this is done.

Complaint: "The electrical outlets in the kitchen counter top are not GFCI protected as required."

Response: These outlets are not required by City Code to be GFCI protected.

Complaint: "New cabinetry work was not required by the contract; however, there are drawer guides that need repair and doors adjusted."

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Response: These cabinets were newly installed in 1997 as part of the original Deferred Loan contract and exhibited no defects at the time of final inspection in 1997, nor has the City received any complaint from the owner since that time. In any event, these items do not constitute City Code violations.

#### 863 Greyton Road, Vivian Burris, owner:

Complaint: "Newly installed switch to ceiling fixture does not operate properly."

Response: The contract called only for the replacement of the ceiling fan, which was completed. The switch did not need to be replaced. At the time of final inspection at the conclusion of the work, the ceiling fan and the switch were operational. If the switch is now defective, that has occurred since the time of final inspection.

Complaint: "Contractor did not install an American Standard Cadet toilet in bath. Contractor installed an American Standard toilet of lesser quality."

Response: When the brand of toilet was called into question, the City Rehab Specialist called the American Standard supplier. He gave the supplier the model number and the supplier indicated to the Rehab Specialist that the toilet *was* a Cadet. The Rehab Specialist also contacted the contractor, who determined upon inspection that the bowl of the toilet was a "Cadet", but the tank was a "Colony" model. The contractor has since replaced the toilet with a full "Cadet" model. (Exhibit "G".)

The City was aware that the homeowner was dissatisfied with the toilet because she felt the flushing mechanism was weak. After she made the initial complaint, the City Plumbing Inspector went to her home and performed an inspection. He determined that the toilet was properly installed and functioning appropriately. It was explained to the homeowner that her old toilet had a 3.5 gallon tank, while the new toilet has only a 1.6 gallon tank (as required by federal law.) Because of the limited capacity of the tank, the flushing action is inferior to the older models.

Complaint: The IG alleges that the contractor did not purchase a 24 inch medicine cabinet for the bath as required by specs, but rather that the owner purchased a 30 inch oak cabinet for installation by the contractor, and that the owner received no credit.

Response: The City investigated this matter and determined that the contractor *did* purchase the cabinet. Attached is a copy of the contractor's receipt for the 30 inch oak cabinet. (Exhibit "H".) The cost of that cabinet was \$95.00, rather than the \$80.00 which was allowed by the contract. The end result is the owner received a better product than was required by the contract, at the contractor's expense.

Complaint: "The bath window was not adjusted for proper operation after painting." Response: This window in the bathroom was not painted by the contractor. It is not a contract item. Bathroom painting was deleted from the contract in order to keep the project on budget. See Change Order #1, Item #5. The owner then had the room painted outside of this loan agreement after the contract work was completed. If the window is painted shut, this is not the fault

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#### of the contractor.

Complaint: "The basement bath does not meet code. Bath does not have a window or vent fan for ventilation."

Response: The basement bathroom does not violate the City Code. It is "grandfathered" in by virtue of the fact that it is a legal non-conforming use. The owner was given the option to remove the bath, but chose not to do so. Because it is legal for an owner to continue to use a nonconforming bathroom, the Rehab Specialist allowed the bathroom to remain, with the contractor installing a new toilet the owner had purchased previously and a GFCI outlet. Pursuant to City Code, a basement half-bath is required to have only an opening for air exchange between the bath and the basement proper for ventilation. This may be achieved by cutting a few inches off the bottom or top of the door or otherwise installing an opening in a door or wall. This has been completed since the time of the IG's inspection.

Complaint: "Electrical wiring was not updated."

Response: City Code does not require updating of existing wiring. It is legal to replace existing two-prong outlets. Two-prong outlets were not *installed* as indicated by the IG, but were rather *replaced*. All *new* outlets (i.e. - those that are installed at locations where no outlet previously existed) that were *installed* were either three-prong grounded outlets or GFCI outlets grounded as specified.

It should be noted that there was significant electrical work done in this house. All Code violations were corrected.

Complaint: "All windows were not required to be in good operating order."

Response: The City's Housing Code requires only one operable window per room. The windows that were required to be repaired in the contract specifications were, in fact, repaired.

Complaint: "All interior door hardware should have been replaced."

Response: City Code requires only bedroom and bath doors to close and latch. This would have been checked at the time of preparation of the original specifications, at which point everything was operational to our best knowledge.

Complaint: "Newly installed shoe molding by the contractor was not painted as required." Response: The contractor added the shoe molding at his own cost to provide a better finish on the flooring that he installed. Given that the *installation* of the molding was not a contract item, obviously the *painting* was not required. Further, it is not a Code violation to leave shoe molding unpainted.

Note that originally there was painting in the contract. The owner requested that it be deleted because she felt other items were more important. She indicated she would take care of it herself.

Complaint: A recessed lighting fixture was installed in lieu of a drum type fixture. Response: The contractor suggested this type of light fixture to the owner because he felt that a recessed fixture would look better above the cabinets than a drum fixture. The owner agreed to

Page 6 of 23

the change. The recessed fixture purchased by contractor was actually more expensive than the drum fixture called for the by contract. Therefore the owner benefitted from this change.

Complaint: "Repairs to the front steps may not have been warranted."

Response: The owner requested that the steps be replaced. The City agreed that the steps were deteriorating and could present a hazard in the future. The attached photo indicates some of the problems with the steps. (Exhibit "I".)

#### 3738 Woodridge Road, Robert Crump, owner:

Complaint: "Water heater and chimney flue pipes not sealed at chimney."

Response: This is not a Code violation as the newly-installed metal flue liner is completely self-contained and independent of the existing clay liner, and thus no noxious gases can escape. However, the City agrees that it is desirable that the pipes be sealed. The inspector's photos do show new mortar around the flue. It is possible that mortar was installed and has come loose during the two year period. In any event, the City intends to return to this property and ensure that this item is remedied.

Complaint: "A hand rail for the side entry stairs should have been required to be installed." Response: This is not a Code violation. This is a pre-existing set of stairs which is "grandfathered" in.

Complaint: Cover plates were missing for electrical switches and outlets.

Response: These plates were installed by the contractor performing the work under the Deferred Loan agreement. The owner later removed them. The owner advised the IG that he, the owner, is the person who removed the switch-plates.

Complaint: "The living room does not have a switch operated ceiling fixture or a switch operated outlet."

Response: The City's Code does not require the installation of a new switch operated ceiling fixture or switch operated outlet Residents are permitted to light their homes with lamps. Once again, these are electrical fixtures which might be required in a new house but are not required for existing homes.

Complaint: "The foyer ceiling fixture is not in operating order."

Response: This fixture would have been in operating order when the City did the original specifications and the final inspection. Presumably the switch became inoperable sometime since the job was completed by the contractor.

Complaint: "The right front bedroom has a defective wall switch and outlet cover plate is missing."

Response: Again, these are items which have arisen since the time the contractor completed

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#### his work.

General Comment: Substantial electrical improvements were required to make this house safe and code-compliant. The contractor specifications and change orders indicate \$2,355.00 was spent on electrical work. As indicated in the electrical inspector's report attached, all the specified work was satisfactorily completed, and no additional work was required. (Exhibit "J".)

Complaint: "There was an additional contract with Brown's Tree Service to remove a tree in the front yard. This was completed, but stump was not removed. No payment for the stump removal was made."

Response: This is accurate. Prices were obtained for both the removal of the tree and the removal of the stump. The owner determined to remove only the tree because of the cost. The stump was not removed and no payments were made for this purpose. City Code does not require that a stump be removed.

Complaint: "The change order for installing the kitchen cabinet, wall and base cabinets, appears to be overpriced. A charge of approximately \$165/per lineal foot would have been more in line in lieu of the \$200 charged.

Response: These are reasonable prices for the Cleveland area.

Complaint: Thirteen (13) lineal feet of kitchen cabinets were not installed. Actual installation was 11 ½ lineal feet for base cabinets with counter.

Response: This is accurate. The specifications stated that there was13 lineal feet of wall space, which was accurate. The actual lineal feet of cabinets which needed to be installed was less than 13 feet because of windows and doors. Payment was made only for the 11 ½ feet of cabinets which were installed. The prices were reasonable and competitive for the area.

Complaint: "Why a repair spec to install new asphalt driveway in original contract was written up is a mystery. Existing drive is in good condition."

Response: The concrete drive shown in the photos taken by the HUD inspector is, in fact, in good condition. This is the front part of the driveway. However, the *back* of the driveway is *asphalt* and that portion was not in good condition. As shown in the City's photos, the condition of the asphalt portion was marginal; that is why it was scheduled for repair. (Exhibit "K".) However, this item was deleted because of budgetary constraints. It was appropriate to suggest repair/replacement of the asphalt portion of the driveway.

#### 3590 Grosvenor Road, Darryl Gardner, owner:

Complaint: "The change order prepared for Gold Star Builders, Inc. was not prepared correctly. The deletion for exterior #4 should have been for \$900 per the contract, not \$300. The added repair for \$600 would give a credit to the owner of \$300. Very simple math calculation. The \$600 repair for the door is reasonable."

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Response: This change order was for a replacement door. The City's rehab specialist thought that the \$900 charge was excessive for the one door originally contracted for. He persuaded the contractor to agree to a price of \$600 for the door. The owner then determined to purchase another door. So \$300 was deleted and \$600 was added for the second door resulting in the owner receiving two replacement doors for \$1200 instead of one replacement door for \$900.

Complaint: IG notes that there were deletions after bid acceptance, "but strangely the concrete repairs were given to another contractor with no explanation."

Response: That change was made at the request of the owner.

Complaint: "Owner is dissatisfied with the concrete work. There are hairline cracks in the new driveway."

Response: Because these hairline cracks are less than 1/4 inch, this is not a Code violation. However, due to the owner's dissatisfaction, the City has assisted the owner in filing for arbitration against the contractor, which is the remedy specified in the deferred loan contract. The arbitration is pending.

Complaint: The new garage door panel was not painted. The specifications do not require it to be painted.

Response: The new door is primed, which is sufficient to protect it from damage. The owner indicated to the City that he would paint that door. As of July 16, 2001, no violations were noted.

#### 3000 Scarborough Road, Chris Hall, owner:

Complaint: "The front service walk exhibits a tripping hazard in several areas from the unevenness of the surface."

Response: The City does not discourage property owners from maintaining existing sandstone walkways such as the one presented here, in that the City feels they add to the historic character of the community. Sandstone walks by their nature tend to be more irregular than conventional walks due to the nature of the material. However, there is no Housing Code violation with regard to this walkway.

#### 3401 Cedarbrook Road, Gwendolyn Holloway, owner:

Complaint: "Contractor's debris was not removed from the premises as required."

Response: The photos taken by the IG of debris on the treelawn was *not* debris generated by the contractor or in any way related to the deferred loan contract. This was debris generated by the homeowner and placed by the homeowner on the front treelawn. The deferred loan contract has been completed for two years. The debris may have been behind the owner's garage prior to the loan work. When the City received the call from the homeowner, City employees met the sub-contractor who indicated it was not his debris and would not haul it away. At the time of the work, the

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contractor did haul away the old concrete garage pad.

Please note the City service department has removed this debris for the homeowner.

Complaint: "New concrete foundation finish grade is not 8 inches above grade as required." Response: The 8 inches suggested in the contract was taken from new construction standards. It is the City's belief that the garage pad *was* 8 inches above ground prior to soil being backfilled around it, which was done after the pad was completed. This work fully meets Code and is safe and secure and is providing a good foundation for the garage. What happened here is that the old garage was jacked up, and the existing garage pad was removed. The new pad was poured and the garage was then anchored on to the new footer. After that was completed, the contractor backfilled around the perimeter.

Complaint: "MFS roofing over the deck was not adequately sealed at the house to prevent leakage."

Response: In June of 2000, the City became aware that there was a leak from the porch, possibly due to the installation of the roof decking material. In that same month the general contractor sent his carpenter back to re-evaluate the roof. At that time the carpenter resealed all possible areas of water intrusion with roofing cement, exterior caulk, and other appropriate materials, and re-evaluated the flashing to ensure it was weather tight. The City Rehab Specialist was present at the time of the site visit. In July, 2000 the owner called again indicating that there was leakage. At that time the City contacted the general contractor and sent him a memo. (Exhibit "L".) The memo required the contractor to schedule a site visit with the owner, which occurred shortly thereafter. They re-evaluated the roof installation. Hoses and buckets of water intrusion. At that time, with the homeowner present, it was determined that there was *no* evidence of roof leakage even after the roof was soaked with gallons of water. However, even though they could not find a leak, the carpenter resealed the roof once again.

If the homeowner is still experiencing leakage, it is not caused by the roofing work. It must be arising from other issues such as defective siding, clogged gutters, etc. The IG makes a blanket statement indicating the porch roof was improperly installed, but when questioned as to specifics so that the alleged problem could be corrected, the IG could not identity any problems with the installation.

Complaint: "The contractor didn't replace all the rotted exterior molding, as required."

Response: Inspector is referring to Item #4 of Change Order #2: "Install approximately 20 feet of wood siding replacement at front elevation and repair miscellaneous rotted siding and molding around the entire perimeter." The cost allocated to this item was only \$200. The intent was to correct the worst areas, containing noticeable rot, not to install new siding and molding on the entire perimeter of the house. The condition of the exterior was poor due to age and neglect. Photo of work in progress IS enclosed showing some of the wood replacement on the front of the home. (Exhibit "M".) The IG would not be able to determine the exact areas of wood replacement since the house was painted after the installation of the wood. The contractor did more than satisfy his contractual obligation of \$200 as far as the installation of wood on the project. The City believes

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#### that all Code violations were corrected and all areas of rotted wood replaced.

Complaint: Interior stair hand railing did not receive adequate paint coverage.

Response: The railing was painted as required by the contract. However, upon review of the photos, it does appear that the underside of the hand railing could use another coat of paint. This work will be completed.

Complaint: One of the new windows installed on the first floor rear room has an upper sash that will not stay in place when opened.

Response: This is the first that the City heard of any problems with the windows. The windows were all in good working condition upon final inspection at the end of the job prior to payment. If the owner called the contractor or the City with regard to any subsequent problem, it would have been corrected. Since the windows are under warranty, the City will ensure that the contractor remedies the problem.

Complaint: The second floor porch door is not reasonably weather tight. It should have been weather stripped.

Response: This is not a Code violation. Further, the door does have a storm door which helps scal out the elements.

Complaint: A hand rail should have been required for the basement stairs. Response: This has been completed.

Complaint: Flue vents to the chimney were not required to be sealed.

Response: This was not addressed as part of the deferred loan and there is no indication that this condition existed at the time of initial inspection. Nonetheless, the City has taken care of the problem.

Complaint: "The water heater discharge line from the hot water tank is too close to the floor to be effective. Required distance six inches from the floor."

Response: This is incorrect. This installation fully complies with Cleveland Heights Code. The Plumbing Code does not specify any particular distance for the discharge line to be located from the floor. (See attached. Copy of Regional Dwelling House Code Section 1593.55, Exhibit "N".) The Building Commissioner considers anything up to six inches acceptable.

Moreover, both the line and the tank were installed by a contractor hired by the owner outside the Deferred Loan Program.

Complaint: "Existing wood windows were not required to be placed in operating order." Response: The City Code requires that only one window per room be operable. It does not require the repair of every window.

Complaint: The side exterior door step-down exceeds the maximum eight inch height. Response: The door step is not in violation of the Code. It is "grandfathered" in and is not

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#### required to be replaced.

Complaint: "The service walk is severely cracked, creating a tripping hazard." Response: The specifications were originally written in 1997, and the job completed in September, 1999. The service pad was not in its present condition at that time.

Complaint: "Large openings in exterior sidings were not required to be sealed." Response: This has been completed.

Complaint: "A hand rail should have been required to be installed for front steps and stoop. This is a HQS and city violation."

Response: This is not a City Housing Code violation. The steps were constructed this way without a railing and are "grandfathered" in.

Complaint: "Exterior painting should not have been deleted from the contract."

Response: The owner requested that the paint job be deleted from the contract so that she could take care of that herself which, in fact, she did. Allowing the owner to take care of the paint job herself is consistent with City policy, and allowed the City to make additional repairs to the property.

General comments: The IG criticizes the fact that change orders were made and the scope of the job was changed. However, the contract was originally signed in 1997, while the work was not performed until 1999 because of delays caused by the owner. In 1997, the deferred loan program was funded with CDBG funds, which employed differing standards than HOME-funded projects. When the present City Rehab Specialist picked up the job in 1999, he added some improvements which needed to be addressed and were not specified in the original contract. Other changes were at the request of the owner.

Complaint: "The price charged for the new roof seems excessive. Almost twice what it should be."

Response: The City contends that the roofing prices were reasonable and competitive for the Cleveland metropolitan area.

#### 877 Helmsdale Road, James Jackson, owner:

Complaint: "Prior to the installation of new furnaces, a mechanical engineer should have determined the proper size of furnace needed for each side. This is required in order to determine if the size of the new furnaces will meet city code."

Response: It is not necessary and, in fact, would be an *inefficient use of federal funds* to hire a mechanical engincer to size furnaces. The square footage of each dwelling unit is given to the contractors who are bidding. The contractors are professionals who do this every day. The specifications are for a furnace to adequately heat the house and the contractor has the responsibility

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to meet this standard. There is no allegation in this project or any other project that the furnaces were inadequate to heat the homes.

Complaint: "The cost of the new roof appears to be excessive."

Response: The price of the roof is not excessive for the Cleveland area. See above comments.

#### 3124 Whitethorn, Geoffrey Joiner, owner:

Complaint: The contractor did not repair the hand railing for the front steps.

Response: The Rehab Specialist originally suggested that the hand railing be replaced, but the owner insisted upon retaining the existing railing. The railing was repaired by the contractor and was secure and safe upon final inspection by the City. Sometime later the railing came loose again. The Rehab Specialist indicated to the owner that the contractor would come and repair it again at no cost; but the owner said he would take care of it himself. As of a September 12, 2001 reinspection, this item was complete.

Complaint: "The step down the rear exterior door is over 8 inches. This presents a hazardous condition and does not meet HQS."

Response: As shown in the picture, the step down is approximately 9 inches. This is an existing condition that is "grandfathered" in and is not a City Housing Code violation.

Complaint: "Rotted exterior wood should have been required to be replaced." Response: All rotted exterior wood was replaced.

Complaint: "Several window sashes have severe deterioration. They will not lock." Response: Those windows were not in the same condition in 1998 at the commencement of the project or in 2000 at the time of completion of the project.

Complaint: "The exterior wood siding should have been required to be painted as it exhibits heavy chipping and peeling."

Response: The owner indicated that he would paint this house - that was going to be his contribution to the project. The owner is young and physically capable of performing such work, and, to the best knowledge of the City, the owner did in fact paint the house.

Complaint: "A change order should have been prepared and signed by the appropriate parties deleting the paving of the driveway".

Response: The driveway was paved by another contractor, but no payment was made to the first contractor for any paving work. He was paid only for the other work he did complete. The records in the file clearly show that no payments were made to the first contractor for driveway work.

In addition, the owner would not cooperate in signing a change order.

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#### 2344 Grandview Avenue, Nicholas and Shirley Knight, owners:

Complaint: "The installation of hand rails for the basement stairs and the attic stairs should have been required to be installed."

Response: The stairs are "grandfathered" in. This is not a City Code violation.

#### 3333 Cedarbrook Road, Oswald P. Lopez, owner:

The City is in agreement with the IG that many of the items specified in the contract have not been corrected. This job has not been completed. In the middle of the project, the owner disappeared from the house. The City was not able to locate him. Notes were left, letters sent, and phone calls were made, but there was no response. The City later found out that the owner had been staying with a family member because of a medical condition.

In the past few weeks the owner contacted the City and indicated that he would like to finish the contract work. The contract work will therefore be completed.

However, some of the items mentioned by the IG, such as the installation of the hand rails, putting all windows in good working order and new electrical installation, were not included in the specifications because they are not required by City Code. These items will not be performed The remaining work will be completed.

#### 983 Greyton Road, Burtis Melvin, owner:

General comments: As a general matter, the City would like to note that this house, when first examined, was one in extreme disrepair. There was no functional bathroom in the house. The resident was using a bucket for a toilet. Raw sewage was backing up in the basement because of damage to the sewer lines under the basement floor. The repairs to this house were absolutely necessary in order to allow the owner to stay in the home and were made up to the \$20,000 limit of the program at that time. For that reason marginal items were omitted.

Complaint: "The contractor did not delete the original repair cost for the rear porch roof. A new roof was installed, including the framework."

Response: That is correct. The original repair amount of \$414 was not deleted because that work was completed. The Change Order reflects *additional* work that was necessary to fix the roof. The need for these repairs could not have been foreseen until the roof was actually removed. Photos attached will show the extensive rotting condition of the porch which became apparent once the work was commenced. (Exhibit "O".)

Complaint: "Contractor did not complete the electrical work. Junction box cover left open." Response: Upon final inspection by City staff, prior to payment, there were not any junction box covers open. The Building Department also performed an electrical inspection. Its report does not indicate any open junction boxes. This work was completed in 2000. The owner indicates that

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since that time he had some electrical work performed himself. Presumably that work, which was done after the City's work was completed, resulted in the conditions mentioned by the IG.

Complaint: "The contractor did not complete the replacing of rotted wood at the front left window sill."

Response: The contractor completed over 70 lineal feet of wood replacement that was required by Change Order #1, additional work Item #3. There was substantial rotting and defective window trim which was not apparent until close examination by the carpenter. The areas most in need of attention were replaced. The picture of the window sill in the auditor's report shows wood that is damaged, not rotted. Although it might have been desirable to replace that wood, it was not necessary. The contractor completed all of the work he was paid for, and all Code violations were corrected.

Complaint: "The contractor did not repair the wall tile in the bathroom after completing the plumbing repairs."

Response: The missing wall tile is not from repairs made pursuant to the loan contract. It is a pre-existing condition. Although, again, it may have been desirable to replace those tiles, the funding was not available, and it was not necessary.

Complaint: "The City did not write up to install a hand rail or remove torn carpet on the basement steps."

Response: There is an existing handrail in the IG's photos. No additional handrail is required for an existing stairwell. Because the homeowner is in a wheelchair and does not use the steps, the carpet was not required to be replaced. However, the City has determined the carpet should be removed and will ensure that this work is performed.

Complaint: "The City did not require the basement smoke detector be relocated due to boiler item."

Response: The Code does not require this.

Complaint: "Exterior drier vent was not required to be replaced." Response: The City did not notice this item. This will be completed.

Complaint: The taped drain line under the sink was not replaced.

Response: The line was not taped during the time of the deferred loan work. After that time a friend of the owner performed some plumbing work for the owner, and this is when the taping occurred. The owner told this to the IG.

Complaint: IG cannot locate the tree branch that was removed. Response: See attached photo of the item in plain view. (Exhibit "P".) This work was completed as required.

Complaint: "The City does not appear to be making a reasonable review of the cost. In

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several cases the cost appears high and the quantities overstated." "Change orders are not properly prepared by the City."

Response: The City disagrees with the assertion by the IG that the costs are high. The costs are reasonable for this metropolitan area. The City also takes issue with the allegation that change orders are not properly prepared. The records indicate that change orders are properly prepared. No monies have been paid out other than for work which was actually performed.

Complaint: Toilet installed does not meet handicapped criteria.

Response: City and State Code do not require this type of modification for a single-family home and the City is aware of no federal regulations which would require such an alteration. In fact, the material provided to the City by HUD regarding HOME-funded programs specifically states that no such modifications are required for single-family home renovations. If this material is inaccurate, please advise.

#### 14642 Superior, Sally Rushin, owner:

Complaint: "Installation of the drip edge was not completed as per specs".

Response: The photo taken by the HUD inspector shows the omission of the drip edge in one small area of the house. However, the City's photo, attached, shows that the drip edge was in fact installed. (Exhibit "Q".) It is believed that because of the configuration of the particular area looked at by the IG, the contractor was not able to install the drip edge at that one small location. City staff is checking to ensure this work was properly performed in all available locations behind the gutters as required by the contract.

General comment with respect to the other conditions noted by the IG: There *are* other violations on the house. Pursuant to the Deferred Loan Program, a contract was executed between the owner and a company named U.S. Damage which would have corrected all Code violations. However, the owner became uncooperative and terminated that contract, not allowing any more work to go forward. She said she would complete it herself. The contract which was terminated did include some garage repairs. Any repairs to the garage which have been made since the time of termination were made by the owner.

The City intends to talk to the owner again to determine her repair plans and to persuade her to reinstate the contract or otherwise ensure that the remaining Code violations are corrected.

Complaint: "There appear to be two contracts for boiler repairs."

Response: Although there were multiple bids, the file discloses that there is only one contract for boiler repairs and only one payment was made.

#### 2640 Mayfield Road, Barbara Simon, owner:

Complaint: "Contractor did not install discharge line according to manufacturer's

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recommendations. Contractor installed line 1 1/2 inches from the floor. Required distance is 6 inches."

Response: This is incorrect. See 3401 Cedarbrook. The contractor fully complied with the Code in the installation of the copper line. The Code indicates all relief outlets or temperature and relief valves shall be piped to a position which will protect persons and property. No measurements are specified. The Building Commissioner considers up to 6 inches acceptable.

Complaint: The front steps are over six feet wide and should have second railing.

Response: These steps are "grandfathered" in. The City's Housing Code does not require the new installation of a second railing.

Complaint: "The above-mentioned water heater discharge line deficiency is a HQS and code violation."

Response: This is not a Housing Code violation and the "HQS" is not applicable.

Complaint: "The drain line from the washing machine in the basement does not have a sewer trap. A trap is required. Sewer gas odor was observed at the time of the inspection."

Response: It is impossible for the IG to know whether there is a sewer trap or not because the sewer trap would be under the concrete basement floor. If there was a sewer trap and it happened to be empty at the time of the inspection, sewer odor might have been detected. Alternatively, the source of odor might have been something entirely different. The City inspectors never detected any odors when they were on the property.

Complaint: An outlet plate cover is missing in the basement".

Response: When the job was completed in 1999, the Rehab Specialist did not see any outlet covers missing in the basement. Further, the Electrical Inspector did not make note of any missing outlet cover in his inspection.

Complaint: "The half bath does not have a vent fan ventilated to the exterior or an operable window. One or the other is required to meet HQS and city code."

Response: The City does not require a ventilation fan or an operable window for existing interior half-baths that don't abut an outside wall because the expense would be out of proportion to any benefit.

Complaint: "The property does not meet HQS or city codes after the rehab repairs." Response: The City disagrees. The property was in full conformance with City Code at the time of final inspection.

Complaint: "The cost to install the ceiling fixtures and GFI outlet appears to be excessive." Response: The City disagrees with this contention. Material and labor costs are reasonable for the Cleveland metropolitan area.

Complaint: The cost for a garage concrete pad or the asphalt repair does not appear to be

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#### warranted

Response: The City Housing Code specifies that a garage must be built when an old structure is demolished. Surface parking is not acceptable.

Complaint: Only one 2 inch clean out cap was installed at the main stack. Two clean out caps are written up on the specs.

Response: The author of the rehab specifications erred in calling for two clean-out caps. A second clean-out cap is unnecessary.

# 3754 Bainbridge Road, Roland and Irma Summerville, owners:

Complaint: "New asphalt drive is not in alignment with new concrete apron."

Response: Since the driveway was not a new driveway but a resurfacing of an existing driveway, no changes in dimensions were required. However, the concrete apron, which was new, was required to be widened by the Building Department, which is why the apron is wider than the driveway. There is no Code violation with regard to this driveway and apron.

Complaint: "Damaged aluminum siding was written up on a change order to be repaired, and then it was deleted."

Response: The siding is not a Code violation and was not cited in the owners' inspection as such. When the new Rehab Specialist took over this job, he suggested to the owners that it be included so that it could be repaired before it became a Code violation. The owners initially agreed, but subsequently changed their minds and requested that it be deleted.

Complaint: "The rear deck bracing for guard [sic] the railing is inadequate. It does not provide sufficient security and presents a tripping hazard. The type bracing used will not hold up for a long period of time. The deterioration will accelerate and cause the bracing to fail and the roof to start leaking. A metal anchoring system should have been applied."

Response: The rear deck railing was done by the owners outside the deferred loan agreement and without the City's knowledge. It was therefor deleted from the contract. However, the owners' installation was wobbly. In order to stabilize the owners' installation, the contractor on his own initiative installed the bracing at no cost. The bracing is of treated wood and will not deteriorate any faster than the railing itself. It was secured on top of the existing roofing and sealed with roofing cement and silicone sealant. The fasteners were sealed as well. No deterioration or leaking has occurred to date. The Building Code does not require any particular type of bracing.

Complaint: Defective windows do not meet HQS or city code. Response: City Code requires only one operable window per room.

Complaint: IG indicates the hand railing should have been required to be installed in the basement stairs.

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in.

Response: No hand railing is required under City Code because the stairs are "grandfathered"

Complaint: The electric system should have been required to have been updated. Response: The City disagrees with this. It is acceptable and in conformance with Code to maintain and replace existing outlets.

Complaint: Smoke detector should have been installed in basement. Response: This was not a part of the contract. Since the owners have not taken care of this matter, the City will ensure that such a detector is installed.

Complaint: The toilet in the basement should have been required to have been removed. Response: The pre-existing bathroom is allowed to remain and is in conformance with City Code. The owners were given the option of retaining or eliminating the toilet. The contract price to repair the existing toilet was \$125. If the toilet was removed and the drain capped, the cost would have been \$125. Therefore, the owners chose to keep the toilet as they felt the property had higher value with an extra facility.

General comments: This work was originally written up in 1997. After that time, the new Rehab Specialist determined that it would be desirable to include additional work. Items the owners had taken care of between the submission of the bid and the start of the work were deleted. This is the reason for the change orders. The other factor relevant to this job is that the specs were first written up at a time when the program was funded by CDBG funds. The program was subsequently changed to HOME funding with its more stringent requirements. The City contends that this property fully meets Code requirements. All the work completed was necessary, including the roofing work. The front side had deteriorated and was necessary to be replaced. In order not to do more work than necessary and due to the limitations expressed by the homeowners, the rear portion of the roof, which was in good condition, was not replaced.

#### 932 Roanoke Road, Beatrice Wiley, owner:

Complaint: "Contractor did not seal the tile around drain pipe. This is an HQS violation." Response: The contractor could have done a better job sealing around the drain pipe. The City will ensure that this is done.

Complaint: "On half bath contractor did not seal corner joints of newly-installed tile". Response: The City disagrees. From the pictures it is clear that the contractor did in fact seal the corner joints with grout. It is possible that some grout has cracked and dried and fallen out since the time the work was done, but the tile was sealed.

Complaint: "Contractor did not reasonably match color". Response: That is correct. When this job was being bid, it was apparent that it would be

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difficult to find a match for the unusual shade of pink tile from the 1930s as a stock color. To special order would have greatly increased the cost. After discussion with the owner, it was determined that a neutral color which would harmonize with the pink would be acceptable to the owner, rather than going to the expense of custom ordering. Needless to say, this is not a Code violation.

Complaint: "Painting on the garage exterior did not properly adhere to the surface. Peeling". Response: The garage was painted in 1999 and inspected by IG in 2001. The owner was advised that there is a year's warranty on painting. Had that issue arisen or been raised within the warranty year, the contractor would have been contacted. When the painting was completed, there were no signs of deficiency. It is not uncommon that paint will not adhere well to an old and neglected structure. This is the original garage to a home built in 1925.

Complaint: Garage wood siding at the ground was not required to be replaced and the exterior grade lowered.

Response: It was not necessary to replace the garage wood siding. The present condition is good. The grade is low enough to prevent damage to the garage. The garage was in very poor condition and it was necessary to prioritize as to which repairs would be completed. The City believes that good judgment was used to determine which repairs would be completed. Although additional work could have been done, it was not necessary to do so. There are no Code violations on the garage.

Complaint: "Walkway was not required to be replaced. Current condition presents a tripping hazard."

Response: The specifications for this job were prepared in 1998, and the work performed in 1999. The conditions noted by the IG did not exist in 1999.

Complaint: "Basement asbestos wrapping should have been required to be inspected by a licensed contractor to determine what action should be taken."

Response: The homeowner was given a copy of a booklet from the U.S. Consumer Product Safety Commission entitled "Asbestos in the Home". (Exhibit "R".) This book is distributed to homeowners in Cleveland Heights by the Building Department. The booklet describes asbestos abatement activities which may be undertaken by homeowners. Since there were budgetary constraints in this job, this item was allowed to be deleted to be performed by the homeowner. However, since the homeowner has apparently not taken care of this issue, the City will ensure that the work is performed.

Complaint: IG raises several complaints about certain electrical work in the basement. Response: None of the conditions specified by the inspector constitute violations of the City's Housing Code. The necessary electrical work was provided for and completed in the contract.

Complaint: "Kitchen torn linoleum flooring exposed the under layer in the traffic area." Response: This floor was not in this condition at the time of final inspection by the City.

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Complaint: "Exterior defective wood siding shingles should have been required to be replaced before applying the new stain."

Response: This comment is representative of the subjective nature of the inspection. Photo does not show *rotted* or *deteriorated* wood shake shingles. The photo shows the original wood shake shingles which are imperfect but are not in a deteriorated condition. It is a judgment call as to when a particular item needs to be replaced, but in the City's opinion these shingles are not in a condition which calls for replacement or constitutes a violation of the Code.

Complaint: re Change Order #1.

Response: The original charge to level the existing block was \$140. For an additional \$50 a new concrete public sidewalk block was able to be installed. This work was done with the approval of the owner.

Complaint: IG indicates that the ceiling in the kitchen never had wallpaper and, therefore, charge for removal of wallpaper was an unnecessary expense.

Response: There *definitely* was wallpaper on the kitchen ceiling. The owner most likely was unaware of its existence since it had been painted over. But this was a completely necessary repair.

Complaint: "New ceiling drywall was an unnecessary repair since existing ceiling is in good condition."

Response: The ceiling was inspected by the IG after the repairs were made. Previously it was not in good repair.

Complaint: The reconstruction of the porch foundation was not necessary.

Response: The City disagrees. It is apparent from the photographs that the foundation was deteriorating and reconstruction was a legitimate expense. Further, much of the deterioration of the foundation is not visible in the photos because of snow cover. This item had previously been cited as a Housing Code violation with instructions to "rebuild".

#### 3804 Kirkwood Road, John and Betty Williams, owner:

Complaint: Asphalt driveway did not receive the topcoat and sealant as required. Response: The sealant coat was applied August 2, 2000. The temperature was 82° and sunny. It is still apparent that seal coating was applied. It can be seen overlapping the concrete sidewalk in spots. (See attached photo, Exhibit "S".)

Complaint: "A window in the living room will not lock".

Response: The City cannot know which window the inspector references. If it was a window covered under the contract work, the owner just needed to notify the City and the matter would have been rectified. If it was not under the contract, it would not be necessary for a lock to be installed to meet Code requirements.

Page 21 of 23

Complaint: Contractor's work for interior paint was not acceptable.

Response: The paint on the windows as complained about is fifteen to twenty years old and is from a previous paint job. It is not the responsibility of the contractor to remove old paint.

Complaint: "Proper number of smoke detectors were not required."

Response: This was discussed with the owners. However, since the owners did not take care of this matter, the City completed the installation

Complaint: IG complains about tree branches which were "endangering" the roof and should have been required to be trimmed.

Response: At the time of the initial survey and the work, the branches in question were not endangering the roof and were not a Code violation.

Complaint: "Interior stairs do not have adequate hand railing." Response: These properties are "grandfathered" in and hand rails are not required, as per City

Complaint: Condition of the front exterior door is not "sufficiently weather tight." Response: This condition does not constitute a Code violation.

#### III) SUMMARY

Code.

As demonstrated above, a review of the IG's list of alleged performance deficiencies reveals that the vast majority of the citations are not well founded. The City has pledged to give attention to those few items which require additional attention as indicated and will supplement this response when the effort is complete.

The City of Cleveland Heights has a well qualified and experienced housing rehabilitation staff. The Housing Preservation Supervisor, the Rehabilitations Specialists, the Plumbing and Electrical Inspectors from the Building Department, and the Housing Inspectors from the Housing Inspections Department are all well qualified by both training and experience in construction technique as well as the interpretation and applications of local and State laws and codes. Although the inspector utilized by the IG may well be qualified with respect to federal Housing Quality Standards, he appears to lack expertise in the application of Cleveland Heights Codes (which includes the Regional Dwelling House Code), as well as construction costs and techniques in the Cleveland metropolitan area.

In addition, the City takes strong exception to the IG's recommendation that the City be required "to monetarily reimburse the HOME program from non-federal funds the total amount of housing assistance that was provided to the applicable houses". This is not a remedy which appears

Page 22 of 23

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anywhere in the Regulations governing the HOME programs or any contractual obligations between the City and HUD. The City also strongly disputes the IG's suggestion that "administrative action" be taken against the City's Rehab Specialists. The City believes that it is improper for the IG to make such a recommendation and that the facts, as revealed above, do not warrant any such action.

# Page 23 of 23



August 16, 2002

Via overnight mail delivery

Heath Wolfe, District Inspector General for Audit, Midwest U.S. Department of Housing and Urban Development 77 West Jackson Boulevard, Suite 2646 Chicago, IL 60604-3507

Re: Third and Fourth Draft Audit Findings

Dear Mr. Wolfe:

Enclosed please find the Response of the City of Cleveland Heights to Third Draft Audit Finding; Response of the City of Cleveland Heights to Fourth Draft Audit Finding; Guidelines for Deferred Loan, No Interest Loan and Short Term Deferred Loan Programs; and City of Cleveland Heights Housing Rehabilitation Standards.

I look forward to meeting with you on Tuesday, August 20, 2002 at 11:00 a.m. at Cleveland Heights City Hall.

Very truly yours,

N. DAL

-John H. Gibbon Director of Law

JHG:nw Encs.

CC: Robert C. Downey, City Manager Karen Knittle, Development Planner Richard Wagner, Housing Preservation Manager

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2003-CH-1008

August 15, 2002

# RESPONSE OF CITY OF CLEVELAND HEIGHTS TO FOURTH DRAFT AUDIT

#### I. G. Complaint: "The City Needs To Improve Its Contracting Process."

As a general response, the City notes that it has been following the same contracting procedures since the inception of the Deferred Loan and other programs over twenty years ago. The procedures followed are those taught to HPO staff in HUD-sponsored seminars, one recent seminar being *Basically CDBG* which was held in Columbus, Ohio in 1998. The City has been subject to dozens of monitoring visits and audits by HUD Columbus over the years, and has never been subject to criticism for its procurement procedures. It is the City's belief that it fully complied with all applicable laws and regulations, as will be discussed in more detail hereinbelow.

# I. G. Complaints: "The Procurement Of Housing Rehabilitation Services Was Not Subject To Full And Open Competition."

#### "The City Did Not Follow Its Administrative Code Regarding The Procurement Of Housing Rehabilitation Services."

The City believes that its procurement procedures appropriately balance the need for competition and fair pricing with the equally important factors of efficiency, the need to avoid an excessive administrative bureaucracy, and inclusion and encouragement of minority contractors. The City maintains a list of contractors who have indicated their interest in participating in these home rehabilitation programs. Periodically (generally once a year) the City advertises in several local newspapers, including the *Call and Post* (a minority-owned publication) to solicit contractors who are interested in participating in the program. In addition contractors may approach the City at any time. All contractors must submit references and be licensed and bonded The homeowner may also suggest contractors. (See, generally, the Guidelines attached hereto.)

The I.G. contends that Federal Regulations and City Ordinances require that the City publicly advertise each home improvement contract. The City respectfully disagrees.

As noted by the I.G., 24 CFR Part 85.36(d)(2) *does* require public advertising. However, the City contends that this regulation is not applicable to the home-improvement contracts in question, none of which exceed \$25,000.00. Instead, the relevant regulation is 24 CFR Part 85.36(d)(1), which states as follows:

(1) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies or other property that do not cost more than the simplified acquisition threshold fixed at

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<u>41 U.S.C. 403(11)</u> (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

The I.G. has prepared a chart listing 49 contracts totaling \$610,881.00 to support his assertion that the contracts were not subject to full and open competition. However, in every instance cited, the City solicited at least two price quotes, and in overwhelming majority of cases the City solicited between three and five quotes. (The cases in which only two quotes were solicited were generally emergency situations such as roof repair/replacement in which the work needed to be done immediately.) Furthermore, in every case except one, the City *received* at least two price quotations. In the case in which the City only received one quote, the homeowner was so difficult with the contractors inspecting the property that two of them declined to submit a price quotation and the City Rehab Specialist was unable to convince any other contractors to bid on the job.

There are many factors which should be considered in determining whether price quotations have been obtained from an "adequate number of qualified sources". Some of these are the estimated cost of the work, the extent to which the work in question has a standard price in the area, the degree to which the quotes vary from the Rehab Specialist's estimate, the nature of the work as an emergency or otherwise, and the extent to which there are seasonal deadlines. The City believes a close review of the cases cited by the I.G. establishes that the City did obtain an adequate number of quotes in each case.

The I.G. further asserts that the City was required to follow Chapter 171 of its Administrative Code which requires public advertising for contracts exceeding \$15,000.00 (formerly \$10,000.00). However, these sections of the Codified Ordinances by their terms apply only to contracts for "public work". (See, C.O. Sections 171.01 and 171.05 at Exhibit "F".) The contracts in question are not contracts for "public work," but rather private agreements between the homeowners and the contractors for rehabilitation to private residences. It is not necessary for the City even to execute these agreements.

It is clear if one reviews the Chapter as a whole that it was never meant to apply to private rehabilitation agreements. The I.G.'s interpretation is contrary to law and contrary to common sense. The City enacted the ordinances, and the City should be the ultimate arbiter of their interpretation.

#### I.G. Complaint: "The City Did Not Obtain Sufficient Quotations For Small Purchases."

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The I.G. cites several transactions in which only one price quotation was solicited, and one instance in which two bids were obtained. He indicates that these transactions were in violation of HUD regulations and the City's Standard Operating Procedures.

The City has previously explained that the Standard Operating Procedures were simply guidelines to educate staff on the operation of the programs and were meant to be interpreted with flexibility. However, the City agrees that in most instance more than one price quotation should be

obtained under the HUD regulations. A review of the City's records shows, in fact, that in the overwhelming majority of cases, at least three quotes were obtained. But in rare instances it is not feasible or reasonable to obtain more than one quote.

It must be kept in mind that the City's Rehab Specialists are highly experienced in their field, with decades of practical construction experience. They have a very good idea what jobs should cost. If there is an emergency situation with, for instance, a sewer back-up or a tree split by lighting that is about to fall on a house, and they receive a reasonable quote, the City contends that it is not unreasonable or a violation of federal regulations to accept that quote. Sometimes the Rehab Specialists need to find someone who is willing to do the job right away, and they can find only one contractor who is available. A couple of the jobs cited involved situations in which the original contractor was dismissed for cause and it was necessary to obtain someone who was available immediately and was willing to take over another contractor's job. In other instances the owner insisted on using the contractor of his or her choice, which was accommodated so long as the price was reasonable and there was not a conflict of interest. (For example, if the contractor were a relative he would not be permitted to perform the work.)

The City does believe that some of its record keeping regarding procurement could be improved, and has addressed this issue in the new Guidelines it has adopted. Although the City believes it is permissible to obtain only one quote in emergency situations or other rare occasions, it would be preferable for the Rehab Specialist to document in the file the reason for obtaining only one quote (even if it seems self-evident, such as emergency sewer repaire). Furthermore, if after several contractors have been called, a quote is received from only one, that fact should be documented in the file.

#### LG. Complaint: "Contract Specifications Did Not Detail The Required Material Or Services."

The LG. indicates that seventeen of the contracts reviewed included specifications that were not specific enough to "detail the scope of work, the quantity and quality of material, and the method of installation". He includes a chart that lists the number of line items in each contract that were, in his opinion, inadequate and the number of items that were adequately detailed. Unfortunately, however, the chart does not identify the line items that the I.G. felt were inadequate. Without that detail, it is difficult to respond to the complaint.

The I.G. does identify a few items in the body of the draft findings. Two of them are the "square footage of an asphalt driveway" and the "number of linear feet of gutters". The City feels that including measurements in the contract specifications for that type of work is unnecessary. The contractors who are interested in submitting a quote for a job are required to go to the house and conduct their own inspections prior to submitting their quotes. Any competent contractor is going to insist upon conducting his own measurement to determine quantities of material needed.

Another item complained of is that the "quality of viny! replacement windows" is not identified. However, vinyl windows are fairly standard, unless a homeowner is going to a high-end custom product, which is not the case with parties participating in the HPO programs. If a contractor used sub-standard materials, he would be in breach of contract and the Rehab Specialist would require the windows to be replaced.

#### I.G. Complaint: "Contract Specifications Included Brand Name Products Without Allowing For Equal Substitutions."

This charge seems contradictory to other criticisms the I.G. has leveled with regard to the City's administration of HPO Programs. In a previous draft finding the I.G. complained that the City had allowed the installation of a toilet which was not an American Standard toilet as identified in the contract specifications. Now the complaint alleges that the City does not allow for substitutions of material of equal quality.

This is not correct. The City does allow for substitutions, and the contractors participating in the programs all know this. The City agrees that when the specifications are written it would be preferable to use the specific words "or equal substitution". However, the fact that the such language may not always be included does not mean that the option is not understood, or that the programs are being administered in a less-than-efficient manner.

# I.G. Complaint: "Honsing Rehabilitation Work Was Not Completed Timely."

The I.G. indicates that 28% of the projects were not completed within thirty days of the planned completion date. The City's short response to this complaint is that it is common knowledge that construction projects are seldom completed in a timely marner. The City believes that the percentages cited by the I.G. establish that the City is doing a good job in keeping projects on track and making sure they are completed in as timely a fashion as possible, rather than highlighting any fault of the City.

In a few instances the "notice to proceed" date cited by the I.G. is inaccurate. But in most cases the contract was not, in fact, completed in ninety days. There are many reasons for this, none of which involve lack of diligence on the part of the Rehab Specialists.

One of the most common reasons for delay is weather. Any project which involves outdoor work (which is almost all of them ) is subject to delay because of an early frost or excessive rain. Sometimes, although work could be performed in the spring, the homeowners preferred to wait until the danger of freezing is over.

Another common reason for delay is the need for additional work, either because of unanticipated conditions or because the homeowners decided at the last minute that they want extra

work added to the contract. There are numerous conditions which arise during construction which can not be identified prior to actually commencing the work, including broken sewer lines and rotted wood under the roof shingles, which can add to the planned construction time. Sometimes an additional professional (such as a plumber) needs to be brought in, which also takes time.

In several cases the contractor needed to be replaced after the job commenced, which naturally contributes to delay. It takes time to legally terminate a contractor, since he needs to be given the opportunity to remedy his breach.

In several other cases the delay is due to a lack of cooperation from the homeowner. Some homeowners refuse to allow the contractor on their property unless they are home, but then are never home when the contractor is scheduled. In one case involving a two family, the contractor could not get access to either the rental unit or the owner's unit. In another case the homeowner disappeared for months in the middle of the job, with no word to the City as to his whereabouts. In many cases the homeowners were just plain difficult. Some of them stopped the work several times in the middle of the job because they were ambivalent about participation in the program. Some vacillate as to whether they will perform some work themselves or allow the contractor to do it.

In a few cases there was no reason for lack of timely completion of the job other than the fact that the contractor was slow or overextended. In that type of case the Rehab Specialist will keep in communication with the homeowner and the contractor, but the ultimate decision as to whether to allow the contractor additional time belongs to the homeowner. Many times the homeowner is pleased with the work done to date and does not mind the delay. In other instances it is determined that it is better to allow the contractor to complete the work than start all over. Any contractor who is persistently untimely will, of course, be dropped from the City's Contractor List. But some degree of untimeliness is inherent in the business. The fact that the work was not completed on time does not mean that the City's Rehab Specialists were not appropriately monitoring the work.

#### I.G. Complaint: "Procurement Problems Existed Because The City Lacked Procedures And Controls Over The Program."

The examples identified by the I.G. do not establish that "procurement problems existed". To the contrary, the files establish that the rehabilitation services in question were competently performed in a cost-effective manner. The files do indicate that some improvement could be had in the area of documentation. The City believes it has addressed this matter in the attached Guidelines which it has prepared and implemented, but it also welcomes any suggestions from the Ohio State Office Director of Community Planning and Development to further improve its procedures.

#### City's Response to LG.'s Recommendations:

The City strongly disagrees with the conclusions of the I.G. with regard to the alleged "deficiencies" of its HPO Programs. The City believes that upon review of the results of the eighteen month, microscopic examination of City records by the I.G. (a supervisor and two employees), one can only conclude that City HPO Staff and management do an overall excellent job, administering the programs in a competent manner that furthers the goals of the CDBG and HOME Programs, which have been vital to the City for the past 22 years.

The aforesaid notwithstanding, the City constantly strives to improve all of its operations, including HPO Programs, and welcomes the suggestions of the Ohio State Office Director of Community Planning and Development in this regard.

Respectfully submitted,

H. Mill

John H. Gibbon Director of Law

#### August 15, 2002

#### RESPONSE OF CITY OF CLEVELAND HEIGHTS TO THIRD DRAFT AUDIT FINDING

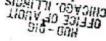
#### LG. Complaint: "The City Provided Assistance To Honseholds Without Determining Whether They Were Current On Their Income Taxes."

The Inspector General (I.G.) cites the document entitled "Standard Operating Procedures" for his contention that homeowners are required to be current in their City income taxes at the time of application to qualify for housing assistance under the Deferred Loan and No Interest Loan Programs. He asserts that 10 of the 46 households surveyed were delinquent in their City taxes at the time of application and should not have been provided assistance. He concludes that the City should therefore be required to indemnify the Housing Preservation Program with non-federal funds if any of these homeowners default on their loans.

The City contends that this assertion is flawed for several reasons. In the first instance, the Standard Operating Procedures ("SOP's) are not, and were never meant to be, mandatory requirements for the operation of the programs in question. As previously stated, the SOP's were compiled by a secretary in the HPO Office to assist interns in understanding the HPO processes. Although referenced by City Council legislation, the procedures in the SOP's were never specifically reviewed by Council or adopted in Ordinance form and were never intended to be administered without flexibility. [See Response of City of Cleveland Heights to Revised First Draft Audit Findings.]

As a policy matter, the preference of the City is to encourage parties to meet their City income tax obligations. Withholding housing assistance until such obligations are met is one means of achieving this goal. However, in some circumstances it is not possible for the homeowners to pay the taxes, yet housing assistance is necessary to protect the health and safety of the homeowner or to preserve the housing values in the neighborhood. For instance, if a homeowner has no heat or water, the alternative to providing aid may be homelessness. And a rotting, leaking roof or a deteriorated foundation can not only threaten the livability and long-term structural integrity of a dwelling unit, but can become a severe blighting factor in a neighborhood. In these cases, it would be counterproductive to the federal goals of the program and the City's goals to deny housing assistance.

The stated objectives of the Community Development Block Grant programs are: (1) to assist low and moderate income persons; and (2) to alleviate slum and blight. The stated objective of the HOME Program is to provide decent, affordable housing to low income households. The City met these goals in its administration of the funds in question. The funds were used for proper purposes and given to eligible parties. Federal regulations require the funds to be used for the provision of and given to eligible parties. Federal regulations require the hands to be used for the provision of housing to low and moderate income persons. The Last party been even a suggestion in this case that the CDBG and HOME funds in question were used for purposes other than the improvement of housing, or that they were used to assist persons who for whatever reasons, were not The LG.'s complaint is that they were given to several persons who, for whatever reasons, were not  $\frac{100}{10} \frac{100}{30} \frac{100}{3$ 



current in their City income tax.

In addition, the penalty suggested by the I.G. for the City making HOME fund loans to persons who were not current in their City income taxes (refund with tax dollars if the loan recipient defaults) is overly harsh and bears no relationship to any purported harm to HUD as a result of the alleged "violation". Very frankly stated, HUD has no legitimate interest in whether a Cleveland Heights resident is current in his or her City income tax obligations at the time a loan of HOME funds is made or at any time, and HUD was in no way harmed by loans made to persons who were not current in their taxes. Whether a loan recipient ultimately defaults on the loan has nothing to do with his or her status as a Cleveland Heights taxpayer.

Most of the loans in question are deferred loans, in which the party never has to make payments on the loan. The loan is repaid when the house is sold, which in many cases is after the homeowner is deceased. Since the City lends up to 100% equity in the homes, a certain small percentage of loans will inevitably not be repaid in full, e.g., if the property is sold at Sheriff's sale in a foreclosure or guardianship proceeding. Whether the loan is repaid is generally related to how long the property owner resides in the house after the loan is made (to allow for appreciation of the value of the house), not the homeowner's tax payments.

Even in the case of loans which require repayments (such as the no-interest loans), there is no positive correlation between the payment of City income taxes and the repayment of the loan. Indeed, if there is any correlation, it is a negative one. That is, it could be argued that a low-income person who is required to make payments to the City under its income tax program is less likely to be able to make payments on a loan.

In summary, there is no relationship between the payment of City income taxes and: (i) any legitimate interest of HUD or (ii) a homeowner's ability to ultimately repay the loan. Moreover, the SOP statement that a party should be current in taxes was meant to be administered with flexibility to promote federal and city goals. Therefore it makes no sense to require the City to repay loan funds in the event of default, and the City requests that the Ohio State Office not follow the 1.G.'s recommendation.

#### LG. Complaint: "The City's Income Tax Division Lacked Documentation for Seven of the 46 Households We Reviewed To Determine Whether They Were Current On Their City Income Taxes At The Time Of Application."

Cleveland Heights Income Tax Ordinances exempt Social Security payments and pensions from local income tax. Although parties who are exempt are supposed to file an exemption form with the City Tax Department, many such persons are unawarc of this requirement and consequently do not file the exemption form. (Many persons think the City tax laws are like the federal laws, which do not require filing unless you owe tax.) These persons are not prosecuted or otherwise subject to penalty. Six of the scven cases cited by the LG. are cases in which it is apparent from the HPO files that the persons *owed no City tax*. In these cases the sole sources of income are social security benefits and/or pensions, neither of which is taxable by City Code. (See Codified Ordinance Section 157.0901, attached as Exhibit "A"). Although it would have been preferable to use the occasion to update City tax records by requiring the property owner to file an exemption form, none of these persons were *delinquent* in City taxes because none of these persons *owed* any City tax.

The seventh case was a situation in which the house needed a new furnace and removal of asbestos, among other issues. The City chose to make the loan for the health of the occupants and to keep the property from continuing to be a blighting factor in the neighborhood. Clearly the City acted in HUD's best interest and the City's best overall interest in waiving the requirement that loan recipients be current in their taxes.

#### I.G. Complaint: "Assistance Was Provided To Households Which Lacked Sufficient Equity. In Their Homes."

The IG contends that the City provided assistance to seven homeowners who lacked sufficient equity in their homes to support the loan. Unfortunately, he fails to explain how he calculated the amount of "equity" in the homes, so it is difficult to respond to this assertion with any specificity.

The City assumes that the LG. calculated the value to the homes by using the tax valuation. However, it is well known in Cuyahoga County that the tax values are notoriously low compared to the actual market value of a property. The City's practice is to first look at the tax value to see if it is adequate to support the loan. If not, the City obtains sales statistics for comparable properties in the neighborhood to calculate the market value.

The City believes that this procedure was followed in the cases in question. However, the former Housing Counselor unfortunately failed to *document* her findings other than a conclusion that the applicants were qualified. This is not acceptable. The Housing Counselor's failure to complete the necessary paperwork to process loan application was one of the reasons she was dismissed.

The City has already taken steps to ensure that this problem will not arise in the future. A new form has been adopted (see Exhibit "B") upon which the HPO staff states current market value, market value after completion of the rehabilitation work, and available equity in the home. Printouts of comparable sales are included, if applicable.

The fact that the former Housing Counselor failed to document her research does not mean that there was inadequate equity in the homes. The City has reviewed all of these files and determined that there was, in fact, adequate equity in the homes to support the loans. The City has obtained and is attaching sales records to show comparable sales in the neighborhoods, which support the Housing Counselor's determination of value. (See Exhibit "C", which also illustrates how the tax value of homes is significantly lower than the actual sale price of the homes.)

#### LG. Complaint: "The City Lacked Documentation To Determine Whether Households Could Repay Their Assistance."

Two of the loans cited by the I.G. (2104 Marlindale and 3160 Yorkshire) were Deferred Loans. The purpose point of the Deferred Loan Program is to provide housing assistance to elderly and disabled persons who *cannot afford* to *make payments* on conventional loans. The City relies *solely* on the equity in the home to achieve repayment at the time the homeowner sells or otherwise ceases to reside in the home. The homeowner is not required to make payments. The documentation which is required to be in the file is documentation that a party's income is *low* enough to qualify for the Deferred Loan Program. This documentation was present in the cases in question.

The file on the property at 1087 Selwyn contains extensive information regarding the homeowner's finances including tax records and a credit report. Furthermore, the loan was made to address deteriorated exterior conditions which were having a blighting effect on the neighborhood and needed to be corrected.

#### L.G. Complaint: "The City Lacked Controls Over Its Housing Programs."

Even prior to the I.G.'s inspections, the City recognized weaknesses in its management of Housing Programs and implemented procedures to improve performance. In particular, the City became aware that a Housing Counselor who was a long-time trusted employee had begun to deliberately ignore and evade program standards. This was the person who was responsible for qualifying applicants and obtaining necessary documentation, and in some cases she failed to do her job. The City tried to work with her to improve job performance, but the employee refused to comply with the rules and was eventually dismissed for insubordination and dereliction of duty.

The City has since implemented procedures to ensure the proper operation of the Housing Preservation Programs. (See memos of December 20, 1999 and March 2, 2000 from Housing Programs Manager Rick Wagner to HPO Staff attached hereto as Exhibits "D" and "E".) A Loan Review Committee consisting of the Housing Programs Manager, the Housing Counselor, the Rehab Specialist and the Development Planner or Assistant Director of Planning and Development now reviews every application to ensure that the applicant is qualified and proper documentation is in the file. (See Exhibit "B"). Furthermore, since the programs are now finded with HOME funds, prior to payment, the City's Development Planner, who is an employee of the Planning Department, not the Housing Preservation Office, reviews the file for compliance with City, HOME and federal regulations. If there is any question the Law Department and any other necessary parties become involved in the issue. The City has drafted new Guidelines for the operation of the Programs, (see copy attached) which will include further controls to insure both compliance with mandatory requirements and that good judgment is used in the application of discretionary standards. The example of the former Housing Counselor has made the City aware of some weaknesses in its procedures, which it is working to correct. In this process, the City certainly welcomes any suggestions that the Ohio State Office Director of Community Planning and Development has to offer.

#### City's Response to I.G. Recommendations:

- A. The City has enacted Program guidelines which include more supervisory controls. (See copy attached.) The City has also replaced a former employee who refused to follow procedures. The City looks forward to reviewing its guidelines with the Ohio State Office Director of Community Planning and Development and welcomes any suggestions she may have to further improve its operations.
- B. The City has no regulation which prohibits making loans to persons who are delinquent in their City income taxes under all circumstances. The goal of the CDBG and HOME funded programs is the elimination of slum and blight conditions, not to act as a collection agent for the City of Cleveland Heights Income Tax Department. The loans in questions were proper loans which met all federal standards. There is no basis in law or reason for the IG's suggestion that the City "indemnify" the Housing Preservation Program if any of owners default.
- C. Six of the seven households cited have no tax obligation to the City, since their sources of income (pensions and social security) are not taxable under City Income Tax Code, (See Exhibit "A" attached hereto.) In the seventh case the City exercised appropriate discretion in its decision to waive the tax requirement to make the loan.
- D. As stated hereinabove, the owners of the houses in questions *did* have sufficient equity in their homes to support the loans based upon comparable sales in the neighborhoods.
- E. Two households are not required to repay their loans. The third file did contain adequate documentation.

Respectfully submitted,

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John H. Gibbon Director of Law



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RECEIVED

August 27, 2002 Via fax (312) 353-8866 and ordinary mail

Heath Wolfe, District Inspector General for Audit, Midwest U.S. Department of Housing and Urban Development 77 West Jackson Boulevard, Suite 2646 Chicago, IL 60604-3507

> Re: Deferred Loan and No Interest Loan Program: Supplemental Response to Findings

Dear Mr. Wolfe:

As you know, I was on vacation and unable to be present at the meeting last Tuesday. The Law Director, John Gibbon, advises that one of the topics discussed at the meeting was the applicability of "Housing Quality Standards" or "HQS" to the City's Deferred Loan and No Interest Loan Programs.

The City has always understood that rehabilitation work performed pursuant to these programs is governed by the City Housing Code. This was the information provided in all of the HUD-sponsored training programs City staff attended, and this is the information contained in the 1998 HOME manual received by the City. (See Exhibit "1"). Further, this is consistent with federal law, specifically 24 CFR Part 92, Section 251(a)(1). (Exhibit "2").

The Law Director advises that a suggestion was made at the meeting Tuesday that the City of Cleveland Heights' contract with Cuyahoga County may require the City to follow "HQS" standards in the operation of its programs. However, the parties did not have copies of the HOME contracts at the meeting and were thus unable to resolve the issue. Mr. Gibbon asked me to follow up on this matter.

Our review indicates that the City's home contracts with Cuyahoga County ("HOME contracts") for the Deferred Loan programs have no mention of HQS standards. This is true for the first contract (May 1, 1998 – October 31, 1999) as well as all subsequent contracts. The only mention I can see of rehabilitation atandards is a provision of the contract (Exhibit "3") which incorporates federal rules and regulations governing the HOME Program, including 24 CFR Part 92.

The earliest HOME contract for funding the No Interest Loan Program (May 1, 1998 through December 31, 1999) *does* make mention of "HQS". (Later No Interest Loan contracts make no mention of HQS. They are on the same forms as the Deferred Loan agreements.) The relevant

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Wolfe letter, 8/27/02 Page 2 of 3

provision of the contract (page 6, attached hereto as Exhibit "4") requires the City to comply with both local building codes and the "Housing Quality Standards". The "Housing Quality Standards" are defined on page 3 of the contract (attached as Exhibit "5") as follows:

"Housing Quality Standards" means the housing quality standards defined in 24 CFR Section 882.109, a copy of which section, as in effect on the date of this Agreement, is attached hereto as Exhibit C. (Emphasis added.)

There is an Exhibit "C" attached to the HOME contract. A copy of this document is attached as Exhibit "6". It contains very basic "performance requirements" and "acceptability criteria", all of which are covered by Cleveland Heights Housing Code. Nowhere in this document are the kind of specific regulations that the HUD Inspector was quoting in his review of City rehab work. (For example, his assertion that stairs built seventy years ago needed to be exactly 8 inches tall, not 8 ½ or 9 inches tall.) Rather, it contains very general criteria such as requiring operating sanitary facilities, heat and kitchen facilities. Certainly there is no question that all of the houses rehabbed through City programs met these criteria, to the extent they were applicable.

However, it is doubtful that these "Housing Quality Standards" were even applicable. As noted, the definition of "Housing Quality Standards" in the HOME contract defines them as the standards set forth in 24 CFR 882.109. 24 CFR 882.109 was apparently *repealed* effective April 30, 1998. (See Exhibit "7" attached, which states that "(1)his section was removed and reserved. See 63 FR 23826, 23854, Apr.30, 1998.) Since there was no 24 CFR 882.109 in effect after April 30, 1998, this explains why there was no mention of "Housing Quality Standards" in later HOME contracts, including the later No Interest Loan contracts. The first contract, which was the No Interest Loan Contract, was apparently prepared on an old form.

The City has been unable to find any other information regarding "HQS" other than what is discussed in this memo. An inquiry was made to Mr. Heiser and he cited on page 6 of the first No Interest Loan agreement. Despite diligent effort, the City still cannot determine the source of the regulations the HUD Inspector was quoting.

Our conclusion, thus, is that the HOME-funded contracts were governed by City Housing Code pursuant to federal law and the contractual terms of the City's HOME agreements with the County. To the extent the "Housing Quality Standards" set forth in Exhibit "C" of the first No Interest Loan agreement were applicable, they are clearly not the same "Housing Quality Standards" the HUD Inspector was citing and were clearly met by the City.

The Law Director indicated that there were three other issues which needed to be addressed by the City in order to assist you in the preparation of the draft Executive Summary. The first was providing you with a copy of Section 171.02(a) of the Cleveland Heights Codified Ordinances providing for an exemption from bidding requirements for personal service contracts. This section Wolfe letter, 8/27/02 Page 3 of 3

was faxed to you yesterday, but I am also enclosing an additional copy in this correspondence.

The second and third issues deal with comparable sales and the Selwyn property. I am working on these now and hope to have additional information to you this week.

In the meantime, if you need any further information on the topics we addressed, please feel, free to contact me.

Very truly yours,

hauteAh 100 Laure A. Wagner

First Assistant Director of Law

LAW:nw

Encs.

CC w/Encs. Lana Vacha, Director of Office of Community Planning & Development, HUD, Columbus (via fax) Doug Shelby, Area Coordinator, HUD, Cleveland CC w/o Encs. John H. Gibbon, Director of Law Rick Wagner, Housing Programs Manager Karen Knittle, Development Planner 1.

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# CLÉVELAND HEIGHIS

August 29, 2002 Via overnight mail service

Heath Wolfe, District Inspector General for Audit, Midwest

U.S. Department of Housing and Urban Development 77 West Jackson Boulevard, Suite 2646 Chicago, IL 60604-3507

Re: Supplement to Response to Third Draft Audit Finding

Dear Mr. Wolfe:

As per your request at the meeting last Tuesday, August 21, 2002, enclosed please find the complete Metroscan Property Profiles for the specified subject properties and comparable sales in the neighborhoods. We are searching to determine if there are earlier comparable sales for these properties and will provide any further information obtained.

Very truly yours,

John H. Gibbon ( WW

John H. Gibbon Director of Law

JHGIIW

Encs.

CC w/Encs. Lana Vacha, Director of Office of Community Planning & Development, HUD, Columbus (via regular mail) Doug Shelby, Area Coordinator, HUD, Cleveland (via regular mail) CC w/o Encs. Rick Wagner, Housing Programs Manager

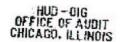
Karen Knittle, Development Planner

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September 6, 2002

Via overnight mail service

Heath Wolfe, District Inspector General for Audit, Midwest U.S. Department of Housing and Urban Development 77 West Jackson Boulevard, Suite 2646 Chicago, IL 60604-3507

Re: Supplement to Response to Third Draft Audit Finding

Dear Mr. Wolfe:

In accordance with our recent communications, enclosed please find additional Metroscan Property Profiles of earlier sales comparable to subject properties.

If you have any questions or comments, please feel free to contact the undersigned.

Very truly yours,

John H. Gibben / USW

John H. Gibbon Director of Law

JHG:nw

Encs.

CC w/Encs. Lana Vacha, Director of Office of Community Planning & Development, HUD, Columbus (via regular mail) Doug Shelby, Arca Coordinator, HUD, Cleveland (via regular mail)

CC w/o Encs. Rick Wagner, Housing Programs Manager Karen Knittle, Development Planner

# 40 SEVERANCE CIRCLE, CLEVELAND HEIGHTS, OHIO 44118

216 · 291 · 5775 FAX · 291 · 3731

2003-CH-1008





March 21 2002

Heath Wolfe, District Inspector General for Audit, Midwest U.S. Department of Housing and Urban Development 77 West Jackson Boulevard, Suite 2646 Chicago, IL 60604-3507

Re: Response to Revised First Draft Audit Findings

Dear Mr. Wolfe:

Enclosed please find the response of the City of Cleveland Heights to the revised first draft audit findings of the Inspector General for Audit, HUD.

If you have any questions or comments, or need any further information, please feel free to contact the undersigned at (216) 291-3810.

Very truly yours,

John H. Gibbon

John H. Gibbon Director of Law

JHG:nw enc. CC w/enc.

Lana Vacha, Director of Community Planning and Development Ohio State Office, HUD

40 SEVERANCE CIRCLE, CLEVELAND HEIGHTS, OHIO 44118

216 · 291 · 5775 FAX · 291 · 3731

### RESPONSE OF THE CITY OF CLEVELAND HEIGHTS TO REVISED FIRST DRAFT AUDIT FINDINGS

#### I) INTRODUCTION AND GENERAL OBSERVATIONS

The Office of Inspector General (hereafter "IG") Revised Draft Findings ("Draft Findings") state that the City did not follow the "City's requirements" regarding promissory notes, hazard insurance, etc. Specifically, the Draft Findings reference as the "City's requirements" a document entitled "City of Cleveland Heights Housing Rehabilitation Standards for the Housing Preservation Office" ("HPO Standards Document").

As is set forth in the attached affidavits, the HPO Standards Document is an informal compilation of procedures which were intended to be a guide in administering the Deferred Loan and other CDBG-funded programs. The Document was compiled by a secretary in the HPO office to assist interns in understanding the HPO processes. (See affidavit of Robyn Dombroski.) The Document was never adopted by any City Board or Commission or ordinance of City Council and the procedures described in the Document were never intended to be the "law" of the City or mandatory "City requirements" without flexibility. (See affidavits of Richard Wong, Robyn Dombroski, Kathleen Ruane and Rick Wagner.)<sup>1</sup>

The City firmly believes that all the CDBG funds and HOME funds which are involved in the files audited by the IG and referenced in its Draft Findings were disbursed in accordance with federal objectives and requirements. The stated objectives of Community Development Block Grant Funds are: (1) to assist low and moderate income persons; and (2) to alleviate slum and blight

<sup>&</sup>lt;sup>1</sup> The City is currently in the process of reviewing guidelines for administration of CDBG and HOMEfunded programs. When completed, the guidelines will be issued by the Manager of Housing Programs with the approval of the City Manager and after review by the Law Department. A copy of the guidelines will be provided to HUD and the IG as a supplement to this Response.

The affidavits attached hereto are true copies of affidavits which were previously delivered to the IG and are a part of its records.

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conditions. The stated objective of the HOME Program is to provide decent, affordable housing to low income households. There are no federal requirements that CDBG funds or HOME funds be disbursed as loans. They may be disbursed as grants at the City's discretion. There are, therefore, no federal regulations requiring security or particular types of security for the loans (if the City determines, in its discretion, to make loans rather than grants) or that the notes, mortgages or hazard insurance be of a certain amount or that the City refuse to make a loan if the applicant is not current with City taxes.

As the auditors are aware, the files involved in all of the cases cited by the auditors in their Draft Findings were the primary responsibility of Cleveland Heights' Housing Counselor, Juanita Miller. Ms. Miller's employment was terminated by the City in November, 2000, for insubordination and dereliction of duty. Since the termination of Ms. Miller, the City has hired a new Housing Counselor and the Housing Preservation Office appears to be functioning well with the new Housing Counselor's assistance. The City is in the process of reviewing its overall procedures regarding the functioning of the Housing Preservation Office in light of past problems with Ms. Miller and the present audit. However, the City believes that it is essential for the City to retain flexibility in security requirements for any given loan in order to accomplish the overall objectives of assisting low and moderate income persons and alleviating slum and blight conditions. This is also true with regard to the decision as to whether to make a loan to a person who may not be totally current in payment of City taxes.

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#### RESPONSE TO SPECIFIC FINDINGS

#### IG Complaint: "The City Did Not Execute Promissory Notes."

The Draft Findings state that the City failed to obtain promissory notes for two households: 3167 Sycamore Road and 3352 Euclid Heights Boulevard. The Draft Findings acknowledged that the Euclid Heights Boulevard loan has been repaid and, therefore, is no longer an issue. The Sycamore loan is in the amount of \$3,260 and is outstanding.

The file for the Sycamore loan evidences a mortgage on the property in the amount of \$2,015.50 and the mortgage references a promissory note in the same amount. The original promissory note appears to have been misplaced. The City has no reason to believe that it was not prepared and executed at the time of the loan. The aforesaid amount of the mortgage (\$2,015.50) is the amount of the original estimate for the work to be performed at the residence. A change order was apparently issued during construction so that the amount currently owed on the loan is \$3,260.00 plus interest. In the opinion of the undersigned City Law Director, the Sycamore homeowner is legally obligated to pay the City \$3,260.00 plus interest and the legal obligation is not dependent upon the note or mortgage. Further, the aforesaid legal obligation has not been disputed by the homeowner and the City has no reason to believe that the loan will not be repaid in full.

It is within the discretion of the City staff to determine whether it would be an appropriate use of City resources to secure a new promissory note and to file a new mortgage in order to secure a \$1,244.50 change order. Securing and filing a new note and mortgage would involve preparation of the mortgage by the law department as well as additional staff time to cause the new note and mortgage to be executed and the mortgage to be filed with Cuyahoga County Recorders Office. At least three hours of additional staff time would be involved and the City's legal position would not • •

be materially improved. A better practice (which is currently being evaluated by the City) is to secure an initial note and mortgage in an amount which anticipates possible change orders.

In any event, the failure of the City to execute a new note and mortgage is not in violation of any federal regulation.

In spite of the above, the City has secured a new promissory note and mortgage from the owners of the Sycamore Road property in order to resolve the Draft Finding on this issue.

# IG Complaint: "The City Failed to Secure \$51,490.00 in Housing Assistance."

The Draft Findings state that the City violated its own requirements in failing to secure promissory notes and mortgages in the full amount of the housing assistance provided in seventeen (17) instances.

There are currently no federal regulations as to the amount or type of security required for loans under the City's housing programs. The programs' purposes are to make needed repairs to the housing stock within the City (stemming blight) and to assist low and moderate income persons. These are not commercial loans and the City does not believe that it should slavishly follow commercial practices in making loans.

The City's policy has been to attempt to reasonably secure the loans it makes under the programs taking all factors into consideration. For one of the seventeen (17) loans cited in the Draft Findings there is a discrepancy of \$86.00 between the loan obligation and the mortgage amount. In the opinion of the undersigned City Law Director, it would not be reasonable to execute a new mortgage and note and possibly lose lien priority in order to secure the additional \$86.00. The additional \$86.00 is still owed; it is simply unsecured.

Failure to obtain an additional note and mortgage with larger overruns and change orders might be an exercise of questionable judgment depending upon the particular circumstances, but it would not be a violation of federal regulations.

The foregoing notwithstanding, the City is in the process of securing additional promissory notes and mortgages in order to resolve the issue so long as they do not effect the City's security position with respect to the loan.

# IG Complaint: "The City Provided Housing Assistance Without Documentation of Hazard Insurance or for Houses With Insufficient Insurance."

The Draft Findings state that the City violated its own requirements by making loans, in some instances, without securing evidence that the properties had hazard insurance in an amount equal to the sum of the assistance provided plus outstanding liens. Specifically, the Draft Findings state that the City violated its own "requirements" by making loans to nine households without securing evidence that the properties had hazard insurance at least in the amount of the assistance given plus outstanding liens. The Draft Findings acknowledge that five (5) of the aforesaid nine (9) properties did, in fact, have adequate insurance by their specification that the City be required to obtain evidence of proper hazard insurance for the other four (4) properties or face substantial monetary penalties.

As it has been stated previously, the City has no mandatory "requirement" with respect to hazard insurance. Further, requiring hazard insurance in the full amount of the loan plus other liens would not, in most instances, be reasonable. The land value is probably the most important component of the security interest so far as the City is concerned and should be taken into

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consideration when determining an amount of required hazard insurance, if any. Unlike the commercial lender, the City might well be interested in acquiring the land through foreclosure in the event of a fire or other catastrophe in order to restore the property for viable housing and to remove a blight on the neighborhood. Additionally, it is probably somewhat meaningless to require proof of hazard insurance at the time of making the loan since it can be canceled at any time.

Nevertheless, the City has obtained proof of insurance on one property (3826 Berkeley Road) and is in the process of obtaining documentation of insurance coverage with regard to the other three residences cited in the Draft Findings in order to satisfy the Finding. In determining whether the coverage is adequate, the City will take into consideration the land value of the premises, the position of the City's lien as opposed to other liens, and the homeowner's financial ability to secure additional hazard insurance.

### IG Complaint: "The City Executed Promissory Notes and Mortgage Liens that Exceed the Amount of Housing Assistance."

The Draft Findings claim that the City violated its own "requirements" by executing several notes and mortgages which exceeded the amount of the housing assistance. The Draft Findings require the City to reduce the notes and mortgage liens or face severe monetary penaltics.

Neither the City nor HUD has any mandatory "requirement" which inflexibly prohibits the execution of notes and mortgages in excess of the amount loaned. Further, the demand of the Draft Findings, that the City amend the notes and mortgages at this time, is totally unreasonable.

Although the housing loans being made by the City are not commercial loans, it is standard commercial practice to execute notes and mortgages in an amount which exceeds the estimated amount of the improvements. This prevents having to go back with new notes and mortgages in the

event of cost overruns or change orders and it does not prejudice the homeowner since the homeowner is never legally responsible for more than the amount which was borrowed. Any subsequent lender will check with the City prior to making a loan in order to determine the actual amount owed and will not rely upon the amount set forth in the recorded mortgage. In the event the City were to substitute new mortgages as required by the Draft Findings, it would lose its position of lien priority and, therefore, substantially jeopardize its security interest. The City respectfully requests that the auditors reconsider their requirement in this issue so that the City is not placed in a position of having to choose between disobeying the Draft Finding requirement and losing its security interest.

# IG Complaint: "The City Lacks Procedures and Controls Over the Program."

In the Draft Findings a statement is made that the City lacks procedures and controls over the Housing Preservation Program to ensure promissory notes, mortgage liens, and property hazard insurance were sufficiently placed on the assisted properties.

As was stated above, the City has terminated the employment of its prior Housing Counselor and has employed a new Housing Counselor who appears to be doing an excellent job. The City is reviewing whether additional controls or procedures are necessary and will advise HUD and the IG of its decisions as a supplement to this Response.

#### III) SUMMARY

For over twenty-five years the City of Cleveland Heights has administered over \$2 million a year of CDBG and/or HOME funds with relatively few complaints or Findings by HUD. The 1-

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City's expenditure of CDBG and HOME funds has been extremely effective in preserving the overall vitality of the City of Cleveland Heights and the City is very proud of its record in this respect. To date there has been no demonstration that federal funds have been or will be lost as a result of any of the issues raised by the Draft Findings. There is no documentation that the City has violated any federal guidelines or that anyone (the City, the Federal Government or homeowner) is being or will be damaged as a result of the activities which have been cited.

Respectfully submitted,

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John H. Gibbon Director of Law City of Cleveland Heights 40 Severance Circle Cleveland Heights, OH 44118 (216) 291-3810

Dated:

# Distribution

- The Honorable Joseph Lieberman, Ranking Member, Committee on Governmental Affairs, 706 Hart Senate Office Building, United States Senate, Washington, DC 20510
- The Honorable Dan Burton, Chairman, Committee on Government Reform, 2185 Rayburn House Office Building, United States House of Representatives, Washington, DC 20515
- The Honorable Henry A. Waxman, Ranking Member, Committee on Government Reform, 2204 Rayburn House Office Building, United States House of Representatives, Washington, DC 20515
- Andy Cochran, Committee on Financial Services, 2129 Rayburn House Office Building, United States House of Representatives, Washington, DC 20515
- Clinton C. Jones, Senior Counsel, Committee on Financial Services, B303 Rayburn House Office Building, United States House of Representatives, Washington, DC 20515
- Sharon Pinkerton, Senior Advisor, Subcommittee on Criminal Justice, Drug Policy & Human Resources, B373 Rayburn House Office Building, United States House of Representatives, Washington, DC 20515
- Stanley Czerwinski, Director of Housing and Telecommunications Issues, United States General Accounting Office, 441 G Street NW, Room 2T23, Washington, DC 20548
- Steve Redburn, Chief of Housing Branch, Office of Management and Budget, 725 17<sup>th</sup> Street NW, Room 9226, New Executive Office Building, Washington, DC 20503
- Linda Halliday (52P), Department of Veterans Affairs, Office of Inspector General, 810 Vermont Avenue NW, Washington, DC 20420
- William Withrow (52KC), Department of Veterans Affairs, Office of Inspector General Audit Operations Division, 1100 Main, Room 1330, Kansas City, Missouri 64105-2112
- Kay Gibbs, Committee on Financial Services, 2129 Rayburn House Office Building, United States House of Representatives, Washington, DC 20515
- George Reeb, Assistant Inspector General for Health Care Financing Audits
- John H. Gibbon, Director of Law for City of Cleveland Heights
- Robert Downey, City Manager for City of Cleveland Heights