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MEMORANDUM FOR: Bill Parsley
Director, Office of Community Planning and
Development, 6FD

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

SUBJECT: City of Fort Smith/McGill Center, Inc.
Review of HOME Housing Rehabilitation
Fort Smith, Arkansas

We completed an audit survey on the City of Fort Smith's (City) housing rehabilitation programs. We did the survey because one of our auditors noted some expenditures that warranted additional review when he assisted you in your February and April 1997 monitoring reviews of the City's use of HOME funds. Since the Little Rock Office did not have a financial analyst on staff, you requested and we provided staff to accompany the monitoring team. During these monitoring visits, our auditor did brief reviews of the accounting records at the McGill Center and the Community Coalition Corporation. These were the only two Community Housing Development Organizations (CHDO's) still in operation in the City. Our auditor determined that some of the expenditures made by the McGill Center were questionable and needed further review. Therefore, we did a survey to further examine both the City's and McGill Center's records.

We limited our review to the City of Fort Smith's and the McGill Center's use of HOME funds for the period January 1994 through May 1997. Our objective was to determine whether the City of Fort Smith or the McGill Center improperly used HOME funds for housing rehabilitation.

To accomplish our objective, we reviewed applicable HUD regulations and policies. At the City of Fort Smith, we interviewed the City Manager and officials in the Community Development Department, and we reviewed policies and procedures, independent financial audits, and disbursement journals. We also reviewed files at the Arkansas Development Finance Authority (ADFA) and those of a former city employee.

At the McGill Center, we interviewed the Executive Director, reviewed their accounting system, board minutes, bank accounts for 1994 through May 1997, and supporting documentation such as invoices and travel vouchers. According to the Executive Director, the building next to their office suffered a fire in 1996 that destroyed their 1993 records. The Executive Director gave us a tour of the fire damage. We also inspected several of the houses the McGill Center had completed.

Summary

Our review showed the quality of the rehabilitation and construction work done by the McGill Center was excellent but there are two instances of potential conflicts of interest that threaten the HOME Program as carried out in Fort Smith, Arkansas. We noted no improper use of funds except for the conflicts of interest that had been previously noted by the Little Rock HUD Office.

The Little Rock HUD Office advised the City and ADFA of the violations of the conflicts-of-interest regulations under the HOME Program. A principal in the contracting firm that received contracts from McGill Center to rehabilitate homes under the HOME Program was also a trustee of the McGill Center and on the Planning Commission of the City of Fort Smith. Also another trustee on the Board of the McGill Center served on the City's Civil Service Commission. HUD required various pieces of information from the City and ADFA for HUD to consider granting an exception to the conflict-of-interest provisions. Although HUD has received some information from the City, HUD has not been able to conclude that an exception should be issued because the individuals may have been in positions with the City and McGill Center to gain inside information and make decisions relating to the HOME Program that benefitted them personally.

We are recommending that HUD obtain information from the ADFA and the City to firmly conclude on whether to issue an exception to the conflict-of-interest regulations or take other corrective or remedial actions or sanctions to resolve the conflicts of interest.

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

Background

The purpose of the McGill Center, also known as The Elizabeth McGill Drop In Center, a nonprofit corporation, is to promote the general welfare of aged persons, senior citizens, and other interested persons in the vicinity of Fort Smith, Arkansas, and to provide decent housing that is affordable to low and moderate income people. The Center was founded by Elizabeth McGill in 1961. Her son, H. L. McGill became President and Executive Director during 1993. In 1992 and in 1995 the Arkansas Development Finance Authority (ADFA) certified that McGill Center met the regulatory requirements to be designated a Community Housing Development Organization (CHDO).

The McGill Center entered into agreements with the City to provide administration and rehabilitation of dwelling units to be inhabited by low and very low income persons. The agreements show the City of Fort Smith, who administers the program for ADFA, awarded the Center \$323,400 in 1993, and \$125,000 in 1995.

HUD records show the City of Fort Smith was authorized HOME funds of \$500,000 for fiscal year 1994, \$328,100 for fiscal year 1995, and \$371,000 for fiscal year 1996. The City spent all of the 1994 funds, 54 percent of the 1995 funds, and none of the 1996 funds. The City reimburses the McGill Center after the Center submits invoices covering project expenditures. The City inspects the work, draws money down from HUD, deposits it into the City's account, and then draws a check for the use of HOME funds.

Finding

Conflict-of-Interest Issues are Unresolved

Although the Little Rock HUD Office brought conflict-of-interest issues to the attention of the City and ADFA in March 1997, the matters remain unresolved. The City provided most of the requested information for HUD to consider an exception to the conflict-of-interest regulations, but there are still concerns to prevent HUD from issuing such an exception. As a result HUD may need to take additional corrective and remedial action or sanctions to resolve the conflict-of-interest issues.

Title 24, Section 92.356, provides that no covered persons who exercise any functions or responsibilities with respect to the activities assisted with HOME funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for 1 year thereafter. A covered person is any person who is an employee, agent, consultant, officer, or elected official or appointed official of the participating jurisdiction, State recipient, or subrecipient which is receiving HOME funds. Upon written request from the participating jurisdiction, HUD may grant exceptions on a case-by-case basis when it determines the exception will serve to further the purposes of the HOME Program and the effective and efficient administration of the project.

Section 92.551 provides that if HUD determines a participating jurisdiction has not met a requirement, the participating jurisdiction will be given a period not to exceed 30 days to show it has done so. If the participating jurisdiction fails to show it met requirements, HUD will take corrective or remedial action. Corrective and remedial action can include a range of actions including canceling activities and requiring reimbursement for activities that did not meet requirements.

Section 92.552 provides for notice and opportunity for hearing and sanctions. This section provides that if HUD finds after reasonable notice and opportunity for hearing that a participating jurisdiction has failed to comply with any provision of the program and until HUD is satisfied that there is no longer any such failure to comply, HUD shall reduce the funds in the participating jurisdiction's program by the amount of any expenditures that were not in accordance with the requirements.

In a March 10, 1997 letter, reporting the results of HUD's monitoring visit, the Little Rock Office advised the City and the ADFA of the violations of the HUD regulations on conflicts of interest. The letter advised that two individuals were barred from having an interest in any contract associated with a HOME-assisted activity. The individuals were barred because: (1) they were trustees of the McGill Center and also serve on the City's planning Commission or the City's Civil Service Commission; (2) one of the trustees is also a principal in the company

that contracts to do construction and rehabilitation work on

properties being renovated under the HOME Program; and (3) the trustee who is on the City's Civil Service Commission is also the fiscal officer of the McGill Center. The letter also advised that both trustees are principals of a company that has rented office space to the McGill Center and if HOME or Community Development Block Grant (CDBG) funds were used to pay for the office space, the conflict-of-interest regulations may be violated.

The Little Rock Office told the City and ADFA that depending on the source of funds being used by the McGill Center, either the City or ADFA may request HUD to grant an exception to the provisions of the conflict-of-interest regulations. The Office said it is imperative that the conflicts be disclosed publicly. The Little Rock Office also requested any ADFA or State Attorney General's opinion that ADFA may have relating to persons such as one of the individuals serving on State boards and commissions while having a personal financial interest in HOME Program contracts.

ADFA responded to the conflict-of-interest issues on March 26, 1997. ADFA stated that the trustee of McGill Center who was also principal of the construction company renovating the houses had resigned from the McGill Center and this resolved the problem. ADFA also said the statements for CHDO certification did not show other public appointments for the other trustee.

On March 21, 1997, the City requested HUD to issue an exception and followed up in a letter of May 7, 1997. The City said neither the individuals nor the commissions on which they serve are involved in reviewing, considering, and/or acting on decisions involving CDBG, HOME, or related Programs. The City said the individuals filed Code of Ethics Disclosure forms as provided by Arkansas law and this should be sufficient public disclosure. However, HUD told the City on May 22, 1997, that the disclosure forms were not adequate public disclosure and suggested a public hearing on the conflict of interest would be acceptable disclosure.

On September 12, 1997, the City provided HUD a copy of the notice of public hearing and the related minutes for the City Board of Directors meeting of August 5, 1997. The minutes of the meeting, which was public, showed that the financial interests of both individuals were discussed, one individual had resigned as a trustee of the McGill Center, and that neither commissions on which the individuals served were involved in review or decision-making involving CDBG or HOME Programs.

As of November 6, 1997, HUD was still not sufficiently satisfied with the information provided and, therefore, had not yet taken action to either issue an exception to the conflict-of-interest regulations or take other corrective or remedial action or sanctions. HUD officials told us they could not issue an exception to the conflict-of-interest information based on the information received. Their primary concern was that the individuals may have been in positions both at McGill Center and at the City where they may have received inside

information or been involved in making decisions that may have affected activities at McGill Center which benefitted the individuals personally.

Attachment A
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Because the McGill Center trustees held positions simultaneously with the City and with the contractor performing construction work under the HOME Program, the individuals may have been involved in decisions that benefitted them personally. If this is true, all funding of the McGill Center under the HOME Program may be questioned. HUD needs to resolve the conflict-of-interest issues.

Recommendations

We recommend you:

- 1A. Determine whether you need any other information to decide on whether to issue an exception to the conflict-of-interest regulations and, if more information is needed, request the specific information from the City or ADFA and
- 1B. If information is not received within a reasonable time frame that adequately justifies issuing an exception, proceed with taking corrective or remedial actions or sanctions as the regulations provide.

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