



U.S. Department of Housing and Urban Development
Office of District Inspector General for Audit
Capital District
800 North Capitol Street, N. W.
Suite 500
Washington, DC 20002

Audit Memorandum
00-AO-174-0801

July 6, 2000

MEMORANDUM FOR: Eva M. Plaza, Assistant Secretary for Fair Housing
and Equal Opportunity, E

FROM: Sandra G. Elion, District Inspector General, Capital District, 3GGA

SUBJECT: Anonymous Complaint
Use of Fair Housing Initiatives Program Funds
Washington, DC

In response to an anonymous complaint, we performed a limited review of the Fair Housing Initiatives Program (FHIP) grant award process. FHIP funds grants, contracts, or cooperative agreements with State and local government agencies, public or private nonprofit organizations, or other entities that conduct programs to prevent or eliminate discriminatory housing practices. The Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) is responsible for administering FHIP.

The complainant alleged that the Secretary of the U.S. Department of Housing and Urban Development (HUD) used FHIP funds inappropriately. According to the complainant, the Secretary:

- Has or is about to award FHIP funds to a public housing authority illegally;
- Used FHIP Program National Education Component funds for ineligible activities; and
- Allocated \$200,000 of FY 1998 FHIP funds for Fair Housing Month activities which were never conducted in 1999.

We found that two of the three allegations were credible. Specifically, HUD violated the FHIP authorizing statute by granting the Boston Housing Authority a \$297,060 conditional award for clearly prohibited purposes. In addition, HUD allocated \$200,000 to another grantee for national

fair housing activities which were never conducted in 1999. We found that the allegation concerning misuse of National Education Component funds lacked merit. In reviewing the specific allegations, we identified other deficiencies relating to funding diversity and audit trails for scoring applications. Until these weaknesses are addressed satisfactorily, FHEO cannot assure Congress and taxpayers that FHIP funds are awarded as intended and that the program is operating efficiently and effectively.

We summarized FHEO's written comments to our draft audit memorandum after each finding and included the complete text of your comments in Appendix B.

Although you accepted and agreed to implement our recommendations, within 60 days, please give us a status report of corrective actions taken on each of those recommendations. The status report should be prepared in accordance with Appendix 6 of HUD Handbook 2000.06 REV-3 and should include the corrective action taken, the proposed corrective action and the date to be completed, or why the action is considered unnecessary. Also, please give us copies of any correspondence or directives issued because of this review.

We appreciate the courtesies extended to the audit staff during this review. Specific questions about this review should be directed to me or Joe E. Richardson, Assistant District Inspector General for Audit.

Appendices

- A - Summary of Funding Diversity Errors
- B - FHEO Comments
- C - Distribution List

OBJECTIVES, SCOPE, and METHODOLOGY

Our objective was to review the FHIP grant award process to the extent necessary to determine if the allegations made by the anonymous complainant had validity.

To substantiate the allegations, we:

- Reviewed applicable FHIP laws, regulations, and program documentation;
- Reviewed several FYs 1998 and 1999 FHIP applications and selection results;
- Reviewed the Settlement Agreement from United States of America v The Boston Housing Authority, Civil Action No. 96-12540 RCL, (D. MA) dated July 26, 1999;
- Obtained an opinion from HUD's Office of General Counsel (OGC) regarding FHIP appropriated funds and the use of media products;
- Interviewed Fair Housing and Equal Opportunity program officials; OGC official in HUD's New England Field Office; Boston Housing Authority officials, including their legal counsel; and plaintiffs' attorneys for the previously mentioned civil action and settlement agreement; and
- Gained an understanding of the FHIP management controls relevant to our objectives.

We conducted our review from January through April 2000 and reviewed grant activities for the period January through December 1999.

BACKGROUND

Section 561 of the Housing and Community Development Act of 1987 (42 U.S.C. 3616a) provided for FHIP to strengthen enforcement of Title VIII of the Civil Rights Act of 1968. Program regulations are found at 24 CFR Part 125. Part 125.104 assigned the responsibility for administering FHIP to the Assistant Secretary for FHEO. FHIP funds grants, contracts, or cooperative agreements with State and local government agencies, public or private nonprofit organizations, or other entities that conduct programs to prevent or eliminate discriminatory housing practices. FHIP funding is provided in four distinct areas: (1) administrative enforcement; (2) education and outreach; (3) private enforcement; and (4) fair housing organizations. The Housing and Community Development Act of 1992 expanded the provisions of FHIP by adding initiatives to establish fair housing organizations, establish a national media campaign for dissemination of fair housing information, and create an annual National Fair Housing Month program component.

In FY 1999, Congress appropriated \$23.5 million for FHIP. HUD made approximately \$15 million of these funds available, on a competitive basis, in the FY 1999 Super Notice of Funding Availability (SuperNOFA). The remaining \$8.5 million was used to fund separate requests for proposals. On

December 15, 1999, the Secretary awarded 62 grants to groups in 53 cities, totaling \$15 million. These awards were conditional because HUD could negotiate the awards after the grantees were selected.

The \$15 million was allocated as follows:

- \$4.5 million to support the Education and Outreach Initiative (EOI), including \$2.55 million for the EOI General Component, \$750,000 for the EOI Homeownership Component, \$750,000 for the EOI Disability Component; and \$450,000 for the EOI National Program Best-Practices Component;
- \$9.3 million to support the Private Enforcement Initiative; and
- \$1.2 million to support the Fair Housing Organizations Initiative.

RESULTS

ALLEGATION 1: Boston Housing Authority Receives FHIP Award

The complainant alleges that the Secretary has or is about to award funds to a public housing authority in violation of the FHIP authorizing statute. Specifically, the complainant considered the Boston Housing Authority's (BHA) FHIP award to be illegal because it would fund activities specified in the July 1999 Settlement Agreement and Court Order. Further, the complainant asserted that the Secretary knew or should have known that the FHIP law specifically prohibits BHA's planned use of FHIP funds for activities which are part of a legal settlement.

FHIP's authorizing statute, 42 U.S.C. 3616a(i), includes a section on "Prohibition on use of funds." This law states that "None of the funds authorized under this section may be used by the Secretary for purposes of settling claims, satisfying judgments or fulfilling court orders in any litigation action involving either the Department or housing providers funded by the Department."

As part of the December 15, 1999, announcement of FHIP awards, the Secretary announced that BHA had been selected to receive \$297,060. BHA's application proposed that the FHIP grant be used to fund the following activities:

- Hire an Outreach Coordinator to work in the Office of Civil Rights;
- Develop and distribute a Boston Housing Authority Guide to Fair Housing and Civil Rights for all Boston public housing residents;
- Develop and conduct a 2-day Fair Housing training seminar for 30 persons at 20 Boston public housing family developments;

- Conduct door-to-door outreach at Boston public housing developments in Charlestown and South Boston; and
- Conduct four community meetings to provide an open forum for discussing fair housing compliance and enforcement.

Coincidentally, these were the same or similar types of activities included in the July 1999 Settlement Agreement and Court Order where BHA was the defendant. Although HUD was not a party to the litigation, the Associate Counsel for HUD's New England Field Office assisted Boston's Assistant United States Attorney in filing and negotiating the law suit. Therefore, HUD knew or should have known of the terms of the settlement agreement.

HUD's award to BHA clearly violated the FHIP authorizing statute which prohibits FHIP funds from being used to fulfill court orders in any litigation action involving either HUD or housing providers funded by HUD. As a result of the improper award to BHA, HUD deprived other eligible applicants of scarce FHIP funds.

After we began our review, the Deputy Director, Office of Programs for FHEO (Deputy Director), withdrew HUD's award to BHA. The withdrawal letter, dated February 1, 2000, states: "...it appears that the activities proposed in your application are the same as those required under the Settlement Agreement and Court Order signed in July of 1999." In addition, the General Deputy Assistant Secretary for FHEO agreed to add specific language on the prohibited use of FHIP funds in all future NOFA announcements.

We concluded that the complainant's allegation was credible. In our opinion, FHEO staff did not exercise due care in reviewing and approving BHA's application.

FHEO Comments

The Assistant Secretary for FHEO (Assistant Secretary) disagreed with our draft finding but has taken corrective action.

FHEO determined that BHA's proposed activities were not fundable and withdrew the conditional award before BHA received any FHIP funds. The Assistant Secretary also recognized FHEO's need to improve its award procedures to ensure that information regarding unauthorized activities is obtained before conditional awards are made. To this end, FHEO added specific language on the prohibited use of FHIP funds to the FY 2000 NOFA and will include such language in all future FHIP NOFAs.

OIG Evaluation of FHEO Comments

The actions FHEO has taken and plans to take should correct the identified deficiencies.

ALLEGATION 2: Use of National Education Component Funds

The complainant alleged that the Secretary awarded \$450,000 of the EOI National Education Component funds to two grantees (National Community Reinvestment Coalition and Lambri Espoir) that did not use FHIP funds for media purposes, as intended under this component. Specifically, the two grantees were to conduct the following activities: (1) create Best Practices Awards that identify current practices to help the disabled community understand their rights and responsibilities under the Fair Housing Act; and (2) disseminate the practices that have been successful in identifying and investigating discriminatory lending practices for replication nationwide.

We reviewed the activities that the two grantees proposed in their applications under the EOI National Program - Best Practices Component. In addition, we obtained a verbal interpretation from OGC on the intent and types of products eligible for FHIP funding under this component. We found the two grantees' proposed use of media products to be appropriate FHIP activities. Although the statute cited by the complainant provides specific examples of media products, OGC did not believe the intent of that statute was to limit media products to only those specific examples. We concluded that this allegation did not have merit.

FHEO Comments

The Assistant Secretary agreed with our draft finding.

ALLEGATION 3: Fair Housing Month Allocations

The complainant alleged that the Secretary allocated \$200,000 of FHIP funds in the FY 1998 NOFA for National Fair Housing Month. However, there were no Fair Housing Month activities held in 1999. Also, the complainant asserted that HUD did not allocate funds for Fair Housing Month in prior years.

We determined that the \$200,000 allocation for Fair Housing Month activities was included in the \$2 million grant HUD awarded to Consumer Action of San Francisco on January 17, 1999. However, the FHEO Grant Officer did not sign the grant award document until July 22, 1999, 3 months after National Fair Housing Month.¹ Therefore, the grant was signed and executed too late for Consumer Action to sponsor Fair Housing Month activities in 1999. According to FHEO, Consumer Action planned to use the \$200,000 to support April 2000 Fair Housing Month activities.

We concluded that this portion of the complainant's allegation was factually accurate but HUD had no legal obligation to use funds for Fair Housing Month activities. Regarding HUD's legal requirement to use FHIP funds for Fair Housing Month activities, we found that Congress specifically mandated that HUD use a portion of the FY 1993 and FY 1994 funds for activities related to the annual National Fair Housing Month activities. Congress did not make a similar mandate for annual appropriations after FY 1994. Based on existing legislation, HUD's funding of annual National Fair Housing Month activities is optional.

¹ HUD designated April as Fair Housing Month.

FHEO Comments

The Assistant Secretary acknowledged that National Fair Housing Month activities were not conducted in 1999. However, the NOFA only required that activities and materials be developed for future Fair Housing Month activities.

OTHER MATTERS AFFECTING PROGRAM EFFECTIVENESS

In reviewing the complainant's specific allegations, we identified other deficiencies in FHEO's administration of FHIP that require immediate attention. These deficiencies relate to the improper application of funding diversity procedures, and the inadequate audit trails for scoring applications. Until these weaknesses are addressed satisfactorily, FHEO cannot assure Congress and taxpayers that FHIP funds are awarded as intended and that the program is operating efficiently and effectively.

Funding Diversity Improperly Applied

Three applicants incorrectly received FHIP awards over higher ranked applicants. This condition occurred because the Assistant Secretary (selecting official) selected the applicants on a basis that was inconsistent with the FY 1999 SuperNOFA guidance on funding and geographic diversity, and supervisory oversight was not adequate. As a result, three lower ranked applicants received \$633,950 that should have gone to other higher ranked applicants.

FHEO used funding and geographic diversity to achieve broader representation among the entities receiving FHIP awards. The SuperNOFA provides the guidance that the selecting official must follow when considering diversity in the selection process. If the selecting official elects to use both funding and geographic diversity procedures, the funding diversity procedures must be applied before the geographic diversity procedures. Funding diversity allows the selecting official to pass over a higher ranked applicant to provide broader representation among funded entities, provided certain conditions are met. To accomplish funding diversity appropriately, the selecting official may pass over a higher ranked applicant who has received two FHIP grants in the past five years in favor of a lower ranked applicant who has not received two FHIP grants in the past five years. Geographic diversity procedures allow the selecting official to provide broader geographic representation among the funded entities by considering geographic location as a selection factor.

If the selecting official elects to use the diversity procedures, these procedures must be equally applied to all the applications of sufficient quality and rank. Under the FY 1999 SuperNOFA, the selecting official elected to use funding and geographic diversity in selecting applicants under the EOI General Component. We reviewed the selection process to determine whether FHEO applied the funding and geographic diversity procedures consistently and accurately.

As discussed in Allegation 1 of this report, BHA proposed to use its \$297,060 of FHIP funds to perform activities that were part of a court ordered settlement agreement. We found that FHEO selected BHA's ineligible application over two higher ranked applicants by using funding diversity as a selection criteria and by increasing the funding threshold for the EOI General Component. Specifically,

the Deputy Director submitted a list of applicants to the Assistant Secretary that contained errors in the application of funding diversity.

Although 100 applications were submitted under the EOI General Component, only the top 55 applicants made the best-qualified list. Overall, BHA's application was not ranked in the upper 20 percentile of applicants. We analyzed three possible funding options FHEO could have used to select BHA's application for funding. Our analysis was based on the assumption that BHA's application did not include prohibited activities.

- We considered whether BHA's application could have been funded based strictly on rank order (best-qualified list). Under this scenario, since BHA's application was not in the upper 20th percentile, FHEO would have needed at least a \$4.5 million allocation for its EOI General Component in order to fund BHA. BHA's application would not have been funded based solely on rank order.
- We considered whether BHA's application benefited from the use of funding diversity procedures. As a result of funding diversity, the rank order of BHA's application increased seven positions. BHA's funding position was now higher than six other highly ranked applications. However, only three applicants (Central Alabama Fair Housing, Mobile Fair Housing Center, and Fair Housing Center-Toledo, Ohio) were improperly impacted by the funding diversity procedures. The first two applicants should have kept their rank order above BHA. The third applicant, Fair Housing Center-Toledo, Ohio, should have moved to the bottom of the qualified list. Considering the \$2.55 million that was allocated to the EOI General Component, BHA's application would have been funded for only \$52,695 of its requested \$297,060.
- We considered whether BHA's application would have been fully funded based on FHEO's increase in the funding ceiling from \$2.55 million to \$2.83 million.² If the Deputy Director had properly considered the higher ranked applications, BHA's application would not have been funded even with the use of the funding and geographic diversity procedures and the increased funding threshold.

Based on our review of the diversity procedures outlined in the SuperNOFA and the Deputy Director's actions, we found inconsistent applications only in the funding diversity procedures. In addition to BHA, we found errors in the following four applications (see Appendix A).

- FHEO passed over Central Alabama Fair Housing's \$300,000 application, although the applicant met the criteria of not having received more than one FHIP grant in a 5-year period. Central Alabama's application was ranked in the 10th percentile of

² To facilitate BHA's funding, FHEO increased the EOI General Component threshold from \$2.55 million to \$2.83 million by shifting \$281,255 of leftover funds from the EOI Homeownership Component. (Note: The FY 1999 NOFA allowed leftover funds to be shifted to the EOI General Component.)

applications. The Deputy Director also confirmed that Central Alabama did not receive two awards, therefore, should not have been passed over. However, the Deputy Director could not explain why this occurred.

- FHEO passed over Mobile Fair Housing Center's \$300,000 application, although this applicant also met the criteria of not having received more than one FHIP grant in a 5-year period. Mobile's application ranked above the 20th percentile of applications. The Deputy Director also confirmed that Mobile did not receive two awards, therefore, should not have been passed over.
- FHEO funded the Fair Housing Center's (Toledo, Ohio) \$300,000 application although the applicant had received four FHIP grants in a 5-year period. According to the Deputy Director, the Center changed its name after it received the previous grants, preventing FHEO from matching the information in its database. We noted, however, that while the applicant's name changed, its tax identification number remained the same.
- FHEO awarded the leftover FHIP allocation (\$36,890) to Future Choices, Inc. because Future Choices, Inc. was the highest ranked applicant after BHA. This award was in error because two other applicants (discussed above) were incorrectly passed over.

These errors occurred because the Deputy Director did not properly apply funding diversity procedures or provide supervisory oversight to validate the results of the applicants' rank order before making recommendations to the selecting official.

As a result of FHEO's misapplication of funding diversity procedures for the EOI General Component, three low-ranking applicants (BHA, Fair Housing Center-Toledo, Ohio, and Future Choices, Inc.) received conditional awards totaling \$633,950, while higher-ranked applicants (Central Alabama Fair Housing and Mobile Fair Housing Center) who met the funding criteria were not selected. During our review, FHEO withdrew the FHIP grant award to BHA. Based on our analysis, FHEO should also withdraw the awards made to the other two applicants (Fair Housing Center-Toledo, Ohio and Future Choices, Inc.) and redistribute the funds to those higher ranked applicants who were passed over without adequate justification.³

FHEO Comments

The Assistant Secretary agreed with the finding and recommendations, but stated that the report goes too far in stating that: "HUD is unable to assure Congress that FHIP funds are awarded as intended and that the program is operating efficiently and effectively." It is the Assistant Secretary's opinion that while processing problems were found, HUD's FHIP grant administration process allowed FHEO to correct problems before final awards were made. The Assistant Secretary also requested that the

³ Subsequent to completing our audit field work, FHEO withdrew the awards to the Fair Housing Center and Future Choices, Inc., and made conditional awards to Central Alabama Fair Housing, Mobile Fair Housing Center, Inc., and Utah State University. (Utah State University was not included in our analysis but was next on the rank order list.)

report be amended as follows:

- Make clear that there was not impropriety in the reallocation of funds within the EOI;
- Delete any references to an applicant's rank order;
- Attribute problems to the program processes that existed rather than to the specific individuals; and
- Show that FHEO has taken corrective action by sending letters withdrawing the conditional awards to Future Choices and Fair Housing Center and awarding conditional grants to Alabama Fair Housing, Mobile Fair Housing Center, and Utah State University.

OIG Evaluation of FHEO Comments

We concluded that the integrity of FHEO's award process is questionable because of the errors made during the FY 1999 FHIP selection process. While FHEO has taken timely actions to correct the deficiencies in this report, the FHIP administrative process **would not** have identified these or similar errors. In addition, the administrative process would not have alerted FHEO to withdraw any of the conditional awards made in December 1999. Therefore, until the established selection procedures are followed, FHEO has no assurance that the program is operating effectively and efficiently.

We made the following requested changes to the report: (1) we clarified the report to show that the NOFA allowed funds to be reallocated to the EOI General Component; and (2) we deleted references to each applicant's rank. We did not delete references to individuals because the "program processes" were not the cause, it was the individual's misapplication of the procedures that caused the problems we found. By specifically identifying an individual responsible for adhering to the policy and procedures regarding the FHIP award process, we assist FHEO in identifying where corrective action is needed to ensure that the program operates efficiently and effectively. Although we acknowledge that conditional awards have been made, Recommendation 1A will remain open until FHEO executes grant agreements with Alabama Fair Housing and Mobile Fair Housing Center.

Recommendations

We recommend that you:

- 1A. Correct the funding errors that resulted from using funding diversity procedures inappropriately. Specifically: rescind the \$300,000 award to the Fair Housing Center (Toledo, Ohio); rescind the \$36,890 award to Future Choices; Inc., fund Central Alabama Fair Housing's application for \$300,000; and fund the Mobile Fair Housing Center's application for \$299,784.

- 1B. Ensure the SuperNOFA procedures for selection are followed and that fair and equitable FHIP awards are made in the future.
- 1C. Expand the FHIP database to include a field for applicants' tax identification numbers.
- 1D. Include legal and regulatory requirements regarding the prohibited uses of FHIP funds as part of the training program for individuals involved in the FHIP application review process.

Inadequate Audit Trails for Scoring Applications

FHEO did not maintain all relevant documents and information to support its scoring and award determinations. This condition occurred, in part, because the Technical Evaluation Panel (TEP) members only retained the consensus scoring sheets. As a result, FHEO did not have any assurance that the scoring was accurate and the most qualified applicants were selected.

24 CFR Part 4.5, of the HUD Reform Act of 1989, states that HUD will make available for public inspection for at least five years, all documentation and other information with respect to each application submitted for HUD assistance. We believe that at a minimum, this documentation should include the individual applications, individual TEP scoring sheets for each application, consensus application evaluation forms (consensus scoring sheets), ranking sheets, notifications of eligibility, and award letters.

Our review disclosed that FHEO did not maintain all relevant documents. We requested the individual TEP members' scoring sheets for BHA's application to verify the accuracy of the score. However, the Deputy Director, Office of Programs, stated that the consensus scoring sheets were its official record, individual scoring sheets were not kept.

In our efforts to verify the accuracy of the scores assigned to BHA's application, we tested FHEO's procedures for scoring these applications. We compared the consensus scores recorded on BHA's and the Legal Services of Northern California's consensus scoring sheets with the scores recorded on the TEP source document.⁴ We found discrepancies that caused us to question the sufficiency of available documentation because we could not verify the accuracy of the scores used to make selections. For example:

- We found discrepancies between the scores recorded on the consensus scoring sheet and the scores recorded on the TEP source document. The consensus scoring sheet showed that BHA received a total score of 86 while the score on the TEP source document totaled 78. The 8 point difference was attributed to Rating Factor No. 5 being recorded on the TEP source document as "not applicable." However, the consensus scoring sheet showed 8 points for Rating Factor No. 5.

⁴ The "TEP source document" is a summary listing of consensus scores, by factor, assigned to each qualified applicant.

- Although the consensus scoring sheet did not show a score for Legal Services of Northern California for Rating Factor No. 4, the TEP awarded them a total of 92 points. The score on the TEP source document totaled 83; however, both “not applicable” and “9” were recorded in Rating Factor No. 4. FHEO could not determine what the score should be.
- We found initials indicating someone had changed the scores, but the initials were not those of any of the TEP members.
- We could not find any justification or explanation to support any scoring changes.

These examples clearly show that the consensus scoring sheets and the TEP source documents did not contain sufficient data to track the applicants’ ratings throughout the technical review process and did not contain justification to support changes to the assigned scores.

HUD OIG Audit Report No. 98-SF-174-0002, “Internal Audit-Office of Fair Housing and Equal Opportunity,” dated September 15, 1998, states that FHEO did not process the application scores accurately, completely, timely and did not maintain supporting documentation for the 1996 and 1997 grant scoring determinations. At that time, we recommended that FHEO take action to ensure that complete and accurate documentation is maintained to support the basis of FHIP awards (Recommendation 3A.). We closed this recommendation on February 24, 1999, based on FHEO’s proposed action; however, the deficiencies we found in this review indicate that FHEO’s actions were not adequate. Therefore, we are re-opening Recommendation 3A.

FHEO Comments

The Assistant Secretary did not make any specific comments relative to this finding; however, she agreed to implement the recommendations.

Recommendations

We recommend that you:

- 2A. Ensure that complete and accurate documentation to support the basis of the FHIP awards is maintained for at least five years.
- 2B. Ensure that all changes to official scores are supported by written justification.

Appendix A

**FY 1999 FAIR HOUSING INITIATIVES PROGRAM GRANT AWARD PROCESS
SUMMARY OF FUNDING DIVERSITY ERRORS**

APPLICANTS	RECOMMENDED FUNDING	GRANTS RECEIVED BETWEEN 1994 - 1998	ERRORS BY FHEO	CORRECTIVE ACTION
Central Alabama Fair Housing Co.	\$300,000	1	Passed over in error	Award funds in FY 2000
Mobile Fair Housing Center, Inc.	299,784	1	Passed over in error	Award funds in FY 2000
Fair Housing Center (Toledo, Ohio)	300,000	4	Awarded funds in error	Rescind grant
Boston Housing Authority	297,060	0	Ineligible proposed activities	Rescind grant
Future Choices, Inc.	36,890	0	Awarded funds in error	Rescind grant
TOTAL	\$1,233,734			


FHEO COMMENTS

OFFICE OF THE ASSISTANT SECRETARY
FOR FAIR HOUSING AND EQUAL OPPORTUNITY

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-2000

June 28, 2000

MEMORANDUM FOR: Sandra G. Elion, District Inspector General for Audit,
Capital District, 3GGA

FROM:  Eva M. Plaza, Assistant Secretary for Fair Housing and Equal Opportunity, E

SUBJECT: Draft Audit Memorandum Report - Anonymous Complaint
Use of Fair Housing Initiatives Program (FHIP) Funds

This responds to your June 9, 2000 memorandum seeking our comments on your draft Audit Memorandum Report concerning your review of the use of FHIP funds. We appreciate the opportunity to comment.

The draft report found two of the three allegations you investigated were credible. First, your report concludes that HUD violated the FHIP authorizing statute by selecting the Boston Housing Authority (BHA) for a conditional award for unauthorized purposes. Second, the draft report concludes that HUD allocated \$200,000 to another grantee for national fair housing activities that were never conducted in 1999. Third, you found that the allegation concerning misuse of National Education Component Funds lacked merit. Furthermore, your report comments generally about the effectiveness of specific FHIP processes.

We agree that the allegation concerning misuse of National Education Component Funds lacked merit. This memorandum focuses on the BHA conditional award, the 1999 National Fair Housing month activities and the steps we are taking to improve the effectiveness of FHIP processes. We accept and will implement the corrective actions you have recommended.

I. Boston Housing Authority Conditional Award

Sec. 561 of the Housing and Community Development Act of 1986 (FHIP's authorizing statute) prohibits the Secretary from funding activities for a HUD-funded housing provider when the provider intends to engage in activities to settle a claim, satisfy a judgment or fulfill a court order resulting from litigation. We take seriously our obligation to implement this provision of the law.

It is our practice to notify applicants that they have been selected for an award subject to the completion of successful negotiations. After the public announcement of the selections, the Boston Hub, which is monitoring the BHA consent order, advised Headquarters of its concern that some or all of the proposed activities were intended to comply with the requirements of a consent order, and thus, were not fundable under FHIP. We wish to make clear that although HUD personnel in Boston knew of the BHA settlement, the contents of the consent order were not known to the Technical Evaluation Panel that reviewed and ranked the FHIP grant applications or to FHEO personnel in Headquarters. The Boston Hub notified Headquarters after the announcement of the conditional award and before the execution of the grant agreement. In response to this new

information, we carefully reviewed the application and the consent order and determined that the proposed BHA activities were not fundable. We then immediately withdrew the conditional grant award before BHA received any FHIP funds. We previously provided your office with a copy of the letter sent to BHA, dated February 1, 2000, withdrawing the conditional grant award. On February 18, 2000, BHA responded. On March 17, 2000, we informed BHA that our decision to withdraw the conditional grant award was final. I have attached copies of these letters.

We recognize the need to improve our procedures to ensure that we obtain information about unauthorized activities before making a conditional award. To this end, we have added specific language describing statutory restrictions on the use of FHIP funds to the FY 2000 Notice of Funds Availability (NOFA) and will include this language in all future FHIP NOFAs. We will also work to identify ways to obtain information from the field about highly ranked applications before conditional awards are announced to the public. This will allow us to identify issues that may have been unknown to the Technical Evaluation Panel or to the selecting official.

II. National Fair Housing Activities

We acknowledge that the national Fair Housing Month activities that were the subject of your audit were not conducted in 1999. However, the NOFA only required that activities and materials be developed for future Fair Housing Month activities.¹

III. Overall Effectiveness of Specific FHIP Process

Your draft report also identified deficiencies relating to application of the funding diversity provision and inadequate audit trails for scoring applications. As a result of these administrative errors, two organizations received conditional awards even though they should not have received conditional awards. In addition, three organizations did not receive a conditional award even though they should have received a conditional award. As we have explained, FHIP selectees are notified only of conditional awards, which allows us to take corrective action before grant agreements are executed and before any FHIP funds are disbursed.² We have previously furnished your office with copies of the letters we sent withdrawing the conditional awards to Future Choices and the Fair Housing Center and awarding conditional grants to Utah State University, Central Alabama Fair Housing and the Mobile Fair Housing Center. We ask that your report reflect that we have already taken these actions.

We will take prompt action to improve the overall effectiveness of specific FHIP processes. An internal FHEO task force is evaluating how the overall effectiveness of the program can be improved. We will also commit additional staff resources to address the administrative weaknesses you identified. The selection procedure will include a comparison of the employer identification number with the information in the Department's Line of Control Credit System (LOCCS) to ensure that we have the correct identity of each applicant.³

¹ The NOFA states as follows: "A minimum of \$200,000 in the Nationwide Education Project must be budgeted for activities and materials developed for future Fair Housing Month activities and their budgets must clearly break out funds relating to those activities that support conformity with this requirement. 63 Fed. Reg. 23972 (April 30, 1998).

² 64 Fed. Reg. 9630 (February 24, 1999).

³ We are already requiring applicants for FY 2000 FHIP funds to submit with their applications a "Listing of Current or Pending Grants/Contracts/Other Financial Agreements" on HUD Form 40086.

IV. Conclusion

Although we acknowledge the need for improvement, we are concerned that the report goes too far in stating that HUD is unable to assure Congress that FHIP funds are awarded as intended and that the program is operating efficiently and effectively. It is important to recognize that while processing problems were found, HUD's FHIP grants administration process allowed us to correct problems before final awards were made. We acknowledge that your office brought certain errors to our attention and we appreciate your doing so. At the same time, our efforts to correct problems with respect to one of the areas identified by your office were already underway when we learned of the Inspector General's investigation. HUD's internal mechanism of making conditional awards allowed time to act upon information not available during the evaluation process that could affect the ratings or the making of awards. We did not disburse funds to any ineligible groups and or for any ineligible activities.

The report should also be amended to make clear that there was no impropriety in the reallocations of funds within the Education and Outreach Initiative. The NOFA specifically allows such reallocations and we followed appropriate procedures. (64 Fed. Reg. 9684-85, February 26, 1999.) The NOFA allows reallocations to assure that all FHIP funds are fully obligated each year by transferring funds to those initiatives/components where the applications received and judged meritorious exceeds the funds available. This promotes program efficiency and furthers the purposes of statute. Reallocations are a normal part of the FHIP process and may occur many times in the past. The reallocation is an administrative function performed by program staff.

The report should be amended to delete any references to an applicant's ranking because the release of such information to third parties would be inconsistent with the Office of Program's practice of not releasing applicant information following the selection of awardees. When the selections are announced, HUD advises all FHIP applicants of their overall score; information regarding their relative ranking is not released. For the same reason, Appendix A should be deleted because it provides information about each applicant's relative ranking. Compliance with this request would not compromise the points made in the report. The report could note that an applicant may have had a higher or lower ranking, without revealing the actual ranking.

The report should be revised to attribute problems to the program processes that existed, rather than to specific individuals.

In conclusion, we agree that processing efficiencies would have avoided the problems identified after the conditional awards were made, but before the awards were executed and funds distributed. While the conditional awards process provides an opportunity to identify and resolve issues before making final awards, we agree that the award selection process may be improved to avoid having to withdraw conditional awards. We will take appropriate measures as outlined above to implement your recommended corrective actions.

Attachments



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-2000

OFFICE OF THE ASSISTANT SECRETARY
FOR FAIR HOUSING AND EQUAL OPPORTUNITY

March 17, 2000

Mr. Robert Trestan
Director of Civil Rights
Boston Housing Authority
52 Chauncy Street
Boston, Massachusetts 02111-02375

Dear Mr. Trestan:

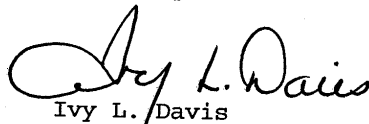
I am responding to your February 18, 2000 letter requesting reconsideration of the US Department of Housing and Urban Development's (the Department's) decision to withdraw the award of the grant to the Boston Housing Authority (BHA) under the EO-General Component of the Fair Housing Initiatives Program (FHIP). As you know, the Department's decision was based on its determination that the activities proposed in the Boston Housing Authority's (BHA's) 1999 application for the grant are required by the Settlement Agreement and Order signed by the parties in July, 1999 and finally approved by the Court in December 1999.

Your letter has received careful review and consideration. In addition, we have once again compared BHA's grant application with the provisions of the Settlement Agreement and Order. This most recent review confirms our initial determination that BHA's grant application proposed using the FHIP grant funds for the purpose of completing activities required by the Settlement Agreement and Order.

As I explained in my February 1, 2000 letter, FHIP's authorizing statute (Section 561 of the Housing and Community Development Act) specifically prohibits using FHIP funds for the purpose of "settling claims, satisfying judgments or fulfilling court orders in any litigation action involving either the Department or housing providers funded by the Department." Thus, the Department must adhere to its decision to withdraw the grant.

If you have any questions about this letter, you may call me at (202) 708-1992.

Sincerely,



Ivy L. Davis
Director
Office of Programs

cc: Eva M. Plaza, Assistant Secretary for FHEO
Amy E. Wilkinson, General Deputy Assistant Secretary for
FHEO
Susan M. Forward, Senior Policy Advisor to the Secretary for
Intergovernmental Affairs
Marcella O. Brown, Director, Office of FHEO, New England
Office
Donna Hawkins, Special Agent, Office of the Inspector
General



BOSTON HOUSING AUTHORITY
52 Chauncy Street
Boston, Massachusetts 02111-02375

617-988-4000
TDD 1-800-545-1833 Ext.420

February 18, 2000

VIA Facsimile and Express Mail

Ms. Ivy Davis
Deputy Director, Office of Programs
U.S. Department of Housing and Urban
Development
451 7th Street, S.W., Room 5230
Washington, DC 20410

RE: Withdrawal of FHIP Grant – Request For Reconsideration

Dear Ms. Davis:

I have reviewed the reasons articulated in your February 1, 2000, letter regarding the Department's reasons for withdrawing the FHIP grant previously awarded to the Boston Housing Authority (BHA). Please consider this correspondence as the BHA's disagreement with the conclusions contained in your letter.

As a preliminary matter, and as I am sure you are aware, the grant application was filed with the Department on June 30, 1999, and the Settlement Agreement and Court Order (Agreement) was not signed by the parties to the litigation until July 29, 1999. Additionally, I want to point out that the New England Regional Counsel, throughout the course of the settlement negotiations, represented the Department.

The FHIP application submitted by the Authority proposes a citywide fair housing initiative entitled *Building a Diverse and Empowered Community*. The proposal contemplates placing fair housing resources within Boston's public housing developments. Critical to the success of this initiative is a citywide focus. This approach is very different from the Agreement, which focuses almost exclusively on the four public housing developments in the lawsuit. Although some overlap is present, the BHA requests that funding be provided where the FHIP proposal differs from the Agreement.

I will address each of the components of the FHIP application as they relate to funding restrictions contained in the authorizing statute.

- 1) The application calls for the hiring of two (2) Fair Housing Assistants. Since the Agreement [§VI ¶B(2)] requires the BHA to complete this task, we agree that the statute restricts FHIP funds from being used to pay the salary of these persons. As required by the Agreement, the Authority has already hired two civil rights investigators to satisfy this requirement.

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Equal Opportunity Housing / Equal Opportunity Employer

Ivy Davis
February 18, 2000
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However, the grant contemplates providing staff with tools to work from any location in the City and most importantly to provide on-site assistance. (See Rating Factor 3) The grant proposal contains a funding request for laptop computers to assist in this endeavor. Since the Agreement contains no provisions regarding the assignment of the additional staff or for providing them with equipment, ~~the BHA requests that funding be provided for two (2) laptop computers.~~ This is consistent with the Project Abstract which describes the *Building a Diverse and Empowered Community* initiative as a citywide project.

- 2) The application proposes that a Civil Rights Outreach Coordinator be hired to coordinate fair housing outreach on a city wide level. The Agreement [§VI ¶B(2) & ¶D(2)] does not contain a requirement that the BHA fill this position. Rather, the Agreement gives the Authority the option of not hiring a Civil Rights Outreach Coordinator should no source of funding be located. Unlike the hiring of two additional civil rights investigators, the BHA faces no threat of Court sanction for not filling this position. Had this been a requirement, no reference to "contingent on receiving HUD funding" would have been made.

Both the Statement of Work and Project Abstract refer to the responsibilities of the Outreach Coordinator within the context of the entire City of Boston. This is in contrast to the Agreement, which specifically states the Coordinator's responsibilities in the Charlestown and Old Colony housing developments.

Since the Agreement 1) does not mandate the hiring of a Civil Rights Outreach Coordinator, absent funding, and 2) in the event that funding is available, defines the job as focussing on only two (2) of Boston's fifty-eight (58) housing developments, ~~the BHA requests that funding be provided for this position, with the condition, that the Coordinator not perform the functions in the Agreement as they relate to the Charlestown and Old Colony housing developments.~~ Should funding be provided, the BHA will use other resources to ensure compliance with the Agreement. The intent of both FHIP and the proposal submitted by the Authority is to benefit as many residents as possible. The residents of the Authority's more than 10,000 apartments in other parts of the City will be the beneficiaries of a Civil Rights Outreach Coordinator.

- 3) Both the Agreement [§VI ¶D(2)] and FHIP application call for development and publication of a Fair Housing Guide. The Authority has already developed and published this Guide in English and Spanish and it is currently available at all BHA sites. The BHA agrees that the statute restricts the use of FHIP funding to pay for the development and publication of a Fair Housing Guide.

However, as part of the citywide approach contained in the funding application, ~~the Authority proposed mailing the Guide to all public housing residents.~~ Since this proposal is not contained in the Agreement, ~~the BHA requests funding to print~~

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Page 3

~~sufficient copies of the Guide to ensure that one is mailed to every public housing resident in Boston, and to cover the costs of postage.~~

- 4) The Agreement [§VI ¶D(4)] contains a general provision that the Authority develop and implement a plan for appropriate tenant diversity and violence prevention programs at the four (4) housing developments referred to in the lawsuit (Old Colony, West Broadway, Mary Ellen McCormack and Charlestown). This is very different from the funding proposal, which contemplates conducting a fair housing seminar for thirty (30) residents at twenty (20) public housing developments. As stated in the funding application, one of the goals of this initiative is to provide residents with the leadership skills to play a greater role in strengthening communication and building relationships within each community.

Since the Agreement only requires a training initiative at four (4) specific developments, and the FHIP application requests funding for this initiative at twenty (20) developments, the BHA requests that funding be approved for Fair Housing Leadership workshops at twenty (20) housing developments. Again, with the commitment that FHIP funds will not be used for training at the Charlestown, Old Colony, West Broadway, or Mary Ellen McCormack housing developments.

As you are aware (and referred to in the application), in May 1999, the Department issued an *Assessment of the Boston Housing Authority's Response to Racial and Ethnic Harassment*. One of the themes, which runs throughout the document, is the Authority's "partnership" with HUD. The Executive Summary states in part: "By adopting these recommendations and working in partnership with HUD, BHA can become a model for public housing nationwide." As I am sure you are aware, the BHA has in fact been working very closely with HUD for the past several months towards achieving this goal. Partners often share common goals, and this case is no different. FHIP program requirements and the submitted proposal share one very important goal, namely, to increase compliance with the Fair Housing Act.

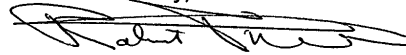
As Assistant Secretary Eva Plaza states in her December 15, 1999, letter, the BHA was one of sixty-two out of more than two hundred applications to receive funding. Amidst "extremely tough" competition, the BHA's proposal was chosen based upon the merits. Each activity proposed by the Authority took into consideration Secretary Cuomo's stated goal of combating all forms of housing discrimination and creating opportunities for Americans to build a better life. The BHA shares these goals with the Secretary.

The award letter dated December 15, 1999, states that funding does not become final until after a successful negotiation of the terms of the grant agreement and budget. ~~The BHA requests an opportunity to negotiate an agreement with the Department which does not contemplate activities which are prohibited by the enabling statute, and 2) addresses our mutual goal of increasing compliance with the Fair Housing Act and providing increased service to Boston residents.~~ It would be unfortunate to deny Boston residents the benefits of FHIP funds because of the restrictions in the enabling statute, particularly when there is an avenue to reach agreement.

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Working together, I am confident that HUD and the BHA can reach agreement on how this FHIP grant can fund permitted activities which will further fair housing and benefit Boston public housing residents. I urge you to reconsider your decision to withdraw the award entirely and invite you to initiate a dialogue to negotiate a mutually agreeable grant agreement for permissible activities. Should you have any questions or require additional information, please do not hesitate to contact me. I look forward to hearing from you soon.

Sincerely,



Robert Trestan
Director of Civil Rights

cc:

Thomas M. Menino, Mayor, City of Boston
Sandra Henriquez, Administrator
Eva M. Plaza, Assistant Secretary for Fair Housing and Equal Opportunity
Amy E. Wilkinson, General Deputy Assistant Secretary for Fair Housing and Equal Opportunity
Susan M. Forward, Senior Policy Advisor to the Secretary for Intergovernmental Affairs
Marcella Brown, FHEO Hub Director, New England Region
Donna Hawkins, Special Agent, Office of the Inspector General

Appendix C

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Senate Office Building, United States Senate, Washington, DC 20510

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
Building, House of Representatives, Washington, DC 20515

Mr. Henry A. Waxman, Ranking Member, Committee on Government Reform, 2204 Rayburn
Building, House of Representatives, Washington, DC 20515

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

Director, Housing and Community Development Issue Area, United States General
Accounting Office, 441 G Street, NW, Room 2474, Washington, DC 20548
ATTN: Judy England-Joseph

Steve Redburn, Chief, Housing Branch, Office of Management and Budget, Room 9226
725 17th Street, NW, New Executive Office Building, Washington, DC 20503

Ms. Sandra Herriquez, Administrator, Boston Housing Authority, 52 Chauncy Street
Boston, MA 02111