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TO: Kevin Marchman, Acting Assistant Secretary for
Public and Indian Housing, P

FROM: Janice LeRoy, District Inspector General, Capital District, 3GGA

SUBJECT: Audit of Notice of Fund Availability Process
Office of Public and Indian Housing
Washington, D.C.

We completed an audit of the Office of Public and Indian Housing's (PIH) fiscal year 1994 notice of fund availability (NOFA) process for five programs: Drug Elimination; Major Reconstruction of Obsolete Projects (MROP); Family Investment Center (FIC); Youth Development Initiative funded under the FIC program (Youth FIC); and Youth Leadership Development Programs. Our objective was to determine whether the office of PIH properly administered the fiscal year 1994 NOFA process from development of the NOFA through grant award.

Our report contains one finding which discloses that PIH did not always follow the HUD Reform Act of 1989 in processing the NOFAs for the 1994 funding cycle for MROP and FIC programs.

Within 60 days, please give us, for each recommendation made in the report, a status report on: (1) the corrective action taken; (2) the proposed corrective action and date to be completed; or (3) why action is considered unnecessary. Also, please furnish us with copies of any correspondence or directives issued because of the audit.

Should your staff have any questions, please have them contact me or Joan S. Hobbs, Auditor-in-Charge, at 708-0351.

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Executive Summary

The Housing and Urban Development (HUD) Reform Act of 1989 was enacted to restore public trust in HUD funding decisions and to ensure full public knowledge of the rules used to competitively award assistance under any program or discretionary funds administered by the Secretary. Section 102(a) of the Act calls for HUD to publish in the Federal Register a notice of availability (notice of fund availability or NOFA) of such assistance including the procedures and deadlines for applying and the selection criteria that will be followed. Once the awards are made, HUD is to publish its final funding decisions.

In reviewing the process by which awards were made within the Office of Public and Indian Housing (PIH), we found that PIH did not always adhere to the requirements of Section 102(a). While we did not find specific evidence of the types of misconduct that prompted the passage of the Reform Act, neither did we find a pattern of adherence to the Act that assured the level of public disclosure needed to restore public trust in HUD funding decisions.

We reviewed the fiscal year 1994 funding cycle NOFAs for five PIH programs—Drug Elimination, Youth Leadership Development, Major Reconstruction of Obsolete Public Housing Projects (MROP), Family Investment Center (FIC), and Youth Development Initiative funded under the FIC Program (Youth-FIC). We found no significant problems with either the Drug Elimination NOFA or the Youth Leadership NOFA. However, the NOFAs for the MROP and FIC Programs did not conform with the HUD Reform Act.

For the MROP and FIC Programs, we found that selection criteria were included that exceeded programmatic statutes, ineligible projects were funded, selection factors were published after the deadline for application, unilateral decisions were made on how selection factors should be defined or applied and selection decisions were not published. Following the HUD accountability guidelines of the Reform Act and specific program requirements, we considered \$73.2 million to be awarded to MROP projects that were not eligible based on management capability, modernization funding and project viability. In addition, \$10.7 million was awarded to FIC projects using undefined selection criteria that could not be validated, \$2.7 million in FIC funds was awarded to states that had already received awards and \$1 million was awarded to a Youth FIC applicant out of rank order.

We recommend the MROP and FIC selections be reviewed and inappropriate funding be recovered and redistributed where possible. We also recommended staff be adequately trained, selection criteria adequately defined and control systems established to assure adherence to the NOFA procedures.

PIH did not agree that any of the funding decisions were inappropriate, that adding selection criteria to the statutory selection criteria for the MROP Program was inappropriate, or that any of the NOFA process did not conform to the HUD Reform Act. PIH did agree that the NOFA process for the FIC Program could be improved.

Introduction

Background

During Congressional hearings in 1989, it was recognized that many of the problems that led to the HUD scandals of the 1980s could be blamed on decisions made in the dark, made subjectively, or made without a clear-cut objective. The intent of Congress in passing the HUD Reform Act of 1989 was to eliminate subjective decision making and assure that everyone knew there were rules to be followed and clear, objective, definable, empirical criteria would be used as the basis for competitive funding decisions.

Section 102(a) of the HUD Reform Act (42 U.S.C. 3545(a)) holds HUD accountable for publishing in the Federal Register:

- a notice of availability (called by HUD a "notice of fund availability" or "NOFA") of any assistance under any program or discretionary fund administered by the Secretary;
- application procedures for applying for assistance and any deadlines relating to the award or allocations;
- selection criteria, to be published not less than 30 days before any deadline for applications or requests for assistance; and
- final funding decisions.

Program administrators are responsible for all phases of the NOFA process. Among those responsibilities are drafting the NOFA and obtaining internal concurrences, including the Office of General Counsel (OGC) concurrence; developing the application kit; notifying field offices of the processing procedures; preparing instructions for ranking and rating applications; training panel members; summarizing panel results; and providing a ranked listing and recommendations to the program director. Following the program office review, the recommendations are provided to the Assistant Secretary for final approval. The program administrator then prepares all award documents and the official award notification to be published in the Federal Register.

PIH published numerous NOFAs during 1994. We reviewed NOFAs published for five programs: Drug Elimination; MROP; FIC; Youth Development Initiative funded under the FIC Program (Youth-FIC); and Youth Leadership Development. The total funding of \$472 million was distributed among the five programs as shown in the following chart.

Program	Number of Applications		Funding (in millions)
	Received	Funded	
Drug Elimination	827	520	\$229
MROP	61	16	\$170
FIC	311	80	\$67
Youth-FIC	52	5	\$5
Youth-Leadership	11	3	\$1

Audit Objective, Scope and Methodology

The objective of our review was to determine whether the Office of Public and Indian Housing (PIH) properly administered the fiscal year 1994 NOFA process from development of the NOFA through grant award. To accomplish this objective we:

- reviewed and evaluated NOFA criteria, application processing, application scoring, applicant selection, and public notifications;
- examined records maintained by the Offices of Distressed and Troubled Housing Recovery and Community Relations and Involvement and interviewed staff, application review panels, OGC staff and the Assistant Secretary for PIH;
- randomly selected and reviewed 30 of 148 drug elimination applications with scores between 80 and 90 points; 28 of 311 FIC applications; 16 funded MROP applications; and 52 submitted Youth-FIC applications. Selections for the Youth Leadership Development NOFA were not finalized at the time we began our review and therefore were not included within our scope of review; and
- compared actual processing of NOFAs with published procedures.

The field work was conducted from March through July 1995 and covered fiscal year 1994 grant awards.

We conducted the audit in accordance with generally accepted government auditing standards.

HUD REFORM ACT NOT ALWAYS FOLLOWED

The Office of Public and Indian Housing (PIH) did not comply with Section 102(a) of the HUD Reform Act in processing the NOFAs for the 1994 funding cycle for Major Reconstruction of Obsolete Public Housing Projects (MROP) and Family Investment Center (FIC) Programs. Our review of the MROP NOFA process disclosed that some of the selection criteria used did not conform to the statutory selection criteria for MROP awards, ineligible projects were funded and the results of the selection process were not published. We also found that FIC awards were made based on ambiguous selection criteria published after the application deadline and Youth FIC selection criteria was changed and the results not published. The ineligible MROP projects were awarded \$73.2 million in program funds, \$10.7 million was awarded to FIC projects using undefined selection criteria and \$2.7 million was awarded to states that had already received FIC awards and \$1 million was awarded to a Youth FIC applicant out of rank order. We believe the problems occurred because inadequate attention was given to developing the NOFAs, to training panel members, and to supervising the processing, scoring, and selecting of applications.

PIH did not agree that any of the funding decisions were inappropriate, that adding selection criteria to the statutory selection criteria for the MROP Program was inappropriate, or that any of the NOFA process did not conform to the HUD Reform Act. PIH did agree that the NOFA process for the FIC Program could be improved and that the MROP and Youth FIC selections had not been published in the Federal Register.

MROP NOFA Flawed

The 1994 MROP NOFA process was flawed in several ways. First, the criteria used to select participants went beyond the statutory criteria of project viability to include undefined geographic diversity and diversity of type. However, the MROP statutes did not provide discretionary authority to add selection criteria and when Congress intends for the use of selection criteria beyond those specified in a statute, it expressly confers the discretionary authority on the Secretary. The MROP program statute does not confer this authority. Second, 5 of the 16 applicants selected either did not meet the management capability criteria, received modernization funds which made the buildings or projects ineligible for MROP funds or were not environmentally viable. Third, final funding decisions were not published in the Federal Register.

The MROP Program, funded under Section 111(a) of the Housing and Community Development Act of 1992, which amended Section 5(j)(2) of the Housing Act of 1937 (42 U.S.C. 1437c(j)(2)(c)), allows the Secretary to reserve up to 20 percent of amounts appropriated for development of public housing in each fiscal year for the substantial redesign, reconstruction, or redevelopment of existing obsolete public housing projects or buildings and for improving project management and operations of obsolete projects. To be eligible for MROP funding, a project must have, as a minimum, long-term viability after reconstruction; be a rental project; have

design or marketability problems; and have correctable deficiencies as determined by modernization procedures.

Non-Statutory Selection Criteria

On May 20, 1994, HUD published a NOFA in the Federal Register, announcing the availability of \$170 million in funding for MROP activities. The NOFA's technical review criteria matched the statutory selection criteria related to project viability: management capability to carry out MROP activities; expected useful life of the project after program completion; and the likelihood of achieving full occupancy in the project or building receiving MROP assistance. However, along with the statutory selection criteria the NOFA announced that PIH retained the discretion to fund lower-rated applications to increase national geographic diversity and/or diversity of development types. Geographic diversity was not defined in the NOFA, although development diversity was defined as either a low-rise development or high-rise development of five or more stories.

A total of 16 applicants were selected from the 61 applications received. After rating and ranking the projects, the first 14 projects were selected using geographic factors—limited to one project per state and three projects per region. It appears the definition of geographic diversity was established after the projects were rated and ranked. Not all regions applied, so not all regions were represented. The final two selections were made on the basis of development type—both high-rise buildings with elevators. Using geographic diversity and development type instead of the statutory selection criteria, five projects were funded that would not have otherwise been selected, two of which had scores that were 40 to 50 points lower than bypassed projects.

The employees directly involved in the 1994 MROP selection were no longer with HUD and there were no records of how or why geographic diversity and diversity of development type were used as selection criteria. We were told by the former Assistant Secretary of PIH that those additional factors were used to prevent most of the approved projects from going to one region, the Southeast, when it was known that the physical housing problems were worse in the Northeast. The former Assistant Secretary also stated that the decision to use geographic diversity and development type was approved by the Office of General Counsel. These issues are discussed in greater detail in the comments section on page 12 of this report.

This line of reasoning does not appear supported by the final selections. None of the five projects that would not have been selected on the basis of project viability, but were selected using geographic diversity and diversity of type, were in the Northeast region of the country. In fact, using geographic diversity and the limit of one project per state, two projects located in the Northeast were bypassed.

The five projects selected on the basis of either geographic diversity or development type, collectively awarded \$43.9 million in MROP funds, are identified in the following chart.

Criteria	Housing Authority	Project	Score	Funding (in millions)
Geographic	Atlanta, GA	John Egan	58	\$12.3
	Las Vegas, NV	Westwood Park	82	\$3.9
	District of Columbia	Sheridan Terrace	46	\$6.9
Development Type	Lexington, KY	Connie Griffith	82	\$10.9
	Baltimore, MD	Lexington Terrace	76	\$9.9

We also noted that the Westwood Park project in Las Vegas, NV, with a score of 82 points, was selected over another project in the same state that scored 95 points. Notwithstanding the lower score, the Las Vegas Housing Authority stated that Westwood Park was a higher priority project based on need.

Ineligible Projects

Our review disclosed that 5 of 16 projects, selected for MROP funding totalling \$73.2 million, were ineligible to participate. The projects either did not meet the management capability criteria, received modernization funds making the buildings or projects ineligible for MROP funds or were not environmentally viable.

Section 111(a) of the Housing and Community Development Act of 1992, amending Section 5(j)(2) of the Housing Act of 1937, requires MROP funds to be allocated on a competitive basis. The NOFA assigned a maximum of 30 points to the competitive factor of management capability. Those 30 points were split between 15 points for an overall Public Housing Management Assessment Program (PHMAP) rating of 60 to 100 and 15 points for PHMAP development and modernization scores of A-B. The NOFA stated that if the PHMAP rating was less than 60, but the application package contained a contingent contract with a qualified entity to act as project administrator, the full 30 points could be given.

Four housing authorities—District of Columbia, Detroit, Atlanta and Pittsburgh—were given full points for management capability although none had a PHMAP score greater than 60 or contingent contract in the application package. In addition, the first three had section 14 modernization funds for the same projects and buildings for which they had applied for MROP funds. Section 111(a) of the Housing and Community Development Act of 1992 states that MROP assistance may not be provided for any project or building assisted under the Section 14 Public Housing Modernization Program.

More specifically, the:

- District of Columbia Housing Authority—Sheridan Terrace was awarded \$6.9 million in MROP funds even though the HUD Washington, DC field office recommended it not be funded. The field office based its recommendation on an overall PHMAP score of 22 and lack of a contingent contract with a qualified project administrator. The recommendation was ignored and the rating panel instructed to award the full 30 points on the assumption the housing authority would have management capability when it went into receivership. Not only did the NOFA give no indication that receivership equated to management capability, but a receiver did not come on board until nearly a year after the funds were awarded. Sheridan Terrace had been awarded \$10 million in 1991 that was set aside for modernization and was still unexpended at the time of the MROP award.
- Detroit Housing Authority—Herman Gardens was awarded \$19.6 million even though the housing authority had an overall PHMAP score of 37 and did not have the required contingent contract at the time of application. The panel awarded the full 30 points for management capability on the basis of the field office assertion that the housing authority would get a contract if the funds were awarded. The project also had approximately \$3.4 million in unspent modernization funds that dated back to as far as 1988 and had been awarded \$7.9 million in MROP funding in 1992—only \$700,000 of which had been spent. Beyond the fact that projects or buildings with modernization funds should not be awarded MROP funds, the fact that the PHA had not demonstrated management capability in using the previously awarded modernization and MROP funds, should have given the panel the support it needed to deny the application.
- Atlanta Housing Authority—John Egan Homes was awarded \$12.3 million in MROP funding although the housing authority had an overall PHMAP score of 55, did not have the required contingent contract, and had been awarded \$19.5 million in modernization funds in 1991 to totally rehabilitate the same project. Only \$2.5 million of the \$19.5 million had been spent at the time of the MROP award and the MROP application included the same work as was funded in 1991. The housing authority, supported by the field office, claimed the modernization funds were insufficient to complete the project because of inflation and increased costs. While inflation may be a factor, without demonstrated management capability, PIH had no assurance that the second MROP award would be used for the intended purpose anymore so than the first funds were. The ultimate effect was to reward a housing authority for its inability to manage its modernization and development work and pay twice for the same work to be performed.
- Pittsburgh Housing Authority—Broadhead Manor was awarded \$23 million in MROP funding because the rating panel used the 1991 PHMAP score of 74 instead of 46, the score at the time applications were reviewed. Using the previous score the project was awarded 15 out of 30 possible points for management capability, allowing it to be reached for selection.

The fifth project, located in Cambridge, MA, received funding despite having environmental flaws severe enough to question its viability. Corcoran Park was awarded \$11.4 million in MROP funding even though the application package clearly showed it had severe environmental problems and the NOFA required that there be no environmental factors to preclude MROP activities. During the initial review process, the environmental officer in the Boston Field Office recommended that consideration be given to closing the project because it was built on a peat bog that caused unstable subsoil and allowed methane gas to permeate the site. In addition, there were excessive amounts of lead contamination in the soil.

Awards Not Published

The MROP funds were awarded and notification letters sent to the state Congressional staffs in September 1994. However, the public notification of grantee selections was not published in the Federal Register as required by the HUD Reform Act. At the time of our review no follow-up procedures had been established to ensure that legal requirements were satisfied. The current PIH office staff claimed to be unaware that the results had not been published, and the individuals involved in the 1994 NOFA process are no longer with HUD.

FIC NOFA Not Timely or Adequately Defined

The Family Investment Center (FIC) NOFA was not administered in conformance with the HUD Reform Act. The original NOFA, published on February 28, 1994, was amended four times, apparently because of inadequate planning. The first two amendments were made in compliance with the HUD Reform Act. The third amendment was published about a week before the application deadline and the last amendment was issued a week *after* the deadline for submitting applications. Significantly, the NOFA published subsequent to the deadline allowed PIH to select grantees out of rank order on the basis of geographic diversity and project size. However, geographic diversity and project size were not defined and, in some cases, the described criteria were not followed. As a result, \$10.7 million was awarded to FIC projects using undefined selection criteria that could not be validated and \$2.7 million in FIC funds was awarded to states that had already received awards.

Family Investment Centers were authorized under Section 515 of the Cranston-Gonzalez National Affordable Housing Act of 1990, which created a new Section 22 to Title I of the Housing Act of 1937 to provide families living in public and Indian housing better access to educational and employment opportunities to achieve self-sufficiency and independence. Better access was to be achieved primarily by developing facilities in or near public housing and providing funding for training and supportive services. The 1994 FIC NOFA announced \$67 million in funding with individual grants limited to no more than \$1 million. From 311 applications received, 80 were funded.

Untimely Amendments

The Family Investment Center NOFA was amended four times after it was originally published on February 28, 1994. The first amendment, dated April 19, 1994, extended the deadline to July 22, 1994 and the second amendment dated, June 9, 1994, revised the funding levels. These minor changes, published more than 30 days before the deadline, were in compliance with Section 102(a) of the HUD Reform Act. However, a third amendment, published on July 14, 1994, only 8 days before the deadline, contained new application submission requirements for renovation/conversion projects. A final amendment, published July 29, 1994, 7 days after the deadline for submission, announced that HUD had changed its selection criteria to allow for funding grants out of rank order on the basis of project size and geographic diversity.

Criteria Neither Defined Nor Consistently Applied

The original NOFA described a three-phase selection process. The first phase called for awards to the 2 highest ranked eligible applicants in each of 2 funding categories, renovation/conversion/supportive services and supportive services only, for HUD's 10 regions—a total of 40 grants. In the second phase, the two highest ranked eligible Indian Housing Authority (IHA) applicants nationwide in both funding categories were to be selected—a total of four grants. During the third phase the remaining funds were to be awarded to applicants in rank order until all funds were awarded.

The program administrator awarded the first 44 grants, valued at \$38.3 million, using the original NOFA criteria. The remaining 36 grants, funded for \$28.7 million, were selected using geographic diversity and project size as criteria. However, the NOFA did not define either *geographic diversity* or *project size* in writing and the verbal definitions subsequently provided did not appear to have been consistently applied.

Geographic diversity was described by the FIC program director as the highest ranking housing authority in each of the states that applied (four states did not) that had not previously been selected to receive a grant. Of the \$28.7 million, we found \$15.3 million to have been fairly distributed using that criteria. However, in two states—Wisconsin and Alaska—the housing authorities selected were not the highest ranked for the state. When the PHAs that were not selected questioned the selections, PIH agreed to fund the higher scoring housing authorities out of 1995 funds.

We could not determine the fairness of the final \$13.4 million in grants. Two states—Oklahoma and South Dakota—were awarded \$2.7 million in grants during the second round of selection that were in addition to grants received during the first round. According to the criteria, these states should not have received the second awards.

The remaining \$10.7 million was awarded by project size. However, project size was not defined nor were size designations used in other PIH programs used. In addition, IHAs were not included

in the pool of potential participants. When asked about the exclusion, the FIC program director stated that IHAs comprised about 5 percent of all housing authorities and IHAs had already received over 5 percent of the grants. Not only was this limitation not published, but an additional IHA was selected at the end of the third round from the ranked list of IHAs. The explanation provided was concern about equity. As a result of using undefined criteria, we could not determine the fairness of the last 15 selections awarded \$10.7 million in FIC funds.

Youth FIC Selection Not in Rank Order

On May 13, 1994, a NOFA was published announcing the availability of \$5 million of FIC funds for a Youth Development Initiative (Youth-FIC) to address the problems of violence in low-income public housing communities. A July 18, 1994 amendment to the NOFA, published 6 days after the July 12, 1994 application due date, extended the deadline to July 29, 1994 and allowed PIH to fund applicants out of rank order, again on the basis of geographic diversity and project size.

Five applications were selected, the first four based on the highest score. However, the final \$1 million selection went to the Los Angeles Housing Authority which was moved from seventh place to fifth on the basis of type of project. Project type was not identified as a selection criteria. As a result of that change, two other housing authorities were passed over for selection.

As with the MROP selections, the Youth-FIC grantees, selected and notified in November 1994, were not published in the Federal Register. The program administrator stated that she was not aware that she was responsible for assuring that the final list of projects selected was published.

Recommendations

We recommend the program administrator:

1. Review all 1994 MROP, FIC, and Youth-FIC selections in accordance with NOFA criteria and applicable statutes. Based on the results, if legally permissible, rescind grants and recapture all unspent funds from the five ineligible MROP grantees, MROP grantees selected based on geographic diversity and diversity based on development type, the Youth-FIC grantee selected based on unauthorized criteria, and the FIC awards made in error. Reallocate the funds to the appropriate housing authorities.
2. Obtain training on all laws, regulations, NOFA, and HUD instructions related to the FIC and MROP Programs for all staff involved in writing NOFA criteria, and supervising, processing, scoring and selecting applications.
3. Ensure that selection criteria, such as geographic diversity and project size, are adequately defined in the NOFA.

4. Establish a system of review and quality controls over the processing, scoring, and selecting of applications which ensures consistent application of established NOFA criteria and statutory authority.
5. Establish follow-up procedures to ensure that NOFA selection results are published in the Federal Register.

Comments

PIH submitted three responses to the draft report. The first response, dated October 3, 1995 (Attachment A), addressed the findings and conclusions expressed on the FIC and Youth FIC portions of the audit report. The second response, dated October 13, 1995 (Attachment B), addressed the recommendations in the report but specified that the response was limited to the FIC and Youth FIC programs. The third response, dated December 5, 1995 (Attachment C), addressed the MROP portion of the finding, but did not address the recommendations from the MROP perspective. The responses are discussed in the same order as the issues are addressed in the report.

PIH Comments on MROP

PIH generally did not agree with our comments and conclusions on the MROP NOFA, except to agree that the grantee selections had not been published in the Federal Register. The bulk of the comments on selection criteria and eligibility was discussed in light of legal opinions obtained from the HUD Office of General Counsel.

It was OGC's opinion that the MROP NOFA was not issued under the authority of Section 111(a) of the Housing and Community Development Act of 1992 because HUD did not go through the rule making process of implementing Section 111. In OGC's view, the selection criteria in the NOFA need not comport with the three selection criteria in the 1992 Act because HUD chose not to implement the 1992 Act by finalizing regulations. Rather than use the 1992 Act, OGC instructed PIH to issue the MROP NOFA under the development authority of Section 5 of the U.S. Housing Act of 1937.

PIH disagreed with the statement that when Congress intends for selection criteria beyond those in the program statute to be used, it expressly confers authority to establish such criteria. PIH took the position that statutory language often infers authority to add new selection criteria through wording such as *selection criteria shall include* certain specific factors even in the absence of a catch-all provision authorizing other factors. According to PIH, whether a particular statute authorizes the Secretary to add selection criteria to a specified listing of criteria depends on a[n] interpretation of the specific statutory language, and as applicable, any relevant legislative history. However, as regards the MROP NOFA, PIH considers the exercise futile since Section 111(a) of the 1992 Act was not the authorizing statute used for the MROP NOFA.

It was not clear whether PIH agreed or disagreed with our finding on management capability scores. PIH first agreed that several (it did not identify which ones) PHAs received full management capability scores without having PHMAP scores of 60 or management contracts submitted with the applications. It then discussed the modernization issue followed by a statement that it felt these general principles were provided for in the selections made. That statement was followed by a discussion of three PHAs: the District of Columbia, Detroit and Atlanta. The District of Columbia discussion addressed an advisory committee formed by the Mayor and the then Assistant Secretary and the fact that an independent firm has since been hired to administer the modernization and development programs. The Detroit discussion stated that a corrective action plan was issued to contract out the modernization function. The Atlanta discussion said that Atlanta had appealed its PHMAP rating though the appeal was later withdrawn. PIH was silent in regards to Pittsburgh. PIH did not agree that the Cambridge Housing Authority had an environmental problem because the Director of Public Housing in the Boston Field Office certified that all the environmental conditions would be corrected before the application could be considered for final selection.

With respect to the issue of providing MROP funds to activities with existing modernization funds, OGC reiterated that Section 111 of the Housing and Community Development Act of 1992 provided that MROP assistance could not be provided to any project or building assisted under Section 14 (Modernization) of the Housing Act of 1937. However, the MROP NOFA was developed to allow a combination of MROP and modernization funding within the same project, but not within the same *units* or buildings. OGC also advised that so long as the application indicated the PHA would comply with the MROP condition on combining funds in one project or building, or so long as the modernization program was so close to completion that the PHA could close out the modernization program prior to the execution of the MROP activities, the application could be approved. In closing, it stated that if the modernization funding was comp grant and the PHA modified its action plan to eliminate the project or building from the plan, then MROP activities could be funded.

Additional OIG Comments on MROP

We do not agree that PIH is not bound by Section 111(a) of the Housing and Community Development Act of 1992 because it did not go through the rule making process. Through Section 191 of the 1992 Act, Congress mandated that implementing rules be developed within 180 days of the date of the Act. The Act was effective October 28, 1992; therefore implementing rules should have been published by April 28, 1993. Choosing not to implement a law does not negate the responsibility to abide by the law. Indeed, the legislative history of the 1992 Act addressed the issue of HUD's failure to issue rules for the MROP Program even though the program was first created in 1985. The Congressional committee strongly believed that the MROP Program must be statutorily authorized to provide clear legislative intent and policy on the purpose and selection criteria for the program. Therefore, HUD should not have used Section 5 of the U.S. Housing Act of 1937 as the authority to issue the MROP NOFA and should have developed the NOFA using the stricter limitations provided in the 1992 Act.

We are not convinced by PIH's comments on authority to add selection criteria. Our reading on the Act and legislative history disclosed no wording about *including* additional selection criteria or specific wording authorizing the Secretary to add criteria. PIH's position is undercut by a fundamental canon of statutory construction: the enumeration in a statute of specified criteria implies the exclusion of other unmentioned criteria. This canon is a product of logic and common sense — i.e., when things are expressed through a list, it is assumed that what is not listed is excluded. Further, the MROP legislative history shows a Congressional frustration with HUD's propensity to continuously change the requirements of the program from year to year by issuing new program guidelines every year in a [NOFA].

The Housing and Community Development Act of 1992 is very clear that MROP assistance should not be provided to any project or building that already has modernization funds. Arguing that the NOFA expanded allowability down to the *building* level as long as it was not the same unit does not change the Act or our position. Nor are we swayed by the arguments that if the modernization project could be closed before the MROP funds were available, or the project or building backed out of the modernization action plan, the application could be approved and MROP activities funded. This defense only shows the lengths PIH was willing to go to fund these projects.

The Director of Public Housing in the Boston Field Office, who was not an environmental expert, and who did not request a physical review, certified to the environmental condition of the project even though the Environmental Officer in the Boston Office certified that conditions were so severe that HUD should consider closing it. We were so concerned about the welfare of the individuals residing at this project that we issued a memorandum to PIH on August 15, 1995, requesting a full technical environmental review of Corcoran Park. A work order for the inspection was issued on August 25, 1995.

PIH Comments on FIC

PIH generally agreed with the recommendations in the report but noted that this was its first competition for FIC grants. As a result of the lessons learned during this initial process, many of the corrective actions had already been taken. For example, a new division was created with responsibility for monitoring the grants process and to ensure that adequate controls and follow-up procedures were in place.

While PIH agreed it would have been better to include submission requirements in the initial NOFA, it believed Section 102(a) of the HUD Reform Act required application submissions to be published in the Federal Register but did not prescribe a 30 day minimum time limit. Because the third NOFA amendment did not contain selection criteria, it was not subject to the time limit and the finding should be deleted.

With respect to the fourth NOFA amendment, PIH responded that OGC advised that ranking on the basis of project size and geographic diversity were factors over which the applicant had no control and were beyond the applicant's ability to address or to improve in their application

submission. Therefore, PIH concluded that it could use the new selection criteria on project size and geographic diversity without violating the Reform Act. PIH believed that although the need for the fourth amendment could have been avoided by better planning, it took the proper steps to avoid violating the Reform Act.

PIH agreed that project size, when used as a selection criteria, could have been clarified, but did not believe that such a clarification was required. PIH reported that OGC reviewed the proposed language with respect to project size at the same time that it reviewed the language on geographic diversity and concluded that it was satisfactory. Although PIH agreed it was possible to elaborate on the methodology used with respect to project size, it did not agree that the method for determining project size was not defined at the time PIH made selections.

Additional OIG Comments on FIC

An applicant's inability to influence a selection factor does not negate the applicant's right to know what the factor is and whether it was properly and consistently applied. The intent of Congress in writing Section 102(a), subsection (a)(3) into the HUD Reform Act was clearly to ensure full public knowledge of the rules used to competitively award assistance under any program or discretionary funds administered by the Secretary. In our opinion, this does not mean that the applicant should only be told about changes in selection criteria when they can affect a change in their application package.

The intent of the HUD Reform Act was to ensure accountability and public trust in the way in which HUD competitively awards assistance. In this regard, the more information provided the applicant in the application submission process, the better. That way, all applicants will be assured that HUD does not develop the specifics of the selection criteria after review of the application packages. For example, the definition of project size in the last round of selections for the FIC Program was determined by the Director of the Office of Community Relations and Involvement when the third round of selections were made. Disclosure through the NOFA process is a good internal control that should be adopted by PIH.

PIH Comments on Youth FIC

The responses on Youth FIC basically replicated those on FIC except as related to using project type as the basis for selecting an applicant out of rank order. PIH stated that the criteria used was geographic diversity, not project type. With only five grants to be awarded, having as little as two grantees in the same proximate geographic area meant that a disproportionate share of program funding. The first four applicants in rank order coincidentally represented different regions—Midwest, Northwest, Northeast, and South. The next two applicants in rank order were from the Northeast and Mid-Atlantic. PIH decided to select Los Angeles (ranked just below the Mid-Atlantic candidate) because it was not proximate to any previously selected applicant and therefore clearly established much greater geographic diversity.

Additional OIG Comments on Youth FIC

Because geographic diversity and project size were not defined and records do not exist to support how the selections were made we are left with only conversations to go by in determining whether selections were actually made in accordance with established criteria. Although *project type* was not identified in the NOFA as a selection criteria, we were told by the program administrator that the reason Los Angeles was selected over two other housing authorities was because it was a supportive services project and two projects already selected were for renovation and one each for supportive services and combination projects. The intent in selecting Los Angeles was to increase the number of supportive services projects.

Compliance and Internal Controls

In planning and performing our audit, we considered the internal controls of the HUD Office of Public and Indian Housing. Internal controls consist of the plan of organization and methods and procedures adopted by management to ensure that resource use is consistent with laws, regulations, and policies; that resources are safeguarded against waste, loss, and misuse; and that reliable data are obtained, maintained, and fairly disclosed in reports.

The audit disclosed that the Headquarters Office of Public and Indian Housing did not establish and maintain the internal controls needed to ensure that grant applications were rated, selected, and reported in accordance with applicable laws and HUD guidelines. Internal controls were established for the FIC Program but were disregarded and the MROP Program did not have established internal controls for grant processing. The control weaknesses are discussed in the finding.

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