



U.S. DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT
OFFICE OF INSPECTOR GENERAL

MEMORANDUM NO. 2012-NY-0802

September 21, 2012

MEMORANDUM FOR: Vincent Hom, Director, Community Planning and Development,
New York, 2CD

Edgar Moore

FROM: Edgar Moore, Regional Inspector General for Audit, New York-New Jersey, 2AGA

SUBJECT: Corrective Action Verification, City of Newburgh, NY, Section 108 Loan
Guarantee Program, Audit Report 2009-NY-1001

INTRODUCTION

We completed a corrective action verification of the recommendations made to the U.S. Department of Housing and Urban Development's (HUD) Office of Community Planning and Development (CPD) pertaining to our review of The City of Newburgh, NY's Section 108 Loan Guarantee program, Audit Report 2009-NY-1001, which was issued November 7, 2008. The purpose of the corrective action verification was to determine whether the audit recommendations included in the subject report were properly implemented and the deficiencies cited were corrected.

Please furnish us copies of any correspondence or directives issued because of the review.

METHODOLOGY AND SCOPE

The corrective action verification focused on the nine recommendations included in the audit report. To accomplish our objective, we reviewed the audit report and associated supporting documentation, as well as the HUD management decisions and the supporting documentation used by HUD to close the recommendations. In addition, we interviewed officials from the City's Community Development Office and HUD CPD. We conducted our limited review work in Newburgh, NY, to follow up on the City's implementation of the agreed-upon audit resolutions to the recommendations. This work included a review of various correspondence and financial files maintained by the City.

BACKGROUND

Finding 1 of the audit report noted that the City failed to ensure that all Section 108 Loan Guarantee funds and related project costs pertaining to the Front Street Marina redevelopment project were proper, necessary, and fully supported. Specifically, the City (1) failed to enforce loan agreement provisions and adequately pursue loan collateral to satisfy the debt, (2) did not ensure that all funding sources were supported and documented, (3) unnecessarily used Community Development Block Grant (CDBG) funds to repay the loan and deprived its activity from receiving program income, and (4) overpaid the developer for duplicate costs. These problems occurred because the City failed to properly administer its Section 108 loan program by not ensuring that all costs incurred were proper and in accordance with the Section 108 agreements. As a result, the City's CDBG program was deprived of funds that could have been used for other activities

Finding 2 of the audit report noted that (1) the City did not achieve the primary objective of job creation for the industrial park project, (2) loan proceeds remained unused in a bank account for more than 7 years, (3) possible collateral or program income for loan repayment was not pursued, and (4) the City did not ensure that the industrial site was feasible for commercial development and job creation. As a result, the failure of the industrial park project had and will continue to have a large negative impact on the City's CDBG program, as CDBG funds were used to repay the Section 108 debt and additional CDBG funds were scheduled to retire the debt.

Recommendations from the prior audit report were as follows:

- 1A. Enforce the loan provisions on the Front Street Marina within 90 days and reimburse the CDBG program from non-Federal funds the \$449,817 used for Section 108 debt repayment.
- 1B. Provide HUD with evidence that all funding sources for the Front Street Marina project have been received or reduce the Section 108 and Economic Development Initiative (EDI) loans proportionately and repay the funds to HUD.
- 1C. Take appropriate action against the developer and ensure that non-Federal funds are used to repay HUD the \$1,322,568 in future Section 108 program loan obligations (\$865,968 due for the Section 108 loan and \$456,600 due for the EDI loan) so that future CDBG funds can be safeguarded and put to better use.
- 1D. Reimburse HUD from non-Federal funds the \$144,341 related to the ineligible duplicate payments paid to the developer for marina-related expenses.
- 1E. Implement policies and procedures to ensure that all future Section 108 projects are administered in accordance with all approved applications, loan agreements, and program requirements.

- 2A. Reimburse the CDBG program from non-Federal funds the \$752,302 in unused Section 108 funds to reduce the CDBG funds already used to repay part of the Section 108 loan.
- 2B. Establish a plan for the Crystal Lake industrial park site within 90 days or reimburse the CDBG program from non-Federal funds the \$1,002,849 used to repay the Section 108 loan debt (\$1,755,151 less \$752,302 in unused Section 108 funds and interest).
- 2C. Pursue the loan collateral or sources of program income and use those funds to repay the \$1,690,177 required for future Section 108 loan repayments. This would allow the City to reprogram the \$1,690,177 in CDBG funds scheduled to be used for future repayments of the industrial park project loan and put these funds to better use for other CDBG-eligible activities.
- 2D. Establish and implement policies and procedures to ensure that all future Section 108 projects are administered in accordance with all approved applications, loan agreements, and program requirements.

RESULTS OF REVIEW

HUD and Office of Inspector General (OIG) officials agreed to resolve recommendations 1A through 1D by instructing the City to properly use the more than \$1.9 million the City recovered from the developer from the legal settlement. In effect, these funds are program income. All of the questioned or ineligible costs were closed by HUD based upon this settlement. During the corrective action verification, we verified that the proceeds were properly received by City officials and properly accounted for and that they were used for either (1) debt payments and settlement of the outstanding Section 108 debts or (2) program income for the EDI or CDBG program to be used in the future on eligible CDBG activities.

City officials used approximately \$1.3 million of the funds to pay off Section 108 debt. There is no Section 108 debt remaining, as the last payment was made in July 2012. City officials still have \$650,487 in settlement funds on hand, which represents program income, a return of the EDI loan, and reimbursements of CDBG funds used on prior Section 108 debt. HUD and City officials have agreed that the \$650,487 in remaining funds needs to be reprogrammed for future use on eligible CDBG activities.

HUD and OIG officials agreed to resolve recommendations 2A through 2C by ensuring that the remaining Section 108 loan funds on hand were properly used or that City officials had a viable plan for the Crystal Lake project. City officials decided not to go forward with the Crystal Lake project but, instead, used the funds to repay the Section 108 debt. This is a positive event, as the report recommended that HUD instruct City officials to consider using the “unused Section 108 proceeds” (more than \$750,000) for the debt since the project had stalled. All of the \$762,394 (which included interest earned) was used to pay the Section 108 debt.

HUD and OIG officials closed recommendations 1E and 2D. HUD officials ensured that monitoring was conducted for more than 6 months to ensure compliance with Section 108 requirements. HUD ensured that the City's Community Development Office and its comptroller were adequately communicating and were able to devise a viable plan to use the \$1.9 million and manage Section 108 financial issues. Thus, City officials complied with this requirement. As evidence of this compliance, no more Section 108 activity was undertaken. Instead, the more than \$752,000 in unused loan proceeds was used for Section 108 debt. Further, City officials decided not to conduct additional Section 108 activities.

CONCLUSION

No deficiencies were noted as result of the corrective action verification; the audit recommendations were properly implemented, and the deficiencies cited in the report were corrected. The auditee declined to provide comments and so there is no OIG evaluation of auditee comments.

RECOMMENDATIONS

Since we did not identify any deficiencies there are no recommendations.