



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
2001-AO-0802

February 13, 2001

MEMORANDUM FOR: Floyd O. May, Deputy Assistant Secretary for Operations and Management, Fair Housing and Equal Opportunity, EG

[Signed]

FROM: Saundra G. Elion, District Inspector General for Audit, Capital District, 3GGA

SUBJECT: Fair Housing Initiatives Program Grant Administration Process Weaknesses
Washington, DC

We have completed a limited review of the process used to award the FY 1998 Fair Housing Initiatives Program (FHIP) National Focus Education and Outreach cooperative agreement to Consumer Action of San Francisco. This review was performed as a result of allegations disclosed during our review of the use of Fair Housing Initiatives Program Funds (Audit Memorandum No. 00-AO-174-0801, dated July 6, 2000). Although we attributed the root cause of the allegations to the undue influence of the Secretary's Chief of Staff and a Senior Advisor (Audit Memorandum No. 2001-AO-0801), we also found deficiencies in the way Fair Housing and Equal Opportunity (FHEO) officials administered the award to Consumer Action. Specifically, the Grant Officer (GO) did not:

- Amend the legal instrument (cooperative agreement) with Consumer Action to specify HUD's anticipated substantial involvement in the execution of the National Focus Education and Outreach project; and
- Coordinate with the Government Technical Representative (GTR) during negotiations to ensure that the statement of work and Consumer Action's proposed activities conformed to the criteria published in the Super Notice of Funds Availability (SuperNOFA) and that the negotiation process was completed timely.

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

Although you agreed to take actions to address our recommendations, within 60 days, please give us a status report on each recommendation made in the report. 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 completed, or why action is considered unnecessary. Also, please give us copies of any correspondence or directives issued because of this review.

Objective, Scope, and Methodology

Our objective was to review aspects of FHEO's management controls over the FY 1998 FHIP National Focus Education and Outreach competitive award process.

To accomplish our objective, we:

- Reviewed applicable FHIP laws, regulations, and program documentation;
- Reviewed FY 1998 FHIP applications and selection results; and
- Interviewed officials from FHEO, Consumer Action, and the Hastings Group.

We conducted our review from July through October 2000 and reviewed project activities for the period January 1999 through August 2000.

Background

Title 31 of the United States Code, "Money and Finance," Sections 6304 and 6305, established the law for using grant and cooperative agreements. Section 6305 states that an executive agency *shall* use a cooperative agreement as the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when:

- (1) The principal purpose of the relationship is to transfer a thing of value to the State, local government, or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; and
- (2) Substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.

Section 6304 authorizes the use of grant agreements in a manner similar to cooperative agreements. However, when the executive agency uses a grant agreement as the legal instrument, substantial involvement is not anticipated between the executive agency and the grant recipient.

HUD Handbook 2210.17, REV-2, "Discretionary Grant and Cooperative Agreement Policies and Procedures," (Handbook) is consistent with the Federal law.

The GO and the GTR are responsible for the administrative requirements for grants and cooperative agreements. The specific responsibilities for the GO and GTR are defined in the Handbook and in FHEO's Guidebook for Monitoring Fair Housing Initiatives Program (FHIP) Grant Agreements. Some of the GO's responsibilities include:

- Directing and/or approving any activity that changes the project description or content, the total award amount, the project period, or administrative provisions of the award;
- Negotiating and executing amendments to existing awards;
- Monitoring recipient compliance with all assistance terms and conditions;
- Reviewing recipient payment requests, financial, cash management, and performance reports and taking appropriate action as necessary; and
- Promptly resolving problems raised by the GTR or recipient.

Conversely, at a minimum, the GTR is responsible for:

- Monitoring the recipient's performance, including progress against the work plan, performance schedule, and budget;
- Maintaining liaison with the recipient and GO to resolve performance problems;
- Fulfilling substantial involvement responsibilities stated in cooperative agreements; and
- Recommending modifications to the GO.

In the FY 1998 National Competition SuperNOFA, FHEO allocated \$2 million of FHIP funds for a national education and outreach project. The project's requirements were defined in the application kit. Applicants that competed for the funds had to design a coordinated national education campaign to provide fair housing information to the public, including historically under-served populations such as new immigrants, and to educate all persons about their fair housing rights.

In January 1999, HUD selected Consumer Action of San Francisco as the recipient of the \$2 million cooperative agreement based on its proposal to conduct a multi-focused, national project targeted primarily for new immigrants and under-served populations. Consumer Action was one of six applicants competing for this cooperative agreement. Although Consumer Action was selected in January, the GO did not sign the cooperative agreement until July 22, 1999.

FHEO Did Not Disclose HUD's Substantial Involvement in the National Education and Outreach Project

FHEO's cooperative agreement with Consumer Action did not disclose HUD's substantial involvement in the FHIP project activities. This condition occurred because once the GO recognized HUD's substantial involvement, she did not amend the agreement as directed in the policy governing cooperative agreements. As a result, Consumer Action operated under verbal instructions, project completion was delayed 9 months, and the PSA cost \$180,000.

The Handbook states that each cooperative agreement shall include an explicit statement of the nature, character, and extent of HUD's anticipated involvement. The Handbook also provides examples of activities that are associated with substantial involvement. These activities include substantially directing the recipient's operations, actively participating during the assisted activities, reviewing and approving the stages of work, and imposing highly prescriptive HUD requirements that limit the recipient's discretion.

Upon learning that HUD's Chief of Staff and a Senior Advisor to the Secretary (hereafter referred to as the Secretary's office) was substantially involved in the FY 1998 National Focus Education and Outreach Project, FHEO did nothing to ensure compliance with HUD's own policies governing cooperative agreements. The GTR and the GO advised us that, initially, FHEO was not aware of the substantial involvement by the Secretary's office. However, they acknowledged that once it became obvious to them that the Secretary's office was going to be substantially involved, they did nothing. In our opinion, FHEO should have amended Consumer Action's cooperative agreement to reflect the extent of HUD's involvement. Instead, the GTR and GO allowed Consumer Action to operate without fully disclosing all of HUD's requirements in its cooperative agreement.

We considered the Secretary's office's activities in the FHIP FY 1998 National Focus Education and Outreach Project as meeting the definition of substantial involvement. The following examples illustrate the Secretary's office's substantial involvement in Consumer Action's activities:

- HUD did not want Consumer Action to focus on reaching the under-served populations and producing deliverables such as PSAs or posters, as requested in the SuperNOFA. Instead, the Secretary's office wanted a national image campaign. Therefore, the Secretary's office verbally expressed to Consumer Action that it was "on the wrong track" in implementing the project. HUD's Chief of Staff assigned a Senior Advisor to the Secretary to be the Secretary's office contact with Consumer Action and to direct the PSAs' development and production. The Secretary's office not only involved itself in developing the PSAs, but also essentially had full reign over all project activities.

The Secretary's office's verbal instructions caused Consumer Action to perform tasks that contradicted the requirements published in the SuperNOFA and incur costs before completing the negotiation process. This is not a good business practice because it presents a potential financial risk to Consumer Action. Consumer Action may be at financial risk if the incurred cost cannot be recovered because of an unsuccessful negotiation.

- The Secretary's office assumed authority for final approval on all of the deliverables produced by Consumer Action. Instead of requiring Consumer Action to produce a deliverable for review and approval before proceeding to the next task, HUD allowed Consumer Action to continually produce deliverables despite the risk of rejection and incurring unnecessary expenditures. Consumer Action submitted elements of the campaign, sample scripts, creative concepts, and storyboards and print ads for review and approval to the GTR and the Secretary's office. However, the deliverables were either not addressed or deemed unacceptable by the Secretary's office.

As a result of the Secretary's office's unresponsiveness and indecisiveness, the project completion date was delayed by 9 months.

- The Secretary's office insisted that Consumer Action use a high-end celebrity in the English/Spanish PSAs. Consumer Action submitted a list of various celebrities with different ethnic backgrounds; however, the Secretary's office rejected the list as unacceptable.

Because the Secretary's office imposed the requirement of high priced talent and flashy production standards, Consumer Action spent \$180,000, over four times what they estimated this deliverable would cost. Furthermore, the increased costs associated with obtaining celebrity talent made it necessary to drop other elements of the campaign in an effort to stay within budget.

Based upon the examples stated above, we concluded that the terms of HUD's cooperative agreement with Consumer Action were too vague and the GO should have amended the cooperative agreement when it became apparent that the Secretary's office wanted to be involved in project operations. By including a clause disclosing HUD's substantial involvement, Consumer Action's cooperative agreement would have fully exhibited all of HUD's requirements and eliminated any confusion between Consumer Action, FHEO grant officials, and the Secretary's office.

FHEO Comments

The Deputy Assistant Secretary for Operations and Management emphasized that the administration of the Consumer Action grant was "**atypical**" because of the involvement of high-level HUD personnel beyond the control of FHIP program staff. FHEO also stated that the GTR assigned to the Consumer Action grant award was not a regularly assigned member of the FHEO grants management staff. FHEO also stated that the GO is experienced and is highly valued for her grant administration skills but this involvement made it difficult, in this particular case, to "enforce the oversight and monitoring" that the Office of Inspector General recommended.

FHEO agreed that the Assistant Secretary will issue memorandums that:

- Designate all grant management staff assigned to all of the Education and Outreach Initiative (EOI) – National Program grants. FHEO field staff administers most of the FHIP grants and “Headquarters” personnel only administer EOI-National Program grants. According to FHEO, the HUB directors are currently required to execute memoranda to designate each person assigned to administer the grant as a GO, GTR, and Government Technical Monitor.
- Authorize that the GO may only amend the grant and cooperative agreements when the GTR makes a written recommendation, with appropriate justification, and the GO approves the recommendation. Also, the GO will be required to give written notice to GTRs who do not adhere to this requirement.

OIG Evaluation of FHEO Comments

FHEO’s proposed corrective action did not address Recommendation 1A. Therefore, future status reports on the audit recommendations should include actions to ensure that HUD’s level of involvement is clearly defined in all cooperative agreements. FHEO’s proposed corrective action addresses the intent of Recommendation 1B. However, we believe that the final action plan should contain specific policy to ensure that the GO enforces his oversight responsibilities beyond awarding and amending the grant agreements.

Recommendations

We recommend that the Assistant Secretary for Fair Housing and Equal Opportunity:

- 1A. Ensure that HUD’s level of involvement is clearly defined in all cooperative agreements.
- 1B. Ensure that the GO enforces his oversight and monitoring responsibilities when administering cooperative agreements.

Weaknesses in FHIP's Negotiation Process

FHEO did not timely negotiate its FY 1998 FHIP National Education and Outreach Project with Consumer Action. This condition occurred because the GO did not coordinate with the GTR during the negotiation process and FHEO had not developed and implemented timeframes for completing negotiations. As a result:

- Targeted populations least familiar with their fair housing rights had to wait to receive information regarding housing discrimination; and
- FHEO cannot be assured that an accurate and reliable Statement of Work (SOW) and budget was constructed that included all of the necessary requirements to ensure that Consumer Action will accomplish its mission.

The Handbook states that the purpose of negotiations is to establish mutual agreements between HUD and the prospective recipient as to project purpose, definition, timing, HUD's role, and the resources appropriate to support the project. HUD's FY 1998 National Competition SuperNOFA requires all successful applicants to participate in negotiations to determine the specific terms of the grant agreement and budget.

The negotiation process took too long because the GO and GTR did not coordinate with each other and in effect held two separate negotiation processes with Consumer Action. The GTR started his negotiation process on February 11, 1999, while the GO's process did not begin until April 14, 1999. However, it is the GO's responsibility to negotiate the SOW and the budget, execute and administer the grant agreements, and assure that no new criteria are added and that criteria published in the SuperNOFA are not changed after the application deadline date.

From February through April 1999, the GTR held several meetings with Consumer Action as part of his negotiation process. The GTR's meetings centered around discussing the planned project activities:

- Grant focus and HUD's expectations;
- Elements of the campaign;
- Revisions to the SOW based upon HUD's feedback; and
- Presentation of storyboards.

However, the GTR did not invite the GO to participate in any of these meetings.

In fulfillment of her responsibilities, the GO commenced negotiating with Consumer Action on April 14, 1999, and used the SOW that was submitted with the original proposal. However, on April 19 (5 days after she began her negotiation), the GTR and Consumer Action issued a revised SOW. Because the GTR did not advise the GO of the revised SOW, the GO used an outdated SOW to conduct her negotiation. This was a duplication of effort. As a result, FHEO cannot be

assured that an accurate and reliable SOW and budget were constructed that included all of the necessary requirements to ensure that Consumer Action will accomplish its mission.

In addition, it took the GTR and GO approximately 6 months¹ to negotiate and approve the terms of Consumer Action's cooperative agreement. On *January 15, 1999*, HUD notified Consumer Action's Congressional Delegation of its selection for the FY 1998 FHIP National Focus Education and Outreach Competition. On *January 17, 1999*, the Secretary publicly announced that Consumer Action was the recipient. However, Consumer Action received its official notification letter from FHEO on *January 25, 1999*, 8 days after the Secretary made his public announcement. The GO signed the cooperative agreement on *July 22, 1999*.

Although FHIP's Negotiation/Award Process states that the grant negotiation process should commence when Congressional release dates have been secured and a selection notice has been sent to the successful applicant, we did not find any policies that provided guidelines on how long the negotiation process should take.

We believe that 60 days is sufficient time to negotiate and approve grants awarded under the SuperNOFA process because the Technical Evaluation Panel (TEP) conducts substantive reviews of all qualified applicants. During the application evaluation and selection process, the TEP provides the GO and GTR with an expert, impartial, and comprehensive evaluation of the technical and management aspects of each applicant's proposal. Therefore, the results of the TEP's assessment can be used to minimize the need for an exhaustive negotiation process.

As a result, targeted populations least familiar with their fair housing rights had to wait 6 months to receive information regarding housing discrimination. Moreover, HUD's announced goal of 'crackdown on housing discrimination' through educating immigrants about their fair housing rights and ensuring enforcement mechanisms are available to address specific types of discrimination was delayed.

FHEO Comments

FHEO states that when the FY 2001 selections are announced, grants management staff will be reminded to coordinate the negotiations and to set realistic timeframes for completing the grant negotiations. FHEO also states that future memoranda for grant management designations will emphasize that the "Grants management is a team effort and the staff assigned to administer the grant must work together early and often in developing the grant agreement, and continually work together throughout the life of the grant."

OIG Evaluation of FHEO Comments

Some of the corrective actions that FHEO proposed satisfied the intent of our recommendations but do not go far enough to be fully responsive. At a minimum:

¹ We calculated the total negotiation time from *January 17, 1999* (the Secretary's announcement date) to *July 22, 1999*.

- Management should establish quantifiable timeframes for completing the grant negotiation phase. We also believe that FHEO's action plan should include procedures that will initiate a status review of the grant award process when the planned negotiation timeframes are not achieved.
- The GO and the GTR should include appropriate documentation in the grant files that provide an audit trail to validate that the review of the statement of work (SOW) and the budget was properly coordinated.

Recommendations

We recommend that the Assistant Secretary for Fair Housing and Equal Opportunity:

- 2A. Establish realistic timeframes for completing the negotiation process.
- 2B. Ensure that the GTR and GO coordinate their review of the SOW and budget during the negotiation process.

Appendix A

Auditee Comments



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

February 1, 2001

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

FROM: Floyd O. May, Deputy Assistant Secretary for Operations and Management, EG 

SUBJECT: Draft Report, "Fair Housing Initiatives Program Grant Administration Process Weaknesses, Washington, DC"

This responds to your January memorandum regarding the above subject. The Draft Report reviewed the process used to award the FY 1998 Fair Housing Initiatives Program (FHIP) National Focus Education and Outreach grant to Consumer Action of San Francisco.

Although the Draft Report attributes "the root cause of the allegations to the undue influence of the Secretary's Chief of Staff and a Senior Advisor (Audit Memorandum No. 2001-AO-XXXX)," you also found deficiencies in the Program Office's administration of the grant. Specifically, the draft report made the following findings:

1. The Grant Officer (GO) did not:
 - Amend the legal instrument (cooperative agreement) with Consumer Action to specify HUD's anticipated substantial involvement in the execution of the National Focus Education and Outreach grant; and
 - Coordinate with the Government Technical Representative (GTR) during negotiations to ensure that the statement of work and the grantee's proposed activities conformed to the criteria published in the Super Notice of Funds Availability (SuperNOFA) and that the negotiation process was completed timely.
2. FHEO did not timely negotiate the Consumer Action award instrument and the GO and GTR did not coordinate the negotiation process.

Appendix A

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The draft report makes four recommendations:

- 1A. Ensure that HUD's level of involvement is clearly defined in all cooperative agreements.
- 1B. Ensure that the GO enforces his oversight and monitoring responsibilities when administering grant agreements.
- 2A. Establish realistic timeframes for completing the negotiation process.
- 2B. Ensure that the GTR and GO coordinate their review of the SOW and budget during the negotiation process.

We are prepared to take appropriate steps to address your recommendations. At the outset, we wish to stress that the administration of this grant was atypical because of the involvement of high level HUD personnel beyond the control of FHIP program staff. The GTR assigned to this grant award was not a regularly assigned member of the FHEO grants management staff. The Grant Officer (GO) is experienced and highly valued for her grant administration skills but this involvement made it difficult, in this particular case, to "enforce the oversight and monitoring" you recommend be done by the GO.

Looking forward, we believe the following steps will implement your recommendations and address the issues you identified.

Actions to be Taken:

1. Designation of Grants Management Staff: The Assistant Secretary will issue a memorandum designating all grants management staff assigned to all EOI-National Program Grants.

Explanation:

Most FHIP grants are administered in the field. Headquarters administers only Education and Outreach Initiative (EOI)-National Program grants. Hub Directors are required to execute memoranda designating each staff person who is assigned to administer the grant as a Grant Officer (GO), Government Technical Representative (GTR) and Government Technical Monitor (GTM). We expect the Assistant Secretary will execute similar designation memoranda for all EOI-National Program grants.

In the future, memoranda for all grants management designations will emphasize the following:

- a. Grants management is a team effort and the staff assigned to administer the grant must work together early and often in developing the grant agreement, and continually work together throughout the life of the grant.

Appendix A

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- b. Grants management staff must familiarize themselves with the documents that control FHIP grant administration, including the HUD Handbook on Discretionary Grants, FHIP Monitoring Handbook, Schedule of Articles and Special Conditions, and the regulatory requirements in 24 CFR Part 84, and 85.
 - c. The obligating instruments (grant and cooperative agreements) may only be amended when the GTR makes a written recommendation, with appropriate justification, to the GO and the GO approves the recommendation. In addition, GOs will be required to give written notice to GTRs who do not adhere to this requirement.
 2. Training Grants Management Staff. As soon as funds are available, we will train grants management staff. The type of training will depend on the size of the grants awarded, the complexity of the grant and the level of risk. *Level One Training* will be designed for grants with low amounts, complexity, and levels of risk. *Level Two Training* will be designed for more complex grants, with higher award amounts and levels of risk.
 3. Coordinating negotiations and timeframes. When the FY 2001 selections are announced grants management staff will be reminded to coordinate the negotiations and to set realistic timeframes for completing the grant negotiations.

Within the next sixty days we will: (1) provide a copy of the model designation memorandum highlighting the above revisions, (2) propose a training course for grants management staff, subject to the availability of funds, and (3) provide a copy of the memo which will be forwarded by Headquarters to all grants management staff regarding coordination of the FY 2001 grant awards. The model designation memorandum will be used in all future grants management designations made by Headquarters and the field. Furthermore, a memorandum highlighting these points will be sent to all current FHIP grants management staff.

Thank you for your attention to this matter.

Distribution

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