



U.S. Department of Housing and Urban Development
Region 4, Office of Inspector General
Office of Audit, Box 42
Richard B. Russell Federal Building
75 Spring Street, SW, Room 330
Atlanta, GA 30303-3388

MEMORANDUM NO:
2010-AT-1802

December 14, 2009

MEMORANDUM FOR: Mary D. Presley, Director, Office of Community Planning and Development, 4AD

FROM: //signed//
James D. McKay, Regional Inspector General for Audit, Atlanta Region, 4AGA

SUBJECT: The City of Atlanta, GA, Needs to Improve Certain Aspects of Its NSP to Meet the Program's 18-Month Obligation Deadline

INTRODUCTION

The City of Atlanta (City) received a \$12.3 million Neighborhood Stabilization Program (NSP) grant from the U.S. Department of Housing and Urban Development (HUD) that was authorized under Division B, Title III of the Housing and Economic Recovery Act of 2008 (HERA). We selected the City for review due to the amount of its NSP funding and because of performance concerns identified during our previous audit of the City's HOME Investment Partnerships Program (HOME). Our objective was to determine whether the City had the capacity to effectively and efficiently administer its NSP.

We provided a draft report to the City on November 16, 2009, and the City provided written comments on December 1, 2009, which are included in appendix A. The city agreed to correct the conditions raised by the review.

For each recommendation without a management decision, please respond and provide status reports in accordance with HUD Handbook 2000.06, REV-3. Please furnish us copies of any correspondence or directives issued because of the audit.

METHODOLOGY AND SCOPE

To accomplish our objective, we

- Reviewed applicable statutes, regulations, and relevant HUD program requirements;
- Reviewed the City's NSP and other relevant procedures;

- Reviewed HUD and City files, including files related to past HUD monitoring reviews of the City;
- Interviewed HUD and City officials regarding the City's operations;
- Reviewed the City's NSP substantial amendment to its consolidated plan and its NSP grant agreement with HUD;
- Reviewed the first five of eight implementation agreements with developers for compliance with NSP and procurement requirements. We also reviewed the total \$141,480 in activity obligations that the City had entered into HUD's Disaster Recovery Grant Reporting System (HUD's reporting system) for accuracy of reporting. The results of our review apply only to the items selected and cannot be projected to the universe or population.

Our review generally covered the period December 1, 2008 (the date of the City's substantial amendment to HUD for the NSP), through October 29, 2009. We also considered related performance issues in the City's HOME program which dated back to April 1, 2006. We conducted the review from July 1 through October 29, 2009, at the offices of the City's Bureau of Housing and the HUD Office of Community Planning and Development in Atlanta, Georgia.

For this report, our work was not conducted in accordance with generally accepted government auditing standards; however, this fact had no effect on the significance of the conditions identified in this report. We designed the review to be proactive and focus on prevention; thus, the scope was significantly reduced to the items and conditions discussed in this report.

BACKGROUND

HERA appropriated \$3.92 billion in NSP funds for emergency assistance for redevelopment of abandoned and foreclosed-upon homes and residential properties. On March 5, 2009, HUD entered into a \$12.3 million grant agreement with the City to carry out NSP activities funded by its direct allocation from HUD. HUD's Federal Register/Vol.73, No. 194, provides that, unless otherwise stated, NSP grants are to be considered Community Development Block Grant funds. The City also applied for NSP funding through the Georgia Department of Community Affairs and was awarded \$3.9 million on March 27, 2009. Our review covered the \$12.3 million in NSP funding that the City received directly from HUD. On February 17, 2009, the President signed the American Recovery and Reinvestment Act of 2009 (ARRA). ARRA provides an additional \$2 billion in NSP funding (referred to as NSP2) that will be made available on a competitive basis. On July 16, 2009, the City submitted an application to HUD for \$57.9 million in NSP2 funding. HUD will not make funding decisions on NSP2 applications before December 2009.

The City's policy-making and legislative authority are vested in the city council, consisting of 15 members and an elected city council president, who serves as a presiding officer. The mayor is responsible for overseeing the day-to-day operations of the City and appointing and directing the heads of the various departments.

On September 28, 2009, we issued an audit report on the City's HOME program that addressed a problem with the program's commitment requirement. The NSP funds have an 18-month obligation deadline that is similar to the HOME program's 24-month commitment deadline.

RESULTS OF REVIEW

Expedited Actions Needed To Meet Program's 18-Month Obligation Deadline

The City has developed the organizational structure needed to administer its NSP and has hired a sufficient number of qualified staff to implement the program. However, the City needs to expedite actions to meet the program's 18-month obligation deadline due to

- Delays in executing implementation contracts and obligating NSP funds,
- Past performance problems that still require attention,
- Procurement inconsistencies, and
- Lack of procedures for some components of its NSP.

HERA, section 2301(c)(1), provides that recipients shall obligate program funds not later than 18 months after receipt of such amounts to purchase and redevelop abandoned and foreclosed-upon homes and residential properties. HUD approved the City's NSP grant on March 5, 2009. The program's 18-month obligation deadline is in September 2010, about 10 months from the time we completed our review in October 2009. During the 7 elapsed months, the City had obligated only \$203,271 of its \$12.3 million in NSP funds and had not completed the execution of program implementation contracts with developers. The obligated amount includes \$141,480 for the City's acquisition, rehabilitation, and disposition activity and \$61,791 for administration.

City officials stated that their progress rate had been impacted by their simultaneous efforts to implement and meet the tight NSP deadline, making application for NSP2 funds, making application for and implementing NSP activities funded through the State of Georgia, and dealing with our audit and a recently completed audit of their HOME program (report issued on September 28, 2009). We recognize the complexities and time-consuming efforts these circumstances placed on the City's resources in its efforts to meet these demands. The City will need to implement effective measures to expedite the rate of program progress to obligate all of its NSP funds within the 10 months that remain before the statutory obligation deadline. We are concerned about the City's delayed execution of implementation contracts and obligating NSP funds, past performance problems, procurement inconsistencies, and lack of procedures.

Delays in Executing Implementation Contracts and Obligating NSP Funds

After more than 7 months of operations, the City had not executed all of its planned implementation contracts with developers, and it had obligated only \$141,480 of the more than \$11 million that HUD approved for NSP activities (excluding program administration). The City had only recently executed the contracts provided for our review (between late August and October 2009). Specifically, the City

- Experienced delays in executing implementation contracts for its \$8.9 million acquisition, rehabilitation, and disposition activity - The City's requests for proposals required prospective contractors to respond by March 2, 2009. However, more than 5 months elapsed before the City executed the first of 10 planned developer contracts (now reduced to eight) on August 28, 2009, followed by seven additional contracts executed between September 16 and October 22, 2009. As of October 23, 2009, the City had obligated only \$141,480 for the activity. The implementation contracts did not constitute obligations because they called for the developers to identify properties for acquisition and separately contract for the rehabilitation work. The developers now have about 10 months from October 2009 to obligate the NSP funds before the program's statutory obligation deadline. The City expedited the contract execution process after we discussed our concerns.

The \$8.9 million activity includes \$800,000 that was not covered by an implementation contract at the time of our review because the City terminated contract negotiations with two developers and planned to amend contracts with existing developers to include that amount. The City terminated the negotiations with one developer because an investor purchased the property that the developer planned to acquire. City officials stated that they expected the program would continue to be affected by investors that are competing with them for the purchase of foreclosed-upon properties. In the other case, the City terminated contract negotiations because the bank did not want to allow the property to go into foreclosure.

The delayed contract executions also caused the City to miss its internal program target dates for assessing contractor performance. Section VI (E) of the City's Neighborhood Stabilization Program Manual for Developers and Subrecipients, provides that all NSP subrecipients and for-profit contractors have until December 31, 2009, to obligate their NSP funds to specific addresses and to complete their projects from the date of the award. Any project not showing significant progress by October 15, 2009, would be subject to recapture, reprogrammed, and reallocated to another NSP project or program. The City disagreed with our assessment that the program was behind schedule. In response to our concern, the City revised the procedure to show September 5, 2010, as the deadline for developers to obligate their funds. The revised date is also the 18-month statutory deadline for obligating program funds.

- Lacked implementation contracts for more than \$1 million for its financing and redevelopment activities - The City's substantial amendment included more than \$1.6 million for a financing activity and a redevelopment activity. It had not executed implementation contracts for more than \$1 million for the two activities. The City had implementation contracts with several developers that included more than \$600,000 for the financing activity, but it was in the process of amending those contracts to remove the financing amounts. The execution of implementation contracts was subject to further delay because the City was in the process of reallocating funds between the financing and redevelopment activities. The reallocations required an amendment to the City's consolidated plan, submission for public comment, and city council approval. City officials stated that they were working to complete these actions.

- Lacked an implementation contract for its \$375,000 land banking activity - The City had not executed an implementation contract for its land banking activity, and it had not established NSP procedures for the activity.
- Lacked progress in implementing its \$159,474 demolition activity - The City had not obligated any funds for demolition. Its substantial amendment provides that it will work with the land banking contractor and other developers to demolish properties

Past Performance Problems

The City had recent problems in meeting the HOME program's 24-month commitment requirement that will require attention to prevent repetition of the same type of problems in complying with the NSP 18-month obligation deadline. During this review, we requested and the City drafted procedures for entering NSP obligations into HUD's reporting system and monitoring the accuracy of those obligations. The procedures provide for adequate input and monitoring of the obligation entries, but additional time is needed for it to demonstrate effective implementation and enforcement of the procedures. We reviewed the \$141,480 that the City obligated for an NSP activity. It made the obligations pursuant to the procedure it provided, and the obligations were properly supported.

Procurement Inconsistencies

The City did not consistently follow the method it selected for awarding implementation contracts to developers. Specifically, it did not consistently apply the scoring criteria it developed to assess leveraged funds and fund commitments. In addition, it executed some implementation contracts that should have contained leveraged funds but did not. Specifically, the City

- Provided inconsistent ranking scores - We reviewed the City's ranking sheets for five executed implementation contracts and noted unexplained or unsupported inconsistencies among evaluators' scores for leveraged funds and status of funding commitments. The City's contractor selection process provided that contractors that scored in the top 20 percent or were recommended by at least two members of the evaluation team would have their proposals submitted to the funding recommendation team. The rating inconsistencies could affect a contractor's overall score and whether its proposal was forwarded to the funding recommendation team. This condition was significant, considering that the City received and evaluated 68 contract proposals.

We identified scoring inconsistencies for leveraging among evaluators for four of the five contracts examined. The City's rating sheet provided up to seven points for leveraged funds based on the ratio of leveraged funds to NSP funding. Thus, the score among the evaluators should have been identical and based on the same mathematical calculation. However, we noted a one-to four-point spread among the evaluators' score for the four contractors. Each evaluator provided the same score for the fifth contractor, and we reviewed and agreed with the score.

We also noted scoring inconsistencies for funding commitments in four of the five contracts examined. The City's rating sheet provided up to five points for funding commitments. In four cases, at least one evaluator provided a score of zero, indicating no funding commitment; whereas, the other evaluators provided scores that ranged from two to five points.

- Executed contracts without leveraged funds - The proposal submitted by one of the five contractors examined included \$160,000 for leveraged funds, but the City did not include leveraged funds in the executed contract. HUD does not require leveraged funds, but the City's request for proposal required prospective contractors to provide leveraged funds, and the City evaluated the contractor's proposal, giving consideration to the proposed leveraged amount. The City's omission of leveraged funds from the contract was not consistent with its contractor evaluation and selection criteria. In addition, we noticed that the City executed another implementation contract on October 22, 2009, that omitted leveraging, although the contractor had proposed to provide more than \$1 million in leveraged funds.

Lack of Procedures

The City had not established procedures for its NSP land banking activity. City officials stated that they planned to use a local land banking authority and follow procedures similar to those they already had in place for other City programs that also use the land banking authority. During the review, we requested but the City had not developed procedures for (1) entering obligations into HUD's reporting system and monitoring the accuracy of those obligations, (2) demolition, and (3) tracking program income in HUD's reporting system. In response to our requests, the City drafted procedures for these areas. The draft procedures appeared to be adequate if implemented as provided.

Conclusion

The City needs to implement its NSP at a faster pace to obligate more than \$10 million in activity funding (excluding program administrative cost) before the program's September 2010 statutory obligation deadline. The City has developed the organizational structure needed to administer its NSP and has hired a sufficient number of qualified staff to implement the program. The City will need to take effective actions to overcome the above conditions to meet the obligation deadline.

RECOMMENDATIONS

We recommend that the Director of the Office of Community Planning and Development require the City to

- 1A. Expedite the implementation of the remaining \$10,942,994 approved for NSP activities (excluding program administration) to prevent further delays that may prevent its ability to obligate the funds by the program's 18-month statutory deadline.
- 1B. Expedite execution of implementation contracts with developers or subrecipients for its financing, redevelopment, and land banking activities.

- 1C. Review and verify the accuracy of evaluator scores for leveraged funds and fund commitments for all prospective contractors and determine whether action is needed to revise the selection of contractors for funding.
- 1D. Amend contracts executed with developers to include leveraged funds if the contractor(s) competed for funding based on the City's leveraging requirement, proposed to provide leveraged funds, and the City evaluated the contractor(s) proposal against other contractors, giving consideration to proposed leveraged amounts.
- 1E. Develop and implement procedures for land banking.
- 1F. Implement the procedures for (1) entering obligations into HUD's reporting system and monitoring the accuracy of those obligations, (2) demolition, and (3) tracking program income in HUD's reporting system.

SHIRLEY FRANKLIN
MAYOR

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JAMES E. SHELBY
COMMISSIONER

December 1, 2009

Mr. James D. McKay
Regional Inspector General for Audit
U.S. Department of Housing and Urban Development
Region 4, Office of the Inspector General
Richard B. Russell Federal Building
75 Spring Street, SW Room 330
Atlanta, Georgia 30303-3388

Subject: The City of Atlanta, GA Needs to Improve Certain Aspects of its NSP
To Meet the Program's 18-Month Obligation Deadline

Dear Mr. McKay:

This letter is in response to the draft audit report dated November 16, 2009 regarding the Office of Inspector General (OIG) review of the City of Atlanta, Georgia Neighborhood Stabilization Program (NSP). We appreciate the opportunity to provide alternative resolutions to the recommendations identified in the OIG's report and have provided our comments.

Thank you for your continued cooperation and assistance. If you have any questions or concerns, please feel free to contact me directly or Ms. Evelyn Nu'Man, Director of the Bureau of Housing at (404) 330-6390.

Sincerely,

James. E. Shelby, Commissioner

cc: Terri M. Lee, Deputy Commissioner
Evelyn Nu'Man, Director Bureau of Housing
File

City of Atlanta, Georgia Response to the

**United States Department of Housing and Urban Development
Office of Inspector General, Region 4
NSP Review Report dated November 16, 2009**

Overview: The City of Atlanta, Georgia is in receipt of the United States Department of Housing and Urban Development's (HUD) Office of Inspector General for Audit (OIG) survey review report dated November 16, 2009, and discussed with the City, applicable members of HUD's Community Planning and Development (CPD) and the OIG staff on November 24, 2009. The purpose of the OIG review was to determine whether the City had the capacity to effectively and efficiently administer its Neighborhood Stabilization Program (NSP). For the purposes of the survey, the OIG review of the NSP covered the period December 1, 2008 (the date of the City's substantial amendment to HUD for the NSP) through October 29, 2009.

Capacity: The City's Department of Planning and Community Development, Bureau of Housing (BOH) is responsible for the implementation of the City's NSP. The City hired four staff dedicated to the NSP and has an additional five financial and managerial staff available to supplement the program as needed. The City staff has attended numerous NSP training sessions over the past twelve months to enhance our knowledge of the NSP regulatory requirements, the Disaster Recovery Grant Reporting system, Section 3, Uniform Act Acquisition, Construction Management, Green Building Standards, and Environmental Review. The OIG conducted a review of the City's NSP program from July 1 through October 29, 2009 and concluded that the City has developed an adequate organizational structure to administer its NSP and has hired an adequate number of qualified staff to implement the program.

Delays in executing Implementation Contracts and Obligating NSP Funds: The City remains committed to obligating the NSP funds by the statutory September 5, 2010 deadline. To ensure timely implementation and adherence to the NSP regulations, the City has executed contracts totaling \$9,509,474 (86% of the NSP program allocation) and scheduled the execution of the remaining contracts by the first quarter of 2010. The City amended the consolidated plan and the NSP budget reallocating \$800,000 to the Redevelopment Activity since the NSP bridge regulations, issued in July 2009, provided greater flexibility and an opportunity for the City to better address the funding request for new construction and redevelopment of vacant land. The City has begun obligating funds to acquire and redevelopment eligible properties. As of November 30, 2009 \$499,803 is obligated with an additional \$350,000 scheduled by year end.

Past Performance Problems: The City requested additional consideration and guidance from HUD in regard to some of the issues raised in the OIG report. Corrective actions have been taken in the HOME program commitment and IDIS procedures have been refined and updated. Once the HUD CPD has completed their review of the HOME OIG report and issued the management decision, the City will work closely with the local HUD officials to resolve any outstanding issues. In addition, the City will continue to participate in HOME and NSP training opportunities as they become available, and continue to seek technical assistance to ensure compliance with the HOME and NSP program regulations.

Procurement Inconsistencies: The City of Atlanta respectfully acknowledges the concerns stated by the OIG in reference to the NSP procurement process. The NSP procurement process

was designed to encourage full and open competition, resulting in 68 developers, and non-profit subrecipients responding to the Request for Proposals (RFP) by March 2, 2009. While the City is confident that it adhered to acceptable procurement standards during the NSP review process, we will work diligently with the HUD CPD office to address the stated concerns and complete a full evaluation of the proposals submitted.

The OIG further asserts that the NSP implementation contracts did not identify the amount of leverage proposed by the perspective contractors. The City will amend the executed contracts to include an estimated leverage amount. Final leverage amounts will not be known until the end of the project.

When developing the NSP contracts, the City incorporated controls designed to produce and track leveraged funds. Under the terms of the executed NSP Development contracts, when the NSP funds are provided for acquisition, demolition and/or renovation, the developers must identify equity, deferred development fees and/or leveraged funds at the time the NSP funds are committed. The executed NSP contracts, as currently written, require the developers to identify additional financing to complete the project and to address cost overruns with the leveraging requirement already stated in several sections of the NSP contracts in Part IIA Section C entitled “*Use of Funds*”, Section D entitled “*Request for disbursement of Funds*”, and Section E entitled “*Program Budget*”. Due to the unpredictable conditions in the housing market, the actual number of units acquired and funds leveraged will be determined on a case by case basis once the actual properties to be acquired are identified. The NSP funds are not obligated until the individual property is identified and under contract to close. It is the City’s position that the existing contracts sufficiently address the tracking and reporting of the leverage, however we will amend the contracts to include estimated leveraged amounts and will work with the local HUD officials to resolve any outstanding issues or inconsistencies.

Lack of Procedures: As noted in the OIG report, the City developed procedures to obligate and report activities in the DRGR system and modified their existing CDBG procedures for (1) the Atlanta Land Bank Authority, (2) Housing Demolition, and (3) tracking program income to accommodate NSP requirements. Based on the review, OIG concluded that the procedures appeared to be adequate if implemented as provided. We assure OIG and HUD CPD that we will implement the procedures provided on a daily basis or as needed.

OIG Audit Recommendations

As a result of the review, the OIG auditors have made the following recommendations that the Director of the Office of Community Planning and Development require the City to:

OIG Recommendation 1A. *Expedite the implementation of the remaining \$10,942,994 approved for NSP activities (excluding program administration) to prevent further delays that may prevent its ability to obligate the funds by the programs’ 18-month statutory deadline.*

City’s Response: The City agrees with this recommendation. To date, implementation is underway for all developer contracts with acquisition negotiations, closing and renovation of properties for sale and rent is underway; a total of \$499,803 is obligated for the acquisition of eligible properties. Please be assured that the City’s aggressive implementation schedule will result in all funds obligated by September 5, 2010 and all funds will be expended by March 2013.

OIG Recommendation 1B. Expedite execution of implementation contracts with developers or subrecipient for its financing, redevelopment, and land banking activities.

City's Response: The City agrees with this recommendation. To date, contracts totaling \$9,509,474 were executed, and the remaining contracts are scheduled for execution during the first quarter 2010.

OIG Recommendation 1C. Review and verify the accuracy of evaluator scores for leveraged funds and fund commitments for all prospective contractors and determine whether action is needed to revise the selection of contractors for funding.

City's Response: The City will perform a review of the 68 proposals and work closely with local HUD officials to resolve any outstanding issues.

OIG Recommendation 1D: Amend contracts executed with developers to include leveraged funds if the contractor(s) competed for funding based on the City's leveraging requirement, proposed to provide leveraged funds, and the City evaluated the contractor(s) proposal against other contractors, giving consideration to proposed leveraged amounts.

City's Response: The City will amend the executed contracts to include the tentative leverage amounts provided in their application during the Request for Proposal process. Final leverage amounts will not be known until the end of the project.

OIG Recommendation 1E: Develop and implement procedures for land banking.

City's Response: The City will finalize the land banking contract and implementation procedures by the fourth quarter, 2009.

OIG Recommendation 1F: Implement the procedures for (1) entering obligations into HUD's reporting system and monitoring the accuracy of those obligations, (2) demolition and (3) tracking program income in HUD's reporting system.

City's Response: The City provided the OIG with procedures and based on their review the OIG concluded that the procedures appeared to be adequate if implemented as provided. The City will continue to implement the NSP program in accordance with the established NSP regulations and City procedures.

Conclusion. The City is hereby committed to take the appropriate actions to ensure management and staff meets the statutory obligation and expenditure deadlines established for the NSP program. The City continues to take corrective actions to address prior issues of non compliance. Once the management decision is provided by the local HUD office, we will work with the HUD CPD office to resolve any outstanding issues.