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

March 28, 2013

**MEMORANDUM NO:**
2013-FW-1801

# *Memorandum*

TO: Dane M. Narode
Associate General Counsel for Program Enforcement, CACC

//signed//
FROM: Gerald R. Kirkland
Regional Inspector General for Audit, Fort Worth Region, 6AGA

SUBJECT: Final Civil Action: Heartland Health Care Center of Bethany Owners Settled Alleged Violations of Equity Skimming

## INTRODUCTION

The civil division of the Western District of Oklahoma U.S. Attorney's Office settled alleged violations of equity skimming against the owners of Heartland Health Care Center of Bethany. The equity skimming allegations stemmed from our December 2004 audit report[1] outlining the misuse of funds. As a result of the combined efforts of the U.S. Attorney's office; the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General (OIG), Offices of Audit and Investigation; and HUD's Office of General Counsel, the owners paid $1.75 million to settle the allegations. Our objective was to assist the U.S. Attorney's office in pursuing the owners and managers for their alleged violations of HUD requirements.

## METHODOLOGY AND SCOPE

To accomplish our objective, we provided the U.S. Attorney's Office our work papers and other requested documentation. We provided the U.S. attorneys an explanation of HUD's programs and applicable requirements and documentation supporting our conclusions. We discussed the elements of the case with the U.S. attorneys and provided them assistance in obtaining additional documentation or clarification. We also participated in a settlement conference presided over by a magistrate judge. We assisted the U.S. Attorney's Office from December 2009 through March 2013.

[1] Audit report 2005-FW-1003, "Heartland Health Care Center of Bethany, Bethany, OK," dated December 10, 2004

## BACKGROUND

In February 1997, the Federal Housing Administration (FHA) insured a $4.9 million mortgage on Heartland Health Care Center of Bethany in Bethany, OK. As a result of the owners' failing to make the mortgage payments, FHA foreclosed on the property in August 2004. FHA lost approximately $4 million on the sale of the loan.

In December 2004, OIG issued an audit report, which concluded that Heartland officials either misspent or could not support a total of $18.7 million. Specifically, Heartland officials made $6.8 million in ineligible and unsupported payments to identity-of-interest and other related companies. In addition, Heartland did not have documentation to support $11.9 million that it received in Medicare and Medicaid payments.

Before issuing the audit report, the OIG Office of Audit referred specific transactions to the OIG Office of Investigation to pursue for possible criminal activity. The Office of Investigation worked with the criminal division of the Western District of Oklahoma U.S. Attorney's Office to investigate the issues referred. In September 2007, a former Heartland official, David Forgy, pled guilty to a misprision of a felony.

## RESULTS OF REVIEW

In December 2009, after the U.S. Attorney's Office completed its criminal case, the civil division was interested in pursuing other transactions and parties included in the audit report. The U.S. Attorney's Office filed a complaint in the Western District of Oklahoma on September 13, 2010. The complaint named six defendants and alleged that they used Heartland's income and assets for their own benefit in violation of Heartland's regulatory agreement with HUD.[2]

A magistrate judge of the Western District of Oklahoma presided over a settlement conference with both parties in August 2012. As a result of the settlement conference, both parties tentatively agreed that the defendants would pay $1.75 million to settle the allegations.

HUD's Office of General Counsel and the U.S. Department of Justice approved the settlement agreement.[3] On March 14, 2013, four of the six defendants[4] settled the allegations for $1.75 million. The remaining two defendants[5] signed the settlement agreement but did not contribute financially. The settlement agreement contained neither an admission of liability by the defendants nor a concession by the United States that its claims were not well founded. The agreement allows the parties to avoid the delay, expense, inconvenience, and uncertainty involved in litigating the case.

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[2] The owners agreed to comply with the regulatory agreement as a condition for obtaining FHA endorsement for mortgage insurance. The regulatory agreement restricted the use of project income and assets.

[3] Since HUD was the client, its Office of General Counsel was responsible for approving the settlement agreement.

[4] John and LaWanda Rich, and Edwin and Elaine Gage

[5] David Forgy and Virginia Moore

The U.S. Attorney's Office was instrumental in resolving the conclusions in our report. The work in obtaining the settlement agreement helped reduce the financial burden to HUD while holding the appropriate parties responsible.

## RECOMMENDATION

We recommend that HUD's Office of General Counsel, Office Program Enforcement

1A. Allow HUD OIG to post the $1,750,000 settlement to HUD's Audit Resolution and Corrective Actions Tracking System.