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Audit Report Number
2009-LA-1004

TO: Steven B. Sachs, Director, Community Planning and Development Division, 9AD

Joan S. Hobbs

FROM: Joan S. Hobbs, Regional Inspector General for Audit, Region IX, 9DGA

SUBJECT: Alameda County HOME Investment Partnership Consortium Did Not Use Program Funds in Compliance with HUD Requirements

HIGHLIGHTS

What We Audited and Why

We reviewed the Alameda County HOME Investment Partnership Consortium's (the consortium) use of HOME Investment Partnerships Program (HOME) funds to determine whether it used its allocation of HOME funds in accordance with U.S. Department of Housing and Urban Development (HUD) rules and regulations. We performed the review because there was a high risk for noncompliance due to a lack of HUD monitoring since 2003.

What We Found

Six of the consortium's 22 construction and rehabilitation projects had construction commencement delays for unreasonably long periods, ranging from 31 to 81 months. Total development costs on the six delayed projects increased by more than $15 million. The consortium used an additional $5.6 million in HOME funds to cover the increase.

We also noted that one of the American Dream Downpayment Initiative (downpayment initiative[1]) projects provided $81,873 in excessive assistance to home buyers. Specifically, the consortium used the appraised market value instead of the actual purchase price of the homes to calculate the six percent maximum limitation for downpayment assistance. Moreover, the consortium did not comply with HUD's requirements for committing HOME funds within 24 months from the date the funds became available to the consortium. Specifically, the consortium entered HOME funds into HUD's Integrated Disbursement and Information System (information system) without executing a binding agreement within 24 months from the date the funds were

[1] The downpayment initiative is an affordable housing downpayment assistance portion of the HOME program.

allocated to the consortium. This action provided incorrect information to HUD, leading it to believe that the consortium was in compliance with the 24-month commitment requirement.

What We Recommend

We recommend that the Director of the San Francisco Community Planning and Development Division require the consortium to

- Repay the consortium's HOME trust fund more than $5.6 million from nonfederal sources for HOME funds used to pay for the cost increases resulting from unreasonable lengthy construction delays and implement policies and procedures to plan and monitor HOME projects in a more efficient manner to ensure that foreseeable construction delays do not occur.

- Repay the consortium's HOME trust fund $81,873 from nonfederal sources for the ineligible use of downpayment initiative assistance and implement policies and procedures to ensure that downpayment assistance is calculated using the purchase price.

- Review all agreements for the use of HOME funds entered into the information system from October 1998 to the present and change the entry dates to the dates of the agreements; repay HUD or have the consortium's future funding reduced by the amount determined not to have been committed within the requisite 24-month period; and implement policies, procedures, and internal controls to comply with HUD's statutory and regulatory requirements for committing HOME funds within 24 months from the time HUD allocates them to the consortium.

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.

Auditee's Response

We provided our discussion draft report to the Alameda County Housing and Community Development Department on October 21, 2008, and held an exit conference with the consortium's officials on October 29, 2008. The consortium provided written comments on November 5, 2008. The consortium generally disagreed with our report. The complete text of the auditee's response (with the exception of auditee's Appendix B [comprised of copies of downpayment initiative contracts], which was redacted due to its voluminous nature and identification of individual homebuyers' names and addresses), along with our evaluation of that response, can be found in appendix B of this report.

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BACKGROUND AND OBJECTIVES

The Alameda County Housing and Community Development Department (Department) was established in 1975 pursuant to the Housing and Community Development Act of 1974. The Department is an integral part of the Alameda County Community Development Agency. The Department is the lead agency for the Alameda County HOME Investment Partnership Consortium (the consortium). The consortium includes the cities of Alameda, Fremont, Hayward, Livermore, Pleasanton, San Leandro, and Union City and the Alameda Urban County (which includes the unincorporated areas of Alameda County and the cities of Albany, Dublin, Emeryville, Newark, and Piedmont). The consortium is the second largest HOME Investment Partnerships Program (HOME) entitlement jurisdiction in the San Francisco Bay area with a current total population of 982,132, comprising 65.5 percent of Alameda County's population.

The consortium receives an annual allocation of HOME funds, which is divided among the eight Community Development Block Grant entitlement jurisdictions. In addition, as mandated by the U.S. Department of Housing and Urban Development (HUD), 15 percent of the annual funding is set aside for community housing development organizations (community organizations). Community organizations are locally based nonprofit organizations, which provide affordable housing to lower income persons.

The Department coordinates and monitors the consortium's participation in the HOME program. It also administers urban county and community organization projects, while the rest of the cities administer their own HOME funding allocations.

Our objective was to determine whether the consortium used its HOME funding allocations in compliance with HUD requirements.

RESULTS OF AUDIT

Finding 1: Construction on Six New Construction and Rehabilitation HOME Projects Did Not Commence within the Required Amount of Time

Of 22 construction and rehabilitation projects active during the period between July 1, 2004, and June 30, 2007, construction work did not commence within the required amount of time on six projects. Contrary to regulatory requirement to commence construction within the required period (12 months), construction on these six projects did not commence for 31 to 81 months from the date the binding agreements for the use of HOME funds were executed. This condition occurred because the consortium committed HOME funds to projects before satisfying other contingencies (additional financing, zoning and environmental issues, property liens, etc.) needed for projects to move forward. As a result, HOME funding unnecessarily increased by more than $5.6 million.

Construction and Rehabilitation Work Did Not Commence for Unreasonably Long Periods

Between July 1, 2004, and June 30, 2007, the consortium had 22 active construction and rehabilitation projects with more than $24 million entered into the HUD's Integrated Disbursement and Information System (information system). Contrary to the regulatory requirements at 24 CFR (*Code of Federal Regulation*) 92.2, construction on six of these projects did not commence within a reasonable time after executing binding agreements for the use of HOME funds. Specifically, construction on these projects did not commence until between 31 and 81 months after HOME funds were committed to them. Not commencing construction for more than 24 months was not reasonable because it was more than twice the 12 months prescribed by regulations as a reasonable amount of time for commencing construction.

HOME Funding for Construction and Rehabilitation Projects Increased by More than $5.6 Million

Because of construction delays on the six projects, the total development costs increased by more than $15 million, including more than $5.6 million in increased HOME funding. A large portion of the cost increases was paid with HOME funds. The table below shows each of the six projects' total development costs and HOME funding.

Project no.	Proposed total development cost	Actual/most current total development cost	Total development cost increase	Initial HOME funding	Final HOME funding	Increase in HOME funding
180	$ 9,787,754	$ 12,583,601	$ 2,795,847	$ 1,250,000	$ 1,280,000	$ 30,000
193	2,280,000	3,362,953	1,082,953	280,000	1,030,000	750,000
196	8,043,962	11,589,868	3,545,906	594,773	2,954,853	2,360,080
239	8,900,000	13,548,023	4,648,023	600,000	1,790,929	1,190,929
281	8,100,000	8,899,000	799,000	100,000	400,000	300,000
326	10,135,510	12,714,860	2,579,350	678,500	1,700,481	1,021,981
Totals	**$ 47,247,226**	**$ 62,698,305**	**$ 15,451,079**	**$ 3,503,273**	**$ 9,156,263**	**$ 5,652,990**

When asked, the consortium officials provided the following reasons for the delays in commencing construction work: delays in meeting environmental requirements, changing zoning designations, mixed financing, failure to identify a specific project, inability to clear a prior state government lien, etc. For example, construction on project 239 did not commence for 53 months after the initial agreement for the use of $600,000 in HOME funds was executed. Main reasons for the delay were attributed to environmental clearance and re-zoning issues. This project is located on a parcel of land that used to be a military base. The consortium committed HOME funds to this project without first ensuring construction could commence within a reasonable timeframe. Although the particular parcel for this project reportedly had environmental clearance, it took more time to obtain clearance for the entire base. In order for any construction work to commence, the parcel in question had to be zoned for civilian multifamily. However, the City of Alameda could not zone this parcel separately from the rest of the base without first transferring ownership of the entire base from the U.S. Department of Defense.

With proper planning and due diligence the barriers that caused unreasonably long construction commencement delays could and should have been foreseen and addressed before HOME funds were committed and expended on these six projects.

Conclusion

The lengthy construction commencement delays resulted in substantial increases in total development costs. Over 36 percent of the cost increases on six projects were paid with HOME funds. The substantial increases in HOME funding to cover lengthy construction delays were neither reasonable nor necessary because with proper planning and diligence the causes could and should have been identified, and HOME funds should not have been committed to these projects prematurely. It was not prudent for the consortium to use more than $5.6 million in limited HOME funds to pay for the total development cost increases resulting from foreseeable delays in project planning and management.

Recommendations

We recommend that the Director of the San Francisco Community Planning and Development Division require the consortium to

1A. Reimburse its HOME Investment Trust Fund $5,652,990 from nonfederal sources for the HOME funds used to pay for the cost increases resulting from lengthy construction delays.

1B. Implement policies and procedures to plan HOME projects in a more efficient manner to ensure that foreseeable construction delays do not occur and implement policies and procedures to monitor construction commencement activities to ensure that construction commences within a reasonable period after execution of a binding agreement for the use of HOME funds.

Finding 2: The Consortium Used HOME Funds to Pay Excessive Downpayment Assistance to Homebuyers

The consortium provided excessive downpayment assistance on 16 of 17 American Dream Downpayment Initiative (downpayment initiative) loans. This condition occurred because the consortium used the appraised market value instead of the actual affordable purchase price of the homes to calculate the maximum threshold set forth by the applicable regulations. The excessive downpayment assistance was not an allowable use of $81,873 in HOME funds under the regulations governing the downpayment initiative program.

The Consortium Spent $81,873 for Downpayment Assistance in Excess of the Maximum Allowed Threshold

On project number 429, the consortium approved downpayment assistance to 17 homebuyers for a total of $363,817. Contrary to the regulatory requirements at 24 CFR 92.602(e), the consortium exceeded the maximum allowed threshold of the greater of $10,000 or six percent of the purchase price for downpayment assistance using HOME funds. Specifically, 16 of the 17 homebuyers received excessive downpayment assistance totaling $81,873. The following table shows pertinent details of each of the home purchase transactions and the 16 transactions with excessive downpayment assistance.

Purchase price	6% of purchase price	Loan amount	Excess
$ 180,630.00	$ 10,837.80	$ 12,500.00	$ 1,662
180,630.00	10,837.80	30,000.00	19,162
202,626.00	12,157.56	11,900.00	0
559,950.00	33,597.00	33,600.00	3
265,680.00	15,940.80	24,651.66	8,711
198,000.00	11,880.00	20,590.86	8,711
199,440.00	11,966.40	20,677.26	8,711
199,440.00	11,966.40	20,677.26	8,711
207,360.00	12,441.60	21,152.46	8,711
208,440.00	12,506.40	21,217.26	8,711
199,440.00	11,966.40	20,677.26	8,711
346,320.00	20,779.20	20,796.00	17
216,360.00	12,981.60	12,997.00	15
301,680.00	18,100.80	18,110.00	9
192,600.00	11,556.00	11,573.00	17
231,840.00	13,910.40	13,918.00	8
228,600.00	13,716.00	13,719.00	3
Total excessive downpayment assistance			**$ 81,873**

Conclusion

Calculating the downpayment assistance by using the fair market value of the homes instead of the actual purchase price resulted in excessive downpayment assistance. Using $81,873 in HOME funds to pay for downpayment assistance in excess of the regulatory limitations was not an eligible use of scarce HOME funds. The excessive downpayment assistance could and should have been used to help additional low income families to achieve homeownership.

Recommendations

We recommend that the Director of the San Francisco Community Planning and Development Division require the consortium to

2A. Reimburse its HOME Investment Trust Fund $81,873 from nonfederal funds for the excessive assistance provided to homebuyers.

2B. Implement policies and procedures to ensure that downpayment initiative assistance is calculated using the purchase price instead of the appraised value of a home.

Finding 3: The Consortium Did Not Commit Funds within 24 Months

The consortium entered funds for its projects into the information system without first executing binding agreements for the use of HOME funds. This condition occurred because the consortium considered the funds to be committed to a project when it received an application from a subrecipient. Because of this practice, the consortium did not execute binding agreements for multiple funding entries on seven of its projects for more than 24 months from the time HUD allocated those HOME funds to the consortium. Accordingly, the consortium did not commit HOME funds within the requisite 24 months.

The Consortium Did Not Commit at Least $5.1 Million within 24 Months

Between July 1, 2004, and June 30, 2007, the consortium had 28 active HOME projects, with more than $27 million entered into the information system. Contrary to the statutory requirements of 42 U.S.C. (*United States Code*) 12748(g), the consortium did not commit HOME funds to affordable housing projects within 24 months of their allocation. Specifically, the consortium did not execute binding agreements for the use of more than $5.1 million.[2]

The consortium considered the funds committed as of the date it made the funding entry into the information system. The information system is HUD's tracking system for verifying compliance with commitment and expenditure requirements of the HOME program. However, regulations at 24 CFR 92.2 define "commitment" as a legally binding agreement for the use of HOME funds executed by the participating jurisdiction and the project owner (for construction and rehabilitation projects) or the property owner (for acquisition only projects).

Contrary to statutory and regulatory requirements, the consortium entered more than $15 million (or 57 percent of the total funds for the 28 projects we reviewed) into the information system without first executing binding agreements. Of the $15 million, the consortium entered more than $5.1 million without executing the requisite binding agreements for more than 24 months. The following table lists the HOME funds entered into the information system with binding agreements executed after the required 24 months.

[2]Pursuant to HUD's Community Planning and Development Notice 98-6, as amended, revised, or superseded, HUD monitors compliance with the 24-month commitment requirement by determining whether a recipient's cumulative historical commitments are greater than or equal to the cumulative allocations of HOME funds to the recipient. For the purposes of this report, the auditors used the current year's allocation date corresponding to the entry date in the information system by the consortium. However, the actual compliance determination is to be made during the implementation process of recommendations 3A and 3B of this report.

Project no.	Information system entry date	Last date of most recent possible fund allocation month	HOME loan agreement/ commitment date	Amount
133	July 29, 1999	Oct. 31, 1998	Sept. 24, 2002	$ 1,444,757
201	June 25, 2001	Aug. 31, 2000	Sept. 15, 2004	1,169,095
201	June 25, 2003	July 31, 2002	Sept. 15, 2004	830,905
239	June 19, 2002	Aug. 31, 2001	Feb. 11, 2004	600,000
326	May 17, 2004	July 31, 2003	July 1, 2006	519,403
424	Dec. 20, 2005	Aug. 31, 2005	Dec. 11, 2007	200,000
287	July 3, 2003	July 31, 2002	None	160,000
287	June 2, 2005	Aug. 31, 2004	None	112,426
435	June 22, 2006	Aug. 31, 2005	None	101,698
435	June 20, 2007	Sept. 30, 2006	None	32,119
Total				**$ 5,170,403**

NOTE: Projects 287 and 435 are downpayment assistance projects for which the consortium entered funding into the information system without executing agreements or identifying homeowners as of September 30, 2008.

Conclusion

The consortium did not comply with HUD's requirements for committing HOME funds within 24 months from the date the funds became available to the consortium. The consortium's practice of entering the wrong date into the information system for committing HOME funds created a false representation to HUD regarding the consortium's compliance with the 24-month commitment requirement.

Recommendations

We recommend that the Director of the San Francisco Community Planning and Development Division require the consortium to

3A. Review all agreements for the use of HOME funds for each entry in the information system from October 1998 to the present, change the entry dates in the information system to the dates of the binding agreements, and redetermine annual compliance with the requirement to commit HOME funds within 24 months of HUD's allocating the funds to the consortium.

3B. Repay the United States Treasury or have the consortium’s future funding reduced by the total amount determined not to have been committed within the requisite 24-month period from the date HUD allocated the funds to the consortium.

3C. Implement policies and procedures to comply with HUD’s statutory and regulatory requirements for committing funds within 24 months of their allocation to the consortium.

3D. Implement policies and procedures for internal controls to ensure compliance with the policies and procedures recommended in recommendation 3C.

SCOPE AND METHODOLOGY

We performed on-site work at the consortium's county offices in Hayward, California, from February through September 2008. Our review covered all 28 acquisition, construction, and rehabilitation projects active during the period July 1, 2004, through June 30, 2007 (we excluded all tenant based rental assistance projects). Some of the active projects during our audit period began as early as 1999. Therefore, we adjusted our audit scope to include all projects active during the period July 1, 2004, through June 30, 2007. Our objective was to determine whether the consortium used HOME program funds in accordance with HUD requirements.

To accomplish our objective, we

- Interviewed HUD and consortium personnel to obtain background information about the consortium's operations, policies, and procedures.
- Reviewed the consortium's accounting records including audited financial statements, general ledgers, expenditure vouchers, and supporting documentation.
- Reviewed HUD requirements and regulations regarding the use of HOME funds.
- Reviewed project master files, construction files, individual city files, and project owner files.
- Visited and observed ongoing and completed projects.

We performed our review in accordance with generally accepted government auditing standards.

INTERNAL CONTROLS

Internal control is an integral component of an organization's management that provides reasonable assurance that the following objectives are being achieved:

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls relate to management's plans, methods, and procedures used to meet its mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

We determined the following internal controls were relevant to our audit objectives:

- Administering the consortium's operations in compliance with applicable laws and regulations,
- Maintaining complete and accurate records, and
- Safeguarding the consortium's resources.

We assessed the relevant controls identified above.

A significant weakness exists if management controls do not provide reasonable assurance that the process for planning, organizing, directing, and controlling program operations will meet the organization's objectives.

Significant Weaknesses

Based on our review, we believe the following items are significant weaknesses:

- The consortium did not safeguard its resources when it spent more than $5.6 million on cost increases caused by unreasonably lengthy construction commencement delays and when it provided $81,873 in downpayment assistance in excess of the maximum threshold specified by the downpayment initiative regulations (findings 1 and 2).

- The consortium's policies, procedures, and operations did not comply with laws and regulations requiring the execution of a binding agreement for the use of HOME funds before the funds are set up in the information system. In addition, the consortium did not maintain complete and accurate records when it recorded HOME fund commitment dates before executing binding agreements for the use of HOME funds (finding 3).

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS

Recommendation number	Ineligible 1/	Unreasonable or unnecessary 2/
1A		$5,652,990
2A	$81,873	

1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or federal, state, or local policies or regulations. We determined that the $81,873, which the consortium spent on downpayment assistance, was not allowable by law.

2/ Unreasonable/unnecessary costs are those costs not generally recognized as ordinary, prudent, relevant, and/or necessary within established practices. Unreasonable costs exceed the costs that would be incurred by a prudent person in conducting a competitive business. We determined that the consortium spent $5,652,990 on costs that could have been avoided by exercising ordinary prudent practices.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation | **Auditee Comments**

November 5, 2008

Joan S. Hobbs
Regional Inspector General for Audits
Office of Inspector General
Region IX
611 West Sixth Street, Suite 1160
Los Angeles, CA 90017-3101

Dear Ms. Hobbs:

The Alameda County HOME Consortium is formally responding to the Office of Inspector General's Draft Audit Report dated October 20, 2008.

The Alameda County HOME Consortium acted in good faith to implement the intent and requirements of the HOME program and associated regulations. We have consistently informed and worked with HUD staff in implementing the program, discussing issues, seeking guidance, and following HUD's guidance.

The purpose of the National Affordable Housing Act (NAHA) of 1990 is: To expand the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low-income and low-income Americans. As the audit process acknowledged, the HOME Consortium successfully financed this type of housing with the audited funds. The housing has been built and is occupied by eligible low-income households, thereby fulfilling the intention and goals of the HOME Program.

Specifically in regards to the Draft Audit Report, we are providing the following responses to the findings:

Finding 1 – Work on six new construction and rehabilitation HOME projects did not commence within the required amount of time.

Comment 1

After carefully reviewing the Draft Audit Report, the Consortium believes that the Draft Audit Report's finding is fundamentally flawed for several reasons. First, rather than containing an inflexible standard for commencement of construction as portrayed by the Draft Audit Report, the HUD regulations contain a more flexible standard, providing that a jurisdiction must "reasonably expect" construction to begin within twelve months of executing the HOME agreement in order to commit funds. The Draft Audit Report incorrectly assumes that the Alameda County HOME Consortium did not have a reasonable expectation that construction would commence within a reasonable amount of time when the funds were committed to the

Comment 2

six identified projects. Second, the Draft Audit Report incorrectly assumes that any and all increased commitment of HOME funds made to those projects after the initial commitment was due to cost increases due solely to time delays. Further, the Report assumes that alternative projects further along in the development process were readily available and would have required a lower investment of HOME funding to develop. Even if HOME funds had been committed to the same projects later in the development process, the costs would have remained the same since they reflect the true costs of development. As is acknowledged by HUD, there are many circumstances beyond the control of the Consortium and its subrecipients that can cause delays.

Comment 1

The Draft Audit Report concludes that '[c]ontrary to the regulatory requirements of CFR (Code of Federal Regulations) 92.2, construction on six of these projects did not commence *within a reasonable time* after executing binding agreements for the use of HOME funds." (Draft Audit Report, p. 5. Emphasis added). In framing the review in this manner, the Draft Audit Report mischaracterizes the regulations, transforming a more adaptable standard based on the participating jurisdiction's assessment of the project into a rigid timing requirement. Code of Federal Regulations Section 92.2 (2)(i) provides:

> Commit to a specific local project means: (i) If the project consists of rehabilitation or new construction [the participating jurisdiction] and project owner have executed a written legally binding agreement under which HOME assistance will provide to the owner for an identifiable project under which *construction can reasonably be expected to start within twelve months* of the agreement date. (emphasis added)

HUD-issued guidance confirms that this standard does not contain a fixed time frame but rather must be analyzed based on the details of the project in question:

> Failure to begin construction within 12 months for acquisition does not automatically necessitate the cancellation of the project or render it ineligible. Many circumstances beyond the control of the PJ's control can cause delays, including lawsuits, unforeseen environmental issues, the loss of other financing, labor strikes, natural disasters and zoning issues. The PJ and the Field Office must use their judgment when deciding what course of action to take on a delayed project. PJs with projects experiencing significant delays must document their files of the causes for delays, and assess whether there is a likelihood that the project will go forward.

HOME Fire Vol. 3 #5, April 2001 (periodic guidance issued by HUD) (emphasis added).

Comment 3

In each of the six projects identified in the Draft Audit Report, the Consortium had the reasonable expectation that construction would begin within twelve months. Unforeseeable factors which resulted in project delays included lawsuits, unsuccessful applications for nonHOME funding, inability of contractor to secure construction defect liability insurance for condominiums (leading to restructuring of the project), and master developer and environmental remediation problems on a closed naval base, among others. Community Housing Development Organization (CHDO) inexperience and the need to add development partners were also factors in several cases. HOME requires a minimum of 15% of HOME funds be spent on CHDO projects. Currently, there are only two active CHDOs in the Consortium area. The Consortium selects the most competitive CHDO projects to fund among the limited number under development, and has funded CHDO operations to support efficient and effective project development.

The source of the reasons for project delays which are cited on page 6 of the Draft Audit Report is unclear but it is not information which the Consortium provided in its response to the draft report outline and is incomplete and inaccurate. The reasons leading to specific project delays are described in Appendix A. The Consortium monitored progress and as delays occurred assessed the likelihood of the project moving forward and the necessity of retaining the commitment of HOME funds to the project in order to achieve affordable housing objectives, weighed against the time delays and constraints likely should funds be uncommitted and/or committed to an alternative project. Efficiency and effectiveness factors were considered. HUD has been kept informed of project progress and delays through, at a minimum, the annual Consolidated Annual Performance and Evaluation Report (CAPER). There have been no requests from HUD as a result of CAPER submissions to clarify the timeliness of a project.

Comment 1

Not only does the Draft Audit Report's use of a rigid time standard deviate from the applicable CFR language, the Draft Audit's approach also does not comport with the realities of developing affordable housing in an highly urbanized metropolitan area like Alameda County. Included in the efficiency and effectiveness analysis is the knowledge that there are significant constraints on available and appropriate sites for the development of affordable housing in Alameda County, a highly urbanized county. Most of the Consortium area is built-out; when limited sites become available if they are not captured quickly, the opportunity to develop affordable housing on them is lost. In-fill sites also have unexpected and complicated issues that arise, as well as add to the cost of development on these sites.

Comment 2

As is stated above, it is incorrect to assume that all increases in HOME funds provided to projects were due to time delays. Rather, increases in HOME commitments were due to a variety of factors, including planned additional contributions after the original commitment, restructuring of financing plans due to unsuccessful nonHOME funding applications and resulting project financing gaps, additional requirements on projects from planning and/or building officials, and lawsuits, among others. CHDO and Urban County funds are allocated on an annual basis and due to limited funds available selected projects are not always fully funded in the initial funding round. Similarly member cities may also not have sufficient funds on hand to fully fund selected projects. These projects then submit proposals in the next year's funding round to obtain additional financing. Finally, cost increases over time impact all projects, including any replacement projects which might have been selected to replace the six projects originally funded. Any cost increases over

Comment 3

3

Comment 4

time would also have affected the six projects if they had been funded at a later stage of development, and the same level of HOME commitment that was provided would have been needed. HOME funding was used to pay for true costs of these projects. More detail on the specifics of each of the six projects specified is outlined in Appendix A.

Recommendations:

1A) Require the Consortium to reimburse its HOME Investment Trust Fund $5,652,990 from nonfederal sources for the HOME funds used to pay for the cost increases resulting from lengthy construction delays.

The Consortium acted in good faith to ensure that delays within our control were kept to a minimum and prudently weighed alternatives and likelihood of timely project development as delays occurred. As is reviewed in detail in this response, additional HOME funds were contributed to these projects for a variety of appropriate reasons not having to do simply with increased cost over time. Ultimately, all projects have been successfully developed and are housing the target populations.

The Consortium believes that recapture of funds is not justified and would be counter to the purpose of the HOME program, since all HOME funds were used to create affordable housing as intended by the program. Requiring reimbursement would only serve to hurt low income households urgently in need of affordable housing.

1B) Implement policies and procedures to plan HOME projects in more efficient manner to ensure foreseeable construction delays do not occur and implement policies and procedures to monitor construction commencement activities to ensure construction commences within a reasonable period after execution of a binding agreement for the use of HOME funds.

The Consortium currently has in place policies and procedures to ensure that foreseeable construction delays do not occur and to monitor construction commencement activities to ensure timely commencement of construction. By April 1 2009, the Consortium will complete a review of established policies and procedures, and will as appropriate develop and implement additional policies and procedures to address this recommendation.

Finding 2: The Consortium used HOME funds to pay excessive downpayment assistance to homebuyers.

The Draft Audit Report incorrectly states that the Consortium based its calculations on “the appraised market value” (p.8) to reach the maximum threshold amount of downpayment assistance to homebuyers. The Consortium’s basis for ADDI loan amount calculations are explained in detail below under the response to Recommendation 2A.

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Comment 5

Recommendation 2A): require the Consortium to reimburse its HOME Investment Trust Fund $81,873 from non-federal funds for the excessive assistance provided to homebuyers.

The Consortium asserts that 13 of the 16 ADDI loans were at or under the threshold amount allowed by the ADDI Program. The documentation on all 16 loans and the Consortium's response to the Recommendation is detailed below.

The crux of the issue in this draft finding is the definition of Purchase Price. The HOME regulations do not include a definition of "Purchase Price." The Consortium used an industry standard definition of purchase price, reflecting the total borrower obligation. The ADDI calculations were not based on the appraised value of the homes, which would have led to substantially higher amounts of ADDI assistance on these properties than was actually awarded.

The Consortium subrecipient City of Livermore supported three types of homeowner units in its ADDI program: market scattered-sites, Inclusionary Below-Market Rae (BMR) units, and nonprofit Habitat for Humanity-developed homes. In simple market-rate transactions, the amount shown on the HUD 1 form on line 101 "Contract Sales Price" was used as the Purchase Price.

In the more complicated transactions for heavily subsidized homeownership units developed by Habitat for Humanity and involving numerous sources of secondary financing and sweat equity, line 101 on the HUD 1 alone does not accurately reflect the borrower's total obligation, and therefore does not accurately reflect the Purchase Price. In these instances, the Purchase Price was still determined as the borrower's total obligation, which is calculated as the sum of all liens which the borrower assumed in order to acquire the property. These are reflected on the HUD 1 form on lines 202, 204, 205, 206, 207 and 1304. These lines are equivalent to the cost of development less the value of sweat equity, and in this project represent the Purchase Price of the homes. The contract sales price is also evidenced on the Purchase and Sale Agreements for the Habitat homes (attached as Appendix B), which distinguish between the affordable sales price, which on these homes equals the first mortgage, and the total sales prices, which equals the sum of all liens and is the borrower's total obligation. Further, the City and Habitat worked with the California Housing Finance Agency which provided purchase assistance on these homes, using the total sales price as described above. This amount is significantly below the appraised value of the properties and represents a well-leveraged investment of HOME funds.

In the BMR unit transactions, the ADDI loan was based on a similar method as that used with the Habitat homes to determine total borrow obligation. The City provided the borrowers with Truth-in-Lending Disclosure Statements which total the liens on the property in addition to the first mortgage. However, these amounts are not reflected in the Purchase and Sales agreements on these properties and no single document exists which provides the borrower with this total Purchase Price. Therefore, we are not contesting the Draft Audit Report's determination that excess ADDI funds were provided on these two properties.

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The OIG auditors concur that there is no definition of Purchase Price in the HOME regulations. In response to the auditor's questioning, the Consortium asked HUD CPD if guidance had been issued or could be issued regarding the definition of Purchase Price. The response was that no guidance had been issued and that a request for guidance would be sent to Headquarters. At the Exit Conference on October 30, 2009, the OIG auditors informed the Consortium that they had received guidance from HUD CPD as to the definition of Purchase Price. The Consortium had not received guidance in response to its request and requested that the OIG auditors forward the guidance it received. The Consortium asserts that the definition of Purchase Price which it used to calculate the ADDI assistance threshold levels was appropriate, that any subsequent provision of a definition on Purchase Price provided by HUD, should it differ from that used by the Consortium, should be used going forward and should not be applied retroactively.

Comment 6

In addition the Draft Audit Report fails to take into account the entirety of the regulation cited, 24 CFR 92.602(e), which goes on to state that "Limitation [on the maximum amount of ADDI funds which can be provided] does not apply to FY2003 funds." Therefore, even if the OIG retroactively imposes a more limited definition of Purchase Price, the maximum limitation on the amount of ADDI assistance does not apply to loans made with FY2003 funds. In the exit interview in response to a question on this point, the OIG auditors stated that they used the date that funds were committed to homebuyers as the key to which fiscal year's ADDI funding was used. Since no ADDI assistance was committed during FY03, the auditors did not apply the part of the regulation concerning FY03 funds. This is an incorrect approach. The HOME rule, as reflected in the Integrated Disbursement and Information System (IDIS) is "first in, first out," meaning that the oldest funds available are used first any time a draw is made. Therefore, which fiscal year the funds were committed in is not relevant to this issue. FY2003 ADDI funds were the first ADDI funding which the Consortium received, in the amount of $191,321. Therefore, the first ADDI assistance awarded to homebuyers used FY2003 funds. (As an aside, FY03 ADDI funds were not even awarded to the Consortium until FY04.) Loans made with FY2003 ADDI funds do not have a maximum limit on the amount of assistance that can be provided. When the regulation is appropriately applied, this reduces the amount in question by $69 to $81,804 (see Table 1 below).

Table 1 – ADDI Loans Made with FY2003 Funds

	ADDI assistance amount	Date of Loan Agreement	OIG Audit amounts incorrectly shown as in 'excess'
FY03 ADDI Draws			
	$12,997.00	7/16/2006	$15
	$13,719.00	7/17/2006	$3
	$13,918.00	7/18/2006	$8
	$20,796.00	7/18/2006	$17
	$11,573.00	7/19/2006	$17
	$18,110.00	7/25/2006	$9

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Total	$111,909		$69

Table 2 below summarizes the Consortium's disposition response to the Draft Audit Report's Recommendation. The Consortium proposes to return $20,827 in ADDI funds, which is the sum of the excess ADDI amount on the two BMR units ($1,662 and $19,162) and the three dollar rounding error ($3). The Consortium proposes to reduce the current year ADDI allocation by the remaining uncommitted balance of $19,671 and to reduce the FY09 ADDI by the remaining amount of $1,256 to reach the $20,827 total to be return under this recommendation.

Table 2 – ADDI Disposition Summary

Purchase Price	6% of Purchase Price	Loan Amount	Excess	Disposition
$180,630	$10,837	$12,500	$1,662	Repayment
$180,630	$10,837	$30,000	$19,162	Repayment
$202,626	$12,157.56	$11,900	0	No Action
$559,950	$33,597	$33,600	$3	Repayment
$265,680	$15,940.80	$24,651.66	$8,711	Habitat
$198,000	$11,880	$20,590.86	$8,711	Habitat
$199,440	$11,966.40	$20,677.26	$8,711	Habitat
$199,440	$11,966.40	$20,677.26	$8,711	Habitat
$207,360	$12,441.60	$21,152.46	$8,711	Habitat
$208,440	$12,506.40	$21,217.26	$8,711	Habitat
$199,440	$11,966.40	$20,677.26	$8,711	Habitat
$346,320	$20,779.20	$20,796	$17	FY03
$216,360	$12,981.60	$12,997	$15	FY03
$301,680	$18,100.80	$18,110	$9	FY03
$192,600	$11,556	$11,573	$17	FY03
$231,840	$13,910.40	$13,918	$8	FY03
$228,600	$13,716	$13,719	$3	FY03

Recommendation 2B): Implement policies and procedures to comply with the regulatory requirements for the ADDI program 24 CFR 92.602 (e).

Comment 7

The Consortium currently has in place policies and procedures to comply with the regulatory requirements for the ADDI program 24 CFR 92.602 (e). By April 1, 2009, the Consortium will complete a review of established policies and procedures, and will as appropriate develop and implement additional policies and procedures to address this recommendation.

Finding 3 – The Consortium Did Not Commit Funds within 24 Months

Comment 8

Contrary to the Draft Audit Report finding, the Consortium has appropriately committed funds within 24 months, according to the requirements in effect at the time of the commitment, with the limited exception of the ADDI funds noted below. We have in no way deliberately created a false representation to HUD regarding the

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Consortium's compliance with the 24-month commitment requirement or other requirements.

The Alameda County HOME Consortium has consistently worked in good faith to ensure that HOME funds are committed within the period prescribed by the regulations, with documentation which meets the requirements as specified in the HOME regulations, as well as in CPD Notices. Since the inception of the HOME program, the Consortium has committed funds through two means: through subrecipient agreements and through contracts for specific projects. Both forms of commitment are allowed in the regulations governing the HOME program, although only commitments made to specific projects were recognized by the OIG auditors.

Comment 9

The Draft Audit Report inaccurately summarizes the HOME regulations concerning the definition of Commitment, by only including the most restrictive definition and leaving out reference to the other forms of Commitment allowed by the regulations. The regulations at 24 CFR 92.2 state: "*Commitment* means: **(1) The participating jurisdiction has executed a legally binding agreement with a State recipient, a subrecipient, or a contractor to use a specific amount of HOME funds to produce affordable housing or provide tenant-based assistance**; **or** has executed a written agreement reserving a specific amount of funds to a community housing development organization; **or** has met the requirements to commit to a specific local project, as defined in paragraph (2) of this definition. [emphasis added]" The regulation language states "or" not "and" has met the requirements to commit to a specific local project.

In addition to the HOME regulations, there have been eight CPD Notices between 1994-2007 which have progressively defined and tightened the definition of commitment regarding HOME funds. During the exit conference the, the OIG confirmed that Regulations take precedence over CPD Notices. Prior to CPD Notice 01-13 (issued 10/12/01), the Notices include the broader definition in the HOME regulations, which allows commitment based on legally binding agreements with subrecipients. With HUD's knowledge, the Consortium utilized subrecipient agreements with HOME Consortium member cities as commitments until 2001, when the process was changed to meet the requirements of CPD Notice 01-13. For example, CPD Notice 98-6 (effective May 5, 1998 – May 5, 1999) states:

> "The definition of commitment includes (1) funds that have been committed to a specific project pursuant to a legally binding agreement and the project has been set up in HOME Cash Management Information System (C/MIS) or IDIS, and (2) funds for which the PJ has entered into a legally binding agreement with a state recipient, a subrecipient, or a contractor to produce affordable housing or provide tenant-based rental assistance, or has entered into a written agreement reserving a specific amount of funds to a CHDO (see 24 CFR 92.2)."

Comment 10

While the various CPD Notices over time have changed the commitment formula, all have used an aggregate commitment of funds, rather than a project by project analysis such as that used by the OIG auditors (see e.g. CPD Notice 01-13). This error in the

Draft Audit Report leads to the OIG disallowing commitments that fully complied with applicable regulations.

Comment 11

The statement in the Report that "...the consortium did not execute binding agreements for the use of more than $5.1 million." is incorrect and misleading. The Consortium has executed legally binding agreements for all of the funds; the issue is the timing between when projects were set up in IDIS compared to when the legally binding agreements *designating specific projects* were executed.

Recommendations: 3A) Review all agreements for the use of HOME funds for each entry in the information system from October 1998 to the present, change the entry dates in the information system to the dates of binding agreements, and redetermine annual compliance with the requirement to commit HOME funds within 24 months of HUD's allocating the funds to the consortium.

When the HOME Regulation 92.2 Definition section is applied to Consortium projects, the HOME Consortium has met the commitment requirements through the subrecipient agreements with Consortium members and specific contracts for those funds not included under subrecipient agreements. Through the audit process, the Consortium has identified a weakness in our procedures which did not ensure that CPD Notice 01-13 was followed in its entirety when applicable, in that not all Project Applications (used as the trigger to set up projects in IDIS) were submitted after the execution of legally binding agreements for specific projects or written agreements reserving funds to community housing development organizations.

Comment 12

The Consortium has followed the direction in the Draft Audit Report and reviewed all agreements for the use of HOME funds for each entry in the information system from October 1998 to the present and re-determined annual compliance with the requirement to commit HOME funds within 24 months of HUD's allocating the funds to the Consortium. This analysis included the dates of the legally binding agreements committing HOME funds to specific projects for HOME projects that were not included in the scope of the audit. Documentation included HOME Contracts, HOME Loan Agreements, Public Participating Jurisdiction Agreements and Regulatory Agreements. Charts 1 and 2, attached as Appendix C, contain the dates of the legally binding agreements committing funds to specific HOME projects. The Charts include all funds except for ADDI funds, which are reviewed separately in Tables 2 and 3 below.

Comment 13

Chart 1 and Chart 2 document that when the appropriate CPD Notices are applied, the Consortium has met the HUD commitment standard, with the exception of a portion of funds under the ADDI program as shown below. From 1992 – 1999, prior to CPD Notice 01-13, the commitments were made utilizing subrecipient agreements along with actual CHDO and Urban County HOME loan agreements since those funds were not included in a subrecipient agreement. After CPD Notice 01-13 became applicable in 2000, the commitment dates shown are based on the legally binding agreements committing HOME funds to specific projects. The commitment analysis is aggregated for the periods specified in the applicable CPD Notices.

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Specifically, Chart 1 documents that when the appropriate CPD Notices are applied, the Consortium has met the HUD commitment standard through the use of subrecipient agreements from FY92-00. Chart 1 includes the amount of "Project Funds Required for Commitment" by fiscal year (based on IDIS Report PR27 which excludes administrative amounts.) The Urban County and CHDO amounts are based on dates of project-specific legally binding agreements that fall within the fiscal year the funds were committed. Funding amounts under subrecipient agreements, along with the funding under Urban County and CHDO project-specific agreements, are used as the basis for the commitment calculations per the applicable CPD Notices through CPD Notice 00-02 (Year 2000 commitments). The column labeled "Commitment Chart Reference" indicates where the CHDO and Urban County commitments are located on Chart 2 – Commitment Analysis by CPD Notice.

Chart 2 contains the dates corresponding to the project-specific legally binding agreements for all projects, even those committed under subrecipient agreements. The projects are listed chronologically by those dates. The color-coordinated letters reflect the CHDO and Urban County projects within the fiscal years in which the project-specific legally binding agreements were executed and the projects were counted as committed, as reflected on Chart 1 for the early years. The line under a row indicates the end of the fiscal year that is covered by the applicable CPD Notice. The right side of the chart contains the citation of the applicable CPD Notice (CPD Notice xx –xx). Underneath the line, the commitment formula and minimum commitment amount for that period are shown. The green highlighted number is the result of subtracting the required amount to be committed from the amount that the Consortium actually committed. In all cases, this analysis shows that more funds were committed than the required minimum amount.

Comment 14

The Consortium has not changed entry dates in the IDIS information system. It should be noted that local jurisdictions do not have the authority to change commitment dates in IDIS. This would have to be done by the HUD IDIS systems staff. Changing the commitment dates in IDIS on closed projects may trigger a requirement to provide information which is currently required in IDIS but which was not required when the project was originally closed, such as performance measurement data. This could cause delays and/or other problems in re-closing projects if they are reopened since some of this information, again such as the performance measurement data, was not previously required to be collected and may not be available.

Comment 15

As noted above, the Consortium's analysis determined that, while all ADDI funds met the regulatory requirement of commitment through subrecipient agreements, not all met the commitment requirements of CPD Notice 01-13. The Consortium mistakenly believed that the ADDI program as a whole could be set up as a project in IDIS, rather than that it must set up as commitments are made to individual homebuyers. ADDI funds have been very difficult to utilize given the high cost of housing in Alameda County, although this is changing due to the high rate of foreclosures and a subsequent reduction in median home prices. The Consortium is currently seeing a significantly increased demand for and housing units which meet the requirements of ADDI funds. Historically however, only one jurisdiction out of eight has been able to spend a sizeable amount of ADDI funds.

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Table 3 summarizes the fiscal year ADDI allocations by amount, grant date, commitment deadline, and funds which were not committed per the requirements of CPD Notice 01-13 by the commitment deadline. Table 4 contains the detail of the ADDI commitments per CPD Notice 01-13 and the applicable fiscal year those funds were committed from. As these Tables show, the Consortium did not have commitments which met the requirements of CPD Notice 01-13 for $100,208 in FY03 ADDI funds and all of the $225,764 in FY04 ADDI funds, and therefore did not commit these funds within the 24 month period required. These funds, totaling $325,972 will be returned to the HOME Investment Trust Fund by the Consortium.

Table 3 – Summary of ADDI Grant Commitments and Uncommitted Funds

ADDI Allocation				
	ADDI Allocation Amount	Grant Date	Commitment Deadline	Uncommitted Funds per CPD Notice 01-13, to be Returned
FY03	$191,321	8/4/04	8/30/06	($100,208)
FY04	$225,764	8/4/04	8/30/06	($225,764)
FY05	$128,736	7/14/05	7/31/07	$0
FY06	$64,238	8/2/06	8/30/08	$0
FY07	$64,238	7/18/07	7/31/09	
FY08	$25,955	8/15/08	8/30/10	
Total	$700,252			($325,972)

Table 4 – Detail of ADDI Commitments and Uncommitted Funds

ADDI Assistance Amount	Date of Loan Agreement	Balance of ADDI Funds	Allocation	Uncommitted Funds per CPD Notice 01-13, to be Returned
FY03			$191,321.00	
$12,997.00	7/16/2006	$178,324.00		
$13,719.00	7/17/2006	$164,605.00		
$13,918.00	7/18/2006	$150,687.00		
$20,796.00	7/18/2006	$129,891.00		
$11,573.00	7/19/2006	$118,318.00		
$18,110.00	7/25/2006	$100,208.00		$100,208
FY04			$225,764	$225,764
FY05			$128,736	
$21,152.46	3/21/2007	$107,583.54		
$20,677.26	3/23/2007	$86,906.28		
$20,677.26	3/23/2007	$66,229.02		
$20,590.86	3/23/2007	$45,638.16		
$24,651.66	3/23/2007	$20,986.50		
$20,677.26	3/26/2007	$309.24		
FY06			$64,238	

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$21,217.26	3/26/2007	$43,329.98		
$33,600.00	5/4/2007	$9,729.98		
FY07			$64,238	
$12,500.00	9/5/2007	$61,467.98		
$11,900.00	11/5/2007	$49,567.98		
$30,000.00	12/4/2007	$19,567.98		
$328,754.02				**$325,972**

3B) Repay the United States Treasury or have the consortium's future funding reduced by the total amount determined not to have been committed within the requisite 24-month period from the date HUD allocated the funds to the consortium.

As stated above, the Consortium has conducted the recommended review and determined that the ADDI funds specified above in the amount of $325,972 are the only funds which were not committed per the applicable HOME regulations and CPD Notices.

Comment 16

Should HUD CPD review determine any errors in the Consortium's analysis and determine that additional funds did not meet commitment requirements, the Consortium makes the following points regarding the recommendation to recapture funds or reduce future funding. The Consortium acted in good faith and believed that the system for committing HOME funds within the Consortium was sufficient because it was based on legally binding agreements for HOME funds, as allowed by regulation. The HOME funds were used for the purposes of the National Affordable Housing Act of 1990 (NAHA), which authorized the HOME program, and the housing which these funds were committed to has been built and is serving the intended low-income intended beneficiaries of the program.

In addition to carrying out the purposes of NAHA, in many cases the Consortium has exceeded NAHA's requirements in order to maximize the effectiveness and efficiency of HOME funds. Almost all the Consortium-financed HOME projects require that the units be affordable for 55 years; over twice as long as the HOME requirement of 20 years. Almost 87% of the Consortium-financed HOME units are restricted to households at or below 50% of area median income, rather than the higher income level of 60% of area median income allowed under HOME regulations. Recapture or reduction in future HOME funds would penalize low income households urgently in need of affordable housing.

3C) Implement policies and procedures to comply with HUD statutory and regulatory requirements for committing funds within 24 months of their allocation to the consortium.

Comment 17

The Consortium has already implemented new policies and procedures, specifically related to CPD Notice 01-13 and subsequent Notices, to comply with HUD statutory

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and regulatory requirements for commitment funds within 24 months of their allocation to the Consortium. By April 1, 2009, the Consortium will complete a review of established policies and procedures, and will as appropriate develop and implement additional policies and procedures to address this recommendation.

3D) Implement policies and procedures for internal controls to ensure compliance with the policies and procedures recommended in recommendation 3C.

The Consortium will review its policies and procedures for internal controls on the same timeline as the review of policies and procedures for Recommendation 3C above, and implement changes as appropriate to ensure compliance.

Comment 11

Internal Controls
The Consortium's objections to the basis of the Significant Weaknesses identified in the Draft Audit Report are stated above. The Consortium is diligent in safeguarding HOME resources and providing only those HOME funds necessary to develop its projects. The Consortium did execute legally binding agreements prior to setting up projects in IDIS. As correctly noted in the Draft Audit Report, however, the Consortium needed to revise its policies and procedures so that projects are set up in IDIS only after they fully comply with the more specific requirements of the current CPD Notice governing commitment (CPD Notice 07-06).

Comment 5

Draft Audit Report Appendix A
The Consortium's objections to the basis of the Questioned Costs identified in the Report are stated above.

Regarding 1: Neither the law governing the HOME program nor accompanying regulations provides a definition of "Purchase Price" for use in the ADDI program. The Consortium used a reasonable definition, appropriate to the program. No costs were "not allowable by law."

Comment 3

Regarding 2: There were no costs which were not "ordinary, prudent, relevant, and/or necessary within established practices" as stated in the Report. While financing the development of affordable housing is competitive, it operates under varied and numerous restrictions, such as the limited availability of land and alternative developments, and the requirements to qualify for and compete successfully for necessary additional financing sources. These restrictions affect what constitutes "ordinary prudent practices." A prudent person weighs these factors when conducting business and acts accordingly to achieve the goals of the HOME program, as the Consortium has done.

Since the inception of the HOME program, the Alameda County HOME Consortium has created more than 680 affordable HOME rental units, 18 affordable HOME homebuyer units, and 576 HOME Tenant-Based Rental Assistance units. The Consortium acted in good faith to carry out the purposes of the HOME program and to achieve its objectives of creating affordable housing for low-income households. The Consortium has been very successful at carrying out its purpose. There is no fraud, malfeasance or an attempt to deceive HUD or the public. The Consortium remains committed to supporting the development of the much-needed affordable housing through implementation of the HOME program, and to working with the OIG and HUD/CPD to ensure that all HOME regulations are met.

Sincerely,

Linda M. Gardner
Housing Director

Attachments: Appendix A: Finding One, Project Detail
Appendix B: Purchase and Sale Agreements for Habitat Homes in ADDI Program
Appendix C: Chart 1 – Commitment Analysis by Subrecipient Agreement
Chart 2 – Commitment Analysis by CPD Notice

Cc: Richard E. Winnie, County Counsel
HOME Consortium members

Comment 3

Appendix A
Finding One
Project Detail

<u>Fremont Oak Gardens (#180):</u>
Original Commitment: 2/8/2000. Fremont HOME, Amount: $900,000
Use of initial funds: Acquisition
Additional HOME funding: 9/1/2000. Urban County HOME Amount: $ 350,000
Use of additional HOME funding: Construction, development- related expenses
Additional HOME funding: 1/1/03. City of Pleasanton HOME. Amount: $30,000
Use of additional HOME funding: Construction
Construction start: 2/2/2004

The original financing plan for this project included HUD 202 and local HOME funding, along with local Redevelopment Agency funds used for acquisition. The developer applied twice for a HUD 202 award and was not funded in 2000 and 2001 rounds. To be competitive under the HUD 202 program, developers must have local commitment of funds, therefore HOME funds remained committed to the project, with the expectation that a HUD 202 commitment would be awarded each time. As a back up financing plan, the developer created a second financing plan, which included Low Income Housing Tax Credits, along with additional contributions from localities, the Affordable Housing Program, and private fundraising.

Since the project did not receive a HUD 202 commitment on its second application, the decision was made to pursue the alternative financing plan. The developer applied to the California Debt Limit Allocation Committee and on 9/23/02 was awarded a bond allocation for a $6.4 million construction loan and $2.7 permanent loan (in June 2003). The award of tax-exempt bond financing also made the project eligible for an allocation of tax credit equity funding from the California Tax Credit Allocation Committee. On 12/16/02, the developer was informed by HUD of a fair housing issue that needed to be resolved with FHEO before construction could begin. This was resolved in a very timely manner on 1/7/03. On 1/1/03 the City of Pleasanton committed the third and final allocation of HOME funds to help fill the financing gap created because of the change in financing structure from HUD 202 to Tax Credits and bonds. With over ten financing sources, aligning all requirements and achieving loan closing was challenging, however construction loan closing was achieved on1/29/04 and all other predevelopment activities were also completed during that time period. According to the loan agreement, the developer agreed to commence construction on 2/1/04 and complete construction no later than 4/1/05. The Notice to Proceed was effective 2/2/2004 and the Notice of Completion dated 4/27/05. Thus the project was completed fairly close (14 months) to the construction start and completion times projected once financing was obtained.

The Consortium reasonably expected the project to receive HUD 202 funding and to proceed to construction in a timely manner. When the project was not funded under the HUD 202 program, the Consortium prudently assessed the alternate financing plan and progress towards implementation of it. At all times, the Consortium determined that the project would still likely go forward and that most efficient and

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cost effective approach to the creation of affordable housing would be to meet the identified local needs and continue to work with the developer. Since local commitment of funds is a critical component of successful applications for both state and other federal financing, the HOME funds needed to remain committed to the project during these application processes. The local HUD Field Office was kept informed of progress on the development through the annual Consolidated Annual Performance and Evaluation Report (CAPER), in addition to the HUD 202 application process and the Fair Housing and Equal Opportunity (FHEO) complaint resolution process.

HOME awards to the project subsequent to the initial award were not due to increased costs because of project delays. The second allocation of HOME funds to the project was from a different jurisdiction in the HOME Consortium and was part of the original financing plan. The third and final allocation of HOME funds was from a third jurisdiction in the HOME Consortium and helped to fill a financing gap created because of the change in financing structure from a HUD 202 to Tax Credits and bonds. While the project took longer than anticipated, it was successfully developed and now provides affordable housing to 50 very low-income seniors in the extremely tight Alameda County housing market, fulfilling the intention of the HOME program.

Buena Vista Commons (#193):
Original Commitment: 1/5/2001. Alameda HOME, Amount: $280,000
Use of initial funds: Acquisition
Additional HOME funding: 3/1/2006. Alameda HOME, Amount: $ 750,000
Use of additional HOME funding: Construction
Construction start: 12/13/2006.

At the time of its application to the City of Alameda for HOME and other funds to acquire the site for this project, the developer had completed the Phase I environmental review, conceptual site design, and appraisal. No significant environmental issues were identified. The project was ready to move forward with site acquisition and the entitlement process. Construction was expected to begin within 12 months of acquisition. After the approval of the initial HOME (and city) funds, the small, local, newly incorporated nonprofit developer acquired the site in 7/2000. The developer then selected an architect, completed a general plan amendment, had the parcel re-zoned, had preliminary plans drawn and completed construction drawings, design approvals, had a contractor selection for pre-development services and completed plan check, by 12/2002. However, it then became clear that costs were going to be higher than originally anticipated and that construction defect liability insurance for the condominium project was going to be both prohibitively expensive and extremely difficult to obtain. The unforeseen problem with construction defect liability insurance caused the developer and the City to conclude that it would be less costly to redesign the project. Options were explored during 2003 and the beginning of 2004 to make the project more financially feasible. This took longer than anticipated due to management changes at the developer, including turnover of the Executive Director and the project management consultant.

In July 2004 the developer began working with Habitat for Humanity to form a partnership to develop eight units of ownership housing on the site. The project concept and financing plan were restructured. During this time, the City was monitoring progress at least quarterly. On October 31, 2005 the County notified the City that possible lack of progress since initial HOME funding was a potential issue for this project as construction had not yet begun. The local HUD Field Office was consulted via telephone on this action and provided instruction on how to proceed so that the project could move forward. Notes referencing this discussion are included in the project file but the OIG auditors did not accept them as evidence. The Consortium monitored quarterly progress reports to ensure progress was being made to bring the project to fruition in a timely manner.

HOME funds remained committed to the project during this period for several reasons: the HOME funds were used for site acquisition and the site would have had to be sold to recapture the funds. Alameda is a relatively small city with very limited development opportunities outside of closed military bases. The City prudently weighed other possibilities and the likelihood of project success as it evaluated project alternatives, along with the reasonableness of time estimates. If the site were sold with no commitment of HOME funds towards the development, there would have been little or no possibility of affordable housing being developed. Similarly it would have been extremely unlikely to find a developer to step in and complete the project if the HOME funds were uncommitted.

During the time of this project's development, construction costs were increasing extremely rapidly nationally. Any alternative project would have been likely to have increased construction costs that would be at least equal to those of this project. Additional HOME funds were committed for the construction phase of the project, once a feasible alternative was created and the project could move forward. While the project took longer than anticipated, it has been successfully developed. The project was issued a Notice of Completion on October 27, 2008, providing eight units of affordable homeownership housing for very low-income households in the extremely tight Alameda County housing market, thereby fulfilling the intention of the HOME program.

<u>Housing Alliance (#196):</u>
Original HOME commitment: 9/12/2000. Urban County (CHDO): $280,380 CHDO: $246,143
Use of initial funds: Predevelopment
Additional HOME funding: 9/1/2001. Urban County(CHDO): $488,540 CHDO: $484,930
Use of additional HOME funding: Acquisition and soft costs
Additional HOME funding: 10/28/03. CHDO $ 250,000
Use of additional HOME funding: Construction
Additional HOME funding: 9/1/2005. Urban County (CHDO): $309,000
Use of additional HOME funding: Construction – additional requirements from the Fire Dept.
Construction start: 2/1/04

The Housing Alliance (#196) project is a Community Housing Development Organization (CHDO) project. This was the CHDO's first new construction project and its first large project which required layered sources of financing. The Consortium knew from initial funding that this would be a capacity building project for the CHDO but reasonably believed that construction could begin within a reasonable period of time. The Consortium provided operating funding to assist the CHDO in developing its staff capacity as an affordable housing developer in September 2000 and 2001. During the development of the project, the CHDO had three different Executive Directors and multiple project management staff. The instability of staff caused delays to the project and could not have been foreseen when the Consortium first funded the project.

The project was designed from the beginning to be a supportive housing project. That, in addition to the CHDO capacity building aspects of the development, meant that it was anticipated to take longer to develop. However, the Consortium had a reasonable expectation that it would proceed within a reasonable timeframe. The project had leveraged other local resources, including HOPWA and CDBG from several local jurisdictions. From inception, it was known that the project would require additional funding sources, including additional HOME funds after the initial commitment for predevelopment and acquisition.

The CHDO acquired the property in 2002. Extensive community planning meetings led the CDHO to decide to make the project a "Universal Design" project (all of the units are accessible to people with disabilities). The Alameda County Planning Department had never worked on a universal design project and it took additional time to work through the entitlement and building department processes, as staff became familiar with this type of development. After the project started, the Low Income Housing Tax Credit program became more competitive and it became clear that a development partner was needed in order for the project to qualify and successfully compete for Tax Credits. The development partnership had to be negotiated with a more experienced CHDO. In addition, the original CHDO had secured project-based Section 8 vouchers for a portion of the units. Due to changes in the rental market at the time which caused the vouchers to have less value and changes in California Housing Finance Agency underwriting assumptions, the project was faced with an additional unforeseeable financing gap.

The final allocation of HOME funds to the project came after construction was substantially complete in June 2005, after the local Fire Department added additional requirements for a fire booster pump and emergency generator. The project did not have sufficient development funds remaining to pay for these items and the CHDO funds were all already committed to projects and so the developer applied in the next HOME CHDO RFP round to obtain the funds to cover this foreseeable cost. HOME CHDO funding was provided as predevelopment, acquisition, and construction financing. Initial HOME CHDO financing was provided with the knowledge that the project would return for additional HOME funding. The local HUD Field Office was made aware of the delays through annual updates in the CAPER.

HOME funds remained committed to the project during this period for many reasons: The HOME funds were used towards site acquisition and predevelopment costs. To recapture the funds spent on acquisition, the site would have had to be sold. Funds spent on predevelopment would have been lost, as they were spent on architecture, engineering, and reports required for entitlements on the specific site. Available sites appropriate for multi-family housing development are severely limited in the

Unincorporated County, especially in the Castro Valley area where this site is located. A commitment of local funds is necessary for the project to qualify for and successfully compete for the remainder of the necessary financing, including State MHP and Tax Credits. There is an extreme need for supportive housing for formerly homeless, special needs households in Alameda County. There were no other special needs projects proposed in the Urban County during the years this project received commitments of funds.

The Consortium prudently weighed project possibilities and the likelihood of project success as it evaluated alternatives, along with the reasonableness of time estimates. If the site were sold with no commitment of HOME funds towards the development, there would have been little possibility of affordable housing being developed. This also holds true in terms of finding a developer to step in and complete the project – it would have been extremely unlikely if the HOME funds were uncommitted. While the project took longer than initially anticipated, it was successfully developed and now provides 28 units of affordable supportive housing for very low-income formerly homeless households in the extremely tight Alameda County housing market.

39-Units/Shinsei (#239):
Original Commitment: 7/29/02. City of Alameda HOME (CHDO), Amount: $600,000
Use of initial funds: Pre-development
Additional HOME funding: 7/1/07. City of Alameda HOME (CHDO), Amount $806,719
Use of additional HOME funding: Construction
Additional HOME funding: 2/1/08. CHDO, Amount: $384,210.02
Use of additional HOME funding: Construction
Construction start: 7/2008

The 39 – Unit Project (Shinsei Gardens) (#239) project is located on a former navel air station in the City of Alameda and is part of a master plan being developed by Catellus, a private development company. This project is the affordable housing component of the master plan, as was established in original negotiations on the re-use of the naval air station (1994-97). The identified owner of the 39-unit project was originally Operation Dignity, a nonprofit which serves homeless veterans. The original financing plan included the use of proceeds from the sale of the former naval air station land to Catellus and affordable housing fees paid by Catellus when it developed offices as part of the master plan.

In September 2001 as part of the larger development process, demolition on part of the master plan site began, which triggered the establishment of a timeline for the development of the 39 unit project. Construction was scheduled to begin no later than September 2003, 24 months from the start of demolition. Unfortunately, delays by Catellus on the overall development made the anticipated funds which it would provide to the project unavailable as scheduled. Therefore, the City did not have the full financing available for the project and determined that the project would need Tax Credit financing in order to proceed. The City selected a CHDO developer with the required experience to qualify and compete for an allocation of Tax Credits, since Operation Dignity did not have it. The Tax Credit requirements also led to a redefinition of the role of Operation Dignity in the project, and an agreement had to be reached that it would delay certain rights to operate the project for 15 years. This change triggered the need for changes in an Memorandum of Understanding between multiple parties which was part of the original base re-use agreements. Operation Dignity's revised role in the project and changes to the various associated agreements where negotiated during 2003. The change in the financial plan was unforeseeable and caused considerable delay to the project.

The City's initial HOME funding to the CHDO developer was for pre-development costs starting in 2002 and included subdivision zoning fees. The CHDO also developed detailed cost estimates and alternative financing scenarios during this period. Although Operation Dignity was part of the discussions and had agreed to a revised role, in 2005 it unexpectedly sued the City for lack of progress on the project. A Settlement Agreement to dismiss the lawsuit was approved in September 2006. Concurrent with working to settle the lawsuit, the developer and City were working on the project design and related State environmental review actions to keep the project moving. These were approved by the City Planning Board in late September 2006.

Financing applications were delayed until after the suit was settled. Applications for Tax Credits and the State Multifamily Housing Program (MHP) were submitted were submitted in the next available funding rounds, starting with MHP in October 2006. These funds were approved in March 2007. Once awarded, the project qualified for Tax Credits and an application was submitted in the Fall round, with an award in December 2007. Also during this time, the CHDO applied for additional necessary HOME funding for construction in 2007 from both the City and CHDO RFP process. The CHDO was not awarded the full amount needed so it submitted an additional request in the 2008 CHDO funding round, which was awarded. With all project approvals in place and all financing obtained, construction started in July 2008.

The initial HOME funding remained committed to this project because, as predevelopment funding, the funds were not recoverable if the project did not move forward. Additional HOME funds were not awarded until the project had cleared the major hurdles of the lawsuit and restructuring of the financing plan. The HOME funds were committed to the project because of the extreme need for permanent supportive housing for homeless households in Alameda County. Construction began within 24 months of subsequent awards of HOME funds for construction. While the project took longer than anticipated due to the extremely complicated nature of base reuse projects involving multiple parties, the project is under construction and will provide 39-units of affordable housing for extremely low- and very low-income housing for formerly homeless and at-risk households, with on-site supportive services. Twenty-one of the units have will have rents further reduced through project-based Section 8 vouchers. The local HUD Field Office was made aware of the delays through annual updates in the CAPER.

Vandenburgh Villa [formerly Gardella Gardens] (#281):
Original Commitment: 11/13/2000. Livermore HOME, Amount: $100,000
Use of initial funds: Acquisition

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Additional HOME funding: 11/24/2003 (pro note). Livermore HOME, Amount: $300,000
Use of additional HOME funding: Soft costs construction, supplemental to HUD 202
Construction Start: 5/24/04

Vandenburgh Villa received HOME funds in 2000 for acquisition. Unfortunately, the original developer backed out of the project after opposition from the surrounding neighborhood. The City hired Eden Housing, a nonprofit housing developer, to work with the neighborhood and develop the property. Eden received all needed approvals from the City's Planning Commission in November 2000.

Eden Housing applied for, but was not awarded, HUD 202 financing in 2001. Eden re-applied in 2002 and received an award of $5.9 million. The City's original intention was to utilize the HUD 202 financing for the majority of the construction costs, with the expectation that additional HOME funds would be needed but the total amount was not yet known. After the HUD 202 was awarded it was determined that an additional $300,000 in HOME funds plus $1.9 million in local funds were needed to complete construction financing. Between the time of the HUD 202 award and the start of construction, the project secured additional local funding, developed cost estimates to be included in the final budget, finalized plans and drawings, created an easement to avoid landlocked parcels behind the development, secured a contract with a utility company, and secured the remainder of permanent financing to take out the construction loans. Eden completed the project within the timeframe for HUD 202 funding.

This project was completed in May 2005. The project was closed out in IDIS in January 2007 due to a late reimbursement request by the City of Livermore and demographic data not received for project close-out until this time. Due to the inclusion of HUD 202 financing, the HUD 202 Housing Program staff would have been notified directly and approved any project delays. The local HUD Field Office was made aware of the delays through annual updates in the CAPER.

HOME funds remained committed to this project because they were necessary to the development and, while construction start took longer than originally anticipated, the project was making progress and had significant competitive funding awarded to it, essentially ensuring that it would be developed if sufficient local funds (including HOME) continued to be available.

Carmen Avenue (#326):
Original Commitment: 1/1/03. City of Livermore HOME (CHDO), Amount: $85,000
Use of initial funds: Pre-development
Additional HOME funding: 7/1/06. CHDO and Urban County (CHDO), $1,572,073
Additional HOME funding: 10/25/06. City of Pleasanton HOME (CHDO), $50,000
Use of additional HOME funding: Construction
Construction start: 11/13/06

Carmen Avenue (#326) is a CHDO project. In order to be feasible, projects require more than just HOME funding. The City of Livermore assisted the CHDO to purchase the site with funding from the City's Redevelopment Agency. The City of Livermore HOME funds were used as predevelopment funds. These funds were spent on architecture and engineering costs and, once spent, could not be uncommitted to the project. During the entitlement process, two of the project's neighbors opposed the project which caused lengthy delays. The City participated in negotiations with the neighbors to attempt to resolve their concerns. Despite the developer and City's best efforts, the negotiations broke down and one of the neighbors filed a lawsuit in 2004 objecting to the density of the project and its potential traffic impacts. The lawsuit was dismissed in June 2006. Shortly after that lawsuit was dismissed, one of the parties to the first lawsuit filed a second lawsuit regarding California Constitution Article 34 compliance. The second suit lasted a year and when the judge ruled in favor of the City, the neighbor appealed the decision. Ultimately the City prevailed, but both of these lawsuits caused considerable delays to the entitlement process and to securing the additional affordable housing financing needed to leverage HOME funds and carry out the development. Both the City and the developer were named in both lawsuits. In addition, the project could not apply for state Multifamily Housing Program during this time because it would not have been competitive due to the lawsuits.

During the period of negotiations with neighbors, additional HOME funds were conditionally awarded by the Consortium with the stipulation that the CHDO developer (Allied Housing) partner with a more experienced developer to finalize the financing plan, qualify, and successfully compete for State housing financing resources (Multifamily Housing Program and Low Income Housing Tax Credits). In November 2005, Allied Housing entered into partnership with Affordable Housing Associates (AHA).

The status of the lawsuit caused the project to miss the Spring 2005 round of Tax Credit funding applications and further delayed the project until it could apply in the Fall application round. The project received an allocation of Tax Credits and an award under the State Multifamily Housing Program in Spring 2005 and was able to close its construction financing in Fall 2006. The City of Pleasanton placed additional HOME funds in the construction escrow account in November 2006 and construction started on November 13, 2006. City staff met with the developer bi-weekly during the construction process to oversee the timely completion of the project. Local HUD Field Office was aware of the delays through annual updates in the CAPER.

The HOME funds remained committed to this project for several reasons. These included the high priority for addressing special needs housing in the Tri-Valley area. The City invested more than $2 million in nonHOME local housing funding towards acquisition of the site and City allocation of HOME funds on predevelopment expenses of the project. These local funds and predevelopment work are critical to any project being competitive for state or other federal funds and could not easily be moved to a different project without an inefficient loss of value. Once these pre-development costs were paid for, they could not be uncommitted. Additional HOME funds were not awarded until the project was fully financed and ready to close construction loans.

Appendix B

Purchase and Sale Agreements for Habitat Homes in ADDI Program

Redacted for privacy concerns.

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Appendix C

Chart 1 – Commitment Analysis by Subrecipient Agreement

Chart 2 –Commitment Analysis by CPD Notice

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Appendix C
Chart 1 - Commitment Analysis by Subrecipient Agreement

Year	Commitment Required*	Amount Committed	Commitment Chart Reference	Notice Number, Formula and Results	Allocation Amount Over/Under-Commitment
1992	**3,109,504.50**				
	Alameda	347,134			
	Fremont	413,275			
	Hayward	465,044			
	Livermore	N/A ***			
	Pleasanton	N/A ***			
	San Leandro	249,194			
	Union City	124,597			
	Urban County**	0			
	CHDO**	0			
	Total	**1,599,244**			
1993	**2,024,121.00**				
	Alameda	268,709			
	Fremont	272,763			
	Hayward	323,981			
	Livermore	89,503			
	Pleasanton	N/A ***			
	San Leandro	173,605			
	Union City	82,235			
	Urban County	0			
	CHDO	0			
	Total	**1,210,796**			
1994	**2,507,400.00**				
	Alameda	332,231			
	Fremont	332,230			
	Hayward	382,379			
	Livermore	132,355			
	Pleasanton	125,370			
	San Leandro	206,861			
	Union City	125,370			
	Urban County	$200,000	b		
	CHDO	$748,928.32	a		
	Total	**2,585,724.32**			
1995	**2,648,700.00**			**CPD Notice 95-04**	
	Alameda	212,398		FY93+94+95 commitment	FY93 allocation
	Fremont	350,948		$6,791,390.82	$2,024,121.00
	Hayward	403,927		Amount over required minimum commitment	$4,767,269.82
	Livermore	132,435			
	Pleasanton	132,435			
	San Leandro	218,517			
	Union City	132,435			
	Urban County	$831,776	c		
	CHDO	$579,999.50	d		
	Total	**2,994,870.50**			
1996	**2,731,500.00**			**CPD Notice 95-04**	
	Alameda	361,566		FY94+95+96 commitment	FY94 allocation
	Fremont	361,566		$8,680,994.82	$2,507,400.00
	Hayward	416,142		Amount over required minimum commitment	$6,173,594.82
	Livermore	56,440			
	Pleasanton	136,440			
	San Leandro	225,126			
	Union City	136,440			
	Urban County	$1,099,280	f		
	CHDO	$307,400	e		
	Total	**3,100,400**			
1997	**2,684,700.00**			**CPD Notice 97-07**	
	Alameda	355,723		FY95+96+97 commitment	FY95 allocation
	Fremont	355,723		$10,609,946.30	$2,648,700.00
	Hayward	409,417		Amount over required minimum commitment	$7,961,246.30
	Livermore	134,235			
	Pleasanton	134,235			
	San Leandro	221,488		**CPD Notice 98-06**	
	Union City	134,235		FY96+97+98 commitment	FY96 allocation
	Urban County	$2,233,219.80	g	$10,450,059.80	$2,731,500.00
	CHDO	$536,400	h	Amount over required minimum commitment	$7,718,559.80
	Total	**4,514,675.80**			

Appendix C

Chart 1 - Commitment Analysis by Subrecipient Agreement

1998	**2,873,700.00**		
	Alameda	380,766	
	Fremont	380,766	
	Hayward	438,240	
	Livermore	143,685	
	Pleasanton	143,685	
	San Leandro	237,081	
	Union City	143,685	
	Urban County	$500,508	i
	CHDO	$466,568	j
	Total	**2,834,984**	

CPD Notice 99-04

FY92-98 commitment	FY92-97 allocation
$18,840,694.62	$15,705,925.50
Amount over required minimum commitment	$3,134,769.12

1999	**2,999,483.00**		
	Alameda	409,505	
	Fremont	409,505	
	Hayward	471,317	
	Livermore	154,530	
	Pleasanton	154,530	
	San Leandro	254,975	
	Union City	154,530	
	Urban County	$1,020,780	k
	CHDO	$1,000,000	l
	Total	**4,029,672**	

CPD Notice 00-02

FY92-99 commitment	FY92-98 allocation
$22,870,366.62	$18,579,625.50
Amount over required minimum commitment	$4,290,741.12

2000	**2,975,441.07**		
	Alameda	410,100	
	Fremont	410,100	
	Hayward	472,003	
	Livermore	154,755	
	Pleasanton	154,755	
	San Leandro	255,346	
	Union City	154,755	
	Urban County	$819,380.00	n
	CHDO	$687,316	m
	Total	**3,518,510**	

CPD Notice 00-02

FY92-00 commitment	FY92-99 allocation
$26,388,876.62	$21,579,108.50
Amount over required minimum commitment	$4,809,768.12

end of using subrecipient amounts

Please refer to Chart 2 (Commitment Analysis by CPD Notice) for commitment analysis past 2000.

* Commitment Amount Required is the "Project Funds Required For Commitment" from the IDIS Report PR27.

** Urban County and CHDO amounts are based on actual dates from Loan Agreements that fall within the fiscal year the funds were committed.

*** Livermore and Pleasanton wre part of the Urban County and did not join the Consortium independently until 1993 and 1994 respectively

Appendix C
Chart 2 - Commitment Analysis by CPD Notice

Note: Commitments from FY93 until 2000 were met through subrecipient agreements along with CHDO and Urban County commitments to specific projects, as listed on Chart 1. All agreement dates are shown here as necessary for the aggregate commitment analysis called for under CPD Notice 01-13 effective 10/12/01.

FY	Project #	Project Name	Agreement Date**	Amount	*	Notice Number, Formula and Results***	Allocation Amount Over/Under-Commitment	Change in period covered
	11	Century Village	01/28/94	$350,000.00				
93-94	11	Century Village	02/14/94	$381,957.00				
	31	1140 Mocho	12/01/94	$417,878.32	a			
94-95	32	Concord Ave	01/24/95	$331,050.00	a			
	14	Ocean Ave	06/12/95	$200,000.00	[redacted]	**CPD Notice 95-04**		
	16	1039 Bluebell	10/01/95	$321,835.00	[redacted]	FY93+94+95 commitment	FY93 allocation	
	30	745 Lincoln Ave	11/01/95	$379,999.50	[redacted]	$6,791,390.82	$2,024,121.00	
	18	Bermuda Gardens	01/16/96	$1,743.70	[redacted]	Amount over required minimum commitment	$4,767,269.82	
95-96	18	Bermuda Gardens	01/16/96	$508,197.30	[redacted]			
	32	Concord Ave	03/29/96	$200,000.00	[redacted]			
	20	5300 Case Ave	06/05/96	$257,805.00		**CPD Notice 95-04**		
	23	FESCO I	12/02/96	$227,400.00	e	FY94+95+96 commitment	FY94 allocation	
	24	5608 Hansen	12/18/96	$136,440.00		$8,680,994.82	$2,507,400.00	
	25	1815 Elm St	02/06/97	$27,673.70		Amount over required minimum commitment	$6,173,594.82	
	25	1815 Elm St	02/06/97	$122,326.30				
	33	Creekside	03/14/97	$800,280.00	[redacted]			
96-97	26	Bessie Coleman	03/17/97	$299,000.00	[redacted]			
	15	Roberts Ave	04/01/97	$51,104.70				
	15	Roberts Ave	04/01/97	$323,895.30				
	27	1815 Corte Cava	04/01/97	$73,600.00				
	28	Park Vista Apartments	05/07/97	$113,429.70				
	28	Park Vista Apartments	05/07/97	$186,570.30				
	31	1140 Mocho	05/28/97	$80,000.00	e	**CPD Notice 97-07**		
	7	Glenn Berry Apt	08/13/97	$246,000.00		FY95+96+97 commitment	FY95 allocation	
	5	Triangle Court	10/29/97	$848,673.80	[redacted]	$10,609,946.30	$2,648,700.00	
	7	BACS	10/29/97	$253,000.00		Amount over required minimum commitment	$7,961,246.30	
	8	503 E Street	10/29/97	$118,536.00				
	9	Haight St	10/29/97	$190,000.00				
	10	Fargo Ave	10/29/97	$249,194.00				
	13	Condo Acq. #2	10/29/97	$234,700.00				
97-98	19	TBRA	10/29/97	$151,822.15	[redacted]			
	21	Shorepoint	10/29/97	$283,900.00				
	22	Bridgeway	10/29/97	$277,000.00	[redacted]			
	29	1416 Sherman	10/29/97	$536,400.00	[redacted]			
	97	Bay St/13th St	04/09/98	$868,806.00	[redacted]			
	103	CASA	06/09/98	$147,769.00				
	103	CASA	06/09/98	$178,125.00				
	17	Strobridge	06/12/98	$187,106.00	[redacted]			
	17	Strobridge	06/12/98	$41,634.00	[redacted]			
	125	460 Buena Vista	06/29/98	$570,000.00		**CPD Notice 98-06**		
	127	Unity Village	08/14/98	$400,508.00	[redacted]	FY96+97+98 commitment	FY96 allocation	
	126	1898 Harvest	08/20/98	$95,000.00		$10,450,059.80	$2,731,500.00	
	17	Strobridge	09/24/98	$100,000.00	[redacted]	Amount over required minimum commitment	$7,718,559.80	
98-99	130	Harris Court II	01/10/99	$165,000.00				
	129	Miramar/Mariposa	05/15/99	$116,568.00	[redacted]			
	129	Miramar/Mariposa	5/15/1999	$18,442.00				
	129	Miramar/Mariposa	5/15/1999	$350,000.00	[redacted]	**CPD Notice 99-04**		
	151	Avalon	07/28/99	$544,806.00		FY92-98 commitment	FY92-97 allocation	
	151	Avalon	07/28/99	$320,000.00	[redacted]	$18,840,694.62	$15,705,925.50	
	131	Emeryville	09/24/99	$143,780.00	[redacted]	Amount over required minimum commitment	$3,134,769.12	
	152	Hope	10/01/99	$357,000.00	[redacted]			
	4444	Project with State HCD	10/11/99	$279,900.00				
	124	Harris Court I	11/10/99	$610,339.70				
99-00	124	Harris Court I	11/10/99	$214,660.30				
	153	Las Palmas	12/06/99	$750,000.00	[redacted]			
	26	Bessie Coleman	01/01/00	$105,080.00				
	26	Bessie Coleman	01/01/00	$44,000.00				
	180	Fremont Senior Housing	2/8/2000	$900,000.00				
	196	Housing Alliance	3/20/2000	$250,000.00	[redacted]			
	196	Housing Alliance	3/20/2000	$200,000.00	[redacted]			
	159	Pleasanton TBRA	05/01/00	$120,000.00				
	152	Hope	08/01/00	$206,500.00	[redacted]	**CPD Notice 00-02**		
	132	Creekside - PA	08/02/00	$2,316.00	[redacted]	FY92-99 commitment	FY92-98 allocation	
	132	Creekside	08/02/00	$300,000.00		$22,870,366.62	$18,579,625.50	
	196	Housing Alliance	9/1/2000	$280,380.00	[redacted]	Amount over required minimum commitment	$4,290,741.12	
	161	Fesco (Banyan)	09/01/00	$175,000.00	[redacted]			
	196	Housing Alliance	9/1/2000	$10,461.64				
	180	Fremont Oaks	9/1/2000	$350,000.00	[redacted]			

Appendix C

Chart 2 - Commitment Analysis by CPD Notice

	192	Dignity Commons	10/26/00	$303,500.00	[redacted]		
	192	Dignity Commons	11/01/00	$189,000.00			
00-01	281	Gardella	11/13/2000	$100,000.00			
	193	Buena Vista	1/5/2001	$197,767.00			
	193	Buena Vista	1/5/2001	$82,233.00			
	240	Las Posadas (I St)	03/19/01	$419,000.00	**CPD Notice 00-02**		
	152	Hope	03/21/01	$18,787.00	FY92-00 commitment	FY92-99 allocation	
	192	Dignity Commons	04/01/01	$3,711.06	$26,388,876.62	$21,579,108.50	
	198	Tennyson Gardens	06/08/01	$69,278.00	**Amount over required minimum commitment**	**$4,809,768.12**	
	198	Tennyson Gardens	06/08/01	$416,554.00	***end of using subrecipient amounts***		
	198	Tennyson Gardens	06/08/01	$314,168.00			
	200	Housing - Jobs Linkages	06/30/01	$120,000.00			
	199	Bridgeway	6/21/2001	$179,000.00	**CPD Notice 01-13**		
	161	Fesco	07/10/01	$9,524.00	FY92-01commitment	FY92-99 allocation	
	161	Fesco	07/10/01	$104,898.00	$22,613,186.47	$21,579,108.50	09/30/01
01-02	159	Pleasanton TBRA	07/11/01	$65,000.00	**Amount over required minimum commitment**	**$1,034,077.97**	
	196	Housing Alliance	9/1/2001	$272,602.00			
	196	Housing Alliance	9/4/2001	$514,336.00			
	196	Housing Alliance	9/4/2001	$508,697.00			
	199	Bridgeway	9/4/2001	$140,538.00			
	161	Fesco	10/09/01	$104,675.00	FY92-02 commitment	FY92-00 allocation	
	239	39-Unit Project	2/22/2002	$600,000.00	$27,501,801.31	$24,554,549.57	09/30/02
	232	Habitat for Humanity	03/20/02	$100,000.00	**Amount over required minimum commitment**	**$2,947,251.74**	
	202	Livermore TBRA	04/08/02	$75,000.00			
	202	Livermore TBRA	04/08/02	$42,676.00			
	237	Surf Apartments	05/06/02	$700,000.00			
	235	Project Independence	06/12/02	$190,205.57			
02-03	240	Las Posadas (I St)Liv	06/21/02	$219,000.00			
	278	House Inc	06/24/02	$166,318.00			
	236	Quail Run	7/1/2002	$358,920.00			
	324	Pleasanton TBRA II	07/01/02	$53,000.00			
	324	Pleasanton TBRA II	07/01/02	$20,000.00			
	234	Security Deposit Assistan	07/30/02	$95,000.00			
	133	Union City Sr Housing	9/24/2002	$18,803.00			
	133	Union City Sr Housing	9/24/2002	$700,260.27			
	133	Union City Sr Housing	9/24/2002	$1,444,757.00			
	279	San Leandro Sr Hsg	12/1/2002	$570,150.00	FY92-03 commitment	FY92-01 allocation	
	180	Fremont Oaks	1/1/2003	$30,000.00	$29,163,976.92	$27,970,201.69	09/30/03
	326	Carmen	1/1/2003	$85,000.00	**Amount over required minimum commitment**	**$1,193,775.23**	
	327	Livermore Habitat	1/1/2003	$25,000.00			
	282	Linkages	01/01/03	$10,000.00			
03-04	282	Linkages	01/01/03	$10,000.00			
	202	Livermore TBRA	01/01/03	$80,000.00			
	199	Bridgeway	2/28/2003	$311,006.00			
	285	Security Deposit Assistan	05/01/03	$63,776.61			
	200	Housing - Jobs Linkages	06/30/03	$20,000.00			
	324	Pleasanton TBRA II	07/01/03	$57,243.00			
	283	Bayport	7/1/2003	$71,615.00			
	283	Bayport	7/1/2003	$319,806.00			
	283	Bayport	7/1/2003	$8,579.00			
	236	Quail Run	10/1/2003	$471,316.00	FY92-04 commitment	FY92-02 allocation	
	328	Lincoln	10/24/2003	$208,650.00	$36,169,366.92	$31,382,907.49	09/30/04
	196	Housing Alliance	10/28/2003	$263,051.00	**Amount over required minimum commitment**	**$4,786,459.43**	
	199	Bridgeway	10/28/2003	$189,407.00			
	196	Housing Alliance	12/9/2003	$250,000.00			
04-05	196	Housing Alliance	12/9/2003	$80,000.00			
	282	Linkages	01/27/04	$10,000.00			
	199	Bridgeway	2/18/2004	$100,000.00			
	200	Housing - Jobs Linkages	02/24/04	$1,345.00			
	326	Carmen	6/1/2004	$15,000.00			
	332	RAP	07/01/04	$110,417.00			
	281	Gardella	7/1/2004	$300,000.00			
	235	Project Independence	7/1//2004	$20,000.00			
	286	Livermore TBRA II	07/01/04	$80,000.00			
	283	Bayport	7/13/2004	$406,204.00			
	201	Mission Blvd	9/15/2004	$95,249.00			
	201	Mission Blvd	9/15/2004	$438,240.00			
	201	Mission Blvd	9/15/2004	$471,316.00			
	201	Mission Blvd	9/15/2004	$995,195.00			
	201	Mission Blvd	9/15/2004	$683,754.00			
	201	Mission Blvd	9/15/2004	$1,816,246.00			
	376	Kennedy House	10/24/2004	$15,000.00	FY92-05 commitment	FY92-03 allocation	
	282	Linkages	01/03/05	$166,662.00	$38,751,674.92	$35,323,803.25	09/30/05
	422	Irvington	3/11/2005	$600,000.00	**Amount over required minimum commitment**	**$3,427,871.67**	
05-06	129	Miramar/Mariposa	5/1/2005	$20,400.00			

Appendix C

Chart 2 - Commitment Analysis by CPD Notice

	328	Lincoln	6/1/2005	$485,000.00			
	331	Kent Ave	6/1/2005	$841,166.00			
	235	Project Independence - Li	7/1//2005	$80,000.00			
	196	Housing Alliance	9/1/2005	$115,795.00			
	196	Housing Alliance	9/1/2005	$209,530.00			
	282	Linkages	09/06/05	$48,755.00			
	423	Baywood	10/1/2005	$400,000.00	FY92-06 commitment	FY92-04 allocation	
	193	Buena Vista	3/1/2006	$750,000.00	$43,873,827.38	$39,688,392.77	09/30/06
	377	Dublin Transit	3/1/2006	$336,652.32	**Amount over required minimum commitment**	**$4,185,434.61**	
	434	Linkages	03/01/06	$166,000.00			
06-07	426	Project Independence	03/01/06	$207,882.88			
	430	Mission Bell	5/3/2006	$158,260.00			
	432	Livermore TBRA III	06/28/06	$30,000.00			
	494	Livermore Rehab	06/29/06	$20,000.00			
	433	Pleasanton TBRA III	07/01/06	$132,757.00			
	326	Carmen	7/1/2006	$190,406.00			
	326	Carmen	7/1/2006	$328,997.00			
	326	Carmen	7/1/2006	$631,571.00			
	326	Carmen	7/1/2006	$421,099.00			
	493	House Inc - Tanager	7/1/2006	$428,527.26			
	431	Project Independence II -	07/11/06	$80,000.00			
	436	Huntwood Commons	9/26/2006	$840,000.00			
	444	Park Hill	10/1/2006	$735,595.00	FY92-07 commitment	FY92-05 allocation	
	444	Park Hill	10/1/2006	$934,035.00	$48,187,176.38	$43,649,270.04	09/30/07
	326	Carmen	10/25/2006	$50,000.00	**Amount over required minimum commitment**	**$4,537,906.34**	
07-08	434	Linkages	3/1/2007	$196,000.00			
	431	Project Independence II -	7/1//2007	$80,000.00			
	494	Livermore Rehab	07/01/07	$125,000.00			
	239	39-Unit Project	7/1/2007	$806,719.00			
	533	Estabrook Senior	9/10/2007	$1,386,000.00	**CPD Notice 07-06**		
	424	Cypress Glen	12/11/2007	$200,000.00	FY92-08 commitment	FY92-06 allocation	
	239	39-Unit Project	2/1/2008	$384,210.02	$49,712,460.40	$47,353,114.83	08/30/08
	430	Mission Bell	2/1/2008	$142,255.00	**Amount over required minimum commitment**	**$2,359,345.57**	
08-09	430	Mission Bell	2/1/2008	$517,699.00			
	535	Project Independence - H:	6/1/2008	$201,120.00			
	431	Project Independence II -	7/1//2008	$80,000.00			

* Urban County or CHDO; letters are color coordinated to reflect the CHDO or Urban County project within the fiscal year the loan documents were signed and as counted as committed as reflected in Chart 1.

** All of the dates are the dates that correspond to a contract, loan agreement or PPJ (Legally binding agreement). This may differ from the IDIS set up date.

*** The line under a row indicates the end of the fiscal year that is reflected in the CPD Notice. The column cites the CPD Notice Number and then gives the formula for commitment and allocation amount required by the Notice. The amounts highlighted in green are the amount of funds committed minus the amount required to be committed and the resultant amount that is over or under committed.

OIG Evaluation of Auditee Comments

Comment 1 The audit report does not provide an inflexible mischaracterization of the regulations found at 24 CFR 92.2. On the contrary, the auditors (in coordination with HUD's Community Planning and Development field office), used a highly flexible standard in the application of section 92.2 requirements. Section 92.2 provides the reasonableness standard for commencing construction after committing funds to a construction or rehabilitation project. The regulations state that when a participant commits HOME funds to a construction or rehabilitation project, it must have a reasonable expectation to commence construction within 12 months.

Of the 22 construction and rehabilitation projects reviewed, the auditors found construction work had not commenced within 12 months on 11 projects. The auditors sited only six of those 11 projects because construction on those six projects did not commence for a period ranging between 31 to 81 months. The other five projects, whose construction commenced within at least 24 months or did not have increases in HOME funding, were not cited in this report. The audit report used a very flexible and reasonable standard for citing projects by affording twice the time than the reasonable 12 months prescribed by 24 CFR 92.2.

Furthermore, periodic HUD guidance issued in HOME Fire Volume 3 #5, April 2001 states:

> The definition of commitment found at 24 CFR 92.2, when referring to a specific local project, states that rehabilitation or new construction (with or without acquisition) must reasonably be expected to start within twelve months … after the participating jurisdiction (PJ) and owner execute a legally binding written agreement….
>
> The regulations require that construction or rehabilitation be reasonably expected to start within twelve months…. When committing HOME funds to a project, a participating jurisdiction must have immediate plans to produce such housing….
>
> A PJ should consider canceling a construction project nearing the end of the twelve month period … if it does not appear that construction is likely to begin … within the required time frame or within a reasonable period thereafter.

When more than twice the prescribed reasonable time for commencement of construction passed, the construction did not commence within a reasonable time after the passage of the initial 12 months. Therefore the delays on the six projects identified in Finding 1 were unreasonable by an objective application of 24 CFR 92.2.

Comment 2 The audit report does not assume that the additional HOME funds spent on the six projects identified in Finding 1 were due to construction delays. The total development costs of these six projects increased over time. The total development costs on these six projects increased by over $15 million (or 32.7 percent), with HOME funds constituting over $5.6 million of those unplanned increases. Therefore, the additional HOME funds were used to pay for the increased costs.

The consortium asserts that construction delays are common, especially in the San Francisco Bay area. The consortium further asserts that rising costs over time are a reality of the construction industry, especially in the San Francisco Bay area. Therefore, the consortium could and should have foreseen such cost increases before committing the limited HOME funds to projects that were not appropriately planned for immediate production (see HOME Fire Volume 3 #5, April 2001).

Comment 3 The brief summary of the causes for construction delays on page 6 of the audit report is provided only for general demonstrative purpose. Despite the causes, the unreasonably lengthy delays, ranging from 31 to 81 months, on all six projects resulted in imprudent use of HOME funds when those funds could have been used for other more readily attainable projects. Each project's delay is addressed below.

Project 180

The consortium asserts that its different members provide funding for one project despite or because their individual shares may at times be inadequate to complete a project. Therefore, the consortium has shown the ability to reallocate its members' HOME fund shares in order to pursue a project to its completion. Accordingly, the consortium's assertion that individual members' or CHDO's annual funding is inadequate to complete a project on time does not provide an adequate reason to disregard the regulatory requirement for commencing construction within a reasonable amount of time. Moreover, the regulations apply to all recipients in a similar and consistent manner. It would be unfair to hold a single recipient to a higher standard of compliance than a consortium with multiple members.

Moreover, it was not reasonable for the consortium to expect that obtaining HUD section 202 funding was guaranteed for immediate approval because such funding is subject to application, review, and approval or denial. Therefore, the consortium's assertion that its expectation for approval of funding was reasonable is not supported by the facts.

Throughout the audit and during the October 30, 2008, exit conference, consortium officials asserted and maintained that the consortium committed HOME funds based on the information contained in the application for the use of HOME funds. The initial application for HOME funding for this project was based on a total development cost estimate of $9.7 million, which the consortium (though erroneously) deemed sufficiently binding to commit HOME funds. After using this application to commit $1.25 million in HOME funds to this project, the consortium incurred additional expenses for its completion. The final cost of the project was over $12.5 million. The almost $2.8 million increase in the development cost included a $30,000 increase in HOME funding. The consortium's assertion that the additional HOME funding was part of the original commitment is not supported by any documentation provided by the consortium.

Project 193

The consortium's assertion that after acquiring the land for developing this project it became apparent that costs were going to be higher than originally anticipated provides another reason for executing an enforceable binding agreement for the use of HOME funds. If the consortium relied on the application information for approving HOME funds and executed a binding agreement to fund the project, the consortium should have had recourse for its reliance on those estimates.

As a steward of limited HOME funds, it was incumbent upon the consortium to ensure increased costs did not affect the level of federal funding by seeking enforcement of the terms of the agreement for the use of HOME funds. This is especially true in light of the cause for increased costs like construction defect liability insurance. This is a cost borne by the developer and the developer was in the best position for knowing this cost. Therefore, the developer should have known and anticipated this cost. The consortium should not have incurred the increased cost of insurance or the additional consequential and incidental costs of completely revamping the project. The consortium could and should have also sought recourse from the previous consultant and developer. Turnover of the executive director should not have had a significant impact on the increase of total development costs by over $1 million (or 47.5 percent), which included $750,000 in additional HOME funding.

Notes in the project file depicting conversations with HUD about moving the project forward after over four years of delay did not change the facts that the project was delayed unreasonably long and substantial increases in the total development cost resulted in an additional $750,000 in HOME funding. With proper planning, the increased costs either could have been avoided or at the least should not have been paid with HOME funds.

Project 196

Management and staff turnover issues are normal for any organization. Such issues should have no substantial bearing on increased costs. Construction on this project did not commence for 49 months after the initial HOME funding commitment.

Prudent practices would dictate the consortium to select an experienced community housing development organization. The selection of an inexperienced organization for such a large project (over $11.5 million) with over $1 million in

HOME funding was not a prudent use of limited funds for the development of much needed affordable housing.

Moreover, the consortium admits on page 17 of its comments (Appendix B, page 33 of this report) that at least the additional $309,000 used to pay for work to comply with the fire code was a foreseeable expense. This expense could and should have been foreseen, had the architectural planning been prepared in a prudent manner. At the least, the consortium should have sought relief from the parties responsible for the improper fire code compliance planning instead of using additional HOME funds to pay for this necessary work. Furthermore, it was incumbent upon the consortium to select experienced and prudent consultants, community housing development organization, contractor, architectural and other services providers.

Project 239

If the consortium relied on the project developer and suffered increased costs to the detriment of public funds, then the consortium (as a prudent steward of those public funds) should have sought adequate remedies from the developer, instead of approving additional public funds for the project.

After dismissal of the lawsuit, at least two more years passed before commencing construction. The consortium asserts that during the time between the lawsuit dismissal and construction commencement it worked to secure tax credit financing. This process took approximately two years. The consortium should have known that obtaining approval for tax credit financing was not the type of funding that was guaranteed for approval, its timing, or the amount sought.

The consortium claims that the predevelopment funding was not recoverable if the project did not move forward. However, the very purpose for having written agreements for the use of HOME funds is to be able to enforce the agreement and move the project forward or recover the damages suffered as a result of detrimental reliance on the developer or the contractor, or both.

Commencing construction 53 months after committing the initial $600,000 in HOME funds was clearly beyond any reasonable expectation and the additional expenses incurred as a result of delays and naturally rising costs were not reasonable. Although the consortium claims that the initial funding was used for acquiring the land for the project, regulations at 24 CFR 92.2 clearly state that the reasonable expectation for construction commencement applies to all construction or rehabilitation projects, “with or without acquisition.”

Project 281

Again, it was incumbent upon the consortium to seek remedy from the original developer, which retreated from the project to the detriment of the consortium and the public funds entrusted to it. Once again, the consortium relied on HUD section 202 financing as guaranteed financing instead of the full application, review, and potential delay or denial process of any such financing. The consortium's reliance was neither justifiable nor reasonable. Therefore, its expectation to commence construction within 12 months of committing HOME funds to this project was not reasonable.

Project 326

During the audit the consortium never asserted lawsuits as a reason for delaying commencement of construction on this project. Regardless, despite the potentially unexpected lawsuits, the consortium still acted in an imprudent manner when it continued to add HOME funds to a project, which was at risk of being halted by a court order.

The total HOME funding for this project was over $1.7 million. The initial HOME funding approved for this project was $678,500. The consortium approved over $1 million in additional HOME funding while it had active lawsuits seeking to discontinue the project. This was not a prudent action because the consortium could not have had a guaranteed anticipation of a completely favorable outcome of the two lawsuits filed against it.

Additionally, the consortium committed over $1.2 million to this project without first executing a binding agreement for the use of HOME funds. Over half a million of those funds were committed more than 24 months after the funds were allocated to the consortium. To keep funding a project that was at risk of being halted by a court order without even executing binding agreements that would ensure some kind of recourse for recovering HOME funds is further indication of the consortium's failure to act as a prudent steward of limited federal funds under the HOME program.

Comment 4 The consortium's recommendation resolution and implementation proposals will be addressed during the management decision and audit resolution process with HUD.

Comment 5 It is inaccurate to characterize the consortium's assertion that it used the total borrower obligation to determine the purchase price of the homes under the downpayment initiative program. It is also incorrect to characterize purchase subsidy that does not cost any actual money being transferred as secondary financing. The consortium actually used the amount encumbered against each property in order to ensure affordability in case the borrowers sold or transferred interest in their property. However, if the borrowers sold the homes for less than the actual loan amount, the borrowers would only be liable for the outstanding balance of the loan.

The auditors obtained an opinion from the HUD program desk officer, which is consistent with the plain language of the regulation that does not include the difference between the fair market value and affordable price paid by the buyers. Lack of prior HUD guidance does not mean the consortium may substitute its own definition inconsistent with the plain meaning of "purchase price" specified in 24 CFR 92.602(e): "The amount of ADDI funds provided to any family shall not exceed the greater of six percent of the purchase price of the single family housing or $10,000."

The regulations governing the downpayment initiative (24 CFR Part 92 Subpart M) were published in the Federal Register on March 30, 2004 (69 FR 16766). This was over two years before the consortium committed the initial funding to this downpayment initiative project on June 19, 2006. Therefore, OIG's audit finding and recommendation does not constitute a retroactive application of the regulations.

Comment 6 At the exit interview of October 30, 2008, the auditors did not state that they used the date that funds were committed to homebuyers as the key to which fiscal year's downpayment initiative funding was used. Instead, the auditors stated that they used the commitment worksheet "Rental/Homebuyer/Homeowner Rehab Set-Up Report" form HUD-40094 to determine which fiscal year's downpayment initiative funds were used to commit to this project. Specifically, the form indicates that of the total $363,817 committed to this project, $267,330 was from fiscal year 2004, $64,368 was from fiscal year 2005, and $32,119 was from fiscal year 2006. Because this worksheet was prepared in the ordinary course of the consortium's business there is no cause for doubting the veracity of the information contained therein.

Additionally, if these funds were fiscal year 2003 funds, then they would have been subject to recapture by HUD as of July 31, 2005 (or within 24 months after the last date of the month in which the HUD made the funds available to the consortium), because none of the contracts for purchase of the homes were executed before July 17, 2006, see 42 U.S.C. 12748. Therefore, if during the management decision and audit resolution process for Finding 3 of this audit report, it is determined that all the assistance provided under the downpayment initiative is subject to recapture by HUD, then the recommendations under Finding 2 will also be satisfied.

Comment 7 The consortium's recommendation resolution and implementation proposals will be addressed during the management decision and audit resolution process with HUD.

Comment 8 The consortium's practice of entering funds in the information system without first executing binding agreements misled HUD into believing that the consortium was in compliance with the 24-month statutory commitment requirement of 42 U.S.C. 12748. During the review, the auditors noticed a pattern or practice exercised by the consortium for assigning HOME funds in the information system during the month of June, the last month of its fiscal year. Over the course of a ten year period between 1998 and 2007, over 31 percent of all funds entered in the information system were entered in the month of June.

For all the projects that were active during the period between July 1, 2004, and June 30, 2007, over 34 percent of the funds were entered in the information system in the month of June. Furthermore, 55 percent of the $5.1 million entered in the information system without executing a binding agreement within the requisite 24 months, were entered in the month of June of a given year. Although this pattern or practice of disproportionate entries in the information system does not provide clear and convincing evidence of a deliberate intent to mislead HUD, the entries without binding agreements resulted in a false presumption that the consortium complied with the 24-month commitment requirement.

Comment 9 Even though the regulations at 24 CFR 92.2 and Community Planning and Development guidance issued by HUD provide for different types of documentation for committing HOME funds to affordable housing projects, the auditors used the only documents found in project files provided by the consortium. Despite raising the assertion about the existence of other documentation for committing HOME funds, the consortium did not provide any such documentation for review in order to support its assertion.

Comment 10 The auditors used a project by project method of analysis to determine whether the consortium's actual compliance with the statutory requirement of 42 U.S.C. 12748 for committing HOME funds within 24 months. Although the auditors found sufficient evidence that the consortium is not in compliance of the 24-month commitment requirement, the audit report clearly indicates in footnote 2 (page 10) that a final determination of compliance with the 24-month commitment requirement is to be made using the cumulative method prescribed by applicable HUD notices (see also recommendations 3A and 3B on pages 11 and 12 of this report).

Comment 11 The statement referenced on page 10 of the audit report is accurate. Although the excerpt isolated on its own may appear to be misleading, the statement itself within the context of the entire sentence in which it is used is accurate because that sentence further elaborates on the sentence immediately preceding it: "Contrary to the statutory requirements of 42 U.S.C. (*United States Code*) 12748(g), the consortium did not commit HOME funds to affordable housing projects within 24 months of their allocation. Specifically, the consortium did not execute binding agreements for the use of more than $5.1 million." The report further provides additional details in the two paragraphs following the statement in question. Specifically, the sentence in the second paragraph following the statement in question states: "Of the $15 million, the consortium entered more than $5.1 million without executing the requisite binding agreements for more than 24 months." Therefore, the overall assertion and conclusion of Finding 3 that the consortium entered $5.1 million in the information system without executing binding agreements within the requisite 24-month period are accurate and supported by all parts of the Finding.

Comment 12 As stated on page 13 of the audit report, the scope of the audit was expanded in order to afford a complete review of all the files active during the original scope period of July 1, 2004, to June 30, 2007. This meant that the auditors needed to review files dating as far back as 1999. Nevertheless, the consortium's recommendation resolution and implementation proposals will be addressed during the management decision, audit resolution, and possible audit verification and follow-up process.

Comment 13 The consortium did not provide any support for its assertion that it complied with the 24-month commitment requirement prior to the effectiveness of Community Planning and Development notice 01-13 issued by HUD. Nevertheless, the consortium's assertion of overall compliance with the 24-month commitment requirement (including information provided in Charts 1 and 2 in appendix "C" of its comments) is to be determined and verified during the management decision, audit resolution, and possible audit verification and follow-up process.

Comment 14 Any information system corrections resulting from the implementation of recommendations 3A and 3B should be coordinated between the consortium and HUD.

Comment 15 The consortium's offer to return $325,972 to its trust account is commendable, but inadequate. The recommendation calls for a review of all the commitments since 1998 because the accuracy of all information system entries is in question. Additionally, any funds found not to have been committed within 24 months are statutorily subject to recapture by HUD and not subject to a permissive deposit of the funds into the consortium's trust account (see 42 U.S.C. 12748).

Comment 16 Although the consortium used the HOME funds for providing affordable housing, the noncompliant use of the funds with lengthy delays in executing binding agreements resulted in a natural rise in project completion costs (as explained in greater detail in Finding 1 of this report). The increased costs for completing each delayed project resulted in reduced potential to provide additional affordable housing by the consortium or another HOME program participant. Accordingly, the statutory requirement to recapture funds not committed within 24 months will not necessarily reduce the number of affordable housing units for low income households because those funds will be reallocated to other participants of the HOME program (see 42 U.S.C 12748).

Comment 17 The consortium's recommendation resolution and implementation proposals will be addressed during the management decision and audit resolution process with HUD.

Appendix C

CRITERIA

Regulations at 24 CFR 92.2 define “commitment” of HOME funds to a specific local construction or rehabilitation project as execution of a legally binding agreement between the participating jurisdiction and project owner under which HOME assistance will be provided for a project. If the project constitutes any new construction or rehabilitation (with or without acquisition), construction work is reasonably expected to begin within 12 months of the execution of the agreement for the use of HOME funds; and if the project constitutes acquisition only, the purchase transaction is reasonably expected to be completed within six months of the execution of the agreement for the use of HOME funds.

Regulations at 24 CFR 92.504(a) state that “[t]he participating jurisdiction is responsible for managing the day to day operations of its HOME program, ensuring that HOME funds are used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems arise.” Section 92.504(c)(4)(iii) further expounds on written agreement requirements and requires the binding agreement to “specify the duration of the contract. Generally, the duration of a contract should not exceed two years.”

Regulations at 24 CFR 92.602(e) limit the maximum amount of assistance using downpayment initiative funds to any family at “the greater of six percent of the purchase price of the single family housing or $10,000.”

Regulations at 24 CFR 92.551(c)(1) state that “HUD may instruct the participating jurisdiction to submit and comply with proposals for action to correct, mitigate and prevent a performance deficiency, including: ... (v) Reimbursing its HOME Investment Trust Fund in any amount not used in accordance with the requirements of this part...”

Statutes at 42 U.S.C. 12748(g) state:

> If any funds becoming available to a participating jurisdiction under this subchapter are not placed under binding commitment to affordable housing within 24 months after the last day of the month in which such funds are deposited in the jurisdiction's HOME Investment Trust Fund, the jurisdiction's right to draw such funds from the HOME Investment Trust Fund shall expire. The Secretary shall reduce the line of credit in the participating jurisdiction's HOME Investment Trust Fund by the expiring amount and shall reallocate the funds by formula in accordance with section 12747(d) of this title.