



U.S. Department of Housing and Urban Development
Milwaukee Field Office
Suite 1380
310 West Wisconsin Avenue
Milwaukee, WI 53203-2289
<http://www.hud.gov/local/mil/>

August 16, 2012

Mike Huebsch, Secretary
Wisconsin Department of Administration
P.O. Box 7864
101 E. Wilson Street
Madison, WI 53703

Dear Mr. Huebsch:

Subject: HUD Monitoring of the State of Wisconsin's Economic Development Activities under CDBG and CDBG-R Programs (Grant Years 2007, 2008, 2010, 2011, and 2012)

This letter and attached monitoring report provide the results of HUD's on-site monitoring of the State of Wisconsin's Economic Development Activities (CDBG and CDBG-R). The monitoring was conducted May 21-24, 2012 by Garry Werra, CPD Representative, John Larsen, Financial Analyst, Eva Fontheim, CPD Specialist, and Matthew Allman, Presidential Management Fellow of the U.S. Department of Housing and Urban Development. Due to the expanded scope and complexity of this review to include 2007, 2008, and 2012, Mr. Werra and Mr. Larsen returned on May 30, 2012 to complete their respective file reviews.

Additionally, Limited Civil Rights, Relocation, and Environmental reviews were performed separately as part of our FY 2012 monitoring. This letter only transmits the results of the CDBG and CDBG-R programmatic and financial reviews only. Letters that address the findings and concerns associated with Civil Rights, Relocation, and Environmental will be provided at a later date under separate cover.

HUD's monitoring objectives were to determine whether the State used CDBG and CDBG-R funds in accordance with all applicable laws and regulations, including whether the funds were used for eligible activities that met one of the three National Objectives and whether the State had a financial management system in place to adequately safeguard the funds. In order to accomplish these objectives we reviewed program files and interviewed program staff. During our review we consulted with staff from the Wisconsin Department of Administration (DOA) and the Wisconsin Economic Development Corporation (WEDC). Please see Attachment A for a complete list of staff consulted during our visit.

This review was based on seven (7) different exhibits from the CPD Monitoring Handbook Rev. 6 and was organized into four (4) areas: Eligibility and National Objective

Exhibit 4-1 and 4-2), Method of Distribution (Exhibit 4-4), Administrative and Financial (Exhibits 4-5, 4-6, and 4-7), and CDBG-R Program (Exhibit 8-18).

CONCLUSION

Our program monitoring resulted in nine (9) findings, four (4) concerns, and one (1) positive observation. These issues were discussed with State staff during an exit conference held via teleconference on June 27, 2012. A summary conference was also held at the DOA office on May 24, 2012 during which HUD staff provided the State with its preliminary findings and concerns. In addition to the comments received during these meetings, HUD also considered the written comments included in DOA's July 12, 2012 letter.

As a reminder, a "finding" is defined as a program element that does not comply with federal statute or regulation. A "concern" is a deficiency in program performance not based on a statutory, regulatory or other program requirement. A detailed description of the programmatic findings and the corrective actions required as a result of CPD's onsite monitoring are included in the attached monitoring report. Also listed are recommended actions to address the concerns.

As a result of our monitoring and the outstanding issues related to the Administrative Agreement with the WEDC we found that the State has not been administering its CDBG program in compliance with the requirements of the Housing and Community Development Act and the State CDBG regulations. Furthermore, HUD has determined that the Wisconsin DOA does not have adequate capacity to oversee the activities of the WEDC.

Please provide a response to address these findings, including the requested documentation, by September 15, 2012.

Additionally, based on our monitoring and discussions with DOA staff, HUD has agreed to provide Technical Assistance (TA) to the State of Wisconsin. The first TA meeting was held on August 8, 2012.

If you have any questions or need further information or assistance on program issues, please contact Community Planning and Development Representative Garry Werra at (414) 935-6644. For financial matters, please contact Financial Analyst John Larsen at (414) 935-6638.

Sincerely,



Sernorma L. Mitchell, Director
Office of Community Planning
and Development, 51D

Enclosures:
HUD Monitoring Report
Attachment A: State of Wisconsin Monitoring Participants

**HUD MONITORING REPORT
STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION
2010-2012 ECONOMIC DEVELOPMENT PROGRAM
(CDBG AND CDBG-R)**

May 21-24, and 30, 2012

This report includes the results of HUD's May 21-24 and 30, 2012 monitoring of the State of Wisconsin's Economic Development Activities (CDBG and CDBG-R). This report is organized into six (6) areas: Background, Eligibility and National Objective, Method of Distribution, Administrative and Financial, CDBG-R Program, and Positive Observations.

Our monitoring resulted in nine (9) findings, four (4) concerns, and one (1) positive observation which are summarized below for your reference.

Findings

- 1 - Method of Distribution
- 2 - Subrecipient Management
- 3 - Funding of 105(a)(15) Entities
- 4 - Underwriting Guidelines
- 5 - Anti-Pirating Provisions
- 6 - Single Audit Review
- 7 - Financial Reporting
- 8 - Internal Controls
- 9 - Grantee Capacity

Concerns

- 1 - Job Creation
- 2 - Insufficient Contract Provisions
- 3 - Compliance with Local Policies
- 4 - Effective and Efficient Use of CDBG Funds

Positive Observation

- 1- Cloud Storage

I. BACKGROUND

Until recently, the state of Wisconsin's CDBG Economic Development Program has been administered by the Wisconsin Department of Commerce (DOC). On January 3, 2011, Governor Scott K. Walker announced a plan to reform DOC by creating a quasi-public entity that would be solely focused on economic development. On February 9, 2011, the Wisconsin Legislature approved Senate Bill 6-2011 Wisconsin Act 7 which created a new public-private partnership entity known as the Wisconsin Economic Development Corporation (WEDC). Additionally, Wisconsin Act 7 transferred the economic development roles of DOC to the WEDC, effective July 1, 2011.

Prior to the establishment of WEDC, on May 10, 2011 HUD provided the State with clarification regarding the ability of the WEDC to receive and administer funds under several HUD program statutes and regulations. Additionally, HUD informed the State that it had concerns about the organizational structure of WEDC and requested that the State provide an

Attorney General's opinion supporting the State's determination that WEDC is an instrumentality of the state of Wisconsin.

An Attorney General's opinion was not provided to HUD and on August 25, 2011, HUD advised the Wisconsin Department of Administration (DOA), that the administrative role of the WEDC would be limited because the State was unable to provide an opinion supporting a determination that WEDC is an instrumentality of the State. During our September 20, 2011 conference call with the DOA staff, HUD reiterated its position that (absent an Attorney General's opinion) it does not recognize the WEDC as an instrumentality of the State. Furthermore, HUD advised the State that the WEDC was not authorized to administer the CDBG program as a subrecipient of the State without an executed written subrecipient agreement. In response, on March 14, 2012 DOA provided HUD an executed Administrative Agreement (the Agreement) for review and indicated that the effective date of the Agreement is retroactive to July 1, 2011.

On February 21, 2012 (prior to the execution of the Agreement), Governor Walker announced that the WEDC had awarded CDBG funds to the Wisconsin Cities of Arcadia and Chippewa Falls, the Villages of Birchwood and Soldier's Grove, and the Town of Mercer. Our onsite review of State records found that a total of \$9,634,470 in CDBG funding was awarded by the WEDC prior to the execution of the Agreement. At the time these awards were made, WEDC had no legal authority under the CDBG Program to award or administer CDBG funds.

The State of Wisconsin has formally indicated its disagreement with this determination during meetings held on May 24 and 26, 2012 and in written correspondence dated July 12, 2012. However, without a written agreement governing the administration of funds between WEDC and DOA, any exercise of authority over the State CDBG funds was improper and in violation of the CDBG statute and regulations. Prior to March 7, 2012, there was neither a written agreement between WEDC and DOA nor was WEDC recognized as an instrumentality of the State.

Accordingly, the \$9,634,470 of CDBG funding awarded by WEDC between July 2011 and March 2012 was awarded in violation of the CDBG statute and regulations. For HUD to recognize the July 1, 2011 effective date on the Agreement between DOA and WEDC is tantamount to ignoring the CDBG statutory violation.

HUD has a duty to ensure that federal funds are administered in compliance with all federal laws and regulations. Implicit in that duty is HUD's responsibility to protect its programs from even the appearance of impropriety. HUD is also committed to ensuring that its grantees as well as the agency itself function in a manner that promotes transparency and accountability with regard to federal funds. For these reasons and given the circumstances regarding the administration of State CDBG funds by Wisconsin, HUD reiterates its earlier position that the Agreement between DOA and WEDC should have an effective date of March 7, 2012 rather than July 1, 2011.

II. ELIGIBILITY AND NATIONAL OBJECTIVE

One of the main purposes of HUD's CDBG Program is to expand economic opportunities, principally for persons of low- and moderate-income (LMI). The intent of the State's CDBG Economic Development program is to create jobs that are ultimately made available to LMI persons.

In order to ensure that positions were first made available to LMI persons, the State and UGLGs performed extensive outreach. Our file review confirmed that the State held several public forums informing the public of the CDBG projects and jobs that will be created and available. Notices were placed in local newspapers and information about available positions was posted at local job centers by UGLGs.

In order to assess whether low- to moderate-income persons received first consideration for filling these jobs, we reviewed a sample of completed projects to determine the actual number of positions that were filled by low- to moderate-income persons. Our review of the State's records for the following sample projects confirms that 69 percent of the positions were filled by LMI persons.

UGLG (Applicant)	Business	Funding Year	# FTEs (a)	LMI	% LMI
Door County	Palmer Johnson Yachts, LLC	2007	223	102	45.7%
Eau Claire County	GSI Call Center, Inc	2007	405	207	51.1%
Juneau County	Central Sands Dairy	2007	34	30	88.2%
Brown County	Marquis Yacht	2010	315	311	98.7%
Rock County	Stoughton Trailers	2011	302	233	77.2%
Subtotal:			1,279	883	69.0%

The State of Wisconsin verifies job creation and retention using a standard reporting form. Projects initiated by Commerce utilize an Economic Development Project Report (EDPR) and projects initiated by the WEDC use a "Project Performance Report" which is a modified version of the EDPR. In practice, the first report establishes an employment baseline and subsequent reports track the number of jobs retained and created by position and average hourly wage. The form includes the businesses certification that "first availability was given to unemployed or low- to moderate-income persons" and is signed by the business. It should be noted that the WEDC form includes improved and expanded language regarding LMI certification by the business.

Public Benefit Standard

As part of our review, we performed individual activity and aggregate benefit tests to ensure that the State's ED Program met the Public Benefits Standards of the CDBG Program. To comply with the individual activity standards, an activity that creates or retains jobs cannot exceed \$50,000 per full-time equivalent (FTE) job. For the aggregate standard activity, an

activity that creates or retains jobs cannot exceed \$35,000 per FTE job. The results of our analysis of these two standards are described below:

Individual Activity Standard (Maximum \$50,000 of CDBG Assistance per FTE)

UGLG (Applicant)	Business	Funding Year	CDBG Amount	# FTEs (a)	Cost Per FTE
Door County	Palmer Johnson Yachts, LLC	2007	\$2,006,000	223	\$8,996
Eau Claire County	GSI Call Center, Inc	2007	\$1,006,000	405	\$2,484
Juneau County	Central Sands Dairy	2007	\$506,000	34	\$14,882
Village of Mazomanie	Synergy Web Graphics, Inc.	2008	\$506,000		
Columbia County	Penda Corporation	2008	\$1,006,000	407	\$2,472
Subtotal:			\$5,030,000	1,069	\$4,705
Brown County	Marquis Yacht	2010	\$1,506,000	315	\$4,781
Columbia County	American Packaging	2011	\$356,000	47	\$7,574
Rock County	Stoughton Trailers	2011	\$756,000	302	\$2,503
Sheboygan County	Morgan Aircraft	2011	\$1,006,000	340	\$2,959
069Vernon County	Organic Producer	2011	\$596,000	446	\$1,336
Ozaukee County	Gilman	2011	\$391,000	52	\$7,519
Taylor County	COWS	2012	\$181,000	6	\$30,167
Subtotal:			\$4,792,000	1508	\$3,178
TOTAL:			\$9,822,000	\$2,722	\$3,608

(a) FTEs for 2007 and 2008 are actual. FTE's for 2010-2012 are estimated.

It is important to note that the public benefit standard test for 2007 and 2008 is based on actual accomplishments, while 2010-2012 is based on job creation goals. This dual calculation was done to ensure that both the State's ED Program under Commerce and WEDC program met a National Objective.

Aggregate Standard (Maximum \$35,000 of CDBG Assistance per FTE)

Includes all loans made during the time period

FY2007: \$3,248 per FTE (meets test)

FY2008: \$3,696 per FTE (meets test)

With one exception, (Synergy Web Graphics, Village of Mazomanie) our review and analysis of the State's ED Program records, confirms that the State has met both the individual and aggregate public benefits standards for FY 2007 and 2008. In addition, our review of estimated job creation for 2010-2012 confirms that the State is on target to meet the public benefits

standard for its current projects. However, it is too soon to make a final determination for this time period.

We could not document that a National Objective was met for the Synergy Web Graphic (Village of Mazomanie) project resulting in the following concern:

Concern No. 1 – Job Creation

Condition: No jobs were created as a result of the \$506,000 in CDBG funding provided to Synergy Web Graphics. At the time of the loan on April 25, 2008 Synergy Web Graphics (Village of Mazomanie) employed 145 people, but by July 21, 2008 (9 weeks later) it had decreased its employment to 125. On September 9, 2008, Synergy Web Graphics (Village of Mazomanie) closed and no employees remained.

Ultimately, Synergy Web Graphics (Village of Mazomanie) filed for chapter 128 receivership under Wisconsin law and the Department of Commerce was a party to the proceeding with a claim against Synergy for the amount due under the CDBG contract plus interest. The case was closed in July of 2010 and Commerce did not receive any money. In September of 2011 the State of Wisconsin received a default judgment for the amount due under the CDBG contract plus interest against (names omitted for confidentiality), the personal guarantor's of the loan. It is our understanding that this litigation is still ongoing.

Cause: State staff indicates that this occurred because of an unexpected downturn in the printing industry.

Effect: HUD recognizes that economic development projects are often high risk and subject to circumstances beyond the control of the State or assisted business. However, by funding a business that immediately reduces employment after receiving CDBG funds is cause for serious concern. When they fail, higher risk projects such as Synergy Web Graphics (Village of Mazomanie) provide no benefit to the public and are a questionable use of scarce Federal funds.

Recommended Actions: Because of the ongoing legal action that is being taken by the State in an attempt to recover CDBG funding, this matter has been identified as a concern rather than a finding. Because the project did not meet a National Objective, the State should continue to aggressively pursue all available legal remedies to recover CDBG funds expended for this project.

Concern No. 2 – Insufficient Contract Provisions

Condition: During our review of the 2010, 2011 and 2012 project lists provided to FHEO, HUD noted that the project descriptions either contained the language “made available to LMI persons” or had no reference to LMI persons. Additionally, the agreement between the State and UGLGs defines “made available to LMI persons” to mean “the borrower is working with the local Job Service Office or Workforce Development Boards to ensure that LMI persons receive consideration for the vacant positions to be filled.”

Cause: This occurred because the State did not fully understand the regulatory requirements of 24 CFR 570.483(b)(4)(iii) as it pertains to ensuring that the unit of general local government and the assisted business take actions to ensure that low and moderate income persons receive first consideration for filling such jobs.

Effect: As written, the contract provisions do not ensure that the unit of general local government and the assisted business take actions to ensure that low and moderate income persons receive first consideration for filling such jobs. However, because the State's Economic Development Project Report includes the businesses certification that "first availability was given to unemployed or low- to moderate-income persons" and is signed by the business, we are not making a finding regarding this matter. Please also note that because someone is unemployed does not mean they are LMI, as a spouse could be employed in a higher paying job.

Recommendation: Because these documents do not ensure compliance with 24 CFR 570.483(b)(4)(iii)(B), HUD recommends that the State revise the language in its contracts and Economic Development Project Reports to be consistent with this regulatory requirement.

III. METHOD OF DISTRIBUTION

Section 104(e)(2) of the Housing and Community Development Act of 1974, as amended, (HCDA) and 24 CFR 570.493(a)(1) require HUD to determine whether or not the state has distributed its funds in conformance with the method of distribution described in its annual Action Plan. Our review of the State of Wisconsin's MOD resulted in the following finding:

Finding # 1 – Method of Distribution

Condition:

- a. The Method of Distribution (MOD) for economic development activities, as detailed in the 2011 Action Plan, states: "[The Wisconsin Department of] Commerce will award an estimated 10 loans which will assist in creating or retaining approximately 1,000 new jobs, 510 of which shall be for low- and moderate-income workers." (page 32). States administering the Community Development Block Grant (CDBG) program are not permitted to make loans using CDBG funds. Rather, state CDBG programs must only make grants to units of general local government (UGLG). In addition, each individual loan made by an UGLG must meet a national objective.

Criteria:

- a. Section 106(d)(2)(A) of the HCDA provides that States must distribute amounts received from HUD to units of general local government; 24 CFR 570.480(g).

Cause:

- a. The State does not understand that it cannot make loans to UGLGs nor grants or loans to non-governmental entities.

Effect:

- a. Interested citizens, UGLGs, and other entities would be led to believe, mistakenly, that DOC is authorized to make direct economic development loans to outside entities. The State could make grants to UGLGs for activities that did not meet a national objective if the State thought that the requirement was that 51% of the aggregate jobs created must benefit low- and moderate-income persons.

Corrective Action:

- a. In future Action Plans, clarify that DOC (or other government entity responsible for administering the state CDBG program) is authorized to make only grants of CDBG funds to UGLGs. The state may further explain that UGLGs receiving CDBG grant funding are permitted to use such funds to make economic development loans to outside entities. The MOD must make it clear that each Economic Development project must benefit low- and moderate-income persons.

Condition:

- b. The Method of Distribution (MOD) for economic development activities, as detailed in the 2011 Action Plan, states: “[The Wisconsin Department of] Commerce will make awards (grants, loans and/or equity investments) to non-profits and businesses via units of general local government (UGLGs) for activities allowed under the federal guidelines.” (page 32). States administering the Community Development Block Grant (CDBG) program are not permitted to make loans or equity investments of CDBG funds. Rather, state CDBG programs must make only grants to units of general local government (UGLGs).

Criteria:

- b. Section 106(d)(2)(A) of the HCDA provides that States must distribute amounts received from HUD to units of general local government; 24 CFR 570.480(g).

Cause:

- b. The State does not understand that it cannot make CDBG loans, and/or equity investments to UGLGs or non-governmental entities. The state does not understand that it can only make CDBG grants to UGLGs.

Effect:

- b. Interested citizens, UGLGs, and other entities may not fully understand the proper funding structure of state CDBG-funded economic development activities (i.e., state grants CDBG funds to an UGLG, which in turn may use the funds for loans or equity investments). In some instances, citizens, UGLGs, and other entities may be led to believe, mistakenly, that DOC is authorized to make direct economic development loans to and equity investments in outside entities.

Corrective Action:

- b. In future Action Plans, clarify that DOC (or other governmental entity responsible for administering the state CDBG program) is authorized to make only grants of CDBG funds to UGLGs. The state may further explain that UGLGs receiving CDBG grant funding are permitted to use such funds to make economic development loans to and equity investments in outside entities.

Condition:

- c. The MOD for economic development activities does not provide sufficient information for UGLGs to prepare responsive applications for CDBG-ED grant funding. Specifically, the MOD lacks detail on what criteria will be used to evaluate applications for grant funding, the relative importance of those criteria, and any threshold factors or grant size limits that are to be applied (see page 32).

Criteria:

- c. 24 CFR 91.320(k)(1)(i) provides that:
 The method of distribution shall contain a description of all criteria used to select applications from local governments for funding, including the relative importance of the criteria, where applicable. The action plan must include a description of how all CDBG resources will be allocated among funding categories and the threshold factors and grant size limits that are to be applied. The method of distribution must provide sufficient information so that units of general local government will be able to understand and comment on it, understand what criteria and information their application be judged, and be able to prepare responsive applications. The method of distribution may provide a summary of the selection criteria, provided that all criteria are summarized and the details are set forth in the application manuals or other official state publications that are widely distributed to eligible applicants.

Cause:

- c. The State did not consider that applicants would be unable to determine how to develop their application in order to apply for funding from the State.

Effect:

c. Interested citizens, UGLGs, and other entities do not have sufficient information regarding the application procedure for CDBG-ED funds, criteria used to select applications from UGLGs, the relative importance of those criteria, and any threshold factors or grant size limits that are to be applied. As such, UGLGs may not be able to provide responsive applications based on the information contained in the MOD.

Corrective Action:

c. In future Action Plans, clearly explain the criteria that will be used to select UGLG applications for CDBG-ED funding, the relative importance of those criteria, and any threshold factors or grant size limits that are to be applied.

Condition:

d. The MOD for CDBG-ED indicates that approximately \$10.4 million would be available for the funding of economic development activities. However, the actual amount of CDBG-ED funding obligated in 2011 reached nearly \$15.6 million (an approximately 50% increase, without triggering a substantial amendment to the consolidated plan). While the MOD does state that intended funding allocations are approximate, it does not include the criteria that are used to determine an increase in Economic Development funding. The MOD must include the state's criteria for allowing a significant increase in funding an activity so that the UGLGs will be informed.

Criteria:

d. 24 CFR 91.320(k)(1)(i) – see “***Criteria***” under section c. above;
 24 CFR 91.115(c) generally provides that citizen participation plan must include among the criteria for a substantial amendment changes in the method of distribution of such funds. The regulation further provides that a substantial amendment is subject to the citizen participation process, which includes reasonable notice and an opportunity to comment for a period of not less than 30 days. The State must also consider any comments received;
 24 CFR 91.505 provides that an approved plan must be amended when a grantee decides to change its allocation priorities or the method of distribution of funds.

Cause:

d. The State did not realize that its MOD needed to specifically describe the criteria that would cause Economic Development funding to be increased.

Effect:

d. Interested citizens, UGLGs, and other entities do not have sufficient information on the basis or justification for a funding discrepancy of this magnitude. In addition, there is no information that UGLGs can use to determine if there will be any change in the economic development allocation. Furthermore, interested citizens, UGLGs, and other entities did not have the opportunity to comment on this change in the economic development funding allocation.

Corrective Action:

d. In future Action Plans, clearly explain the criteria by which the state uses to determine a significant funding increase of an activity so that UGLGs are well informed. If the State amends its action plan per 24 CFR 91.505, it must follow the citizen participation requirements of 24 CFR 91.115(c) for a substantial amendment to the consolidated plan.

IV. ADMINISTRATIVE AND FINANCIAL MANAGEMENT

A focus of HUD's review was to assess the State's compliance with the general administrative and financial management requirements of the CDBG Program to ensure that funds are used consistent with applicable statutory and regulatory provisions and that they are spent only for the reasonable and necessary costs of operating programs.

Finding No. 2 – Subrecipient Management

Condition: As previously described in the background section of this report, the WEDC has directly awarded and administered more than \$9,634,470 in CDBG funds without the appropriate authority. Between July 1, 2011 and March 7, 2012, the State knowingly allowed WEDC to administer its CDBG funds in violation of the CDBG statute. Although DOA and WEDC executed an Administrative Agreement with an effective date of July 1, 2011, the Agreement was not made and entered into until March 7, 2012. Between July 1, 2011 and March 7, 2012 the WEDC was not recognized as an instrumentality of the state, a subrecipient, or a contractor under the CDBG Program and had no authority under the CDBG Program to act on behalf of the state.

Criteria: Section 102(a)(2) of the HCDA defines a "State" as "any State of the United States, or any instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico." Thus, only a State or an instrumentality of a State may accept/receive State CDBG funds from HUD. The provision of an executed Administrative Agreement with a retroactive effective date does not negate the fact that the WEDC was not recognized as an eligible administrative entity (instrumentality of the state, a subrecipient, or contractor) prior to March 7, 2012.

Cause: This occurred because the DOA lacks the administrative and management capacity to properly oversee the activities of the WEDC and does not understand its role as a program administrator of the administrative requirements of the HCDA. The State of Wisconsin did not ascertain the nature of the relationship between the DOA and WEDC before the dissolution of the DOC. Therefore, the WEDC continued to act as a State entity (relative to the CDBG program), instead of a subrecipient or contractor of the State.

Effect: As a result the DOA is not able to ensure compliance with the HCDA.

Corrective Actions: Within 30-days of the date of this letter, the State must finalize its formal relationship with the WEDC by providing HUD with a copy of the fully executed Administrative Agreement between DOA and WEDC. HUD requests that the Agreement fully address all 16 revisions identified in our May 17, 2012 letter.

In addition, all contracts issued by the WEDC between July 1, 2011 and March 7, 2012 are considered invalid and must be reassigned to the DOA. The State must promptly notify all affected units of general local government (UGLG) of this change.

The DOA must review all agreements executed between July 1, 2011 and March 7, 2012 to ensure that the units of general local government have certified to the following:

- Residential antidisplacement and relocation assistance plan certification pursuant to Section 104(d)(1) of the HCDA.
- Certification of protection of individuals engage in non-violent civil rights demonstrations pursuant to Section 104(l) of the HCDA.
- Certifications under Section 106(d)(7) of the HCDA – minimizing displacement, compliance with the Civil Rights Act and the Fair Housing Act, duty to affirmatively further fair housing, compliance with a citizen participation plan, and non-recovery of capital costs of public improvements, unless excepted.

In addition the agreements between the UGLGs and the State should require the UGLG to comply with the following:

- Title I of the HCDA, the CDBG regulations at 24 CFR part 570 and all other applicable federal laws.
- Section 3 of the Housing and Urban Development Act of 1968 and 24 CFR part 135.
- Lead-based paint procedures of 24 CFR part 35, subparts A, B, J, K, and R.

The agreement between the UGLG and State should also state:

- That the parties to the agreement are eligible to enter into the agreement.
- That the activities subject to the agreement are eligible under 105(a) of the HCDA.

If these actions are not taken, the Department will require the State to reimburse \$9,634,470, to its program account.

Finding No. 3 – Funding of 105(a)(15) Entities

Historically, some Wisconsin UGLGs have funded 105(a)(15) entities to minimize the amount of repaid Revolving Loan Funds (RLF) to be treated as program income. Section 105(a)(15) of the HCDA allows the provision of assistance to nonprofit organizations serving the development needs of communities in non-entitlement areas to carry out neighborhood revitalization, community economic development or energy conservation projects. At this time the three 105(a)(15) entities funded in Wisconsin are 1. Regional Business Fund, Inc., 2. Northwest Regional Economic Development Fund, Inc, and 3. Central Wisconsin Economic Development Fund, Inc.

As part of its monitoring of the State's CDBG economic development program, HUD performed a remote review of Wisconsin's Regional RLF documents prior to our onsite visit. Specifically, our remote monitoring included a review of the administrative structure of the RLFs and memorandums of agreement executed with these entities. We found that the implementing structure of the State's CDBG Small Cities funded Regional RLF is not consistent with the HCDA and CDBG regulations as described in the following finding:

Condition: The State and its UGLGs do not fund 105(a)(15) entities in a manner that is consistent with CDBG program requirements thereby minimizing the amount of revolving loan funds that must be treated as program income. HUD has also found that the State's description of its RLF process and its written documentation does not follow the requirements of CPD Notice 04-11. Specifically, the use of a three party agreement executed by the State, the UGLG, and the 105(a)(15) entity (RLF) does not clearly show that grant funds were first provided to an UGLG and that the UGLG subsequently provided funding to the 105(a)(15) entity. The State does not enter into a separate agreement with its UGLGs separate from the agreement entered into between the UGLGs and the assisted 105(a)(15) entity. This is inconsistent with 106(d)(2)(A) and 105(a)(15) of the HCDA, 24 CFR 570.480(g), and the guidance provided in Section IV of CPD Notice 04-11, which require the UGLG to fund the 105(a)(15) directly.

Criteria: 106(d)(2)(A) of the HCDA, and 24 CFR 570.480(g) provide that States must distribute amounts received from HUD to units of general local government; Section 105(a)(15) of the HCDA provides that assistance to nonprofit organizations serving the development needs of communities in non-entitlement areas to carry out neighborhood revitalization, community economic development or energy conservation projects is an eligible activity; and 24 CFR 570.489(e)(2)(ii) provides that program income does not include amounts generated by activities under section 105(a)(15) of the Act and carried out by an entity under the authority of section 105(a)(15) of the Act. This deficiency was previously communicated to the State in correspondence dated February 7, 2012.

Cause: This occurred because the State did not fully understand the statutory requirements of the HCDA as it pertains to the funding of 105(a)(15) entities for the purpose of reducing program income.

Effect: Because the RLFs were not funded in a manner consistent with program requirements, CDBG repayments made to 105(a)(15) entities in Wisconsin are considered to be CDBG program income.

Corrective Actions: Within 30-days the State must provide HUD with a report identifying all outstanding CDBG ED UGLG grants that support loans to 105(a)(15) entities and for-profit businesses between April 1, 2007 to March 31, 2012 (State Program years 2007-2012). This report must identify the UGLG, 105(a)(15) entity (if applicable), assisted business name, total CDBG loan, and outstanding balance as of June 30, 2012 (the start of the State's Fiscal year).

Due to the State's lengthy history of funding the Regional RLFs and the resulting financial hardship that would occur, HUD will not require the State to payback repaid funds that it previously believed was not considered to be program income. However, all repayments that are received after the date of this letter shall be treated as program income by the State and administered consistent with 24 CFR 570.489(e).

If the State wishes to use 105(a)(15) entities to minimize the amount of repaid RLF funds to be treated as program income, it may do so after the required revisions to the Administrative Agreement dated March 7, 2012 have been reviewed and approved by HUD. DOA is reminded that WEDC must execute agreements with the units of general local governments separate from the agreements to be executed between the units of general local government, the 105(a)(15) entities, and potential borrowers/awardees. In addition, these agreements must be written in a manner that accurately reflects the authorized role of WEDC by DOA.

Finding No. 4– Underwriting Guidelines

Condition: Neither the State, nor its UGLGs performed an underwriting analysis for 2 of 6 files that we reviewed. In one case, the State did not perform any underwriting analysis for Gilman (Ozaukee County). In the case of Morgan Aircraft (Sheboygan County) funded on October 24, 2011, the underwriting review was completed July 2, 2007. Because of the age of this review and lack of current/updated financial information, HUD does not consider this to be a valid or acceptable underwriting review.

Criteria: 24 CFR 570.482(e) which requires that "...state or units of general local government conduct basic financial underwriting prior to the provision of CDBG financial assistance to a for-profit business."

Cause: In the case of the Gilman (Ozaukee County) project, WEDC staff indicated that the underwriting process was skipped in order to accommodate the businesses timeline. In the case of Morgan Aircraft (Sheboygan County) WEDC staff indicates that an updated underwriting was performed, but not placed in the file. HUD staff requested a copy of the updated underwriting for Morgan Aircraft (Sheboygan County), but as of the date of this letter, it has not been provided. Staff ultimately provided HUD with additional information related to this project, but not an updated underwriting review.

Effect: The failure to perform underwriting is in violation of the CDBG Program Regulations and prevents the State from ensuring that 1) project costs are reasonable; 2) all sources of project financing are committed; 3) that to the extent practicable, CDBG funds are not substituted for non-Federal financial support; 4) the project is financially feasible; 5) that to the extent practicable, the return on the owner's equity investment is not unreasonably high; and 6) that to the extent practicable, CDBG funds are disbursed on a pro rata basis with other finances provided to the project.

Corrective Actions: Because these projects ultimately met a CDBG National Objective, HUD will not require the State to payback the CDBG assistance that was provided. While the use of the underwriting guidelines published by HUD is not mandatory, the DOA must implement an oversight process that ensures that DOA, WEDC and/or the assisted units of general local government conduct basic financial underwriting prior to the provision of CDBG financial assistance to a for-profit business. As part of your response to this finding, please provide a description of the administrative process that will be used to ensure that the required underwriting is performed for all funded projects in the future.

Concern No. 3- Compliance with Local Policies and Procedures

Condition: The State does not consistently follow its established program guidelines. In one instance Kapco (Polk County) a \$20,000 per job benefit was provided, when the State's written guidelines limited assistance to a maximum of \$10,000 per job. In addition, the State's guidelines indicate that forgivable loans are only provided under extraordinary circumstances, however no documentation of a qualified circumstance was observed in the project file for Kapco (Polk County). Based on our review it appears that 11 of 20 loans provided since January 1, 2011 have been forgivable.

Cause: Staff indicated that certain jobs were considered more valuable to the State and therefore in these cases the cost per job limits were exceeded and in other cases the projects received forgivable loans.

Effect: The administration of public funds, particularly Federal funds, should be a transparent and defensible process. The inconsistent application of established program guidelines is a questionable practice that can lead to accusations of preferential treatment and potential legal action. The State should revise its "CDBG Economic Development Guidelines" to identify the specific circumstances that it considers to be extraordinary and eligible for an exception to the established underwriting guidelines. Documentation of the extraordinary circumstance that justifies an exception to the State's policies should be retained in the project files. The State should also expand the established loan "tiers" to account for jobs it considers to be high value.

Finding No. 5 - Anti-Pirating Provisions

Condition: The UGLGs written agreements with assisted entities (105(a)(15) or for-profit businesses) do not include the required anti-pirating provisions.

Criteria: Section 105(h) and 24 CFR 570.482(h) prohibit the use of CDBG funds to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from one area to another area, if the relocation is likely to result in a significant loss of employment in the labor market area from which it occurs. 24 CFR 570.482(h)(3) requires a written agreement that includes the specified anti-pirating provisions to be executed between the proposed CDBG-assisted business and the CDBG recipient, subrecipient or non-profit entity (if applicable) before the assistance is provided.

Cause: The State indicates it was not aware of the requirements to include this language in its written agreements. Please be advised that on May 11, 2010, HUD reminded the State of the anti-pirating provisions regarding the use of State Small Cities Community Development Block Grant (CDBG) funds to assist Mercury Marine, Inc. to expand its operations for the retention of jobs in Fond du Lac, Wisconsin. A copy of the September 24, 2008 HUD Memorandum, Reminder of the Prohibition on Use of Community Development Block Grant Assistance for Job-Pirating Activities was also provided to the State at this time.

Effect: As a result, the State cannot ensure that the assisted businesses were aware of and complied with the anti-pirating restrictions.

Corrective Actions: The State must require its UGLGs to ensure that the anti-pirating restrictions are contained in the written agreements with each assisted business, regardless of whether the assistance to the business is provided by the UGLG, a subrecipient or a 105(a)(15). The UGLG, subrecipient, or 105(a)(15) entity as applicable needs to be a signatory to the anti-pirating agreement with the business. Specifically, the written agreement must include a statement as to whether the activity will result in the relocation of the business from one labor market area (LMA) to another LMA and, if so, the number of jobs that will be relocated from each LMA [24 CFR 570.482(h)(3)(i)].

If there are no plans to directly assist a business in relocating from one LMA to another which will result in a significant loss of jobs by the losing LMA per 24 CFR 570.482(h), the agreement must include:

- (1) a certification from the assisted business that neither it, nor any of its subsidiaries, has plans to relocate jobs at the time the agreement is signed that would result in a significant job loss as defined in 24 CFR 570.482(h)(3)(ii);
- (2) a provision for reimbursement to the recipient of any assistance provided to, or expended on behalf of, the business in the event that assistance results in relocation [24 CFR 570.482(h)(3)(iii)].

Financial Management

The purpose of the financial review was to analyze the financial management and accounting systems to ensure that effective accountability for CDBG funds has been established and that the program is in compliance with federal requirements regarding economic development. The financial management review consists of two components. The first

component is to determine if the state's records are sufficient to demonstrate that the state is administering the program in accordance with applicable financial management requirements. The second component is to determine if the state has sufficient records to demonstrate that it has conducted financial reviews of its recipients as may be necessary to ensure recipient compliance with applicable financial management requirements including audit requirements of the Single Audit Act as outlined in OMB Circular A-133.

The review areas under the two components include requirements for financial management and recordkeeping, record retention and custody, allowability and allocability requirements, program income, cash management, managing conflicts of interest, and audit review requirements. The review did not include procurement, bonding and insurance requirements, or property management requirements. Materials reviewed include applicable written State of Wisconsin policies and procedures, a random sample of economic development program expenditures source documentation, and reports provided by State of Wisconsin staff.

Finding #6 - Single Audit Review

Condition: The State did not have a system that determined if localities expending \$500,000 or more in Federal awards in one fiscal year meet the requirements of Circular A-133. However, the Department of Administration has implemented a new system with additional staff responsible for compliance with the Single Audit Act requirements as described in OMB Circular A-133.

Criteria: 24 CFR 570.489(m) requires States to develop and administer an audits management system to ensure that audits of UGLGs are conducted in accordance with 24 CFR 85.26 which implements the Single Audit Act and OMB Circular A-133.

Cause: The person responsible for compliance with the Single Audit Act requirements did not maintain a review system that met the OMB Circular A-133 requirements. In addition, the position responsible for the single audit review system remained unfilled from July 2011 until February 2012.

Effect: The State of Wisconsin may be unable to ensure compliance with program requirements without adequate sub-recipient monitoring.

Corrective Action: The State of Wisconsin must establish a single audit review system that includes written policies and procedures to ensure the State meets all OMB A-133 Circular requirements.

Finding # 7 - Financial Reporting

Condition: The State's fiscal control and accounting procedures are not sufficient to prepare accurate reports to HUD. For example, the State did not report most of the program income received from UGLGs in the Integrated Disbursement and Information System (IDIS) or the Consolidated Annual Performance and Evaluation Report (CAPER).

Criteria: 24 CFR 570.489(d)(2)(iii) applies the provisions in 24 CFR part 85 “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments” adopted by the State of Wisconsin. 24 CFR 85.20(a) requires State fiscal control and accounting procedures sufficient to permit the preparation of reports required by this part and the statutes authorizing the grant. (Note: The final rule with an effective date of May 23, 2012 that will be incorporated into the regulations at 24 CFR 570.490(a)(3) requires the state to make entries into IDIS in a form prescribed by HUD to accurately capture the state’s accomplishment and funding data, including program income, for each program year. It is recommended that the State enter IDIS data on a quarterly basis and it is required to be entered annually.)

Cause: The previous accounting staff at the DOC was unaware of the requirement to report program income in IDIS and the CAPER.

Effect: The failure to report CDBG program income results in a significant number of people receiving benefits from the CDBG program, but not recognized in HUD’s outcomes reported to CDBG program stakeholders.

Corrective Action: The State of Wisconsin must report 2011 program income receipts and expenditures in IDIS within 60 days. The State must also submit a plan establishing deadlines for completion of IDIS data entry of unreported program income from prior program years 2007, 2008, 2009, and 2010. Finally, the State must report program income received in the 2011 CAPER that coincides with the program income reported in IDIS.

Finding #8 - Internal Controls

Condition: WEDC received \$8,635,700 in CDBG funds on December 27, 2011 without any approval from DOA. According to the Financial Manager in the Bureau of Financial Management, the WEDC controller (on the last day of employment as the WEDC controller) initiated the transaction in the Wismart system (the state accounting system) in a manner that did not require DOA approval. The WEDC controller was a former Department of Commerce Bureau Director of Fiscal & Procurement Services. The reimbursement was for economic development and public facility projects administered by WEDC between July 1, 2011 and November 30, 2011. Although WEDC was requesting reimbursement in IDIS for project costs, the CDBG funds were still going to the Department of Commerce account because the banking information had not been changed in LOCCS.

Criteria: 24 CFR 570.489(d)(1) requires the State to have fiscal and administrative requirements for expending and accounting for all funds received under this subpart. These requirements must (i) be sufficiently specific to ensure that funds received under this subpart are used in compliance with all applicable statutory and regulatory provisions and (ii) ensure that funds received under this subpart are only spent for reasonable and necessary costs of operating programs under this subpart.

Cause: This occurred because the DOA lacks the administrative and management capacity to properly oversee the activities of the WEDC and does not understand its role as a

grantor or the administrative requirements of the HCDA. The State of Wisconsin did not ascertain the nature of the relationship between the DOA and WEDC before the dissolution of the DOC. Therefore, the WEDC continued to act as a State entity (relative to the CDBG program), instead of a sub-recipient of the State.

Effect: The State of Wisconsin is unable to ensure that CDBG funds are used in compliance with all applicable statutory provisions.

Corrective Action: The DOA must review all source documentation related to the funds drawn without approval on December 27, 2011 to ensure that CDBG funds are used in compliance with all applicable statutory and regulatory provisions and only spent for reasonable and necessary costs. After notification from the DOA that the review is completed, HUD will select a random sample of costs and review the related source documentation. The State must also require WEDC to submit timely monthly financial reports in accordance with the sub-recipient agreement.

Concern # 4 – Effective and Efficient Use of CDBG Funds

Condition: An analysis of recently funded economic development activities and RLF balances revealed almost all projects funded in 2010 and 2011 drew grant funds even though funds were available in local revolving loan funds for economic development projects. In 2010 and 2011, local revolving funds could have contributed over \$7,000,000 to economic development projects benefiting residents of their counties. Instead, the State of Wisconsin funded the projects using CDBG grant funds and the local revolving fund cash balances remain unused and continue to increase from additional loan repayments.

Cause: The State of Wisconsin and local governments view the CDBG grant funds and local revolving loan funds as two different economic development programs run by two separate entities. The State indicated that local RLF resources are not used for various reasons. For example, The State of Wisconsin has different loan terms than local RLFs that are more favorable to companies such as lower loan interest rates and forgivable loans.

Effect: There are substantial amounts of CDBG resources for economic development that are not being utilized to create low- and moderate-income jobs. For example, there is over \$43,000,000 in local revolving loan funds across the State of Wisconsin that could be creating low- and moderate-income jobs in local economies.

Recommended Action: HUD recommends that the State of Wisconsin strongly encourage the use of available local RLF funds before drawing additional grant funds for economic development activities.

Finding No. 9 – Grantee Capacity

Condition: As a result of this monitoring review, HUD has determined that the DOA does not have adequate capacity to oversee the activities of the WEDC. Currently, oversight of

WEDC is performed by the Division of Housing, which has its primary focus on Housing activities.

Criteria: 24 CFR 570.493 requires that HUD's reviews and audits determine whether the state has carried out its certifications in compliance with the requirements of the Act and this subpart and other applicable laws as referenced in findings 1-9 of this report.

24 CFR 570.489(d) requires that the State's fiscal and administrative requirements ensure that all CDBG funds are used in compliance with all applicable statutory and regulatory provisions and that CDBG funds are only spent for reasonable and necessary costs of operating programs under Subpart I of the CDBG regulations.

Cause: The Division of Housing does not have the staff capacity or experience to adequately oversee the economic development and public facility activities administered by the former DOC and the new activities that are being undertaken by the WEDC.

Effect: The lack of adequate staff capacity and experience has resulted in nine (9) findings. These findings and the hasty transfer of CDBG programs to the WEDC has caused HUD to question the state's ability to manage its CDBG Program in compliance with the Housing and Community Development Act.

Corrective Actions: DOA must hire an Administrator level (or higher) staff to be responsible for WEDC's CDBG-funded Economic Development and Public Facilities monitoring, oversight, and compliance. At minimum, this staff must have demonstrated experience in economic development and public facilities grants administration, particularly with knowledge of federal grant programs and federal management policies, such as OMB circulars, CDBG Regulations, and the Housing and Community Development Act. This position must be provided appropriate authority to ensure WEDC compliance. The establishment of a separate division of DOA, staffed as described above, and provided with the appropriate authority to ensure WEDC compliance with OMB circulars, CDBG Regulations, and the Housing and Community Development Act would satisfy this requirement.

V. COMMUNITY DEVELOPMENT BLOCK GRANT RECOVERY (CDBG-R)

We performed a limited review of several projects undertaken by the State of Wisconsin, using Community Development Block Grant Recovery (CDBG-R) funds. These funds are authorized under Title XII of Division A of the American Recovery and Reinvestment Act (ARRA), 2009 (Public Law 111-005, approved February 17th, 2009) to enable local governments to undertake a wide range of activities intended to create suitable living environments, provide decent affordable housing, and create economic opportunities, primarily for persons of low and moderate income.

The State of Wisconsin received CDBG-R funds in the amount of \$7,533,775 and has followed HUD's recommendations to use these funds for hard development costs associated with infrastructure activities that provide basic services to residents and activities that promote energy

efficiency and conservation through rehabilitation or retrofitting of existing buildings. The following three CDBG-R projects were selected for the purpose of our limited review:

Project Name:	Intergenerational Center
UGLG:	City of Plymouth
CDBG-R Funding:	\$1,010,000
<p>This project meets the requirements of Title XII of Division A and Section 1602 of ARRA by preserving and creating jobs and promoting economic recovery through the construction of the facility and assisting those most impacted by the recession, particularly seniors and low and moderate income households that are unemployed or in need of affordable childcare.</p>	

Project Name:	Downtown Improvements
UGLG:	City of Chippewa Falls
CDBG-R Funding:	\$660,000
<p>This project meets the requirements of Title XII of Division A and Section 1602 of ARRA by preserving and creating jobs and promoting economic recovery by enhancing the appearance of the downtown area and thereby attracting more shoppers. Additionally, this project assists those most impacted by the recession by assisting a business district already impacted by reduced consumer spending.</p>	

Project Name:	Lauri Jean Zach Center Renovation
UGLG:	Ashland County
CDBG-R Funding:	\$247,920
<p>This project meets the requirements of Title XII of Division A and Section 1602 of ARRA by creating jobs and promoting economic recovery through the rehabilitation of a building housing a senior center and workshop for developmentally disabled persons. Additionally, the project assists those most impacted by the recession by repairing and making energy improvements to a facility that provides services to seniors, including meals and providing training in basic job skills to individuals faced with limited employment opportunities.</p>	

Pursuant to [Section 1604 of title XVI of Division A of the Recovery Act, Pub. L. 111-5] we reviewed the State of Wisconsin Community Development Block Grant Recovery (CDBG-R) Program Substantial Amendment to its 2008 Annual Action Plan (Amended June 2010) and confirmed that the State did not expend CDBG-R funds on any project expressly prohibited by the Recovery Act, i.e., any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

Our review also included confirmation that the State of Wisconsin is complying with the Recovery Act's "Buy American" requirement [CDBG-R Notice, II.H.2.c and 74 Fed. Reg. 18449]. During our review we noted that all UGLGs receiving CDBG-R funding certify

compliance with the Buy American provision in Attachment C: Statement of Assurances of the CDBG-R Application.

VI. POSITIVE OBSERVATION

Positive Observation No. 1 – Cloud Storage

During our review, the State was in the process of moving its economic development program files to a cloud-based storage system. Rather than relying solely on paper files, this cloud based system creates a virtual place where team members can access the same information from any location across the State (and beyond). This is an important feature since the State has staff located across Wisconsin.

During our review, HUD staff was provided access to the State's cloud in order to review several project files. Our reviewers generally found the system to be well organized, efficient, and an effective use of technology.

ATTACHMENT A

State of Wisconsin CDBG and CDBG-R Program and Financial Monitoring Participants

Staff	Title	Agency	Entrance Conference 5/21/2012	Interviews 05/21/12 through 05/24/12	Summary Conference 5/24/2012	Exit Conference 6/27/2012
Allman, Matthew	Presidential Management Fellow	HUD-OBGA	X	X	X	
Baxter, Tara	Budget Analyst	DOA	X	X	X	X
Coomer, Wendy	Executive Assistant	DOA				X
Fischer, Korianna	Controller	WEDC	X		X	X
Fontheim, Eva	CPD Specialist	HUD-OBGA	X	X	X	
Herrera, Oscar	Bureau Director	DOA	X		X	
Hicks-Sorensen, Brenda	VP of Economic and Community Dev't	WEDC	X	X	X	
Huebsch, Mike	Secretary	DOA				X
Holtan, Coleen	Financial Manager	DOA	X	X	X	X
Holden, Patti	Senior Financial Underwriter	WEDC	X	X		
Larsen, John	Financial Analyst	HUD	X	X	X	X
Marks, Lisa	Division Administrator	DOA	X	X	X	X
Michels, Steven	Staff Counsel	WEDC	X	X	X	
Mitchell, Sernorma	CPD Director	HUD-MFO	X		X	
Murray, Greg	Chief Legal Counsel	DOA	X		X	X
Renfro, Hannah	Chief Legal Counsel	WEDC	X		X	X
Roos, John	Senior Financial Underwriter	WEDC	X	X		
Sabtko, Steve	Senior Financial Underwriter	WEDC	X	X	X	X
Storm, Jeanne	Budget and Policy Analyst	DOA -DOH	X		X	
Van Epps, Jerome	Equal Opportunity Specialist	HUD-MFO	X		X	
Werra, Garry	CPD Representative	HUD-MFO	X	X	X	X
Wilson, Debra	Accountant	DOA	X		X	X
Wilson, Marti	Grants Specialist	DOA	X			
Young, Amy	Strategic Projects and Policy Advisor	WEDC		X	X	

Key to Abbreviations:

- DOA Wisconsin Department of Administration (Grantee)
- WEDC Wisconsin Economic Development Corporation (Subrecipient)
- HUD-MFO U.S. Department of Housing and Urban Development, Milwaukee Field Office
- HUD-OBGA U.S. Department of Housing and Urban Development, Office of Block Grant Assistance



AUG 02 2012

U.S. Department of Housing and Urban Development
Milwaukee Field Office
Suite 1380
310 West Wisconsin Avenue
Milwaukee, WI 53203-2289
<http://www.hud.gov/local/mil/>

Ms. Lisa Marks
Administrator, Division of Housing
Department of Administration
101 E. Wilson Street
P.O. Box 7970
Madison, WI 53707

Dear Ms. Marks:

SUBJECT: Environmental Monitoring of Disaster Assistance, Neighborhood Stabilization, and Community Development Block Grant (CDBG) Programs

Kathleen Schmidt, Environmental Protection Specialist, conducted a review of your environmental procedures for the Disaster Assistance and Neighborhood Stabilization Programs on June 11-13th, 2012. A limited review of environmental records for your CDBG Economic Development activities was also conducted. We appreciated the participation of Doug Brethauer, Environmental Specialist, and other Department of Administration (DOA) staff members who assisted during the monitoring. An exit conference was held on June 13th to conclude the monitoring.

The State of Wisconsin received several separate allocations of Disaster Assistance funds from HUD in 2008 totaling approximately \$124,000,000. The State also received NSP I and III funds in separate allocations totaling approximately \$44,000,000. There is an allocation of CDBG funds to Economic Development projects each year by DOA. This amount has varied from year to year, depending on factors such as the amount of the State's CDBG allocation from HUD, and the number of applications received for funding. The Wisconsin Economic Development Corporation (WEDC) has recently been given responsibility for economic development projects, including those funded under CDBG. WEDC staff and units of local government assist Mr. Brethauer with the environmental review process for the CDBG projects.

The purpose of the monitoring was to verify compliance with the requirements of the National Environmental Policy Act (NEPA), HUD environmental regulations at 24 Code of Federal Regulations (CFR) Part 58, and related federal laws and executive orders. Monitoring allows us to observe whether grantees have considered the environmental impacts of projects on their surroundings in their decision making processes. General technical assistance was also provided during this visit.

During the monitoring Ms. Schmidt met with Mr. Brethauer and other members of your staff to discuss the environmental review process. Mr. Brethauer reported that he is responsible for oversight of the process for all HUD programs and also conducts some of the reviews himself. Mr. Brethauer and a number of other Department of Administration staff members have previously attended HUD environmental training.

DOA maintains an environmental resource library with HUD training materials, floodplain and wetland maps, and historic preservation information. We encourage your staff to continue to keep your source documentation materials current and to reference HUD's environmental website at http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment for additional useful information and assistance. Resources available at this site include HUD's Assessment Tools for Environmental Compliance (ATEC) and information which can be used during the preparation of Part 58 environmental reviews to comply with HUD and NEPA requirements.

The Wisconsin Department of Administration executed a Programmatic Agreement with the Division of Historic Preservation at the Wisconsin Historical Society (SHPO) in December of 2002 which covered HUD programs. This agreement was in effect for 5 years and expired in December of 2007. However, DOA has been instructed by SHPO to continue following the terms of this agreement until SHPO has an opportunity to update it. Programmatic Agreements allow Responsible Entities to approve certain common work practices without having to submit each project to SHPO for concurrence.

ENVIRONMENTAL RECORDS

As noted above, environmental review records (ERRS) were monitored for a sample of Disaster Relief, NSP, and CDBG-ED projects. A list of the projects for which records were requested was provided to your office in an attachment to our letter of May 31, 2012 confirming the monitoring. The Disaster Relief and NSP projects selected for review were located in Beaver Dam, Spring Green, Gays Mills, Rock County, and Prairie du Chien. The two CDBG Economic Development projects which were selected for review, Marquis Yacht and Morgan Aircraft, were located in Brown and Sheboygan Counties respectively.

DOA and WEDC have a series of manuals for their programs which include information on the environmental review requirements for HUD funded projects. The manuals are available on the DOA web site, and reference the necessary steps units of local government must follow before they can receive an environmental clearance letter from Mr. Brethauer. During the monitoring these manuals were reviewed for consistency with HUD and NEPA requirements and were found to be acceptable. We commend your staff for their efforts in preparing these manuals and in keeping them updated with the appropriate review forms and applicable information. We believe they are very useful in achieving compliance with environmental review requirements for HUD funded projects. In this letter we've provided recommendations for improving the supporting documentation for several review items. These recommendations could be incorporated into your manuals.

During the monitoring your environmental forms were also analyzed for consistency and compliance with the above requirements. The review forms being used by your staff and the local units of government who receive HUD funds appear to be acceptable in addressing HUD and NEPA requirements. The Environmental Review Records (ERRS) contained project

descriptions and addresses with sufficient detail. They also contained written determinations for activities considered to be categorically excluded from NEPA or which were exempt from HUD and NEPA requirements.

During the monitoring Ms. Schmidt also recommended that the preparer of each environmental review refer to the most current information available to determine if the property being reviewed is located in a designated runway clear zone. The most current U.S. Fish and Wildlife list of endangered species for that community must also be referenced. It was noted that some of your project files included references to old HUD circular letters and/or to a 2003 endangered species list.

In most cases your records were acceptable and met the applicable requirements. However, the following findings were noted during the monitoring:

Finding #1 (Condition): The environmental assessments completed for the Spring Green Drainage System and Gays Mills Infrastructure projects did not include documentation of Findings of No Significant Impact (FONSIs). In addition, the FONSI in the environmental assessment for the Beaver Dam Floodwall project was not signed by the preparer or the approving official. (24 CFR 58.40)

It is required under Part 58.40 that each project file include documentation which confirms the Responsible Entity made a determination that the appropriate review process was completed prior to the commitment of funds. A full environmental review under 58.36 is required for those projects which are more complex and therefore do not qualify as exempt or excluded from NEPA requirements.

Part 58.40 goes on to state that the following steps must be taken in the process: determine and describe the existing conditions, character, features, and resources of the project area and surroundings; identify potential environmental impacts and evaluate them to determine their significance; recommend feasible mitigation methods for the project; and make either a Finding of No Significant Impact (FONSI) or a Finding of Significant Impact (FOSI). If a FONSI is made the Responsible Entity then prepares and disseminates the public notices and notifies HUD when required.

Criteria: The files for the Spring Green and Gays Mills projects included the necessary review documents to confirm that environmental assessments of the projects' impacts were studied, but files did not document the final determination or decision for either of the projects. This is required by 24 CFR Part 58.40. The file for the Beaver Dam Floodwall project included the proper documentation of a FONSI but it was not signed or dated by the preparer.

Cause: We believe this was an oversight on the part of the preparers of the reviews who may have been verifying information and then did not go back to complete the process of documenting the final determination for each project. The reviews were done by staff members of the local governments receiving the funds from the State of Wisconsin Department of Administration or their contractors.

Effect: Documentation of the final determination about each HUD funded project's environmental effects is required under Part 58. The signature of the preparer and date of the determination are also required. These steps are to be completed prior to the publication of the FONSI and the Request for Release of Funds, since the certification in the Request for Release of Funds states that the Responsible Entity, or its designee, has made this determination.

Corrective Action: In your letter of response please address how you will assure compliance with this requirement for all environmental reviews going forward from the date of this letter.

Finding #2 (Condition): The date of the grant agreement for the Gays Mills Infrastructure project (12/27/07) was prior to the dates of completion of the environmental review (6/25/09) and Request for Release of Funds (7/18/09). (24 CFR 58.22)

Criteria: Part 58.22 addresses the limitations on activities pending environmental clearance. It states the following: "(a) Neither a recipient nor any participant in the development process, including public or private non-profit entities, or any of their contractors, may commit HUD assistance under a program listed in Sec. 58.1(b) on an activity or project until HUD or the state has approved the recipient's RROF and the related certification from the responsible entity." Part 58.22 also addresses the use of non-HUD funds prior to completion of the environmental review process and determination about the project's environmental effects and alternative actions.

Cause: It was unclear to Ms. Schmidt if the project was revised after the original contract date and an updated environmental review was then completed, or if not, what would have resulted in the contract being executed prior to the review process taking place. The wrong date may also have been recorded on either the review documents or the contract.

Effect: The purpose of the review process is to determine potential environmental effects prior to federal funds being allocated to the activities that are to take place. The process serves little purpose for projects which have already been started prior to the reviewer reaching a conclusion about potential environmental effects or possible alternative actions.

The Gays Mills Infrastructure project was complex, involving the relocation of businesses, residences, and municipal buildings to other sites in the village to protect them from future flooding. Therefore it was very important that funds not be committed until all environmental issues were addressed, and any necessary mitigation was brought to the attention of Village of Gays Mills officials and other program partners.

Corrective Action: In your letter of response please address the circumstances of this project that allowed for the funds to be committed prior to the date of the environmental assessment being completed. If the dates on any of the documents are incorrect please note this in your letter. We also ask that you explain the process you will follow for future projects to make sure this does not occur again.

Part 58.77 gives HUD the authority to impose sanctions for serious program violations including, but not limited to, more frequent monitoring, required attendance at training, and suspending or terminating the Responsible Entity's assumption of environmental review authority. However, because this was a single occurrence noted during the monitoring, we will not be pursuing these options.

Finding #3 (Condition): Inconsistent information was included in the environmental review files for the Spring Green Drainage System and Beaver Dam Floodwall projects. (24 CFR 58.5 and 58.6)

The introduction to Part 58.5 states the following: "In accordance with the provisions of law cited in 58.1(b), the responsible entity must assume responsibilities for environmental review, decision-making and action that would apply to HUD under the following specified laws and authorities. The responsible entity must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies, and regulations of these laws and authorities." Part 58.5 goes on to individually address each of the review items. Part 58.6 discusses the additional requirements which must be addressed in each review, including flood insurance, coastal barriers, and runway clear zones.

The Spring Green project file indicated the activities were exempt from NEPA and Part 58.5 requirements, citing 58.34(a)(10) which refers to emergency repairs. However, the file also included other environmental review information which is not required if a project's activities are categorized as exempt. Note that 58.34(a)(10) is limited to those activities which are "necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration".

The environmental record for the Beaver Dam Floodwall project included a copy of the second floodplain notice from the 8 Step Floodplain Notification process under 24 CFR Part 55.20, but the Statutory Checklist noted that the location was not in a FEMA designated floodplain.

Criteria: Due to the nature and size of the Spring Green project it appeared to be best categorized under 58.36 as needing a full NEPA environmental review, and not as an exempt project under 58.34. The project was partially the result of the 2008 flooding which occurred in the Spring Green area and in other parts of southern Wisconsin. However, it was not clearly documented in the file that there were further "imminent threats to public safety". The project involved the construction of a 10,000' long, 15' wide earthen channel to be lined with seeding and erosion control, and road construction to raise the roadway to a higher elevation. The location is in the Town of Spring Green.

The file included approvals from the U.S. Army Corps of Engineers, WI State Historic Preservation Office, U.S. Fish and Wildlife, and Wisconsin Department of Agriculture. The Wisconsin Department of Natural Resources (WI DNR) raised some questions about the project regarding sediment and erosion control. It was unclear from the file if these were sufficiently addressed so that the project could be approved by WI DNR.

The Beaver Dam file information on the floodplain issue was inconsistent and somewhat confusing to readers of the environmental review. It was unclear if the entire 8 Step process was followed or not.

Cause: There appeared to be some uncertainty on the part of the local government officials as to the type of environmental assessment required for HUD funding of the Spring Green project. As noted in Finding #1 above, this project file was also one for which a FONSI was not included. The floodwall appeared to affect a floodplain, but there was also conflicting information in the file that did not support this determination.

Effect: The above conditions resulted in a fragmented review process that did not entirely meet the standards at Part 58 for documenting conclusions about the environmental effects of the projects, compliance with the requirements for publication of these conclusions, or the intention of the Responsible Entity to request the release of HUD funds.

Corrective Action: In your letter of response please address how you will comply with the requirements for proper categorization of each project's activities prior to the commitment of HUD funds. Please also include information on the process you will follow to assure consistency in the file documentation materials for each project going forward from the date of this letter.

SUMMARY:

Thank you for the opportunity to meet with your staff to discuss HUD environmental review procedures. The cooperation of Mr. Brethauer and other staff members at WI DOA was very much appreciated. We ask that you please respond to the findings within 30 days of the date of this letter. If you need any additional assistance please feel free to contact Kathleen Schmidt at 414/935-6642.

Sincerely,


for Senorma L. Mitchell, Director
Office of Community Planning and Development

cc: Doug Brethauer, Environmental Specialist
Garry Werra, CPD Representative