U.S. Department of Housing and Urban Development
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May 17, 2012

Mike Huebsch, Secretary
Wisconsin Department of Administration
P.O. Box 7970
Madison, WI 53707

Dear Mr. Huebsch:

Subject: Review of Administrative Agreement between the Wisconsin Department of Administration and the Wisconsin Economic Development Corporation

This correspondence is being provided to transmit the results of HUD's review of the Administrative Agreement executed between the Wisconsin Department of Administration (DOA) and its subrecipient, the Wisconsin Economic Development Corporation (WEDC).

As you may recall, on August 25, 2011, HUD advised the Wisconsin DOA that the administrative role of the WEDC would be limited because the State was unable to provide an Attorney General's (AG) opinion certifying the WEDC as an "*instrumentality of the State.*" During our September 20, 2011 conference call with the Wisconsin DOA staff, HUD reiterated its position that (absent an AG opinion) it does not recognize the WEDC as an instrumentality of the State and that the WEDC was not authorized to administer the CDBG program as a subrecipient of the State without an approved written subrecipient agreement. In response, on March 14, 2012 DOA provided HUD an executed Administrative Agreement (the Agreement) for review.

Prior to the execution of the Agreement, on February 21, 2012 Governor Scott 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. At the time of this award WEDC had no legal authority under the CDBG Program to award or administer CDBG funds.

On April 12, 2012 HUD advised DOA that WEDC must immediately cease the award and administration of all CDBG funds until an appropriate written opinion from the Wisconsin Attorney General or an appropriate written agreement between the Wisconsin DOA and the WEDC is received and approved by HUD. Additionally, HUD notified DOA of its decision to suspend the Wisconsin Economic Development Corporation's (WEDC) access to HUD's Integrated Disbursements and Information System (IDIS). System access was suspended at the close of business on April 20, 2012.

HUD has completed its review of the Agreement and has found it to be generally sound and to contain many of the generally required CDBG subrecipient provisions. However, our review did identify several critical provisions that were not included and certain language in the document that needs clarification or correction by DOA. Specifically, we ask that DOA address all of the following items:

1. The Agreement indicates that it is retroactive to July 1, 2011. However, as a result of the February 20, 2012 announcement that indicated that WEDC awarded State CDBG funds to certain units of general local government in potential violation of the CDBG statute, HUD requests that the effective date of the Agreement be the date the agreement was signed, which was March 7, 2012, rather than July 1, 2011.

2. Article 13 reads as though it includes every dollar from the beginning of the program ("all funds prior to ..FY 2011"). HUD believes that this should read "...includes all unspent CDBG funds as of the date of the agreement." Please clarify this statement in the revised Agreement.

3. Article 14 defines CDBG Program Income incorrectly. The State is required to make grants to Units of General Local Government (UGLGs), therefore UGLGs do not repay grant funds to the State. This language should be deleted from the Agreement. Instead, HUD suggests that a sentence requiring WEDC to comply with 24CFR 570.489(e) be inserted. Alternatively, the Agreement may use the definition of program income found at 24 CFR 570.489(e). Please refer to the final rule "State Community Development Block Grant Program: Administrative Rule Changes" published April 23, 2012 at 77 FR 24139-24146 (http://www.gpo.gov/fdsys/pkg/FR-2012-04-23/pdf/2012-9693.pdf) for the most recent version of this regulation.

4. In Article 28 the Method of Distribution (MOD) must be established by the State of Wisconsin. The WEDC is not an Instrumentality of the State and cannot establish a MOD. The State should strike the reference to "WEDC's MOD" and replace with the "Wisconsin Department of Administration's MOD."

5. The Agreement does not contain a provision requiring DOA to monitor WEDC. The Agreement should include this provision.

6. Throughout the Agreement it typically requires compliance [from WEDC] with HUD rules and regulations but neglects to mention the program statute. Wherever this language appears, insert the terms "all applicable federal laws, including Title I of the Housing and Community Development Act of 1974." A short name can also be used for Title I, such as "the Act."

7. In Article 16 delete CPD Notice 06-12 and replace with CPD Notice 12-010, as Notice 06-12 is expired and has been replaced.

8. Article 27 should indicate that the monitoring by WEDC must be in accordance with HUD regulations, specifically 24 CFR 570.492.

9. Article 21 needs modification to include 24 CFR 570.480(e) which requires compliance with 24 CFR 570.200(j), (Conditions prohibiting inherently religious activities). Where applicable, HUD rules prohibiting the use of CDBG funds for inherently religious activities (24 CFR 570.200(j)) should also be included in the Agreement.

10. Article 17 Procurement, indicates that WEDC will meet the requirements of 570.489(g), which states that when procuring property or services to be paid for in whole or in part with CDBG funds, the State shall follow its procurement policies and procedures. Because WEDC is not an Instrumentality of the State, this should be restated to clarify that WEDC will follow the State procurement policies and procedures.

11. Due to WEDC's anticipated role in administering the State's CDBG economic development program, we recommend that the Agreement include additional provisions related to the following:

    - Job pirating (24 CFR 570.482(h))
    - Underwriting requirements (24 CFR 570.482(e))
    - Public Benefit requirements (24 CFR 570.482(f))

12. Article 15 addresses the requirements of 570.489(d)(1), but is unclear which of the fiscal and administrative requirements WEDC will be following. Please clarify, in the revised Agreement, whether this will be: 1. the State's fiscal and administrative requirements, 2. 24 CFR 85, or 3. new fiscal and administrative requirements.

13. Section E of Attachment D states that WEDC shall permit DOA or its designees or employees to conduct site inspections, conduct appropriate tests, examine documents … as the State deems appropriate in order to fulfill its responsibilities in the implementation of the National Environmental Policy Act. The Environmental Review requirements at 24 CFR Part 58 specifically indicate that the Responsible Entity (RE) must be a unit of government. It is not clear in the agreement who the designees will be. Please clarify this in the revised Agreement.

14. Section E of Attachment D incorrectly references "Executive Order 11396 as it relates to flood hazards." Please strike this reference and replace with Executive Order 11988, Floodplain Management.

15. Section G of Attachment D Special Conditions should read ...submitted to the Advisory Council on (not and) Historic Preservation for review and comment…

16. Section E of Attachment D does not identify who will be signing as the Certifying Officer on behalf of the State as required under Part 58.2. The State should identify the Certifying Officer in the revised Agreement so that all parties are aware.

Once HUD receives an executed Agreement, containing the suggested revisions described herein, access to the IDIS system will be restored to the WEDC and it will be permitted to perform the specific functions authorized by the Wisconsin DOA in its revised Agreement. This reinstatement authorization will be provided in writing.

Thank you for your attention to this very important matter. If you have any questions or concerns, please do not hesitate to contact me at (414) 935-6640.

Sincerely,

Sernorma L. Mitchell, Director
Office of Community Planning
and Development, 5ID

cc: Lisa Marks, DOA – Division of Housing