Issue Date
November 8, 2010
Audit Report Number
2011-CH-1002

TO: Jon L. Gant, Director of Healthy Homes and Lead Hazard Control, L
Craig T. Clemmensen, Director of Departmental Enforcement Center, CACB

FROM: Heath Wolfe, Regional Inspector General for Audit, 5AGA

SUBJECT: ACORN Associates, Inc., New Orleans, LA, Materially Failed To Use Its Lead Elimination Action Program Grant Funds Appropriately

HIGHLIGHTS

What We Audited and Why

We audited ACORN Associates, Inc.'s (Associates) use of its fiscal years 2004 and 2005 Lead Elimination Action Program (program) grant funds. Associates was selected for audit based upon a request from the U.S. Department of Housing and Urban Development's (HUD) Office of Healthy Homes and Lead Hazard Control and multiple congressional requests. Our objective was to determine whether Associates expended program funds in accordance with HUD's requirements.

What We Found

Associates inappropriately expended more than $3.2 million from its fiscal years 2004 and 2005 grants for the elimination of lead poisoning in its housing program. It paid program funds of more than $3 million to affiliate and nonaffiliate organizations without properly procuring their services and did not include the funds in a HUD-approved grant budget. For its 2004 and 2005 grants, Associates failed to (1) properly procure the services of 19 affiliate and 20 nonaffiliate organizations through free and open competition, (2) retain records and files documenting the basis for contractor selection, (3) justify the lack of competition and basis for the award cost, (4) ensure that it obtained the lowest, most reasonable cost, and (5) enter into a contract with each organization that performed an activity to accomplish grant goals. Additionally, it did not have adequate supporting documentation for nearly $218,000 in disbursements to 11 affiliate and 4 nonaffiliate organizations.

Also, program funds were not used for approved purposes. Associates used nearly $1.2 million in program funds for purposes not identified in its grant applications' detailed budgets. The unapproved uses included campaign services, grant fund-raising activities, lead-based paint remediation work, payroll taxes and workmen's compensation insurance, communication services, and financial- and audit-related expenditures for services performed by affiliate organizations and more than $16,000 disbursed to its nonaffiliate organizations. Further, more than $600 in improper expenses for bank service fees was disbursed from program funds. The nearly $1.2 million of program funds used for unapproved purposes are associated with and included in the $3.2 million expended without being properly procured. The repayment of total questioned costs will not exceed the amount of the funds drawn from Associates' 2004 and 2005 grants.

What We Recommend

We recommend that the Director of HUD's Office of Healthy Homes and Lead Hazard Control require Associates to (1) provide procurement documentation or reimburse HUD from non-Federal funds more than $3.2 million in program funds, (2) provide documentation or reimburse HUD from non-Federal funds for nearly $218,000 in program funds, and (3) reimburse HUD from non-Federal funds for nearly $1.2 million for the unapproved and improper use of program funds. We also recommend that the Director withdraw Associates' ability to draw down the more than $750,000 in program funds remaining in its grants.

Further, we recommend that the Director of HUD's Departmental Enforcement Center pursue the appropriate administrative sanctions against Associates' officers for their failure to adequately manage the program grants.

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 review results to the Director of HUD's Office of Healthy Homes and Lead Hazard Control and Associates' acting legal counsel during the audit. We provided our discussion draft audit report to Associates' acting legal counsel and HUD’s staff during the audit. We held an exit conference with Associates’ acting legal counsel on September 30, 2010.

We asked Associates’ acting legal counsel to provide written comments on our discussion draft audit report by October 22, 2010. Associates provided its written response, dated October 22, 2010, and disagreed with our findings. The complete text of the written comments, except for 332 pages of documentation that were not necessary to understand Associates’ comments, along with our evaluation of that response, can be found in appendix B of this report. We redacted the names of employees cited in Associates’ comments before including them in this audit report. We provided the Director of HUD’s Office of Healthy Homes and Lead Hazard Control with a complete copy of Associates’ written comments plus the 332 pages of documentation.

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BACKGROUND AND OBJECTIVE

The Program. The Lead Elimination Action Program's (program) purpose is to provide grants to private-sector and nonprofit organizations to conduct activities that leverage additional funding for addressing lead hazards in privately owned housing units and eliminating lead poisoning as a major public health threat to young children. The program assists States, Native American tribes, and local governments in undertaking programs for the identification and control of lead-based paint hazards in eligible privately owned rental and owner-occupied housing units. The U.S. Department of Housing and Urban Development (HUD) is interested in promoting lead hazard control approaches that result in the reduction of elevated blood lead levels in children for the maximum number of low-income families with children under 6 years of age for the longest period of time and demonstrate techniques which are cost effective, efficient, and replicable elsewhere.

Office of Healthy Homes and Lead Hazard Control. On October 30, 2009, the Director of HUD's Office of Healthy Homes and Lead Hazard Control (Healthy Homes) requested an audit of ACORN Associates, Inc. (Associates). The request was for assistance in reviewing the documentation for two program grants for fiscal years 2004 and 2005 totaling nearly $4 million. Healthy Homes repeatedly conveyed its concerns to Associates regarding its grant performance. Technical assistance was provided during a June 2006 site visit and an onsite monitoring visit was conducted in January 2010. Issues noted during the visit included policies and procedures that did not detail the overall grant processes and that Associates' financial database did not include enough information to track costs and leveraged resources. As of September 2010, an independent financial audit could not be completed, and no audit report could be prepared due to the lack of sufficient information. Associates failed to submit complete contracts, work specifications, inspections and risk assessments, and clearance reports for a number of units with grant funds when requested by HUD. Also, some work was performed in homes for which Associates did not provide adequate documentation of property ownership. In addition, risk assessment reports and clearance reports were unsigned, and the original budget for Associates' fiscal year 2005 grant included direct costs for staff outside the jurisdiction of New Orleans that did not achieve any outcomes for the grants.

Healthy Homes prepared its March 12, 2010, draft report from an onsite visit performed on January 21 and 22, 2010, which disclosed that Associates did not (1) carry out its obligations in completing lead hazard assessments, interventions, and leveraging activities; (2) accurately describe its production results; (3) maintain a separation of its grants' activities and finances; (4) provide the materials necessary for the grant officer(s) to complete a formal modification, and (5) provide documentation for a number of paid and unpaid invoices. As of November 4, 2010, the draft report had not been issued to Associates.

Association of Community Organization for Reform Now (ACORN). ACORN was established in 1970 as a grassroots organization to advocate for low-income families. By 2009, ACORN reportedly had 500,000 members and had expanded into a national network of organizations involved in the development of affordable housing, foreclosure counseling, voter registration, and political mobilization, among other things. ACORN organizations relied on membership dues and Federal and private foundation funding to support various activities.

Voter registration fraud allegations in a number of States and widely distributed videotapes depicting what appeared to be inappropriate behavior by employees of several local ACORN chapters spurred calls to identify Federal funding provided to ACORN and ACORN-related organizations and for legislation to restrict or eliminate funding.

Congress passed provisions restricting the funding of ACORN and its affiliates, subsidiaries, or allied organizations in the fiscal year 2010 continuing resolutions, which were followed by several fiscal year 2010 appropriations acts that prohibited any appropriated funds from being awarded to various ACORN or ACORN-related organizations. ACORN officials reported similar cuts in private foundation funding. In March 2010, ACORN officials stated that the national ACORN organization would terminate its field operations and close all of its field offices because of the loss of Federal and other funding, although some of its affiliate organizations were to remain open.

In September 2009, we received four separate congressional requests to review ACORN's activities. We received additional requests in June and August 2010. Our disposition of those requests will be addressed in a separate report.

ACORN Associates, Inc. Associates was incorporated as an Arkansas nonprofit corporation on July 23, 1975, for the purpose of establishing and developing a fund to provide training, assistance, consultation, and other services to aid in the development and maintenance of community, rural, and neighborhood organizations. Associates received three grants from HUD's Healthy Homes. According to Associates' articles of incorporation, its principle sources of revenue are contractual fees, gifts, and grants. The grants from the program are reimbursable grants to eliminate lead poisoning as a major public threat to children.

The following table shows the amount of funds that HUD awarded Associates for the 2004 and 2005 program grants and the amount of funds that Associates had expended as of October 31, 2010. Healthy Homes amended the grant agreements on October 20, 2010, suspending any further payments to Associates. This measure was taken to comply with section 163 of the Continuing Appropriations Resolution for the fiscal year 2010 Federal budget[1].

Program year	***Program funds awarded***	***Program funds expended***	***Program funds Remaining***
2004	$2,000,000	$1,841,376	$158,624
2005	1,999,920	1,405,702	594,218
Totals	**$3,999,920**	**$3,247,078**	**$752,842**

According to Associates' grant agreements with HUD, HUD emphasized the need for a competitive bidding process for the full implementation of program activities. In its approved applications, Associates was to contract with community-based organizations and ACORN to

[1] Section 163 required that none of the funds made available by the resolution or any prior Act may be provided to ACORN, or any of its affiliates, subsidiaries, or allied organizations.

implement the program. Program funds were to be used for training community-based organizations to use community-based strategies to leverage resources for lead hazard education, identification, and control activities in low-income neighborhoods.

Associates contracted with Citizens Consulting, Inc., for the maintenance of its fiscal responsibilities and to furnish administrative and other services and contracts for the annual audits and tax return preparation. Citizens Consulting, Inc., was to manage project contracts, funds, and financial management activities according to Federal guidelines. Managing activities included drawing down funding based on timesheets, invoices, and allocations and completion of program goals.

Our objective was to determine whether Associates expended program funds according to HUD's requirements.

RESULTS OF AUDIT

Finding 1: Associates Inappropriately Used Its Program Funds

Associates administered its program contrary to HUD's requirements for its fiscal years 2004 and 2005 program grants. It failed to (1) properly procure the services of 19 affiliate[2] and 20 nonaffiliate organizations through free and open competition, (2) retain records and files documenting the basis for contractor selection, (3) justify the lack of competition and basis for the award cost, (4) ensure that it obtained the lowest, most reasonable cost, and (5) enter into a contract with each organization that performed an activity to accomplish grant goals. Associates lacked written procurement policies to ensure that the grant requirements were followed. As a result, more than $3.2 million in program funds was not used in accordance with the grant agreements and HUD requirements.

Associates Failed To Properly Procure Affiliate and Nonaffiliate Organizations' Services

Associates used more than $3.2 million in program funds for 19 affiliate and 20 nonaffiliate organizations to accomplish program goals without properly procuring their services through free and open competition. It failed to retain records and files documenting the basis for the selection and justify the lack of competition and basis for the award cost, ensuring that the lowest, most reasonable cost was obtained (see appendix C of this audit report for the program requirements). Contracts were not entered into with each organization. In addition, Associates did not establish its own procurement policies or follow Federal requirements for the procurement of services from its affiliate and nonaffiliate organizations as its grant agreements required.

According to Associates' HUD-approved applications, Associates agreed to contract with community-based organizations and ACORN to implement the program. Instead, Associates chose affiliate and nonaffiliate organizations to provide services to accomplish program goals without properly procuring their services and did not provide a cost analysis for its procurement action or enter into a contract with each organization.

According to Associates' records, it disbursed more than $3.264,675, $17,597 more than it received in program funds. Contrary to its grant agreements,

[2] Congress and Federal agencies, in defining "affiliate" in other substantive areas of law, similarly provide that an "affiliate" is an entity (a) controlled by another entity, (b) in control of another entity, or (c) under common control with another entity by a third party.

Associates commingled other funds with its program funds. We were unable to identify the nongrant funds due to the lack of sufficient accounting records.

Associates disbursed nearly $2.8 million in program funds to 19 affiliate organizations without following HUD's procurement requirements. The following table shows the affiliate organizations that were not properly procured and the amount of program funds disbursed.

Affiliate organizations not properly procured	Program funds disbursed
ACORN Services, Inc.	$1,033,374
ACORN Maryland	695,568
ACORN Louisiana	692,007
ACORN Associates (New Orleans)	102,088
ACORN New Jersey	46,370
ACORN Texas	41,543
ACORN Ohio	38,293
AGAPE	24,926
ACORN Arkansas	22,072
ACORN Pennsylvania	22,072
ACORN Delaware	22,071
ACORN Georgia	19,472
ACORN Kentucky	16,195
ACORN Institute - communications	8,419
ACORN Associates - audit reserve	7,018
ACORN Institute	3,200
ACORN Chief Organizer Fund	1,937
ACORN Services, Inc.'s - secretary/treasurer	1,013
ACORN Services, Inc.'s – representative	912
Total	$2,798,550

Associates also disbursed $466,125 in program funds to 20 nonaffiliate organizations without following HUD's procurement requirements.

Disbursements to Affiliate and Nonaffiliate Organizations Lacked Supporting Documentation

Associates failed to maintain documentation to support its disbursement of $217,995 in program funds to 11 affiliate ($212,840) and 4 nonaffiliate ($5,115) organizations. HUD requires financial records, supporting documents, and all other records pertinent to an award to be retained for a period of 3 years from the date of submission of the final expenditure report. Since Associates had not submitted acceptable final expenditure reports for the grants as of November 4, 2010, it was required to maintain supporting documentation for the disbursements. As previously mentioned, we were unable to identify the nongrant funds due to the lack of sufficient accounting records and Associates' commingling of Federal and non-Federal funds.

Associates failed to retain cancelled checks and invoices supporting the expenditure of $212,840 as noted in the following table.

Program funds disbursed to affiliate organizations without adequate supporting documentation		***Unsupported amount***
ACORN Maryland	Contractual services	$80,617
ACORN Associates (New Orleans)	Contractual services	60,755
AGAPE	Communications	14,959
ACORN Delaware	Contractual services	11,682
ACORN Pennsylvania	Contractual services	9,621
ACORN Texas	Contractual services	9,587
ACORN New Jersey	Contractual services	9,413
ACORN Arkansas	Contractual services	9,100
ACORN Georgia	Contractual services	5,795
Citizens Consulting, Inc.	Accounting	1,302
ACORN Chief Organizer Fund	Campaign services	9
Total		$212,840

Associates disbursed another $5,115 to nonaffiliate organizations without adequate documentation to support the expenses. It failed to maintain invoices and cancelled checks in support of the expenditures as described in the following table.

Program funds disbursed to nonaffiliate organizations without adequate supporting documentation		Unsupported amount
Community Resources	Consultant	$2,500
BTS Laboratories, Inc.	Lead risk assessment	984
Oden Environmental Service, Inc.	Lead risk assessment	981
New Hampshire Department of Health	Technical training	650
Total		$5,115

Associates Had More Than $750,000 in Program Funds Remaining in Its Current Grants

As of November 4, 2010, Associates had $752,842 in program funds remaining for its two current authorized grants (LALHO0017-04 and LALHO0020-05). Given Associates' material failure to manage its current authorized program grants (see this finding and finding 2 in this audit report), HUD should terminate Associates' ability to draw down the remaining program funds to ensure that they are not improperly used. This measure would prevent unnecessary program expenditures for the remaining program grants.

Conclusion

Associates lacked adequate procedures and controls to ensure that it complied with Federal requirements. It selected affiliate and nonaffiliate organizations without obtaining their services through free and open competition and did not retain records and/or files to document the basis for their selection, justify the lack of competition, and document the basis for the award cost. Also, Associates failed to show that it obtained the lowest, most reasonable cost for these services. In addition, it failed to maintain documentation supporting its disbursement of program funds. Therefore, there was no assurance that program funds were used solely for approved purposes and at the lowest, most reasonable costs.

Recommendations

We recommend that the Director of HUD's Office of Healthy Homes and Lead Hazard Control require Associates to

1A. Provide documentation to support that it followed the grants' procurement requirements or reimburse HUD $3,247,078 (actual amount drawn from its 2004 and 2005 grants) from non-Federal funds for the procurement transactions cited in this finding.

1B. Provide documentation to support its disbursement of program funds to the 11 affiliate ($212,840) and 4 nonaffiliate ($5,115) organizations or reimburse HUD $217,955 from non-Federal funds.

We also recommend that the Director of HUD's Office of Healthy Homes and Lead Hazard Control

1C. Terminate Associates' ability to draw down the $752,842 in program funds remaining in its grants.

Finding 2: Associates Used Funds for Unapproved and Improper Purposes

Associates provided program grant funds to affiliate and nonaffiliate organizations for unapproved purposes and to a nonaffiliate organization for ineligible purposes. It lacked adequate procedures and controls to ensure that it complied with Federal requirements. As a result, nearly $1.2 million in program funds was not used effectively and efficiently or in accordance with the grant agreements and HUD requirements.

Program Funds Were Not Used Properly

Associates failed to use nearly $1.2 million in program funds for approved purposes when it expended program funds for organizational services not included in its HUD-approved program detailed budgets. According to the Director of the Grants Services Division of HUD's Healthy Homes, an organization must be identified in the applicant's approved budget before receiving funds from a grant (see appendix C of this audit report for the program requirements). In this case, Associates' fiscal years 2004 and 2005 detailed budgets did not include the use of funds for campaign services, grant fund-raising activities, lead-based paint remediation work, payroll taxes and workmen's compensation insurance, communication services, and financial- and audit-related expenditures for services performed by affiliate organizations and more than $16,000 disbursed to its nonaffiliate organizations. The unapproved use of funds was contrary to Associates' contract with HUD. Therefore, the costs were ineligible.

Associates disbursed more than $1.18 million to affiliate organizations for services not identified in its program's detailed budgets. The following table shows the program funds used for unapproved services provided by affiliate organizations and the amount of program funds disbursed.

Program funds disbursed to affiliate organizations	Unapproved service type	Amount disbursed
ACORN Services, Inc.	Lead remediation work ($642,080), payroll taxes ($354,406), and workmen's compensation insurance ($36,888)	$1,033,374
ACORN Associates (New Orleans)	Unknown	102,088
AGAPE	Communications	24,926
ACORN Institute-communications	Communications	8,419
ACORN Associates, Inc.	Audit reserve	7,018
ACORN Institute	Grant fund raising	3,200
ACORN Chief Organizer Fund	Campaign services	1,937
ACORN Services, Inc.'s secretary/treasurer	Non-employee reimbursement	1,013
ACORN Services, Inc. representative	Waste disposal	912
Total		$1,182,887

Another $16,395 was disbursed to three nonaffiliate organizations and individuals for services that were not identified in the detailed budgets for Associates' 2004 and 2005 grants. These services included financial accounting, training, and other unknown expenses. In addition, program funds were used for $633 in ineligible bank service fees and overdraft charges.

Conclusion

Associates lacked adequate procedures and controls to ensure that it complied with Federal requirements and that program funds were used for approved and eligible purposes. The acting legal counsel retained by Associates did not know why the program funds were not used properly since he was not involved with the expenditure of the funds. Associates' acting legal counsel was hired after the funds were expended.

Recommendations

We recommend that the Director of HUD's Office of Healthy Homes and Lead Hazard Control require Associates to

2A. Reimburse HUD $1,199,282 ($1,182,887 to affiliates plus $16,395 to nonaffiliates) from non-Federal funds for the unapproved use of program funds cited in this finding.

2B. Reimburse HUD $633 from non-Federal funds for the ineligible use of program funds for the bank fees/charges cited in this finding.

We recommend that the Director of HUD's Departmental Enforcement Center

2C. Pursue appropriate administrative sanctions against Associates' officers for their failure to adequately manage the program grants.

SCOPE AND METHODOLOGY

To accomplish our objective, we reviewed

- Applicable laws; Federal Registers Volume 69, No. 94, dated May 14, 2004, and Volume 70, No. 53, dated March 21, 2005; 24 CFR (Code of Federal Regulations) Parts 2, 24, 84, and 85; Office of Management and Budget Circulars A-110 and A-133, and Government Accountability Office (GAO) publications GAO-10-648R, dated June 14, 2010, and B-320329, dated September 29, 2010.

- HUD's files for the grants.

- Associates' application procedures, lead remediation procedures, policy and procedural manual and personnel policies, chart of accounts, board members listing, service contracts with Citizens Consulting, Inc., and ACORN Services, Inc., incorporation documentation, Line of Credit Control System voucher payment requests, quarterly reports, employee listing for affiliate and nonaffiliate organizations, lead elimination action program grant applications/agreements and detailed budgets, check registers, bank statements, cancelled checks, and invoices for grant years 2004 and 2005.

We also interviewed current and former employees of Associates and Citizens Consulting, Inc., the acting legal counsel for Associates, its public accounting firm, and HUD's staff.

We reviewed 100 percent of the available hardcopy documentation for Associates' disbursements for its fiscal years 2004 and 2005 grants. We verified the accuracy of Associates' documentation by reviewing its bank statements, canceled checks, and check registers.

We performed our onsite audit work from January through April 2010 at Associates' offices located at 2609 Canal Street, New Orleans, LA. The audit covered the period October 1, 2004, through November 30, 2009, and was expanded as determined necessary.

We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

INTERNAL CONTROLS

Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about achievement of the organization's mission, goals, and objectives with regard to

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

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

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

- Effectiveness and efficiency of operations - Policies and procedures that management has implemented to reasonably ensure that a program meets its objectives.

- Reliability of financial reporting - Policies and procedures that management has implemented to reasonably ensure that valid and reliable data are obtained, maintained, and fairly disclosed in reports.

- Compliance with applicable laws and regulations - Policies and procedures that management has implemented to reasonably ensure that resource use is consistent with laws and regulations.

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness and efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws or regulations on a timely basis.

Significant Deficiencies

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

- Associates lacked adequate procedures and controls to ensure that it complied with Federal requirements. It failed to (1) properly procure affiliate and nonaffiliate organizations through free and open competition, (2) retain records and files documenting the basis for contractor selection, (3) justify the lack of competition and basis for the award cost, (4) prepare an analysis ensuring that the costs were the lowest and most reasonable, (5) enter into contracts with each organization, and (6) retain supporting documentation for its disbursement of program funds (see finding 1).

- Associates failed to use program funds solely for approved and eligible purposes. It drew down funds for services not identified in its 2004 and 2005 detailed budgets and used funds for ineligible purposes (see finding 2).

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS AND FUNDS TO BE PUT TO BETTER USE

Recommendation number	Ineligible 1/	Unsupported 2/	Funds to be put to better use 3/
1A		$1,829,168	
1B		217,995	
1C			$752,842
2A	$1,199,282		
2B	633		
Totals	$1,199,915	$2,047,163	$752,842

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.

2/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures. Actual unsupported costs for recommendation 1A totaled $3,247,078. For reporting purposes, this amount was reduced by $1,417,910 because the associated costs were questioned for other reasons and are reflected in totals for recommendations 1B, 2A, and 2B. The repayment of total questioned costs should not exceed the amount of the funds drawn from Associates' 2004 and 2005 grants.

3/ Recommendations that funds be put to better use are estimates of amounts that could be used more efficiently if an Office of Inspector General (OIG) recommendation is implemented. These amounts include reductions in outlays, deobligation of funds, withdrawal of interest, costs not incurred by implementing recommended improvements, avoidance of unnecessary expenditures noted in preaward reviews, and any other savings that are specifically identified. In these instances, if HUD implements our recommendation, it will cease providing program funds to an entity that does not adequately manage its program grants. This recommendation includes a deobligation of program funds from current authorized program grants.

Appendix B

AUDITEE COMMENTS AND OIG's EVALUATION

Ref to OIG Evaluation	Auditee Comments

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October 22, 2010

By E-mail (wwolfe@hudoig.gov)
and Overnight Mail

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RE: Lead Elimination Action Program Grant Draft Audit

Dear Mr. Wolfe:

Summary of Response

ACORN Associates, Inc. ("AAI") disagrees with the overall findings of the audit for the following three reasons:

Comment 1

1. ACORN Associates did effective work in remediating lead from housing, which was the purpose of the two grants in question. Nowhere in the Draft IG report does HUD question the effectiveness of ACORN Associates Inc.'s work to remove lead from homes.

Comment 2

2. ACORN Associates worked with the staff of HUD's Office of Healthy Homes starting in 2004 who were familiar with the work being done on the project. The Office of Healthy Homes did not raise the issues in this report with ACORN Associates until the very end of this 6 year period.

Comment 3

3. Two-thirds of the money spent by ACORN Associates was spent according to the budgets approved by HUD's Office of Healthy Homes. The other third was spent almost exclusively for lead remediation and thereby protecting children and adults from lead poisoning.

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ACORN Associates believed that this was in line with the overall purpose of the grant, and the performance of this work was approved by HUD, either implicitly or explicitly.

Comment 4

4. All "procurement" was done in line with approved grant proposals and was based on the unique nature of the field services being procured.

Introduction

It is widely acknowledged that lead-based paint is a particularly dangerous and toxic environmental hazard, and that when found in homes it presents a significant threat to children. Accordingly, HUD has for many years administered programs that provide grants to community-based organizations for the purpose of eliminating lead hazards from homes and apartments. As the HUD IG acknowledges, the purpose of the two grants in question was to "address... lead hazards in privately owned housing units and eliminate... lead poisoning as a major public health threat to young children."

It is in this context that ACORN Associates, Inc. ("AAI") began applying for and receiving grants in 2002 from the Department of Housing and Urban Development under the Lead Elimination Action Program ("LEAP"). Grants were received in 2003, 2004, and 2005, and a massive organizing effort, as well as an actual lead abatement program, continued until 2009 in states across America.

Comment 5

Comment 6

Comment 2

AAI was a non-profit entity created many years earlier by the Association of Community Organizations for Reform Now, Inc. ("ACORN"), a nationwide non-profit membership corporation headquartered in New Orleans, Louisiana. AAI was created to receive and administer various grants and existed so that grant money would remain segregated from other funds raised by ACORN. At various times over many years, AAI had a small central staff and its own employees, but generally it did its work by contracting with ACORN and other entities to do the actual field or technical work. In connection with HUD's office of Health Homes, between 2003 and 2008, under the Administration of George W. Bush, AAI carried out the program it outlined in its grant proposals (Exhibits A and B), reached thousands of Americans, and helped clean up thousands of homes. AAI got its grant money through draw downs, after making periodic reports about the work going on, and not until 2009 were any of those draw downs challenged. The ACORN staff member administering the grant during most of that period, [redacted] worked closely with staff at HUD and regularly discussed the work with them. At not one point prior to 2009 was AAI or Ms. [redacted] advised that their method of procuring ACORN's field work or that of ACORN's subsidiary, ACORN Services, Inc., was

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improper, that inadequate records were being presented to support draw downs, or that the work being done was outside the scope of the grant.

Comment 7 **Comment 8** **Comment 9**

It should be noted that the contractual relationship between AAI and ACORN, and the performance of the field work by ACORN, was wholly in line with the way that ACORN-related entities which received grants functioned between 202 and 2009, and was consonant with the way that many organizations carry out their work under federal grants. Whether expressly or implicitly, it was understood that if ACORN and ACORN staff were listed in the grant proposal as the entity carrying out the work and the employees staffing the grant, no further "procurement" efforts need to be undertaken. These gránts largely involved community organizing and education, and ACORN was uniquely qualified to carry out that work on the scale called for by the grant awards. It was not until the draft report issued by the OIG about the 2004 and 2005 LEAP grants to AAI that anyone in the federal government was critical of the "procurement" procedures followed by AAI.

During the period these grants were being administered, AAI's administrative headquarters, in New Orleans, survived three hurricanes, the worst of which was Katrina. During Katrina, in 2005, the roof of the building which the work was being done in blew off, and many records were destroyed. On a lesser scale this also happened when Hurricane Gustav hit in 2006.

Comment 10

In 2008 ACORN, which at its peak had 13,000 employees, was rocked by an internal scandal. Its longtime CEO resigned and a top-to-bottom review of operations was undertaken by counsel and auditors. As a result of these reports ACORN, in early 2009, began a period of reorganization. Part of that reorganization was a decision to wind down and close AAI and many other ACORN-related entities. AAI advised HUD that it would not be drawing down any other LEAP funds, even though around $750,000 remained.

Also in 2009, the HUD field officer, in place as a result of the new Obama Administration increased the supervision over the FY04 and FY05 grants and began a field audit in an effort to close out the grants. AAI asked outside counsel to work with Ms. [redacted] on the audit, which was underway during the spring and summer of 2009.

In September 2009 a politically conservative zealot, in coordination with Fox News, released a series of doctored videos which appeared to show ACORN staff giving improper assistance to a prostitute and her boyfriend (whom Fox characterized as a "pimp"). The resulting uproar included a vote by Congress to freeze all funding to ACORN and the freezing or withdrawal of all grant money coming to ACORN and related entities from local government

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agencies and charitable foundations. ACORN's stream of income stopped and it laid off almost all of its staff. Ms. [redacted] lost her job at this time as well. By January 2010 it had fewer than a dozen employees spread across the U.S. ACORN Associates, Inc. ceased to function.

Comment 11

It was in this context, in October 2009, that the HUD OIG asked to do an audit of the 2004 and 2005 LEAP grants as a result of the request of a Congress member. AAI had no money, no staff, and no attorney. The undersigned, as ACORN's counsel, explained the situation to the IG, who persisted in doing an audit.

Also in this context, the Louisiana Attorney General did a wholly unconstitutional raid, based on an inaccurate and anonymous tip that records were being stolen and were not secure, and seized over 100 computers and servers, and over 100 cartons of records. To date, little of that material has been returned.

Comment 12

In January 2010 the auditors began to work in a space provided in ACORN's headquarters. They were given every box of records about the grants that the entity which kept AAI's records (Citizens Consulting, Inc., which itself was down to a half-dozen employees) and access to AAI's general ledger and bank account records. They did their work without speaking to anyone who had administered the grant, either in New Orleans or in the field. Occasionally, they asked questions of the attorney who had assisted in the 2009 field audit or of the undersigned, and, occasionally, they asked questions of [redacted] who came to work for CCI in late 2008. Neither counsel nor Ms. [redacted] had any first-hand knowledge about the grant. At no time did the auditors speak with Ms. [redacted] whose statement is annexed as Exhibit C.

Although Ms. [redacted] and I participated in the post-draft report meeting, we did so because our clients, CCI and ACORN, asked us to, not because there was a functioning entity known as AAI which asked us to. (In June 2009, after some legal wrangling, a new Board for AAI was created, whose only job was to shut the corporation down.)

It is in this context that the IG's report must be viewed.

Comment 1

- It ignores the success of the project and includes no discussion of the work performed and the enormous "deliverables" delivered (i.e., number of people aided and organized to engage in self-protective activities).

Comment 8

- It ignores years of practice and understandings about procurement rules and the fact that the contracts between AAI and various other entities were known to HUD and expressly or implicitly approved when funds were drawn down.

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Comment 13

– It ignores the loss of records caused by the disastrous hurricanes which hit New Orleans.

Comment 12

– It fails to discuss the IG's failure to discuss the grant activities with one single person responsible for administration of the grant.

Comment 14

Comment 2

The report reaches a preposterous conclusion: that over $3.24 million was misspent – even though the IG knows what every cent was spent on and could not suggest an alternative way that AAI could have carried on the grant. It lays no blame at the feet of the Bush Administration HUD staff overseeing the grant and makes no discussion of what was at worst a misunderstanding of the relationship between the grant proposal and procurement rules.

General Comments

Comment 1

Given that this was the purpose of these grants, it is shocking that by far the single largest category of ACORN Associates Inc.'s expenditures that the IG labeled "improper" was, as the IG's report admits, for "lead remediation work". Nowhere in the draft IG report does HUD question the effectiveness of ACORN Associates Inc.'s work to remove lead from homes. In fact, AAI can document the successful remediation of lead hazards in hundreds of homes, saving thousands of children from the threat of lead poisoning.

Comment 15

As the work proceeded and AAI worked to clear housing units from dangerous lead contamination, the project director told the HUD Healthy Homes staff of the ways in which the funds were being expended on directly clearing the housing units of lead. (Many of the houses used leveraged, donated labor to help clear them from lead contamination.) At that time, the Office of Healthy Homes staff did not object to the funds being used in this way and therefore ACORN Associates continued to remove lead from the community using the grant funds. HUD staff [redacted] and [redacted] conducted a audit during a two-day on-site visit during the course the grants and told the staff working on the project that everything appeared to be in order.

Comment 1

Comment 3

Comment 2

The second major charge that the IG levels at ACORN Associates questions the procedures AAI used to procure contractors, including the contractors who employed the key staff listed in the approved grant proposals to carry out the purposes of these grants. Of the expenditures questioned in the IG's report, $1,767,632.39 was used to pay key staff and contractors listed in the budget approved by HUD for the two grants. HUD approved AAI's proposal and budget in its entirety, including the use of the identified contractors and key staff. If the IG's office now has problems with these contractors and key staff, it should direct its

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Comment 3

questions to and aim its fire at the HUD officials who approved AAI's proposal. Therefore AAI believes that this money was spent appropriately and should be removed from the finding sections of the HUD IG report.

Comment 16

HUD additionally states that some documentation was missing for some expenditures. AAI lost a good deal of its paper documentation during Hurricane Katrina when the roof came off of the building housing AAI and its accounting contractor, CCI. Many documents were lost at that time. This loss of documentation was reported to the HUD Office of Healthy Homes at the time of the Hurricane. At no point was AAI given any instructions from the Office of Healthy Homes as to what actions to take regarding the loss of these documents.[1] Even including these documents lost to a natural disaster, approximately 93% of the expenditures had proper documentation. At no point in HUD's draft report does HUD allege that the funds were not used for lead elimination.

Comment 17

Comment 18

Therefore ACORN Associates believes that the Lead Elimination Action Program grant funds were used to further HUD's intended purpose of eliminating lead from housing in the community, that HUD staff knew about the program being run to accomplish this work, and the report's conclusions are unnecessarily baseless and alarming.

In the next part of this letter, ACORN Associates will comment on specific details in the original draft report that AAI believes are erroneous. Some of these comments were previously provided to the HUD IG through e-mails and an audit exit conference call during which some changes were agreed to. Since AAI has not seen a copy of any revisions, all concerns are addressed to the Draft Report sent to AAI counsel on September 20, 2010.

[1] An effort was made to get some of these documents and all submissions to HUD associated with grant draw downs, as part of an effort to rebuild a file on all HUD grants. The request was made under the FOIL. In response, HUD identified 15,000 pages of documents but wanted $18,000 to send them. See Exhibit D. The $18,000 was not available.

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I. COVER PAGE

Comment 19

ACORN Associates would like this page to show that this audit was only an audit of procurement procedures and records, and that it does not evaluate the expenditures of the contracting entities (principally ACORN and ACORN Services, Inc.) or how much appropriate and needed lead elimination work was done.

II. HIGHLIGHTS SECTION

Comment 18
Comment 3
Comment 20
Comment 21

In the highlights section, under "What We Found," HUD states the AAI improperly expended $3.2 million in funds. AAI points out that these funds were expended for the elimination of lead poisoning and that the HUD inquiry only questions the procurement procedures used to carry out the work. Over $1.7 million was spent, in accordance with the grant budget, for the key staff of the projects as set forth in the approved grant proposal and budget as well as in one of the principal contracts. Later in that same section HUD states that $1.2 million in program funds were not used for approved purposes. These funds are a subset of the $3.2 million and not a separate amount. AAI has demonstrated to HUD that funds were being spent to do lead remediation (which required paying for the salaries, payroll taxes and workmen's compensation insurance for the workers). HUD has misinterpreted "campaign services," which was a phrase used to describe general management support. At no time did the HUD IG ask what campaign services meant in the ledgers.

Comment 22

Additionally, since ACORN is one corporation which maintained separate bank accounts for each of its chapters, the HUD IG's auditors were confused in thinking that checks written to different bank accounts were actually paid to different entities. The same problem occurred with ACORN Services, Inc. and ACORN Institute, Inc. The correct number of "affiliated" organizations that should be mentioned here is 5 (ACORN, ACORN Chief Organizer Fund, ACORN Services Inc., ACORN Institute, and Agape Broadcasting), plus one bank account within ACORN Associates Inc. The specifics are in the chart below, bank accounts listed which should be attributed to a single entity:

Legal Entity	Bank account listed as
ACORN	ACORN Association (New Orleans)
ACORN	ACORN Arkansas
ACORN	ACORN Delaware
ACORN	ACORN Georgia
ACORN	ACORN Kentucky
ACORN	ACORN Louisiana

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ACORN	ACORN Maryland
ACORN	ACORN New Jersey
ACORN	ACORN Ohio
ACORN	ACORN Pennsylvania
ACORN	ACORN Texas
ACORN Services, Inc.	ACORN Services, Inc.
ACORN Services, Inc.	ACORN Services, Inc. representatives (twice)
ACORN Institute	ACORN Institute
ACORN Institute	ACORN Institute communications

Similarly, on page 2 of the draft highlights it was stated "... for nearly $218,000 in disbursements to 11 affiliates and ... ." Here again, this should say 3 affiliates – being ACORN, Agape, and Citizens Consulting, Inc. since the listed are bank accounts of ACORN and not separate organizations.

Comment 9

This point is important because the services ACORN could offer in the 11 states set out in the grant proposal were unique. It, and its subsidiary ACORN Services, Inc., were the only entities which could provide the staff, supervision, and coordination required to carry out the grant work in 11 states.

III. BACKGROUND AND OBJECTIVE

A. **Comments on the 2 paragraphs on page 5 starting with "*Office of Healthy Homes*"**

Comment 23

In the draft report, the Office of Inspector General includes information told to them by the Office of Healthy Homes, including information from an on-site visit in January 2010. There was no AAI staff starting in the fall of 2009, after the new board (which was put in place in the summer of 2009 in order to better close up the lead elimination grants) terminated the project director. Therefore during the visit by the Office of Healthy Homes there could have been no "technical assistance" provided.

Also in this section there are statements from the alleged draft Healthy Homes programmatic audit that AAI has never been provided with. AAI believes that hundreds of housing units were cleared of lead and thousands of families were organized to address lead

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paint hazards, and that the documentation exists to show this work. AAI has not seen the draft report from the visit and therefore cannot properly comment on the findings which are dicussed in this financial audit report.

Comment 15

Until fall 2009, the Office of Healthy Homes seemed satisfied with the work done on the project and therefore the statement that that office "repeatedly conveyed its concerns to Associates" does not seem correct for the majority of the time and expenditures under the grant. The undersigned made inquiries to HUD between March 2009 and September 2009 and was told that the field audit closing out the grant was proceeding properly. At no time did the Healthy Homes staff raise issues to counsel. Despite this fact, in the late summer and fall of 2009 ACORN Associates, Inc. did ask a New Orleans-based attorney to work with HUD to close out both the FY 2004 and FY 2005 grants. No information or instructions came from the HUD Office of Healthy Homes about other information needed to properly close down these grants, despite repeated requests.

Comment 24
Comment 25

It is important to also note that an Inspector General's subpoena seeking to audit these grants was served in early October 2009, flowing from Congressional requests. Healthy Homes staff (according to the IG Report) requested an audit after the OIG had already begun one. The Healthy Homes office, if it did ask for an audit, only did so after becoming aware that the grant administrator was no longer employed and that some of AAI's records had been seized by the Louisiana Attorney General.

B. Comment on the section titled "*ACORN Associates, Inc.*"

Comment 10

HUD lists the amount of funds originally granted under the fiscal year 2004 and 2005 grant years. Under the direction of its caretaker board, AAI had already notified HUD that it was not expecting or requesting any further draw downs which freed HUD to reallocate the $752,842 not drawn down.

Comment 19

The final sentence should also be adjusted to reflect the actual focus of the audit since, as explained by the IG at the closing conference, the IG's objective was to determine whether the services procured by AAI were procured in accordance with HUD requirements. There was no focus on what happened to the funds after they were transferred to ACORN, ACORN Services, or other contracting entities.

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IV. FINDING 1

A. Allegations regarding procurement

Comment 22

As discussed above, the first paragraph under Finding 1 the language should be changed to 5 affiliates as opposed to the incorrect 19 listed there in the draft.

Comment 12

Additionally, while the IG's office was not shown any of AAI's procurement policies or documents about AAI's procurement activities, the auditors did not interview the former staff who would have been familiar with those policies, and could have discussed (as she does in her attached comments) the likelihood that these records were destroyed by Hurricanes Kartina and Gustav.

Comment 3

ACORN Associates, Inc. used the approved grant budgets (such as Exhibits A and B) as a template for spending the funds just as it did under the FY03 grant that it had received (which has not been audited by the IG). The FY03 grant was closed out by the same staff of the Office of Healthy Homes which also supervised the FY04 and FY05 grants. The AAI's grant proposals that were approved by the Office of Healthy Homes, included the resumes of ACORN staff who would do much of the work if the grants were awarded. ACORN paid these staff members for their time and ACORN was reimbursed once grant money was drawn down. Since the Office of Healthy Homes never raised concerns about this openly documented reimbursement process outlined in connection with the FY03 payments, AAI continued with the same relationship and payment procedure in connection with the FY04 and FY05 grants. These payments to ACORN for staffing for the grants and for the outreach contract specified in the FY05 grant amounted to $1,742,606.39 which was less than the amount in the approved budget. An additional $24,926.00 was paid out that was also included in the approved grant budget for staffing services from KNON radio (also known as Agape) which was also less than the amount in the approved budget.

Comment 12

While the HUD auditor did ask AAI's counsel if there was documentation about procurement procedures (he knew of nothing outside of what was in the records in New Orleans), no one who would have had knowledge of those procedures while working on the project was questioned, even though contact information for those staff (including Ms. [redacted] would have been provided to HUD auditors upon request.

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B. Allegation that disbursement to affiliate and nonaffiliate organizations lacked support documentation.

Comment 26

In order to respond to this section, after receiving the draft audit, AAI asked the IG to specify which payments reflected expenditures prior to Hurricane Katrina. AAI has not received this (or any) particularization from the IG's office, limiting our ability to respond. If AAI had received this information from the auditors, then it could have identified expenditures for which back-up documentation was likely to have been lost during Hurricane Katrina. On its own, AAI could only identify the check to Agape Communication for $14,959 as written prior to Katrina and therefore the documentation was likely lost in the storm. (The Agape check was for the staff at KNON which was clearly listed an stated in the grant proposal and budget as being for marketing and outreach for the project.) HUD also did not give a specific list of checks for which there were no cancelled checks. Cancelled checks could have been procured from the bank had AAI been given a list of the ones required.

Comment 22

Once again, the chart should only show 3 affiliates (ACORN, Agape, and Citizens consulting).

V. <u>FINDING 2</u>

A. Alleged improper use of program funds

Comment 27

Comment 21

In the first paragraph, ACORN Associates disagrees with the wording in the third and fourth sentences. The "acting legal counsel of ACORN Associates" (presumably the undersigned) stated that he had no personal knowledge about the reason for any expenditure and had no records other than those the IG reviewed. The only expenditure I was asked about was the Chief Organizer expenditure of $1,937. I stated that he provided overall supervision to ACORN staff but knew no specifics other than that. No admission about improper use was ever communicated. Furthermore, the conclusion that funds were not used for approved purposes is strongly disputed, as is the assertion that funds were utilized ineffectively or inefficiently.

Of the $1,183,887 identified in the chart in this section, the following errors in the audit are to be noted:

Comment 18

- All of the funds to ACORN Services, Inc. ($1,035,299) was money paid to ACORN Services for lead remediation work often involving community volunteers and efforts by tenants – this had been disclosed to HUD's Office of Healthy Homes and was an eligible grant-appropriate activity.

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Comment 28

- The funds listed as written to ACORN Association should show as being written to ACORN Associates audit reserve account – there were funds listed in the budget for auditing and these funds went to the central escrow account for the grantee which was used to pay for audit services. This is a bank account of AAI and not a separate entity.

Comment 3

- The check to Agape Communication was to pay for the staff time for Dave Walkington ($24,926) as listed in the grant proposal and grant proposal budget.

Comment 3

- The check to ACORN Association ($102,088) is just a payment to one of ACORN's bank accounts reimbursing ACORN for staff salaries – this was an approved use under the grant proposal and grant proposal budget.

Conclusion

This audit was flawed in numerous respects:

Comment 17

a. The audit fails to identify, verify, and credit the work done pursuant to the grant;

Comment 12

b. The audit was done without the aid of anyone who had been on staff who had first-hand knowledge;

Comment 3

c. The audit was premised largely on the notion that the contract was not a contract to perform the work set out in the grant proposal in the manner set forth in that proposal;

Comment 13

d. The audit failed to take into account the impact of Hurricanes Katrina and Gustav on the ability of AAI to protect grant-related records; and

Comment 29

e. The audit was an audit of a defunct entity without the ability or resources to properly respond to the investigation being conducted.

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This audit is severely flawed and the issuance of the report will do disservice to the public, the scores of people who worked on the project, and the hardworking HUD Healthy Homes officials employed during the Bush Administration who encouraged and assisted this worthy public undertaking done in the name of AAI by ACORN.

Yours truly,

Arthur Z. Schwartz

AZS:dr

OIG Evaluation of Auditee Comments

Comment 1 The audit objective was to determine whether Associates expended program funds in accordance with HUD's requirements. We did not assess the use of the program funds for lead remediation because it was not an approved use of the program funds. According to the notice of funding availability and Associates' grant application for both grants, only leveraged funds were to be used for lead remediation.

Comment 2 We audited Associates' use of program funds and not HUD's Office of Healthy Homes and Lead Hazard Control.

Comment 3 Healthy Homes never approved an official budget workplan for the grants because it never received them from Associates.

Comment 4 We requested but Associates did not provide documentation to support that it followed the grants' requirements for procurement. Healthy Homes awarded grants to six separate entities in six States. The services were not unique to Associates and its affiliates.

Comment 5 The only contract provided during the audit was in Associates' records and was between Associates and Citizens Consulting, Inc., for accounting, bookkeeping, corporate, and administrative services.

Comment 6 Associates' acting legal counsel stated in an April 14, 2010, electronic message that he was sure that the OIG auditors were going to find bad record keeping. He also stated that the person administering that grant was horrible about her record keeping and was eventually fired because of it.

Comment 7 No documents were provided to support any contractual relationship between Associates and ACORN.

Comment 8 The grants emphasize the need for a competitive bidding process for the full implementation of program activities as described in the work plan/statement of work. The procurement standards at 24 CFR 84.40 were required by the grants.

Comment 9 Healthy Homes awarded grants to six separate entities in six States. The services were not unique to Associates and its affiliates.

Comment 10 No documentation was contained in HUD's files or provided by Associates to support that Associates notified HUD that it would not draw down additional funds.

Comment 11 Associates was selected for audit based upon a request from Healthy Homes and multiple congressional requests.

Comment 12 We interviewed the former project director for Associates that Associates' acting legal counsel makes reference to as "at no time did the auditors speak with". The former project director contended that all records were maintained during her employment. After her employment was terminated, she said that Associates and Citizens Consulting, Inc. staff destroyed the records. We also spoke with the director of Citizens Consulting, Inc., a staff attorney for Advocates for Justice, P.C., and Associates' acting legal counsel. We did not have contact information for any other staff that may have administered the grants. The contact information was requested, but never provided by the director of Citizens Consulting, Inc., a staff attorney for Advocates for Justice, P.C., or Associates' acting legal counsel.

Comment 13 According to document retrieval experts, damaged documents should be retrieved as soon as it is safe to enter the damaged area. An experienced archive restoration company should have been contacted immediately to retrieve these fragile documents. With HUD's permission, Associates could have revised the grants to incorporate these retrieval costs into the grants.

Comment 14 The conclusion was based upon the documentation provided by Associates and the grants' requirements.

Comment 15 No documentation to support these statements were contained in Associates or Healthy Homes files, or provided with the auditee comments. Additionally, these statements could not be verified in interviews with Healthy Homes' staff.

Comment 16 Healthy Homes' staff had discussed the matter and indicated its willingness to modify the grant agreements in light of Hurricane Katrina's impact on the target area.

Comment 17 We did not assess the use of the program funds for lead remediation because it was not an approved use of the program funds. According to the notice of funding availability and Associates' grant application for both grants, only leveraged funds were to be used for lead remediation.

Comment 18 According to the notice of funding availability and Associates' grant application for both grants, only leveraged funds were to be used for lead remediation.

Comment 19 We determined whether Associates expended program funds in accordance with HUD's requirements. The grant agreements included the procurement standards at 24 CFR 84.40.

Comment 20 The $1.2 million is a subset of the $3.2 million. However, more than $3 million was paid to affiliate and nonaffiliate organizations without properly procuring their services and did not include the funds in a HUD-approved grant budget. Actual unsupported costs for recommendation 1A totaled $3,247,078. For reporting purposes, this amount was reduced by $1,417,910 because the associated costs were questioned for other reasons and are reflected in totals for recommendations 1B, 2A, and 2B. The repayment of total questioned costs should not exceed the amount of the funds drawn from Associates' 2004 and 2005 grants.

Comment 21 Associates' acting legal counsel stated in a September 3, 2010, interview that the Chief Organizer Fund was a corporation created for ACORN's former chief organizer's use only. Associates' check register showed a number of checks with the purpose of "Chief Organizer Fund's organizer/campaign services."

Comment 22 No documentation was provided with Associates' comments to support Associates' contention that there were chapters within ACORN. Therefore, we did not change our reference regarding affiliates.

Comment 23 We gathered relevant information from a number of sources during our audit. Associates' acting legal counsel is correct that we used an unissued draft report from Healthy Homes from its January 2010 onsite review.

Comment 24 We did not subpoena any records for this audit.

Comment 25 We initiated our audit on December 10, 2009, after receiving an October 30, 2009, request from Healthy Homes.

Comment 26 We provided supporting schedules that included the respective date, check number, amount, and payee. These documents included copies of Associates' check registers.

Comment 27 We removed the sentence from the charge paragraph for finding 2.

Comment 28 The entity name was corrected in this audit report.

Comment 29 In May 2010, Associates' acting legal counsel stated that Associates was discontinuing its operations because of our audit. At the September 30, 2010, exit conference with Associates' acting legal counsel, he stated that Associates only existed on paper and would be filing for bankruptcy. On November 2, 2010, Associates' acting legal counsel filed the petition for bankruptcy.

Appendix C

GRANT AGREEMENTS AND HUD'S REQUIREMENTS

Finding 1

HUD agreement HUD 1044, paragraph 8, cites a special consideration in which HUD emphasizes the need for a competitive bidding process for the full implementation of program activities as described in the work plan/statement of work. In this regard, full compliance with procurement standards set forth at 24 CFR 84.40 is applicable.

Page 2 of the fiscal year 2005 program grant agreement states that the grantee shall not commingle any fund computed under this grant with any other existing or future operating accounts held by the grantee.

HUD's regulations at 24 CFR 84.40 state: "Sections 84.41 through 84.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property, and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders."

HUD's regulations at 24 CFR 84.43 state: "All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids, and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered."

HUD's regulations at 24 CFR 84.44 state: "All recipients shall establish written procurement procedures. These procedures shall provide at a minimum: (1) recipients avoid purchasing unnecessary items, (2) where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government, and (3) solicitations for goods and services will have a clear and accurate description of the technical requirements for the material, product or service to be procured, requirements which the bidder/offeror must fulfill, a description of technical requirements in terms of functions to be performed or performance required, specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation. (d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement."

HUD's regulations at 24 CFR 84.45 require the recipient to perform some form of cost or price analysis in connection with every procurement action.

HUD's regulations at 24 CFR 84.46 state: "Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum: (a) basis for contractor selection; (b) justification for lack of competition when competitive bids or offers are not obtained; and (c) basis for award cost or price."

HUD's regulations at 24 CFR 84.53(b) state: "Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by HUD. The only exceptions are the following. (1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken."

Office of Management and Budget Circular A-110 paragraph 21(b), states: "Recipients' financial management systems shall provide for the following: (3) effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes. Paragraph 40 states these standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders."

Paragraph 42 of Circular A-110 states: "The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient."

Circular A-110**,** paragraph 43, states: "All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so."

Circular A-110, paragraph 61, states that awards may be terminated in whole or in part by the Federal awarding agency if a recipient materially fails to comply with the terms and conditions of an award.

The 2004 Lead Elimination Action Program grant application states that the selection process for subgrantees and subcontracts will comply with all Federal regulations.

The 2004 and 2005 Lead Elimination Action Program grant applications state that Citizens Consulting, Inc., will manage contracts and assist in any contracts with partners, funds, and financial management activities in accordance with HUD regulations. A system was developed to track and document activities and expenses. On a monthly basis, funds will be drawn based on documentation to include timesheets, invoices, receipts, and allocations in support of the draw.

Finding 2

Section V of the Federal Register Volume 70, No.53, dated March 21, 2005, states that in its application, applicants are to identify the organizations or entities that will assist the applicant in implementing the program.

HUD's regulations at 2 CFR 2424.10 state that HUD adopted, as HUD's policies, procedures, and requirements for nonprocurement debarment and suspension, the Federal regulations at 2 CFR Part 180.

HUD's regulations at 24 CFR 24.1 state that the policies, procedures, and requirements at 2 CFR Part 2424 permit HUD to take administrative sanctions against employees of recipients under HUD assistance agreements that violate HUD's requirements. The sanctions include debarment, suspension, or limited denial of participation and are authorized by 2 CFR 180.800, 2 CFR 180.700, or 2 CFR 2424.1110, respectively. HUD may impose administrative sanctions based upon the following conditions:

- Failure to honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations (limited denial of participation);
- Violation of any law, regulation, or procedure relating to the application for financial assistance, insurance, or guarantee or to the performance of obligations incurred pursuant to a grant of financial assistance or pursuant to a conditional or final commitment to insure or guarantee (limited denial of participation);
- Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as a history of failure to perform or unsatisfactory performance of one or more public agreements or transactions (debarment); or

- Any other cause so serious or compelling in nature that it affects the present responsibility of a person (debarment).