



**DEPARTMENT OF COMMUNITY AND CULTURE
Federal Programs for Affordable Housing**

Management Letter
For the Period September 2002 through March 2008

Report No. 08-COU-A

*Keeping Utah
Financially Strong*

AUSTON G. JOHNSON, CPA
UTAH STATE AUDITOR



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REPORT NO. 08-COU-A

July 23, 2008

Palmer DePaulis, Director
Department of Community and Culture
324 South State Street, Suite 500
Salt Lake City, Utah 84111

Dear Mr. DePaulis:

The Department of Community and Culture (DCC), Division of Housing and Community Development (DHCD) received federal Community Development Block Grants (CDBG) and HOME Program funds which were then passed through to Daggett County officials for use in the Daggett County Affordable Housing Program. Several months ago, anonymous allegations of possible favoritism and/or mismanagement were made public by KSL News. As a result of these allegations, we performed the following procedures to certain aspects of the Daggett County Affordable Housing Program for the period of September 2002 to March 2008.

1. We reviewed the application, review and approval, and awarding processes for reasonableness.
2. We reviewed applications for the program to determine if eligibility was determined in accordance with grant requirements.
3. We determined whether grant requirements were applied appropriately regarding provisions for resale of homes awarded in the program.
4. We determined whether grant requirements were followed regarding potential conflict of interest issues.
5. We performed other miscellaneous procedures.

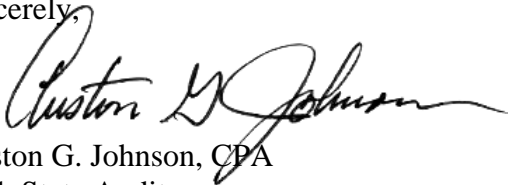
Our procedures were more limited than would be necessary to express an audit opinion on compliance or on the effectiveness of DCC's internal control or any part thereof. Accordingly, we do not express such opinions. Alternatively, we have identified the procedures we performed and the findings resulting from those procedures. Had we performed additional procedures or had we made an audit of the effectiveness of DCC's internal control, other matters might have come to our attention that would have been reported to you.

The findings contained in this report indicate errors were made by DHCD and Daggett County. However, DCC/DHCD is the original recipient of the federal grants involved and, as such, has the responsibility of ensuring compliance with grant requirements. Therefore, we address this report to DCC/DHCD. Our findings resulting from the above procedures are included in the attached findings and recommendations section of this report.

This report is intended solely for the information and use of DCC and the Daggett County Commission and is not intended to be and should not be used by anyone other than this specified party. However, the report is a matter of public record and its distribution is not limited.

By its nature, this report focuses on exceptions, weaknesses, and problems. This focus should not be understood to mean there are not also various strengths and accomplishments. We appreciate the courtesy and assistance extended to us by the personnel of DCC during the course of the engagement, and we look forward to a continuing professional relationship. If you have any questions, please call Debbie Empey, Audit Director, at 801-538-1342.

Sincerely,

A handwritten signature in black ink, appearing to read "Auston G. Johnson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Auston G. Johnson, CPA
Utah State Auditor

cc: Gordon D. Walker, Director, Division of Housing & Community Development
Daggett County Commission
Todd Gagon, Senior Auditor, U.S. Dept. of Housing & Urban Development,
Office of Inspector General

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FOR THE PERIOD SEPTEMBER 2002 THROUGH MARCH 2008

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FINDINGS AND RECOMMENDATIONS
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1. **LACK OF COMPLIANCE WITH HOME PROGRAM RESALE/RECAPTURE REQUIREMENT**

Federal Agency: **DHHS**

CFDA Number and Title: **14.239 HOME Investment Partnership Program**

Federal Award Number: **M-02-SG-49-0100**

Questioned Cost: **\$-0-**

Pass-through Entity: **N/A**

The Department of Community and Culture (DCC), Division of Housing and Community Development (DHCD) did not communicate HOME Program Resale/Recapture requirements to the Daggett County Affordable Housing Program. As a result, two homebuyers were not aware that there were restrictions regarding resale of the homes. These two homes are currently being offered for sale by the original homebuyers.

DHCD loaned federal HOME Program funds to Daggett County to finance the construction of two of the homes in the Daggett County Affordable Housing Program. Daggett County repaid the loans in full when the homes were sold to eligible low-income buyers. The HOME Program requires assisted homes to remain affordable for a period of time depending upon the amount of assistance given. To ensure affordability, the State is required to impose either a resale or recapture requirement. Per HOME Program Final Rule 24 CFR section 92.254 a.5.ii.A.5:

The HOME investment that is subject to recapture is based on the amount of HOME assistance that enabled the homebuyer to buy the dwelling unit. This includes any HOME assistance that reduced the purchase price from fair market value to an affordable price, but excludes the amount between the cost of producing the unit and the market value of the property (ie: the development subsidy). . . . If the HOME assistance is only used for the development subsidy and therefore not subject to recapture, **the resale option must be used.**

This condition appears to apply to the two homes built with the HOME construction loan, which are currently for sale. Per the rule, the period of affordability would be somewhere between 5 and 15 years depending on how the amount of HOME assistance is calculated. HOME Program Final Rule 24 CFR section 92.254 a.5.i. states:

Resale requirements must ensure, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability, that the housing is made available for subsequent purchase only to a buyer whose family qualifies as a low-income family and will use the property as its principal residence. The resale requirement must also ensure

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that the price at resale provides the original HOME assisted owner a fair return on investment. . . and ensure that the housing will remain affordable to a reasonable range of low-income homebuyers.

Per the State Consolidated Plan, compliance with the resale/recapture requirement “will be assured through liens on the trust deeds for the property.” However, we found no indication that the resale/recapture requirement was included in any documentation related to the sale of the homes to the two original homebuyers. Further, it appears that DHCD believed that the resale/recapture requirement was satisfied since Daggett County had already paid back the loan in full to the State.

DHCD should establish policies to ensure that the resale/recapture provisions are properly established and communicated to sub-grantees. Also, DHCD should work with the U.S. Department of Housing and Urban Development (HUD) to determine the consequences for noncompliance in this case. The lack of compliance with grant requirements could result in questioned costs and a loss of federal grant funds for the State. We have not questioned any costs since the affected homes have not actually been sold to date.

Recommendation:

We recommend that DHCD:

- **Ensure resale/recapture provisions are properly established and communicated with sub-grantees.**
- **Begin procedures to determine the amount to recover in the event the homes are sold.**

Agency Response:

We believe that the State Auditor’s Office would agree that the applicability and details of the HUD resale and recapture provisions are not sufficiently clear. We will prepare a written request to HUD for a determination that outlines the particulars of the Daggett County project and several other single family/owner-occupied projects. Based upon HUD’s determination of applicability to each type of project, DHCD will take the necessary steps to impose and manage the appropriate provisions. In the case of homes with loan documents in place, the imposition of new provisions is problematic. Therefore, DHCD will also seek HUD’s guidance regarding conformity for existing loans to resale/recapture provisions.

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2. **POTENTIAL CONFLICT OF INTEREST**

Federal Agency: **DHHS**

CFDA Number and Title: 1) **14.228 Community Development Block Grant (CDBG)**
2) **14.239 HOME Investment Partnership Program**

Federal Award Number: 1) **B-02-DC-49-0001; B-04-DC-49-0001**
2) **M-02-SG-49-0100**

Questioned Cost: **\$-0-**

Pass-through Entity: **N/A**

DHCD did not ensure that Daggett County followed HOME Program and CDBG conflict of interest policies when they assisted County employees with grant funds. As the recipient of grant funds, DHCD is responsible for monitoring subrecipients for compliance with grant requirements. Six of the seven homes awarded to date were awarded to County employees. Four of the employees were correctional officers. The grant requirements (HOME Program Final Rule 24 CFR section 92.256 and 24 CFR part 570.611 (CDBG)) indicate that an employee of the County who exercises any function or responsibilities with respect to activities assisted with the grant funds or who is in a position to participate in a decision-making process or gain inside information with regard to these activities may not benefit from the grant assisted activity. Since inmates participated in building the homes and correctional officers guarded the inmates, it appears that the correctional officers may have exercised some function or responsibility at some point. Therefore, this could create the perception of a conflict of interest even if the employee did not participate in a decision-making process. The grant requirements allow an exception for affected individuals if the County makes a request in writing to HUD, demonstrates that various conditions exist, and ensures that public disclosure is made. It appears that the affected individuals would have qualified for an exception under the rules. But apparently, the County did not perceive the awarding of these homes as a conflict of interest and, therefore, did not request an exception to the rule. DHCD should ensure that conflict of interest policies are followed by the County through subrecipient monitoring to alleviate a perception of favoritism.

Recommendation:

We recommend that DHCD/DCC monitor subrecipients to ensure they comply with the conflict of interest policies under the two grants.

Agency Response:

DHCD has provided training to Olene Walker Housing Loan Fund and CDBG recipients on conflict of interest issues and the process for requesting exceptions from HUD. This formal training will continue. However, DHCD will include conflict of interest as a point of inquiry during each field monitoring and compliance monitoring visit.