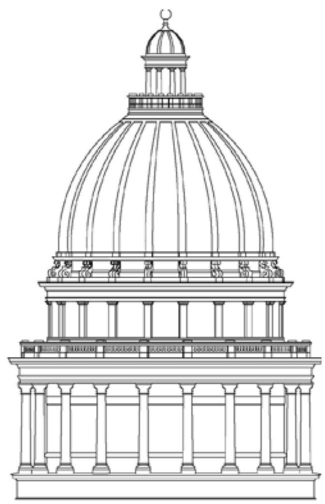
REPORT TO THE

UTAH LEGISLATURE

Number 2012-06



A Performance Audit of the Division of Housing and Community Development

February 2012

Office of the
LEGISLATIVE AUDITOR GENERAL
State of Utah

STATE OF UTAH

Office of the Legislative Auditor General

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AUDITOR GENERAL

February 6, 2012

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Performance Audit of the Division of Housing and Community Development** (Report #2012-06). A digest is found on the blue pages located at the front of the report. The objectives and scope of the audit are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

John M. Schaff

John M. Schaff, CIA
Auditor General

JMS/lm

Digest of
A Performance Audit of the Division of Housing and Community Development

Chapter I: Introduction

Some operations of the Division of Housing and Community Development (HCD or division), Utah's focal point for low-income housing development, have raised concerns over the last few years. Much of the concern arises from the division's change in its operational model from that of a direct fund provider to that of a loan provider taking a greater interest in the way funds are used. Along with this change is an increase in the division's involvement in site development and fund leveraging.

Primary concerns include HCD's decision to purchase property in South Salt Lake, its handling of federal Neighborhood Stabilization Program (NSP) money, and other governance issues. In these concerns, we found that the division acted appropriately under their board's assumption that statute allows direct involvement in land acquisition. Current statute speaks to how and where funds should be spent, but is silent on the mechanism for expending the funds. While the division has been innovative in its interpretation of laws and public leveraging, its actions have alienated some organizations in the low-income housing community. We recommend that HCD establish guidelines to ensure its own actions, not just those of its community partners, align with the legislative intent of leveraging money.

Chapter II: Policy for HCD Driven Projects Needs to be Strengthened

HCD has detailed guidelines to evaluate low-income housing projects proposed by private developers, yet lacks policies to evaluate its own in-house development projects. In 2007, HDC used the Olene Walker Housing Loan Fund (OWHLF or fund) to purchase 6.9 acres of land in South Salt Lake with the intent to develop housing for homeless veterans. We found nothing to indicate that this purchase was contrary to any laws or the division's authority. However, it was a non-traditional approach compared to HCD's routine use of private developers that does not appear to have limited OWHLF's ability to contribute to other projects. To better align department practice with legislative intent and avoid unnecessary costs, HCD should create guidelines for projects where HCD's participation goes beyond that of a funding source.

The South Salt Lake City Council did not support more property being taken from the city's tax roll and so refused to approve the plans for the property, resulting in the project not moving forward. Since 2007, HCD has been holding the land in reserve, so the funds invested in the property are considered to be land-banked. Land-banking is an unusual practice with this particular fund (the HOME fund), but is a common practice of other federal housing funds, educational institutions, and private developers. ***Utah Code*** does not appear to forbid the practice for low-income housing, but is ambiguous on the matter. Land-banking delays funds from use and leveraging, while still retaining the value of the asset. The Legislature may want to consider if and how land-banking for low-income housing aligns with legislative intent.

Chapter III: Misunderstanding of HCD Programs Has Led to Confusion

Misunderstanding among community partners of the use of both federal NSP funds and funding for a training program called Bridges Out of Poverty has led to some confusion and dissatisfaction with the division. Despite these concerns, the first NSP funds released in Utah (NSP1) were awarded appropriately and have been used efficiently. The third round of funding (NSP3) was not awarded through a request for proposal (RFP) process because the federal government did not require use of RFPs. HCD followed the required guidelines for the release of the funds for an appropriate project. Utah did not receive any NSP2 monies. We found no basis for concern with HCD's use of either of the NSP funds entrusted to them.

Finally, the Bridges Out of Poverty training program has cost the state minimal amounts, and is offered on a voluntary basis to interested parties. We found no cause for concern in these areas.

REPORT TO THE

UTAH LEGISLATURE

Report No. 2012-06

A Performance Audit of the Division of Housing and Community Development

February 2012

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Chapter I
Introduction

Some operations of the Division of Housing and Community Development (HCD or division), Utah's focal point for low-income housing development, have raised concerns over the last few years. Much of the concern arises from the division's change in its operational model from that of a direct fund provider to that of a loan provider taking a greater interest in the way funds are used. Along with this change is an increase in the division's involvement in site development and fund leveraging.

Concerns have arisen because of changes in HCD's operating plan.

Primary concerns include HCD's decision to purchase property in South Salt Lake, its handling of federal Neighborhood Stabilization Program (NSP) money, and other governance issues. In these concerns, we found that the division acted appropriately under their board's assumption that statute allows direct involvement in land acquisition. Current statute speaks to how and where funds should be spent, but is silent on the mechanism for expending the funds. While the division has been innovative in its interpretation of laws and public leveraging, its actions have alienated some organizations in the low-income housing community. We recommend that HCD establish guidelines to ensure its own actions, not just those of its community partners, align with the legislative intent of leveraging money.

HCD's Primary Mission Is to Provide Low-Income Housing

HCD is a division of the Department of Community and Culture (DCC), and provides a number of functions focusing on the development of low-income housing. HCD's mission statement charges it

HCD runs a number of programs intended to fulfill its mission to improve and preserve housing in Utah.

> To be a catalyst for creating, improving and preserving housing, community infrastructure, facilities, services and economic development that will enhance the quality of life for the people of Utah.

In order to accomplish this mission, HCD operates a number of programs, including:

Olene Walker Housing Loan Fund – The OWHLF provides gap funding to developers statewide for low-income housing in the form of grants and loans. This money is then leveraged to obtain federal and private equity and tax credits.

Permanent Community Impact Fund – The CIF is funded by federal mineral lease royalties returned to the state; a Community Impact Fund Board provides grants and/or loans to subdivisions of the state. These subdivisions are, or may be, economically impacted (directly or indirectly) by mineral resource development on federal land.

Community Development Block Grants – CDBG includes the Small Cities program, which is intended to provide decent housing for persons of low and moderate incomes. Created under the CDBG program umbrella are the Neighborhood Stabilization Programs, federal grants intended to purchase foreclosed or abandoned homes and rehabilitate, resell, or redevelop these homes to stabilize neighborhoods and stem the decline of house values.

State Energy Assistance & Lifeline Program – This program provides winter home heating assistance for low-income households. It also provides funds to the State Weatherization Program to help weatherize low-income homes and provide emergency repair or replacement of defunct furnaces or air conditioning units.

Pamela Atkinson Homeless Trust Fund – This program, funded by legislative funding and public contributions, is a competitive grant program that supplements various agencies' funds, state and private, statewide in an effort to move people from homelessness.

HCD's Budget Is a Mixture of Federal and State Funds

Much of the funding for HCD's programs comes from the federal government, augmented by matching state funds. Figure 1.1 shows the amounts of state and federal funds provided to HCD over the last four fiscal years.

Over the last four years, 82 percent of HCD's funding comes from the federal government.

Figure 1.1 The Majority of Funding for HCD Programs Comes from the Federal Government. 11 percent of the funding in fiscal year 2011 were state matching funds.

Funding Source	FY 2008	FY 2009	FY 2010	FY 2011
State	$12,061,600	$24,313,300	$8,497,100	$8,785,800
Federal	36,722,200	50,572,400	87,072,600	70,207,400
TOTAL	**$48,783,800**	**$74,885,700**	**$95,569,700**	**$78,993,200**

Source: Office of the Legislative Fiscal Analyst

Figure 1.1 shows that the majority of the funding for HCD's activities comes from the federal government. In the last five years, anywhere from 68 to 91 percent of the division's funding came from federal sources, with the high of 91 percent coming in fiscal year 2010. In fiscal years 2010 and 2011, federal support increased across the board, the majority from the American Recovery and Reinvestment Act.

By making loans instead of grants with the majority of the funds, HCD has been able to reinvest the proceeds. This reinvestment has increased the division's ability to provide low-income housing even during the recession. By leveraging funding through its loan programs and required contributions by private and other participants, HCD has been able to extend the usefulness of its allotted funds.

Because HCD loans funds instead of granting them, they have been able to reuse the money.

HCD Is Currently Located Within DCC

HCD and all its programs currently operate under the Department of Community and Culture. In December 2011, the Governor announced his intention to move HCD from DCC to the Department of Workforce Services, and reorganize DCC. This move is dependent on legislative action during the 2012 Legislative Session.

Audit Scope and Objectives

We were asked to include the following areas in our audit:

- Review the process by which the division awards the millions of dollars of state and federal grant money for low-income housing projects; specifically, in managing these awards, determine whether the division:
    - Follows good practice and policy
    - Performs sufficient analysis in project selection
    - Checks for evidence of potential conflicts of interest.
- Review other areas of concern that may arise during the course of the audit.

As part of this scope, we specifically examined HCD's use of NSP funds, the purchase of property in South Salt Lake, and other areas about which interested parties expressed concerns.

Chapter II
Policy for HCD-Driven Projects Needs to Be Strengthened

The Division of Housing and Community Development (HCD or division) has detailed guidelines to evaluate low-income housing projects proposed by private developers, yet lacks policies to evaluate its own in-house development projects. In 2007, HDC used the Olene Walker Housing Loan Fund (OWHLF or fund) to purchase 6.9 acres of land in South Salt Lake with the intent to develop housing for homeless veterans. We found nothing to indicate that this purchase was contrary to any laws or the division's authority. However, it was a non-traditional approach compared to HCD's routine use of private developers that does not appear to have limited OWHLF's ability to contribute to other projects. To better align department practice with legislative intent and avoid unnecessary costs, HCD should create guidelines for projects where HCD's participation goes beyond that of a funding source.

HCD's nontraditional approach in land-banking should have had internal guidelines to direct it.

The South Salt Lake City Council did not support more property being taken from the city's tax roll and so refused to approve the plans for the property, resulting in the project not moving forward. Since 2007, HCD has been holding the land in reserve, so the funds invested in the property are considered to be land-banked. Land-banking is an unusual practice with this particular fund (the HOME fund), but is a common practice of other federal housing funds, educational institutions, and private developers. ***Utah Code*** does not appear to forbid the practice for low-income housing, but is ambiguous on the matter. Land-banking delays funds from use and leveraging, while still retaining the value of the asset. The Legislature may want to consider if and how land-banking for low-income housing aligns with legislative intent.

***Utah Code* does not forbid land-banking, although it delays the use and leveraging of funds.**

South Salt Lake Property Purchase Was Unusual, But Within Statutory Guidelines

Except for the purchase of and intent to develop the South Salt Lake property, HCD uses the private sector and nonprofit organizations as the primary funding and development source for construction of affordable housing. As part of the division's 10-year plan to end chronic homelessness in Utah, in 2007 the director of HCD, with the OWHLF board's approval, purchased a 6.9-acre parcel of land in South Salt Lake with the intent to partner with a private developer to construct housing for homeless veterans. This purchase constitutes 2.5 percent of the $106 million in total assets of the OWHLF. ***Utah Code*** 9-4-705 gives HCD's executive director the authority to buy land with the approval of the board, but section 9-4-1202 clarifies that "the private sector, including nonprofit entities, shall be the primary source of developing and providing affordable housing with state and local incentives to encourage housing development." Of the 23 contacted states, four have purchased land with similar state funds, but only one has land-banked those purchased lands.

***Utah Code* requires that HCD funds should be leveraged with the private sector.**

Utah Code Allows the Executive Director to Purchase Land and Develop Projects

As shown in Figure 2.1, ***Utah Code*** 9-4-705 allows the executive director of the HCD to purchase land at the direction of the OWHLF board.

Figure 2.1 *Utah Code* 9-4-705 Gives Authority to the Director of HCD to Purchase Land for Low-Income Housing. In fact, at the direction of the board, statute allows the director to do any act necessary or reasonably implied to increase low-income housing.

At the direction of the board, the executive director may:

(1) provide fund money to any of the following activities:

(a) acquisition, rehabilitation, or new construction of low-income housing units; . . .

(c) the development and construction of accessible housing designed for low-income persons; . . .

(e) other activities that will assist in the improving the availability or quality of housing in the state for low-income persons;

(2) do any act necessary….or reasonably implied therefrom including:

(c) entering into agreements…for the purpose of… purchase, construction….

Typically, the OWHLF board loans money to nonprofit organizations that already own or buy land, so they may construct low-income housing projects on that land. These projects are evaluated by the HCD staff using their published "Program Guidance and Rules" manual and are then approved by the OWHLF board. However, statute gives the HCD director the ability to do any act necessary or reasonably implied, including the purchase of land for low-income housing, with the approval of the board.

Nonprofit organizations' projects are required to follow published guidelines.

The Federal Department of Housing and Urban Development (HUD) distributes HOME funds to states to increase the availability of low-income housing. HUD encourages states to grant or loan the money to develop or rehabilitate housing for low-income people. In Utah, the OWHLF distributes these funds. HUD rules allow states to purchase land with federal funds, but only for a specific goal of constructing low-income housing. Land-banking is not permitted under federal rules for HOME funds, but it is allowed and used for Neighborhood Stabilization Program funds, which HCD also administers. There is also no prohibition on using state funds for land-banking. Roughly half of the Olene Walker funds used for low-income housing come from the federal HOME program. HUD also encourages states to contribute matching funds. Use of Utah's state matching funds is controlled by state, not federal requirements.

HCD became aware of the property as a potential site for veteran housing because of a veterans group's interest in the land. In 2007, the OWHLF board purchased the South Salt Lake property for $2,276,000. HCD used only state funds, which did not fall under the federal restrictions. Accounting codes identify and track whether federal or state dollars are used for each project, and these codes identified the funds used for the South Salt Lake purchase as state funds. The board's intent was to construct low-income apartments on the property for chronically homeless veterans, as part of the division's goal to end chronic homelessness. This purchase was the first and only time to date that OWHLF funds have been used to purchase property directly.

HCD used $2,276,000 for a non-traditional purchase of land in South Salt Lake.

The South Salt Lake City Council has opposed the use of this land by HCD for low-income housing. Because of this, the city council has not approved the plans for the property. As a result, the land has been land-banked by default. HCD management states that other projects

Although the division can build without city approval, HCD chose not to with regards to the South Salt Lake property.

have been fulfilling the need for housing for the chronically homeless and is holding onto the land in case circumstances change. The division can override the city's objections and construct the housing with the approval of the Division of Facilities Construction and Management (DFCM), but HCD officials are reluctant to alienate the city. The OWHLF board has given the agency 10 years to either develop the property or sell it. The Legislature should decide whether this is in line with legislative intent to fully leverage state funds.

Other States Have Purchased Land But Only One Other Has Land-Banked

Connecticut land-banks with matching state HOME funds.

Of 22 surveyed states' housing and community development agencies, 4 (Arizona, Connecticut, Delaware, and Wyoming) reported purchasing land with matching state HOME funds for immediate use. Agency representatives in three of these states said they would only purchase land under specific conditions. For example, land purchasing might occur if the applicant has all funding in place, or if the purchase is connected to a project or the land had existing housing. Only Connecticut has conducted any land-banking with matching state HOME funds. Utah's land-banking of the South Salt Lake property appears to have been a fall-back position adopted when the initial plan fell through.

Current Property Appraisal Suggests HCD Is Unlikely to Lose Money on South Salt Lake Property Purchase. A recent visual evaluation of the South Salt Lake property by the Salt Lake County Appraiser's Office valued the property and buildings at nearly $3 million. As the calculations in Figure 2.2 show, HCD should be able to cover expenses if the property sells near the assessed value.

Figure 2.2 Salt Lake County Valued the Land and Buildings Purchased by HCD at $2,994,000. If the property sells near the appraised value, HCD should not lose any money on the property.

South Salt Lake Property Expenses		
Total Purchase (2007)	$	2,286,733
Remodel/Maintenance		37,421
Demolition		69,000
Architectural/Engineering		266,400
Total Expenses		**2,659,554**
Assessed Value (2011)*		2,994,000
Increased Value	**$**	**334,446**

**Assessed by the Salt Lake County Appraiser, 12/15/2011*

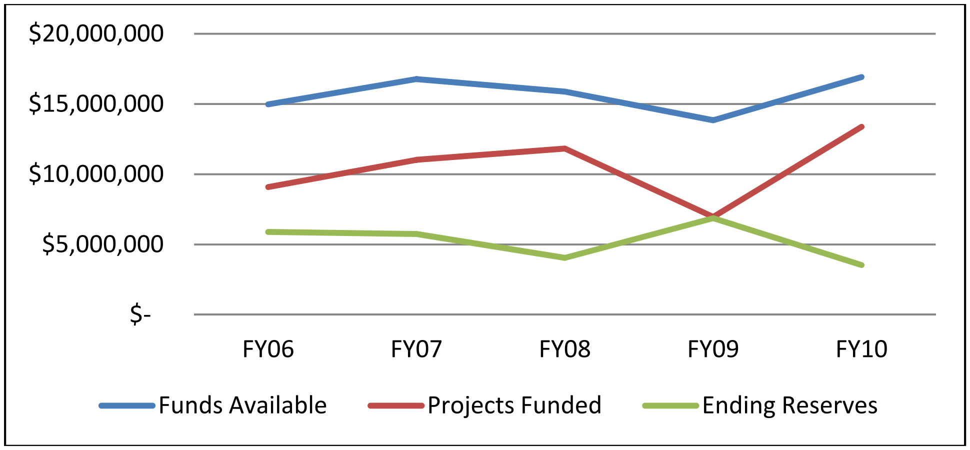
If the property sells at the assessed value, the division should show a profit of just over $334,000. For a five-year period, that represents an interest rate of over two percent; the actual sale price would be affected by future market conditions.

The South Salt Lake property may not result in a loss for HCD.

Purchase of the South Salt Lake Land Has Not Limited Other OWHLF Projects

Use of the OWHLF for the purchase of land in South Salt Lake does not appear to have negatively impacted HCD's ability to provide funds for other projects. At the time the purchase was made, the fund had over $5 million in reserve money that was available to lend for eligible projects. Reserve funds have remained fairly constant in the years since the land purchase. In addition, the amount of money the fund has contributed to housing projects has remained fairly steady over the same time period. Figure 2.3 shows the total funding available, the amount of money contributed to housing projects from the OWHLF, and the amount of reserve funds available for each year.

Figure 2.3 The Amount of Money OWHLF Has Contributed to Low-Income Housing Projects Has Remained Fairly Constant. This has occurred over the last five fiscal years.



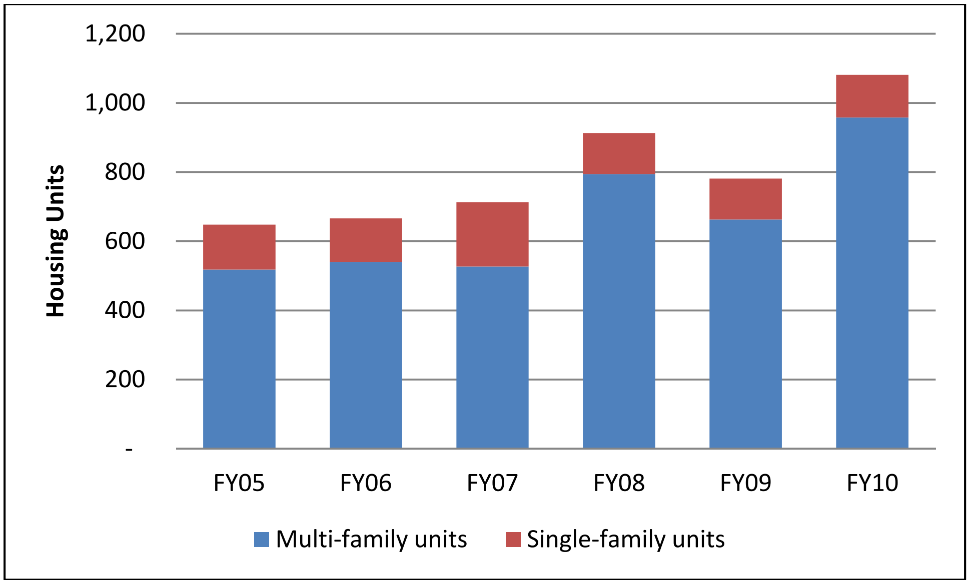
Source: Division of Housing and Community Development

OWHLF's amount of project funding has remained consistent over the last five years.

On average, OWHLF has about $15.7 million in funds annually available for projects. About $10.5 million per year has been used on projects, leaving $5.2 million per year in reserve funds. Due to the recession, OWHLF has contributed a larger proportion to total project funding as it has been difficult for private developers to cover their share of the cost.

Although actual funds spent by OWHLF on low-income projects have remained fairly steady, the number of housing units funded has gradually increased in the same period. Figure 2.4 shows the number of single- and multi-family units funded by the fund.

Figure 2.4 OWHLF Has Contributed To an Increasing Number of Housing Projects. This has occurred over the last six fiscal years.



Source: Division of Housing and Community Development

Despite $2.2 million being spent on the land in South Salt Lake in fiscal year 2007, the number of housing units OWHLF contributed to increased that year and the following year. The division's decision to land-bank the South Salt Lake property appears to have had no negative effect on the division's ability to contribute to low-income housing projects primarily because of its large reserves.

Because HCD and the OWHLF helped fund other low-income housing projects during the five years that the South Salt Lake property has been inactive, the demand by people in chronic homelessness was being addressed. The division currently considers this property as essentially a part of their reserve funds. They anticipate knowing within the next two years whether they will need this property to help eradicate chronic homelessness. If, as they expect, the units in progress are sufficient to cover that need, they intend to sell the land.

HCD Should Develop Guidelines For Internal Projects

While within the division's rights, purchasing the South Salt Lake property has tied up over two million dollars of state low-income housing funds for nearly five years. By establishing guidelines for internal projects, HCD could have avoided some costs and concerns arising from the project. Since approval of the plans for the project was never granted, the property has been considered land-banked, which is a legitimate practice in the real estate development community. However, land-banking is less common in low-income housing development and the Legislature may want to consider if the use of land-banking is consistent with legislative intent.

Some Costs Could Have Been Avoided with Guidelines

Although rules exist to guide private or nonprofit development, there are none to guide HCD's purchasing of land for its own projects.

The division has developed an OWHLF Program Guidance and Rules manual that is used to evaluate projects proposed by private developers. However, these rules are not specifically written to evaluate HCD's own land purchases, and were not fully applied to the South Salt Lake land purchase. By creating rules for evaluating their own projects, HCD should be able to avoid unnecessary costs, better align projects with legislative policy, and maintain goodwill with those in the low-income housing community.

OWHLF rules customarily cap funding for a single project at $1 million.

Statute for the distribution of OWHLF monies requires that the executive director "establish the criteria with the approval of the board by which loans and grants will be made". The OWHLF Program Guidance and Rules manual satisfies this requirement. These rules cap the amount of loan monies for any one project at $1 million and require that the money be leveraged with private funds. The purchase of the South Salt Lake property did not satisfy these rules which were intended for evaluating the projects of private developers rather than HCD's in-house development projects. Rules for evaluating HCD's own land purchases would be different because these developments would occur in stages, with a private developer seeking OWHLF funding after much of the planning, designing, zoning approval, and property purchase was complete.

Before acquiring the property at 700 West 3400 South in 2007, HCD officials felt confident that the plans for the property would be approved after their discussions with city planners. HCD presented the plans to the South Salt Lake Planning Commission after having hired architects and structural engineers at a cost of $266,400 to design an apartment complex for homeless veterans. The plan then went to the city council where it was not accepted. HCD decided not to override the city's decision, thus stalling the project, despite being statutorily allowed to build without city approval.

HCD's direct purchase of the South Salt Lake property was unusual, but within the division's statutory authority and goals of providing housing for the chronically homeless. The statutory authority given HCD to build low-income housing allows for "any act necessary . . . including . . . purchase". This broad authority suggests the need for guidelines to evaluate the circumstances under which HCD land purchases would be appropriate, and determine how HCD use of that land would best comply with the legislative mandate to leverage funds.

HCD works with a small community of low-income housing developers, both private organizations and public housing authorities. A few we spoke with in this community were concerned that the South Salt Lake project limited funds for other projects in 2007. As discussed in the previous section, this concern appears to be unfounded, but though HCD has the authority to purchase land, establishing guidelines will inform the low-income housing community of HCD's authority to develop such projects as well as the criteria for doing so. This step could help maintain good-will with the community.

Established guidelines may help maintain good will with the housing community.

Legislature May Want to Consider Its Intent on Land-banking for Low-income Housing

Utah Code 9-4-1202(4)(b) clarifies legislative policy and purpose pertaining to HCD housing goals. It specifies that

> State money used in the development of housing shall: be heavily leveraged when possible; be primarily invested as loans; be primarily spent on housing production;

In fiscal year 2007, 69 percent of the state housing money allocated to OWHLF was spent on purchasing the South Salt Lake property from the former ASARCO. If the South Salt Lake City Council had approved the plans to allow the project to be built, other funds might have been leveraged in the development of the project. The money would also have been spent primarily on low-income housing, thus satisfying much of the legislative policy on how the money should be used. But the plan was not approved, and so leveraging was not accomplished with that $2 million that year.

The Legislature may want to consider how they wish to treat land-banking with state low-income housing funds.

Unfortunately, development did not occur. As a result, the land is being held in reserve, or land-banked, for possible future low-income housing development. With over $2 million in OWHLF monies tied up in land-banked property, those monies are not meeting the legislative goals of being "heavily leveraged" nor "invested as loans". Since the land-banking for the project was limited to 10 years by the board these funds may yet fully satisfy legislative goals in the future. The funds invested in the property so far represent 2.5 percent of the $106 million in total assets of the OWHLF. Land-banking is a legitimate real estate development tool that is used by other federal housing funds, educational institutions, private developers and other states to deal with urban blight. Other states have established land-banking in their codes and ***Utah Code*** does not appear to forbid the practice with regards to low-income housing money. The Legislature may want to consider whether land-banking is consistent with legislative intent for these state funds.

Recommendations

1. We recommend that the Division of Housing and Community Development form guidelines on how and when the division will seek to purchase land internally.

2. We recommend that the Utah State Legislature consider whether land-banking is consistent with legislative intent to leverage state monies for low-income housing.

Chapter III
Misunderstanding of HCD Programs Has Led to Confusion

Misunderstanding among community partners of the use of both federal Neighborhood Stabilization Program (NSP) funds and funding for a training program called Bridges Out of Poverty has led to some confusion and dissatisfaction with the Division of Housing and Community Development (HCD). Despite these concerns, the first NSP funds released in Utah (NSP1) were awarded appropriately and have been used efficiently. The third round of funding (NSP3) was not awarded through a request for proposal (RFP) process because the federal government did not require use of RFPs. HCD followed the required guidelines for the release of the funds for an appropriate project. Utah did not receive any NSP2 monies. We found no basis for concern with HCD's use of either of the NSP funds entrusted to them.

Finally, the Bridges Out of Poverty training program has cost the state minimal amounts, and is offered on a voluntary basis to interested parties. We found no cause for concern in these areas.

HCD's Awarding of NSP1 Funds Was Appropriate and Efficient

The NSP1 RFP was conducted according to the rules, and appears to have resulted in an efficient process.

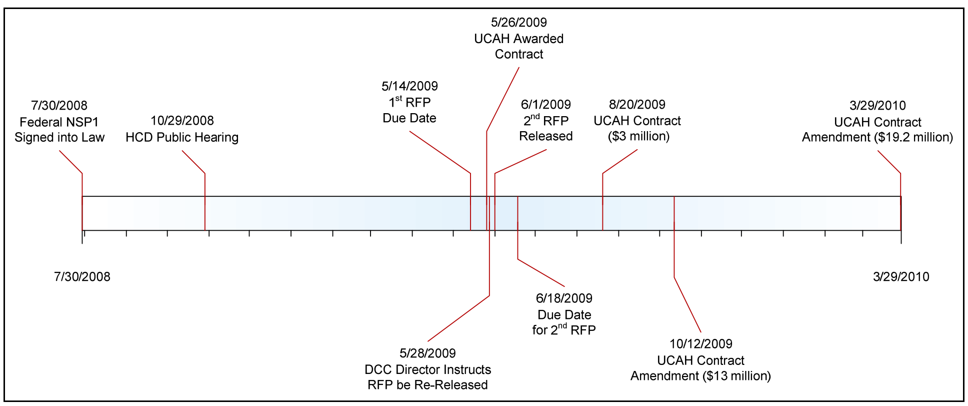
The Neighborhood Stabilization Program 1 (NSP1) grant money awarded by the federal government ($19.6 million, the smallest amount awarded to individual states) has been used appropriately and efficiently in Utah. Despite some concern with HCD's method of awarding the money to a non-profit organization, the NSP1 RFP process appears to have been appropriate and fair. In addition, the federal government's charge to states was for the funds to be used quickly. The *Federal Register* states that "one of the most critical NSP provisions is . . . that any grantee receiving a grant 'shall, not later than 18 months after the receipt . . . use such amounts to purchase and redevelop . . . residential properties.'" In compliance with this federal requirement, Utah was among the first in the nation to put the majority of these critical funds to use.

Two RFPs Were Issued to Ensure Fairness

Two separate RFPs awarded the NSP1 contract to the same nonprofit.

Part of the concern expressed with the awarding of the NSP1 money was HCD's selected RFP process. Within three months of the NSP1 monies being signed into law, HCD held a public hearing to determine what should be done with the funds. Six months later, the first RFP was issued, requesting nonprofits to submit plans for how best to use the funds, with emphasis on leveraging the funds to create more money. Figure 3.1 shows the timeframe of the process, with the NSP1 monies being awarded almost a year after the deadline for submission of proposals.

Figure 3.1 Two RFPs Were Issued for the NSP1 Money. Both awards were made to the same nonprofit agency.



Source: Office of Legislative Auditor General Analysis

The first RFP was awarded to Utah Center for Affordable Housing (UCAH), a nonprofit new to Utah's low-income housing industry. Because of UCAH's relatively new status, as well as the fact that BidSync (an online program) was used by HCD for the first time, there was some outcry among established nonprofit organizations. This outcry caused the Department of Community and Culture (DCC) director to require that the RFP be reissued to ensure fairness. UCAH was again awarded the contract, based in part on the administrative costs being donated by a private company. We found that both of the RFP processes were conducted according to state statute.

The federal government suspended some notification requirements to expedite the use of the money.

The state was not required by the federal government to issue any sort of RFP. In fact, the federal government had reduced some of the customary notification and citizen participation requirements in the interest of expediting the use of the NSP funds. None of the other 13 states that received $19.6 million issued a similar RFP.

Utah's NSP1 Use Complied with Federal Requirement to Use Funds Quickly

Even with the RFP process, HCD was able to put the majority of the NSP1 funds to use faster than any other state in the nation. This speed of use complies with the federal emphasis on using the NSP1 money quickly. HCD awarded the contract to UCAH in August 2009; by June 2010, UCAH had loaned 96 percent of the money. As of June 2011, Utah had the largest percentage of money used of any state.

Federal regulations repeatedly discuss "moving forward rapidly" or "expediting" the use of NSP1 funds. Specifically, the regulations state,

> One of the most critical NSP provisions is . . . that any grantee receiving a grant 'shall, not later than 18 months after the receipt of such amounts, use such amounts to purchase and redevelop abandoned and foreclosed homes and residential properties.'

Instead of slowing down the use of these monies, the RFP process and partnership with UCAH seems to have accomplished the federal government's goal of expediting use of these funds.

In addition to using the funds quickly, HCD, through UCAH, has chosen to loan the NSP1 money instead of granting it. Doing so will enable HCD to recycle the funds and use them for the foreseeable future. This is fairly unique among the states receiving $19.6 million. Of the 13 we contacted, only 3 others distributed the money on a loan basis.

34 percent of Utah's NSP1 funds were used for land-banking.

The two other main concerns expressed with the NSP1 set up were that UCAH is predominantly using land-banking, and that they give preferential treatment to properties owned by the private company donating administrative costs. We found that neither of these concerns appear to be true. A federal Office of Housing and Urban Development (HUD) report identifies that 34 percent of Utah's NSP1 monies have been used for land-banking, a practice discussed in

Chapter II. Land-banking is allowed under federal rules for NSP money. It also appears that only two of the properties purchased by UCAH were previously owned by the private company donating the administrative costs, and those properties were not purchased until later in the process. This constitutes less than two percent of the total NSP1 funding.

HCD Acted Appropriately When Not Issuing an RFP for NSP3 Funds

Charges that the Neighborhood Stabilization Program 3 (NSP3) was awarded unfairly, or that the RFP announcement was difficult to find seem to be based on confusion about the nature of the allowed use of NSP3 monies. HCD did not issue an RFP for NSP3, nor was the division required by the federal government to do so. The money is scheduled to be used for a short-term construction loan and will be available for reuse within a short time.

Following federal guidelines, NSP3 was not awarded using an RFP.

Although HCD chose to issue an RFP for the federal monies offered in NSP1, they did not choose to do so with NSP3 monies. NSP3 was an extension of the Neighborhood Stabilization Program, which is a component of the federal Community Development Block Grant program. NSP3 had similar requirements for eligible uses as NSP1, although the amount was $5 million instead of $19.6 million. Similarly, the federal government did not require that states issue RFPs. In this instance, HCD chose not to issue an RFP, but to loan the funds directly for construction activities.

HCD's direct use of the money was allowed and encouraged by the federal government. The *Federal Register*, which provided guidelines for NSP spending, states

> 'Any State . . . that receives amounts pursuant to this section shall . . . use such amounts to purchase and redevelop . . .' This clearly speaks to the states using funds directly for projects . . . Direct use of funds by a state may also result in more expeditious use of NSP funds. Therefore, a state receiving NSP funds may carry out NSP activities directly for some or all of its assisted grant activities.

According to these federal guidelines, HCD acted appropriately in choosing not to issue an RFP, but to disperse the funds directly.

Utah's NSP3 monies are scheduled to be used as gap funding, or a short term construction loan, for a project on State Street in Salt Lake City that will create 120 affordable housing units. This loan will be repaid in two to three years, and will then be available for reuse. Initially, the money was targeted for a project in Midvale, but the project could not spend the money within the required two-to-three years, so HCD awarded the funds to the State Street project. A site map of the State Street project met the federal requirements of an NSP score of 12 or more, and so is acceptable to HUD.

Bridges Out of Poverty Training Has Cost the State Negligible Amounts

Despite concerns that the amount of state funds spent on the Bridges Out of Poverty training program were excessive, although $40,027 was spent over two years, only $3,980 of that expenditure was state funds. In addition, no state funds have been spent since 2007. Bridges Out of Poverty training was never a requirement for receiving grant money from HCD, but was only intended as a tool. Bridges Out of Poverty is a training program designed to help middle-class people communicate with people in poverty.

The Bridges Out of Poverty training program was initially funded by a series of grants, totaling $18,500, obtained by HCD to be used specifically for training staff on this program. Over two years the state fronted an additional $21,527 for books and training supplies; most of this money was reimbursed to the state through registration fee collections. Just over $17,500 of registration fees were paid by nonprofit entities, resulting in state costs of only $3,980. The only state support since 2007 has been the cost for two state employees who periodically train community groups on request. Figure 3.2 shows the amount of funds expended on this program.

An aggregate of $3,980 was spent by the state on Bridges Out of Poverty.

Figure 3.2 A Total of $40,027 Has Been Spent on the Bridges Out of Poverty Training Program. Most of the funding has come from nonprofit organizations, either up-front in the overall grant or as individual participant registration support.

Funding Source	Amount
Grants (Nonprofits)	$ 18,500
State Funds*	3,980
Registration Fees (Nonprofits)	17,547
Program Total	**$40,027**

** The state initially provided $21,527 as seed funds that were reimbursed as registration fees were collected. To date, $3,980 of state funding was used for the program.*
Source: Division of Housing and Community Development

HCD never required this training as a prerequisite to receiving grant money and, as noted, has only used a small amount of state funds. We found no cause for concern with the Bridges Out of Poverty program.

Agency Response

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State of Utah

GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

Department of Community and Culture

Julie Fisher
Executive Director

Michael Hansen
Deputy Director

Division of Housing and Community Development

Gordon D. Walker
Division Director

February 6, 2012

Mr. John Schaff
Legislative Auditor General
W315 Utah State Capitol Complex
Salt Lake City, UT 84114

Dear Mr. Schaff:

On behalf of the Division of Housing and Community Development, we wish to thank you for the opportunity to respond to the audit of the Division of Housing and Community Development. Your staff was both courteous and professional as they carried out the audit. We appreciate the in-depth review of our programs and the greater understanding of the nature of our work that is made available with this audit. The reasoned recommendations resulting from the audit will be useful in improving the performance of the Division. We accept those recommendations.

Here is a list of the recommendations to the audit and the response of the Division:

Recommendation 1: We recommend that the Division of Housing and Community Development form guidelines on how and when the division will seek to purchase land internally.

Response: We concur. We will begin immediately to formulate those policies with the approval of the Olene Walker Housing Loan Fund Board.

Recommendation 2: We recommend that the Utah State Legislature consider whether land-banking is consistent with legislative intent to leverage state monies for low-income housing.

Response: This recommendation is beyond the scope of the division. However, the division will work closely with the Legislature to insure that the division, in conjunction with the Olene Walker Housing Loan Fund Board, (the decision making authority regarding the expenditure of appropriated funds), works closely with legislative intent.

Again, we express appreciation for the professionalism of your staff. We look forward to responding to questions and suggestions as this audit report is presented to various legislative committees.

Sincerely,

Gordon D Walker

Gordon D. Walker
Director, Division of Housing and Community Development

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