



OFFICE OF INSPECTOR GENERAL
City of Albuquerque

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Investigative Informative Case Synopsis

FILE NO: 22-0182-C

SUBJECT MATTER: Alleged non-compliance with public comment period

STATUS: Final

INVESTIGATOR: M. Santistevan

DocuSigned by:
Melissa R. Santistevan

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October 4, 2022
Date of Completion

DocuSigned by:
Edmund Perea

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**EDMUND E. PEREA, ESQ
ACCOUNTABILITY IN GOVERNMENT
OVERSIGHT COMMITTEE CHAIRPERSON**

October 19, 2022
Date of Approval

DISTRIBUTION:

- Honorable Mayor**
- President City Council**
- Chief Administrative Officer**
- City Councilors**
- Director Council Services**
- City Attorney**
- Department Director**
- Members, Accountability and Government Oversight Committee**
- File**

EXECUTIVE SUMMARY

The mission of the Office of Inspector General (OIG) is to provide independent and objective insight, oversight, and foresight in promoting integrity, efficiency, overall effectiveness, accountability, and transparency in government to safeguard and preserve public trust.

According to City Ordinance 2-17-2, the Inspector General's goals are to (1) Conduct investigations in an efficient, impartial, equitable, and objective manner; (2) Prevent and detect fraud, waste, and abuse in city activities including all city contracts and partnerships; (3) Deter criminal activity through independence in fact and appearance, investigation and interdiction; and (4) Propose ways to increase the city's legal, fiscal and ethical accountability to insure that tax payers' dollars are spent in a manner consistent with the highest standards of local governments.

On September 28, 2022, the Office of Inspector General (OIG) received an email complaint alleging that there was a violation of the public comment period because the documents referenced in the public notice titled NOTICE OF SEVENTH SUBSTANTIAL AMENDMENT TO THE 2020 ANNUAL ACTION PLAN FUNDING FROM THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) NOTICE OF 5-DAY PUBLIC COMMENT PERIOD, dated September 22, 2022, were not available on the City of Albuquerque website until September 27, 2022, at 2:24 pm. September 28, 2022, was the end of the public comment period. The OIG determined that the allegations contained violations of City Ordinances and regulations and that it was appropriate for the OIG to conduct a fact-finding investigation. The purpose of the investigation was to determine if there was a violation of the required 5-day public comment period required as the result of the referenced documents not being available on the City of Albuquerque website until the last day of the public comment period.

As a result of the investigation, the OIG was able to substantiate the allegation of non-compliance with the required 5-day public comment period due to the referenced documents not being available on the City of Albuquerque website until the afternoon of September 27, 2022.

ABBREVIATIONS

AFH: Assessment of Fair Housing
CDBG: Community Development Block Grant
City: City of Albuquerque
FCS: Family and Community Services Department
HUD: Housing and Urban Development
OIG: Office of Inspector General

INVESTIGATION

Background

The Department of Housing and Urban Development (HUD) creates standards for the administration of the Community Development Block Grant Program (CDBG). The City of Albuquerque (City) is a recipient of a CDBG Program Grant award. HUD requires recipients to have an approved Citizens Participation Plan for CDBG funding. HUD requires a 30-day (reduced to 5 days for emergency) public comment period for the plan and amendments.

This report is confidential and shall not be released until publication by the Office of the Inspector General. Violations are subject to the provisions of Article 17: Inspector General Ordinance.

In March 2020, the world experienced a pandemic that resulted in the U.S. Government declaring a state of emergency. With this Presidential declaration, HUD revised and relaxed some provisions of its programs. CDBG-CV funding requirements were specifically revised to reduce the 30-day (reduced to 5 days for emergency) public comment period to 5 days.

The City's Article 15 provides requirements for rulemaking. Specifically, a 14-day notice must be provided to the public and the notice shall state the time and date of a public hearing.

The City also has a Citizens Participation Plan per HUD guidelines. The Citizens Participation Plan provides a guide for citizens and organizations to participate in an advisory role in assisting with the development of the Assessment of Fair Housing (AFH), *Consolidated Plan*, the annual Action Plan, and the review of the Consolidated Annual Performance Evaluation Report.

Allegation: Non-compliance with the public comment period because the documents referenced in the public notice titled NOTICE OF SEVENTH SUBSTANTIAL AMENDMENT TO THE 2020 ANNUAL ACTION PLAN FUNDING FROM THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) NOTICE OF 5-DAY PUBLIC COMMENT PERIOD, dated September 22, 2022, were not available on the City of Albuquerque website until September 27, 2022, at 2:24 pm. September 28, 2022, was the end of the public comment period.

Authority: City of Albuquerque Article 15, § 2-15, Citizens Participation Plan as required by HUD's CDBG Instructions.

Evidence: Publicized notice and emails from Family and Community Services (FCS) staff.

Analysis: CDBG 2.1.3 requires the City to have a HUD-approved Citizens Participation Plan.

Article 15 § 2-15-3 states that notice of the intention to consider the adoption of a rule or regulation shall be given by posting in the lobby of City Hall, posting notice electronically on the City Clerk's website dedicated to the schedule rulemaking hearings and meetings of public boards, commissions, and committees and by giving written notice to the Mayor and the Chief Administrative Officer. All such notices shall be given at least 14 days before the hearing at which the proposed rule or regulation will be considered. All such notices shall state the time and location of the hearing and contain a brief description of the proposed rule or regulation and a location where the full text of the proposed rule or regulation may be obtained.

The City of Albuquerque Citizen Participation Plan required by HUD for the CDBG program states that revisions to the AFH will provide 30 days (reduced to 5 days for emergency) for public comment. All comments received will be handled pursuant to this Citizen Participation Plan. Substantial amendments to the Consolidated and Action Plans are funding adjustments or reallocations that involve:

- A. Adding, deleting, or shifting \$750,000 or 20% or more of the approved funds, whichever amount is less, from one eligible activity to another. An eligible activity is defined at 24 CFR Parts 201 through 206; and/or

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B. The introduction of a project not listed in the current Action Plan, or the removal of a listed project, valued over \$75,000.

Program Income received in any amount will not be subject to a substantial amendment since it is applied across the range of approved funds; balances resulting from program income are addressed in subsequent action plans. New activities valued over \$75,000 and funded with program income are subject to a substantial amendment.

Substantial amendments will be subject to a 30-day (reduced to 5 days for emergency) comment period following publication of the proposed amendment in a newspaper of general circulation and posting on the City's website. A summary of comments or views, and applicable responses, will be attached to the substantial amendment.

The Citizens Participation Plan also states that in the event of an emergency, the City of Albuquerque may utilize CDBG funds to meet these needs with a 5-day public comment period instead of a 30-day (reduced to 5 days for emergency) public comment period which is otherwise required for substantial amendments.

Following HUD guidance as stated in a letter dated April 2, 2022, and reiterated in another letter dated September 11, 2022, the CARES Act adds additional flexibility for both the CDBG-CB grant and, in some cases for the annual FY2020 CDBG grants in these unprecedented times. The Public comment period is reduced to not less than 5 days, grantees may use virtual public hearings when necessary for public health reasons, the public services cap is suspended during the emergency, and States and local governments may reimburse costs of eligible activities incurred for a pandemic response regardless of the date.

The OIG's review of the public notice placed in the Albuquerque Journal on September 23, 2022, revealed that a reallocation of \$3,059,662.12 in CDBG-CV funds was being made to contribute to the Sure Stay Hotel to provide permanent housing with supportive services. Per the notice, a statutory, 5-day public comment period will begin on September 24, 2022, and end on September 28, 2022, at 5:00 pm.

The OIG did see in the publication, language indicating, where the documents could be obtained. The notice of advertisement included the following language that was also published in the public notice.

“A copy of the 2020 Annual Action Plan, as well as the 2018-2022 Consolidated Plan, is available for public review weekdays between the hours of 8:30 AM and 4:30 PM at the office of the Department of Family and Community Services, at the above mentioned location, or available anytime on the City of Albuquerque website at:
<http://www.cabq.gov/family/documents/publications>”

Based on our review, it appears that the reallocation of \$3,059,662.12 in CDBG funds requires a period for public comment subject to public notice of the proposed amendment in a newspaper of general circulation and posting on the City's website.

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The OIG acknowledges that by not making the referenced documents for the amendment available for review by the public contributed to a lack of transparency and possibly a violation of the City's Citizens Participation Plan.

Allegation Finding: The OIG was able to substantiate the allegation of non-compliance with the required 5-day public comment period required as the result of the referenced documents not being available, on the City of Albuquerque website until the afternoon of September 27, 2022, for the public comment period.

Recommendation: The OIG recommends that the Department re-open the public comment period for five days with all documentation posted as stated in the public notice to ensure compliance with Article 15, the City's Citizens Participation Plan, and HUD's CDBG instructions.

Management Response: DFCS agrees with the recommendation. DFCS will re-open the public comment period for five days, with all documentation posted as stated in the public notice to ensure compliance with Article 15, the City's Citizens Participation Plan, and HUD's CDBG instructions.