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Dear Lead Hazard Control Program Grantee:

The Massachusetts Office of the Inspector General (OIG) is issuing the attached advisory to assist Massachusetts grantees and subgrantees of the U.S. Department of Housing and Urban Development's (HUD) Lead Hazard Control (LHC) program. The American Recovery and Reinvestment Act of 2009 (ARRA) currently funds these LHC grants. This advisory offers suggestions to increase program efficiency and accountability and to reduce program risks to fraud, waste, and abuse.

The OIG has reviewed ARRA-related grants and projects to identify potential vulnerabilities for fraud, waste, and abuse and other risks that could negatively influence the accountability, transparency, and anti-fraud mandates contained in the statutory language and interpretive guidance of ARRA.

The OIG based the suggestions contained in this advisory on a review of a majority of LHC grantees and subgrantees in Massachusetts including the largest recipients of LHC funds. Although the OIG based the issues contained in the advisory on a review of the LHC program, many of the suggestions may be applicable to other grant programs regardless of whether these programs receive ARRA funding. The OIG recommends that grantees review this information for applicability to their programs. Grantees should not construe the issues and suggestions contained in the advisory as the outcome of any audit, investigation, or comprehensive program review of a particular grantee.

Please do not hesitate to contact us if you have any questions, concerns, or require assistance regarding this or any other issue.

Sincerely,

A handwritten signature in dark ink that reads "Gregory W. Sullivan".

Gregory W. Sullivan
Inspector General

Risk Assessment Advisory to Grantees and Subgrantees of the U.S. Department of Housing and Urban Development (HUD) Lead-Based Paint Hazard Control Program (LHC) in Massachusetts

Introduction

This advisory offers recommendations concerning the U.S. Department of Housing and Urban Development's (HUD) Lead Hazard Control Grant (LHC) program. Under the American Recovery and Reinvestment Act of 2009 (ARRA), Massachusetts received \$8,624,565 in total LHC grants awarded to 13 grantees and subgrantees. The OIG makes the following suggestions based solely on a review of the current grant cycle.

The LHC grant program intends to assist individuals in identifying and remediating lead-based paint hazards in the home. The program helps homeowners and tenants address federal and state deleading requirements by paying for lead paint testing, abatement, and temporary relocation expenses. According to HUD's program description, the objectives of this program are to:

- Reduce and prevent the number of children under the age of six who have elevated blood lead levels, lead poisoning, or are exposed to lead-based hazards in the home;
- Develop a cooperative approach to address lead hazards in homes by organizing involvement among all levels of government, the private sector, and community-based non-profit organizations in order to establish a more cost-effective approach to identifying and abating lead-based hazards;
- Establish a public registry of lead-safe housing to allow prospective homeowners or tenants to identify those properties that have been deemed lead-safe;
- Promote employment, job training, and other opportunities for low-income and minority residents in the lead remediation industry; and
- Collect data as part of a larger community wide effort to identify high at-risk areas and children.

Remediation eliminates lead-based paint health hazards in homes. The LHC grant funds remediation work including:

- Scraping and painting exterior surfaces such as doors and windows;
- Covering exterior surfaces with vinyl and aluminum;
- Replacing exterior structures like porches and stairs; and
- Covering up walls and ceilings with plasterboard.

The following section contains the issues identified by the OIG's review.

Findings

- 1. Eligibility and Affordability Requirements:** Grantees must ensure that applicants meet HUD established eligibility criteria.

LHC program eligibility is generally based on applicant income. The OIG review identified the applicant intake process used by grantees to determine applicant eligibility as a high fraud risk. Although grantees require eligibility documentation from applicants such as pay stubs, bank statements, employer verification letters, etc, there is a risk that applicants may not provide all the necessary information, provide false information (such as false social security numbers), or may provide misinformation (such as the number of actual income earners in a household.) Grantees may not have the ability or resources to perform full applicant financial reviews or reviews beyond a basic “desk review.” The fraud potential in the verification process is particularly high when an applicant claims no income or assets, and provides only limited documentation.

Recommendation: All grantees must consistently require proof of eligibility from all applicants and verify applicant information, including, but not limited to, speaking with current or former employers, obtaining applicant permission to obtain credit reports and/or federal tax returns (for possible audit sampling), and making unannounced visits to or observations of the home/tenant-occupied building or unit in question. Grantees should expect to receive all of the information upfront. If not, the grantees should identify a reasonable amount of time for applicants to submit the necessary paperwork. Grantees should specify that they would not consider applications that fail to meet this timeline. The grantee should also use any government or third party data it may have access to (or may be able to obtain access to) for eligibility verification. Examples of this information include other government programs that an applicant may be eligible for or receive benefits from and the “e-verify” service of the U.S. Citizenship and Immigration Service.

- 2. Applicable procurement statute:** Grantees confused between M.G.L. c.149 and M.G.L. c.30B

Some grantees expressed confusion regarding which state procurement statute to follow when required to follow state and local procurement law. M.G.L. c.149 governs the construction, reconstruction, or maintenance of buildings. Grantees should use M.G.L. c.149 to procure the services of deleading contractors. Some grantees chose to use M.G.L. c.30B, that the OIG has determined to be inappropriate for these services. Other grantees appeared to follow a sound business practice approach that may be compliant with 24 CFR §85, but not with state law. In at least one case, a grantee used what it believed to be a sound business process model by hiring contractors it knew (and approved of) from prior

projects to perform the work. This action violated M.G.L. c.149 (and c.30B), raised questions concerning the level of effort employed by grantees to ensure fair and open procurement under the grant, and creates vulnerability to fraud, waste and abuse when contractors are hired based on the preferences of a public official.

Recommendation: All grantees must ensure they follow applicable procurement laws that are appropriate for the project and services they need to procure. If grantees have questions, they may contact the OIG's procurement hotline at (617) 722-8838 or the Fair Labor Division of the Office of the Attorney General at (617) 727-2200 ext. 2330.

3. Pre-qualified lists of contractors and inspectors: Grantees maintain pre-qualified lead inspector and deleading contractor lists for long periods without reprocurement and/or requalification.

Most grantees obtain contractors through a pre-qualification process. Grantees screen interested contractors to verify that they have proper licensing, insurance, adequate prior work experience, and other relevant criteria established by the grantee. Once a contractor is pre-qualified, they are eligible to bid on future deleading work funded by the grantee.

The OIG found that some grantees have maintained their pre-qualified lists for many years without updating the information on contractors or testing the market to determine whether new qualified contractors are eligible to be prequalified. As a result, the OIG found that:

- Some pre-qualified contractors are no longer active or in the deleading business. As a result, grantees request bids from firms that will not or cannot submit bids thereby limiting competition to the few contractors that remain prequalified. Limited competition may drive up bid prices.
- Some pre-qualified inspectors and contractors have expired licenses and/or outdated work experience. This could cause grantees to award work to unqualified contractors.

All grantees should frequently update their pre-qualified lists because licenses and insurance certifications expire and other criteria used to prequalify contractors may no longer be valid. Moreover, maintaining long-standing vendor relationships without the benefit of a periodic procurement does not ensure that a grantee is receiving the benefits of open market competition and receiving the best value for grant funds expended.

Grantees should consider greater outreach to generate competition for placement on prequalified lists and for the award of contracts. Grantees stated that they have

relied on network contacts and responses to newspaper advertisements – even if they placed advertisements in newspapers with low circulation.

Massachusetts currently has 160 certified deleading contractors and 83 certified lead inspectors. Because there may not be certified contractors or inspectors in or near a grantee's community, grantees need to look beyond the reach of the limited circulation of a local newspaper for qualified contractors.

Recommendation: To avoid a stagnant pre-qualified contractor list, grantees could use an "open door" pre-qualification application process in addition to periodically verifying the credentials of those already prequalified. The OIG also recommends creating new prequalified contractor lists at least once per grant cycle or every three years. Grantees should also seek to expand the contractor pool through outreach efforts directed to contractors and inspectors on the licensee lists maintained by the Commonwealth before every grant cycle. Grantees should improve the fairness and openness of the procurement process by extended outreach efforts to all licensed contractors and inspectors within a reasonable geographic area surrounding a jurisdiction. At least one grantee currently locates licensed deleading contractors in its region of the state and sends mailings to them on a regular basis. As a result, the grantee has prequalified 10 licensees for deleading work. Even though using the local newspaper satisfies statutory requirements, additional outreach is necessary to increase competition and meet sound business practice requirements of the grant.

- 4. Oversight of tenant's selection of a contractor:** Some grantees allow the tenant or unit owner to choose a contractor from a prequalified list other than the low bidder to perform deleading work, potentially undermining a fair and open procurement process.

Generally, grantees procure deleading contractors by soliciting potential bidders (most often from pre-qualified vendor lists), receiving bids, and choosing the lowest eligible bidder. However, some grantees explained to the OIG that their procurement process involves the tenant/owner of the unit soliciting and choosing bidders with the assistance of the grantees. Grantees explained that the contract for deleading work is usually between the owner and the contractor (even though the grantee pays for the work) pursuant to program guidelines. Although the grantees may recommend that the tenant/owner choose the contractor with the lowest bid, the tenant/owner is not required to choose the lowest bidder. However, if the tenant/owner chooses a bid that is not the lowest, then he/she rather than the grantee must pay the difference between the low bid and the cost of the chosen contractor. The grantee still pays the "low bid" price. Although this may be allowable under the grant and applicable procurement laws, it raises concerns. For example, contractors could collude with a tenant/owner to obtain the work. A contractor might convince a tenant/owner to pick him/her as the winning bid, even if not the lowest, and agrees to repay the difference to the tenant/owner. Other than

collusion, a tenant/owner might choose a contractor because of a pre-existing relationship with or marketing by the contractor. Even if the grantee pays the “low bid,” this could undermine the fairness of an open procurement process because the efforts of the other contractors to submit a low bid, in what they perceived to be a fair and open competitive process, could be rendered meaningless.

Recommendation: All grantees should have controls in place to limit the risk of collusion between tenants/owners and deleading contractors. Controls could include:

- Requiring the low bid unless the tenant/owner can offer a compelling reason for doing otherwise.
- Monitoring a tenant/owner’s choice of contractors.
- Requiring tenants/owners and contractors to sign non-collusion forms under the pains and penalties of perjury.
- Requesting that pre-qualified contractors refrain from contact with tenant/owners during the procurement process.

5. Unit selection process: Some grantees may not be able to perform higher priority lead abatements because they select units for deleading on a first-come, first-served basis.

The first-come, first-serve unit selection process may satisfy grant production goals and the overall ARRA mandate of having a “shovel ready” project. However, despite the need to spend funds quickly, grantees do not want to encounter a high-priority unit that cannot be delead because the grantee exhausted funds early in the grant cycle on lower-priority units. Units occupied with children who suffer from lead poisoning or elevated blood lead levels are the highest priority for lead abatement in the LHC program. As lead poisoning is a life-threatening health and safety issue, high-priority units should be delead first. In light of this risk, it may be counterproductive for a grantee to award LHC funds as quickly as possible on a first-come first-served basis. The OIG understands that HUD has imposed strict milestone spending and production goals on grantees. However, grantees should perform minimum due diligence to identify potential priority units. In one case, a grantee committed almost half of its deleading funds to low priority units within the first six months of the three-year grant cycle (including a small number of ineligible units as allowable under the grant). The grantee made this early commitment despite using grant funds for outreach efforts aimed at identifying higher priority units and underwriting the local Board of Health’s efforts to identify lead poisoning cases throughout the grant cycle. The grantee made its funding commitment before obtaining the results of the outreach efforts it funded.

Recommendation: Prior to spending significant grant funds, all grantees should first identify high-priority cases through outreach efforts, many of which are funded under

the grant. Grantees should address high-priority units first and retain a reasonable level of funding to address these cases throughout the grant cycle.

- 6. Maintaining affordability of deleaded units:** Grantees have consistently failed to file affordability agreements with the Registry of Deeds.

According to LHC program guidelines, deleaded units must remain affordable to low to moderate-income families for at least three years after the lead abatement. To ensure this, grantees execute agreements with owners and tenants of deleaded units that require that the units will remain lead-safe and affordable. Historically, grantees have recorded these agreements, outlining affordability requirements, with the appropriate Registry of Deeds. Grantees record these agreements because the grant does not provide funding for monitoring the continued affordability of the units beyond the grant cycle. Recording the agreements ensures that the restriction remains in place in the event of a property sale.

However, for budget and resource reasons, grantees have informed the OIG that they no longer record these agreements with the appropriate Registry of Deeds. As a result, there is no longer any enforcement mechanism in place to ensure the agreed-upon affordability restrictions.

Recommendation: Grantees must record affordability agreements. Because filings are an expense item, the OIG recommends that grantees include them as a separate line item in the budget proposed to HUD or DHCD during the grant application process. Grantees should also consider including monitoring and oversight costs in future budget proposals and/or allocate program resources to this effort. Grantees have advised the OIG that monitoring and enforcing these agreements beyond the grant term is not practical because of resource constraints. Even without this budget item approval, grantees should try to provide some oversight effort even though this effort would not match the efforts of a fully funded initiative. Even if limited, since some enforcement is better than no enforcement at all. Oversight of deleaded units helps ensure that the benefits of lead abatement activities, paid for with tax dollars, inure to eligible tenants, not to the owners of deleaded property who may wish to gain financially from the sale or re-rental of newly abated units. Again, the OIG understands that there are cost constraints to filing a deed restriction or post-grant monitoring if filing is not possible. However, the OIG believes that there should be some kind of accountability of these units after they are deleaded.

- 7. Agreements with subgrantees, contactors, and/or “partners”:** Some grantees rely on “good faith” or “memoranda of understanding” rather than formal written contracts to define their business relationships with subgrantees, contractors, and other parties.

Some grantees rely on oral contracts and the “good faith” between parties to ensure that such parties perform work under the grant. Additionally, documents often used by grantees to define their business relationships with other parties frequently do not spell-out the responsibilities of the parties involved, cost or price terms, schedules and timetables, or performance measures. Moreover, some of these documents are one-sided as they give inadequate attention to the rights of the grantee in the business relationship.

Ill-defined agreements or oral contracts limit accountability, create a risk for misinterpretation that could lead to conflict and possibly litigation, and make the grantee vulnerable to fraud, waste, and abuse. A good written contract clearly states the responsibilities of both parties and is a complete statement of all understandings between the parties. Clear and detailed written contracts help agencies avoid conflict by having clearly defined scopes of service, price, compliance requirements, performance indicators, and other grant-specific or sound business practice requirements such as insurance and grounds for termination. Agreements should also define important terms, identify timetables and obligations, define compliance, outline oversight policies, and incorporate procedures for updating the agreement. Additionally, grantees should incorporate policies and procedures that apply to the program, thus avoiding conflict with and providing protections for their business partners.

Recommendation: Grantees should use written contracts that clearly define all business relationships.

- 8. Oversight for Davis-Bacon prevailing wage requirements:** Grantees should ensure that ARRA-funded work includes the payment of Davis-Bacon wage rates.

The federal Davis-Bacon Act requires the payment of prevailing wages to various classes of laborers and mechanics employed through federally funded projects. Davis-Bacon wages did not previously apply to the LHC grant. Because this is the first time Davis-Bacon wages are required under this grant, grantees should act appropriately to ensure compliance. As this is a new grant requirement, the OIG believes this to be a high risk for fraud and abuse.

Recommendation: All grantees should have written Davis-Bacon reporting, monitoring, and compliance policies and procedures. Information regarding Davis-Bacon can be found on the websites for the U.S. Department of Labor (<http://www.dol.gov/compliance/laws/comp-dbra.htm>) and HUD’s Office of Labor Relations (<http://www.hud.gov/offices/olr/>). For a grantee whose grant agreement includes additional responsibility for monitoring and compliance, the OIG recommends including measures such as unannounced site visits, pay-stub verification, cancelled check and employee identification verification, and employee interviews. In addition, grantees should require sub-grantees, vendors, and

contractors sign statements that they are aware of and promise to comply with Davis-Bacon Act provisions.

9. Risk Assessments: The LHC grant is at a high risk for fraud, waste, and abuse.

The U.S. Office of Management and Budget considers all ARRA programs to be of high risk for fraud, waste, and abuse. High-risk grants require greater oversight, and grantees should consider completing a risk assessment of the program. Risk assessment is a tool used to identify vulnerabilities and efficiency issues that may affect the achievement of organizational or programmatic goals.

Recommendation: All grantees should conduct a risk assessment in an effort to identify and rate the significance of any potential risks not identified previously. Risk assessment resources are available through various public, private, and not-for-profit sources, including the Massachusetts State Comptroller and the Community Action Program Legal Services, Inc. (CAPLAW).

10. Fraud awareness and prevention policies: Many subgrantees do not have appropriate policies in place to prevent fraud, waste, or abuse.

Anti-fraud policies are important for accountability, transparency, and maintenance of a robust control environment. Developing an anti-fraud policy makes it clear that an organization will not tolerate fraud by employees and vendors and that it takes potential fraud seriously. The language in these policies should be detailed and specific to the appropriate behavior of employees. The policies should also clearly state inappropriate employee and vendor behavior and the specific repercussions for violations. Grantees should distribute these policies to all employees, and your organization should provide regular training in, review of, and enforcement of these policies.

Recommendation: All grantees should establish anti-fraud and code of conduct policies. For further information, grantees can find useful information including, the "Guide to Developing and Implementing Fraud Prevention Programs" - http://www.mass.gov/ig/oigarra/arra_fraud_advisory.pdf - and the State Comptroller's "Toolkit for Departments to Combat Fraud, Waste and Abuse" - http://www.mass.gov/Aosc/docs/business_functions/bf_int_cntrls/fraud_waste_toolkit.doc.

11. Ethics Policies: Completing the online ethics exam required by Massachusetts law is not a substitute for an ethics policy.

Some grantees believe that having employees complete the online training program required by Chapter 28 of the Acts of 2009 (the Ethics Reform Law) suffices for an ethics and anti-fraud program. Although the recent ethics reform, including the

online training program, is a significant tool to improve ethics law compliance, grantees may take additional measures to improve grantee capacity to prevent fraud, waste, and abuse.

Recommendation: All grantees should ensure that employees comply with the Ethics Reform law and implement strong ethics policies that compliment M.G.L. c. §268A. Recommended measures include, but are not limited to, periodic training, assistance and complaint hotlines, and whistleblower posters, embedding of anti-fraud policies and procedures in programs, and a zero-tolerance tone by management.

12. Reporting Fraud, Waste, or Abuse: Recipients of ARRA funding are required to report suspected fraud, waste, or abuse to appropriate oversight agencies.

The OIG has learned from its review of various ARRA grant programs that some grantees/sub-grantees may have encountered possible fraud by individual recipients of or applicants for grant benefits but have not so reported it. For example, grantees have found that applicants may have submitted false or misleading income information in order to qualify under program eligibility requirements. The OIG informed grantees of their responsibility to refer these cases of suspected fraud to appropriate authorities. The OIG found that some grantees remained unaware of this requirement and believed that a denial of the benefit application would be sufficient. However, this action is insufficient; grantees must report suspected fraud.

The following information has been excerpted from a reporting advisory released previously by the OIG:

If you or your firm receives federal funding either directly or indirectly to provide goods or services to the government then you may be a "contractor." Contractors and their employees have an obligation under federal law and regulation to report fraud, waste, or abuse to federal authorities.

You may be in violation of and subject to prosecution under the Federal False Claims Act if you know of a crime and fail to report the crime. For example, if you know that the business you work for is sending invoices with false information to the government and you fail to report it, even if you did not assist with the preparation of the invoice you may be in violation of the law.

According to federal regulations, you must "timely notify" the relevant Federal Office of Inspector General (OIG) [each major federal agency has an Inspector General] whenever there is "credible evidence" that a violation of criminal law or the False Claims Act has occurred. You must disclose this evidence when you believe that fraud, bribery, gratuity, or conflict of interest

violations have occurred in the award, performance, or closeout of a contract, subcontract, grant, or agreement.

The OIG released this advisory to inform grantees, recipients, contractors and others of their legal reporting responsibility. This advisory may be found at: http://www.mass.gov/ig/oigarra/contractor_fraud.htm Those who report may also be protected by federal and state whistleblower statute. According to the U.S. Recovery Accountability and Transparency Board, "If you are a whistleblower and you have been singled out for disciplinary actions as a result of sharing information about fraud, waste, and abuse, you have certain protections under the Recovery Act."

Recommendation: Suspected fraud, waste, or abuse must be reported to appropriate oversight agencies.

13. Fraud Prevention: Grantees can take proactive steps to prevent and detect possible fraud, waste, and abuse in grant programs.

The following information is from a previously released OIG ARRA advisory regarding proactive fraud prevention and detection. The OIG recommended the following steps:

- Do a fraud risk assessment including evaluating your control environment and decide whether you need outside experts to help develop adequate systems, controls and programs to fight fraud;
- Develop a clear, comprehensive and enforceable code of conduct for all employees, including ethics rules and fraud prevention policies;
- Perform background checks on new hires;
- Provide regular training on fraud prevention for new and long-time employees;
- Ask your external auditor to perform an in-depth review of at least one program every year;
- Segregate duties and add layers of approval so that an individual can't disburse funds all on his own;
- Require employees to take vacations and/or periodically rotate their duties to expose fraudulent routines;
- Regularly review financial and program data to identify (and investigate) trends or anomalies;
- Enforce anti-fraud controls and procedures by making sure system overrides and/or sloppy record keeping trigger a review;
- Conduct surprise audits or reviews;
- Ask your staff whether they think there's fraud in your organization and whether it occurs;
- Make sure your employees know you're interested in rooting out fraud by making it easy to report through an employee assistance program, a confidential hotline or easy access to responsible officials;

- Report fraud or abuse to the proper authorities.

Recommendation: Grantees should introduce proactive anti-fraud measures within their programs. The OIG advisory is located on the OIG website: http://www.mass.gov/ig/oigarra/fraud_prevention.htm

Conclusion

The OIG hopes this advisory will assist your program to identify LHC grant program vulnerabilities and to protect the integrity of ARRA spending. Please do not hesitate to contact the OIG if you have any questions, concerns, or require assistance regarding these or any other issues.