

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,  
Department of Justice  
Main Justice Building  
10th Street & Constitution Avenue, N.W.  
Washington, D.C. 205030

ex relator,

ERVIN AND ASSOCIATES, INCORPORATED,  
7315 Wisconsin Avenue  
Suite 1150 West  
Bethesda, Maryland 20814

Plaintiffs,

v.

THE HAMILTON SECURITIES GROUP, INC.,  
7 Dupont Circle, N.W., 2nd Floor  
Washington, D.C. 20036-1108

SERVE: C. Austin Fitts  
1410 Q Street, N.W.  
Washington, D.C. 20009

- and -

HAMILTON SECURITIES ADVISORY SERVICES,  
INC.,  
7 Dupont Circle, N.W., 2nd Floor  
Washington, D.C. 20036-1108

SERVE: National Corporation  
Research, Ltd.  
Registered Agent  
9 E. Lockerman Street  
Dover, Delaware 19901

- and -

FILED

JUN 06 1996

Clerk, U.S. District Court  
District of Columbia

CASE NUMBER 1:96CV01258

JUDGE: Charles R. Richey

DECK TYPE: Civil General

DATE STAMP: 06/06/96

GOLDMAN, SACHS & CO.,  
85 Broad Street  
New York, New York 10004

SERVE: David A. George  
Chairman of the Board  
85 Broad Street  
New York, New York 10004

- and -

BLACKROCK CAPITAL FINANCE L.P.,  
345 Park Avenue  
New York, New York 10154

SERVE: CT Corporation System  
Registered Agent  
1633 Broadway  
New York, New York 10019

Defendants.

**COMPLAINT FOR DAMAGES AND OTHER  
RELIEF UNDER THE FALSE CLAIMS ACT**

Plaintiffs Ervin and Associates, Incorporated and the United States of America ("Plaintiffs"), by and through counsel, states as and for their Complaint under the False Claims Act against Defendants The Hamilton Securities Group, Inc., Hamilton Securities Advisory Services, Inc., Goldman, Sachs & Co., and BlackRock Capital Finance L.P. (collectively, the "Defendants") on knowledge as to themselves and on information and belief as to all others, as follows:

**PARTIES**

1 Qui Tam Plaintiff Ervin and Associates, Incorporated is a corporation organized and existing under the laws of the State

of Delaware, with its principal place of business at 7315 Wisconsin Avenue, Suite 1150 West, Bethesda, Maryland, 20814. Plaintiff has standing, pursuant to 31 U.S.C. § 3730(b) (the "False Claims Act" or the "Act"), to assert the legal claims contained herein to the extent that a private right of action exists under 31 U.S.C. § 3730(b) and authorizes a civil action for a violation of § 3729 for the person and for the United States Government.

2. Defendant The Hamilton Securities Group, Inc. is a corporation with its principal place of business at 7 Dupont Circle, 2nd Floor, Washington, D.C. 20036-1108.

3. Defendant Hamilton Securities Advisory Services, Inc. is a corporation with its principal place of business at 7 Dupont Circle, 2nd Floor, Washington, D.C. 20036-1108.

4. Defendant Goldman, Sachs & Co. is a corporation with its principal place of business at 85 Broad Street, New York, New York 10004.

5. Defendant BlackRock Capital Finance L.P. is a limited partnership with its principal place of business at 345 Park Avenue, New York, New York 10154.

#### **JURISDICTION**

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (1988) because this action arises under the Federal False Claims Act, 31 U.S.C. §§ 3729, et seq., which provides that the United States District Courts shall have exclusive jurisdiction of actions brought under that Act.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a) (Supp. V 1993).

8. Section 3732(a) of the Act provides that "any actions under Section 3730 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business or in which any act proscribed by Section 3729 occurred." The acts complained of herein occurred in the District of Columbia, within this judicial district.

9. Under the Act, this Complaint is to be filed under seal and shall remain under seal for a period of at least sixty (60) days and shall not be served on the Defendants until the Court so orders. The Government may elect to intervene and proceed with the action within sixty (60) days after it receives both the Complaint and the material evidence and information

#### SUMMARY OF CLAIMS

10. This complaint discloses a conspiracy by a cabal of four extremely well-connected financial and government insiders who are taking advantage of their influence over HUD and their connections to the current Administration in a scheme to direct literally billions of dollars of United States taxpayer assets to themselves under the guise of re-engineering the government and helping to balance the Federal budget.

11. The scheme is being conducted through The Hamilton Securities Group, Incorporated and Hamilton Securities Advisory Services, Inc. (collectively, "Hamilton"), HUD's primary

financial advisor, and a partnership between Goldman Sachs & Co. ("Goldman Sachs") and BlackRock Capital Finance LP ("BlackRock"), two very large and well capitalized Wall Street firms who have been uniquely successful in acquiring HUD-held assets for sale at discount prices.

12. Central to Defendants' ability to effectuate their claim is their relationship with Helen Dunlap ("Dunlap"), HUD's Deputy Assistant Secretary for Operations in the Office of Housing. Although not named as a Defendant in this suit, Dunlap is the linchpin of the conspiracy suit insofar as she has used her inside position of power and influence to direct the Financial Advisor procurement to Hamilton and otherwise protect the scheme from discovery by retaliating against anyone inside or out of HUD who questions her activities.

13. The scheme is being accomplished through (i) Hamilton's providing Goldman Sachs and BlackRock with the secret opportunity to increase sealed bids; (ii) Hamilton's illegal disclosure of material and confidential inside bid information to the "tag team" of Goldman Sachs and BlackRock; (iii) Hamilton's misapplication of a defective "optimization model" to limit competition; and (iv) Hamilton's misdescribing the true nature of the assets offered for sale. In effect, HUD and Hamilton have intentionally stifled the ability of all but the largest financial institutions who understand the process based on inside information to win the auctions, to the exclusion and detriment of all other investors. Although this relates to multifamily and

single family note sales, much of the discussions herein relate primarily to single family sales, and attached as Exhibit A is a detailed analysis by Ervin of these problems.

14. The gist of this Complaint is that HUD and Hamilton have intentionally limited competition for the pools of single family assets (worth billions of dollars) to enable Goldman Sachs and BlackRock to win the asset pools through the illegal selective disclosure by Hamilton of material and highly confidential bid information and insider knowledge on HUD's note sales process. This constitutes a serious and illegal breach of responsibilities by HUD's primary financial advisor and one of its co-advisors, and constitutes a serious threat to the integrity of HUD and its entire note sales process.

**Ervin's Separate Lawsuit Against HUD**

15. Simultaneous with the filing of this Complaint, a separate lawsuit is being filed in this same court against Helen Dunlap, the United States Department of Housing and Urban Development, Henry Cisneros as Secretary of the United States Department of Housing and Urban Development, the United States Small Business Administration, Philip Lader as administrator of the United States Small Business Administration, and the United States of America. Ervin has been forced to file this action to protect its business and its employees from other illegal actions by Helen Dunlap and agencies of the United States government.

16. As Ervin prepared and documented the related action referred to above, it became increasingly aware that its specific

problems represented only a small portion of the much larger conspiracy that exists. Where the other suit describes what happened to Ervin, it often does not describe why those things happened. The conspiracy described in this action provides the reasons why Ervin, who understands what is going on, is such a threat to Dunlap, and why she was motivated to cut Ervin out of the entire note sale and portfolio re-engineering processes and prevent Ervin from fairly competing for new work with HUD. Quite simply, it was because Ervin would not have stood by and let these unfair and illegal activities take place.

17. Ervin's related suit seeks declaratory and injunctive relief and money damages, with the major issues falling into seven categories, as follows:

- Contracting Corruption and Favoritism;
- Racial, Gender, and Age Discrimination;
- Retaliation Through Breach of Contract;
- Theft of Ervin's Intellectual Property;
- Insider Trading;
- Cover-Ups; and
- Retaliation Through Defamation, Rumor, Innuendo, Cancellation of Existing Work, and Blackballing.

18. Importantly, Ervin is not bringing any claims in this action which are based upon the allegations or transactions in the related, but separate, suit

#### FACTUAL BACKGROUND

19. The allegations raised in this Complaint are admittedly complex. If they were not complex, the parties to the conspiracy

alleged herein would not have been able to cover up their misdeeds and illegalities. Were it not for Ervin's knowledge of HUD and its operations, Ervin's documentation of a series of seemingly unrelated facts and occurrences through numerous FOIA requests and discussions with various HUD employees and successful and unsuccessful Wall Street bidders, and based on objective observation of the note sales process, Ervin would not have been able to piece together the causes of action alleged herein. Indeed, Ervin is the original source of the information alleged herein insofar as Ervin has spent months investigating HUD's conduct of the note sales process and has assembled facts which it believes establish clear violations of the False Claims Act. No one fact is dispositive; taken together, however, which Ervin has done, the facts reveal a level of fraud and corruption that dwarfs previous HUD scandals.

20. The False Claims Act violations alleged herein arise out of the relationship between Goldman Sachs, BlackRock, Hamilton and Dunlap. Hamilton defined this relationship as "a you scratch my back, I'll scratch yours" situation. (This "back scratching" arrangement was first predicted by Hamilton in its 1993 best and final offer to provide Financial Advisor services to HUD, a copy of which Ervin received under the Freedom of Information Act ("FOIA"), and which is discussed more fully herein.)



21. To successfully implement the conspiracy described herein, Dunlap, aiding and abetting the Defendants, created an environment within HUD that permits her to:

- 1) maintain an iron grip and absolute control over the note sale and portfolio re-engineering processes at HUD;
- 2) eliminate anyone who might understand and disclose what is going on;
- 3) restrict factual information only to insiders; and
- 4) eliminate internal and external controls over the note sale and bidding processes.

This was almost accomplished.

22. Dunlap, through her interference in and corruption of the procurement processes and employment practices at HUD, has caused Hamilton to become HUD's contractor of choice in connection with the administration and implementation of the note sales effort. Dunlap has gone to extraordinary lengths to ensure that Hamilton, and only Hamilton, is in a position to oversee the implementation of the note sales effort.

23. In addition, Dunlap has used her position with HUD to eliminate others who are not on her team who are able to understand the process. Her history is to eliminate anyone within or outside of HUD that might prevent her from covering up her misdeeds. When Judy May, the original HUD career staff person responsible for note sales and the original Hamilton financial advisor contract, questioned Hamilton's activities, she was quickly removed and transferred to a lesser position within HUD. When Asset Strategies, an expert in the field of single

family note sales brought in by Hamilton to structure such sales, expressed their opinions about the problems with the process, they were forced to resign or were fired. When Ervin started to question HUD's contracting processes under Dunlap and the optimization model, it was blackballed by HUD from further contracts. The message has clearly been sent that challenging Helen Dunlap is a career ending, or livelihood threatening, decision.

24. Dunlap's ability to control and, in some instances, selectively disclose information is critical to the conspiracy. Control over information and directing what news is let out provides further indication of a cover up. There is no reason that the bids on the single family note sale should not be made public. If they were, most of the potential bidders would recognize their involvement was a waste of time and money. This in turn might be sufficient reason to institute an Inspector General or Congressional investigation, which could then harm the ability to continue with the conspiracy.

25. Adding to the ability of the Defendants to accomplish their unlawful acts is the fact that, despite dealing with transactions that can approach a billion dollars each, the independent oversight and internal controls at HUD that should ensure a note sales process that is free from fraud and abuse are almost non-existent. HUD has all but delegated the entire responsibility for these checks and balances to Hamilton.

26. Because the matters alleged herein are complex, it is critical to review the identities and relationships of the parties.

**Ervin and Associates, Incorporated**

27. Ervin was formed in July 1989, by John Ervin and a small group of asset managers who had directed the Nation's largest portfolio of privately-owned, low-income apartments. Faced with the loss of their jobs through corporate downsizing, they started a business that would support affordable housing on a national basis.

28. Ervin has been awarded contracts with HUD to provide Multifamily Asset Management, Review of Annual Financial Statements, Delegated Processing, Physical Inspections, Technical Assistance, and various single family processing and servicing engagements, all of which cover tens of billions of dollars in FHA insured mortgage value. Under these contracts, Ervin has worked with HUD's Offices of Inspectors General and various United States Attorneys' offices around the country to enforce the nation's housing laws

29. Ervin enjoys the reputation for scrupulous honesty and for being a nationally recognized expert on both multifamily and single family affordable housing and loss mitigation, as well as on HUD. Ervin possesses the most comprehensive database of operating information on HUD's multifamily projects and more experience with this class of housing than any other independent housing organization in the United States. In short, Ervin has a

unique understanding of housing and of HUD that provides it with the expertise and credibility to speak to the issues discussed in this complaint.

HUD's Office of Housing

30. HUD's Office of Housing has direct responsibility over all single family and multifamily properties, including asset management, disposition and production activities for the Federal Housing Administration. It currently oversees over 16,000 multifamily projects with over 2 million housing units and original mortgages totaling over \$50 billion. In addition, under various programs, HUD insures the mortgages on millions of single family homes in America, with such insurance in effect amounting to hundreds of billions of dollars.

31. HUD's statutory objective is not to own properties but only to insure and regulate those loans that it insures. If a multifamily mortgage goes into default and cannot be brought current, however, the mortgagee typically assigns the loan to HUD in return for a substantial payment from the Federal Housing Administration ("FHA"), an agency within HUD.

32. HUD is also responsible for administering the Section 8 rental assistance subsidy program which provides rental assistance to underprivileged families by paying the difference between the fair market rents and 30% of the residents' income. As a result of such payments, HUD becomes the source of most of the revenue to meet the mortgage payments on many HUD-insured mortgages.

Helen Dunlap

33. Dunlap is a Schedule C political appointee who arrived as HUD's Deputy Assistant Secretary for Multifamily Housing on June 18, 1993 with responsibility for all multifamily housing operations throughout the United States.

34. In November 1995, Dunlap was transferred to the lesser position of Deputy Assistant Secretary for Operations in the Office of Housing after an internal investigation by HUD's Inspector General ("IG") revealed alleged irregularities in the Department's multifamily note sale program. To Ervin's knowledge, despite Dunlap's demotion, the IG investigation and findings were never made public.

35. Although Dunlap was officially relieved of responsibility for multifamily housing, she has retained absolute control over HUD's note sale and portfolio re-engineering activities through which HUD is transferring billions of dollars of taxpayer assets through Hamilton to the private sector, including Goldman Sachs and BlackRock.

36. Dunlap has assembled a small but well-placed group of contractors and HUD employees who are loyal to her and who will follow her lead without question. This group, the most prominent member of which is Hamilton, totally controls the note sales and portfolio re-engineering initiatives and, directly or indirectly, all contracting relating to these activities.

37. Dunlap utilizes her select group of trusted outside contractors to complete her agenda. This includes using

contractors to perform personal service and lobbying activities, both of which are unlawful under the Federal Acquisition Regulations ("FAR"), but which allows Dunlap to exercise absolute control over her "company line."

38. Subscribing to the maxim that information is power, Dunlap strictly limits and controls the flow of any information relating to her agenda to ensure that the only truth told at HUD is her truth. Quantitative factual information which might raise questions about her agenda is strictly off-limits to those whom she perceives as adverse to her. This is particularly true with regard to information included in annual financial statements and information related to note sales activities.

**The Hamilton Securities Group, Inc.**

39. From the beginning of her tenure at HUD, Dunlap closely aligned herself with Hamilton, a female owned and controlled contractor of about 20 persons headed by C. Austin Fitts. Fitts is an ex-Assistant Secretary of Housing and FHA Commissioner.

40. Hamilton has become the contractor of choice for Dunlap, being assigned huge contract and subcontract awards, typically under less than fully competitive circumstances. As a contractor, Fitts and Hamilton have been provided with a level of access, power and influence by Dunlap within HUD that enables it to exert virtually unfettered influence over the note sales process.

41. Hamilton was awarded a competitively bid contract in September 1993 to act as HUD's first Financial Advisor. HUD

requires the services of a Financial Advisor to assist HUD with the administration and implementation of the note sales process. This first Financial Advisor contract was to be awarded as a two year contract with a maximum value of \$1 million, and was to be billed on an hourly basis. Through noncompetitive contract modifications and expansions, this contract is now a \$19 million contract. The hourly billing originally contemplated in the contract now provides for other than hourly billing and contains provisions for huge incentives, which, upon information and belief, are based upon HUD's note sales. It has also allowed Dunlap and Hamilton to create the structure being used by HUD for note sales.

42. In order to create the appearance of fairness, HUD sought to procure Financial Advisor services from several sources to legitimize Hamilton's grip on note sales. The most recent Financial Advisor contracts were to be for a total of \$20 million. Winners in the "competition" to date are Hamilton, Merrill Lynch, Cushman & Wakefield, and CS First Boston. Ervin has learned that CS First Boston has withdrawn from award, possibly because of the control exerted by Hamilton. Under any circumstances, withdrawing from a contract providing for a share of \$20 million after such contract was awarded is highly unusual and should be thoroughly investigated.

43. In order to assist it with the administration and implementation of the note sales process, Hamilton has hired various contractors, including BlackRock which has acted as a co-

financial advisor on certain note sales. In what appears to be an obvious and blatant conflict of interest, BlackRock, along with its partner Goldman Sachs, have been uniquely successful in acquiring HUD assets.

**Goldman Sachs**

44. Goldman Sachs is a global investment banking and securities firm. Its clients include corporations, governments, institutions and individuals worldwide. The firm is registered as a broker-dealer with the U.S. Securities and Exchange Commission and as a futures commission merchant with the Commodities Futures Trading Commission.

45. Goldman Sachs is a very large contributor to President Clinton's presidential campaign efforts and is extremely well connected to the Administration.

**BlackRock Capital Finance, LP**

46. BlackRock serves as an investment advisor to institutional and individual fixed income investors in the U.S. and overseas through a number of funds and separately managed accounts with combined total assets in excess of \$27 billion.

47. In the fall of 1995, Ervin staff met with representatives of Goldman Sachs and BlackRock in New York, at their invitation, to discuss potential opportunities arising from HUD's multifamily affordable housing inventory. The meeting was held the day Goldman Sachs and BlackRock were advised by HUD that they were successful in the follow up auction in the first single family note sale where Goldman Sachs was the only bidder. Ervin



was told by both Goldman Sachs and BlackRock that, for the purposes of any HUD note sale efforts, Goldman Sachs and BlackRock should be considered as a single entity. To the best of Ervin's knowledge, this relationship remains intact.

#### The Conspiracy

48. Ervin believes that a conspiracy exists whereby Dunlap, Hamilton, Goldman Sachs, and BlackRock are operating under an arrangement wherein Dunlap is able to exercise her power to enable Hamilton, assisted by BlackRock, to perform all financial advisor services to HUD in connection with its note sales effort. Information about the note sales is then passed by Hamilton to BlackRock which then shares such information with its "tag team" partner Goldman Sachs. The result is that Hamilton is able to collect huge fees for relatively easy transactions. Goldman Sachs and BlackRock are thereby able to consistently win billion dollar portfolios of assets that they can churn to produce hundreds of millions of dollars of profits.

#### Note Sales

49. In 1994, HUD held a portfolio of approximately 90,000 single family loans and about 2,500 multifamily loans as a result of insurance claims paid on defaults and assignments of mortgages it had insured. The unpaid principal balance of this HUD-held portfolio exceeded \$10 billion.

50. In 1994, Dunlap instituted a program, primarily through Hamilton, designed to dispose of HUD's \$10 billion portfolio of

assigned loans through public sealed bid auctions, and in certain cases relating to other governmental agencies, negotiated sales.

51. Because of the way the sales process was designed, particularly through the use of large pools of assets and a flawed optimization model, the number of potential winners was significantly limited. This is despite the fact that HUD's rule providing authority for single family and multifamily note sales required the opportunity for small investor participation. This intentional limitation reduces competition for these assets and allows for the success of the conspiracy, which could not be successful if there were a large pool of prospective bidders.

52. Negotiated sales to private entities are prohibited. Nevertheless, because of the extremely large capital requirements, this solution was clearly directed to a few Wall Street firms, rather than to the more diverse industry that has historically provided affordable housing throughout the United States.

53. HUD is disposing of HUD-held assets through various types of note sales, as follow:

- Unsubsidized multifamily notes - sealed bid auctions;
- Subsidized multifamily notes - negotiated sales;
- Partially subsidized multifamily notes - structured transaction; and
- Single family notes - sealed bid auctions.

54. Additionally, as part of its Portfolio Re-engineering process, HUD intends to transfer \$20 billion to \$30 billion of other assets into trusts based, to some extent, on the concepts

developed in the Partially Subsidized Multifamily structured note sale where BlackRock acted as "co-investment advisor" to Hamilton. It is expected that Goldman Sachs and BlackRock will become major participants in these trusts.

55. In the fall of 1995, Austin Fitts confided to John Ervin that she expected HUD would have to take an approximate \$25 billion write off before the note sales and portfolio re-engineering processes were completed. A very large but as yet unknown portion of these write offs will convert to profits for Wall Street players.

56. HUD's ostensible objective in implementing these note sales is to reduce the number of difficult projects that HUD's dwindling staff has to service. Of secondary importance is the recovery of funds for the taxpayer. Under the existing structure, the objective of maintaining the nation's affordable housing supply is of little importance to Dunlap or the Defendants. Ervin suspects, however, that the real motivation directing these sales is to churn fees for Hamilton, Goldman Sachs, and BlackRock at the expense of the U.S. taxpayer.

57. Dunlap and Hamilton have always recognized, and even predicted, the potential for conflicts of interest in the note sales process. In its 1993 best and final offer to provide Financial Advisor services to HUD, Hamilton stated, ". . . we believe the potential for conflict and problems would be substantial." Additionally, Hamilton acknowledged the potential for conflicts in hiring a member of the FHA "bidders club."

Hamilton's best and final offer stated that, if it was teamed with a member of the "bidders club" it "would run the risk that [its] capital markets partner would be joining the team primarily to gain access to critical market information." Hamilton stated that the motivation of a teaming partner that was part of the "bidders club" would be to trade that information for other favors, which Hamilton referred to as "a common practice in the mortgage loan sale market." Hamilton explained this "you scratch my back, I'll scratch yours" arrangement as "common among the firms that serve as both loan sales advisor and bidder..." and as detrimental to HUD. Despite this, Hamilton has done exactly what it warned HUD against by hiring BlackRock as a subcontractor to help conduct some of HUD's note sales.

58. With full knowledge of the risk of conflict, Hamilton, with Dunlap's concurrence, hired BlackRock as a "co-investment advisor", at least for the partially subsidized note sale and possibly more. Under any circumstances, considering Hamilton's small size, working closely together on one project could only help BlackRock to become knowledgeable about other activities. BlackRock is also part of a group that was the winning bidder (based on the optimization model) in both the first and second single family note sales and, along with Goldman Sachs, is attempting to sell subsidized loans to state agencies.

59. Ervin contends that HUD, presumably Dunlap, went to extraordinary lengths to waive, draft around or cover-up what appears to be gross and highly suspect conflicts of interest.

60. To be able to pursue a note sale type of transaction, which may involve literally thousands of properties, requires prospective bidders to formulate purchase prices, incur due diligence costs, prepare bid deposits and possess the capability to service the portfolios, all of which are valued in the hundreds of millions of dollars. These requirements significantly limit the number of potential investors who actually have a chance to purchase these assets to no more than a handful. This is proven by the sales history to date.

**The Key To the Conspiracy is Dunlap's Ability to Eliminate Any Criticism of the Note Sales Effort**

61. Hamilton teamed with Asset Strategies, Inc., an expert in single family note sales, to respond to HUD's first RFP for financial advisors. Asset Strategies became very distressed about the way Hamilton and HUD chose to manage the note sales process and went on the record to tell HUD about the problems. Asset Strategies was particularly distressed over Hamilton's and HUD's use of the optimization model, and brought specific concerns to HUD's attention in that it:

- is not fair;
- overly complicates the process for bidders;
- is contrary to the way single family assets should be sold to maximize value, and is not necessary for homogeneous pools;
- locks many people out of the opportunity to win;
- heavily favors the "big boys" like BlackRock and others;

- is not the way HUD should sell affordable housing loans because smaller local banks, mortgage bankers, and investors cannot participate;
- does not get HUD the highest price;
- is not in the U.S. taxpayers' best interests;
- limits the audience; and
- misleads smaller participants into thinking they can win and wastes their time, money, and resources while making Hamilton look good for producing a large bidder turn out.

62. HUD has ignored Asset Strategies' warnings. Because it spoke out against these problems, Asset Strategies was fired or forced to resign.

63. In addition, Dunlap, by instilling an atmosphere of fear, intimidation and retaliation within HUD, has forced HUD career employees and contractors who might be inclined to disclose the problems or weaknesses in the note sales process and produce constructive debate in an effort to solve them, has instead encouraged or cajoled them to look the other way or suffer the consequences. For example, Judy May, the previous GTR on the Hamilton contract, after objecting to what she believed was a bait and switch contract modification to improperly increase and enlarge the contract, was removed from the contract and transferred by Helen Dunlap to a position far away from the note sales. This sent a very strong message throughout HUD that questioning Hamilton or Dunlap would bring prompt retaliation from Dunlap.

64. Indeed, Ervin was forced to bring his separate lawsuit against HUD because Dunlap has orchestrated a campaign of

retaliation against Ervin for speaking out about HUD's conduct of the note sales process.

**Major areas of impropriety**

65. The major areas of impropriety in the note sales process which give rise to violations of the False Claim Act are as follows:

- Hamilton gave Goldman Sachs and BlackRock a secret opportunity to increase a sealed bid followed by a "make-up" opportunity to purchase 3,100 loans;
- Hamilton illegally disclosed material and confidential inside bid information to enable Goldman Sachs and BlackRock to win a portfolio of single family loans;
- The misapplication by Hamilton of a defective "optimization model;" and
- Hamilton's misrepresentation of the true nature of the portfolios offered for sale.

**Secret Opportunity to Increase Sealed Bids**

66. In the first sealed bid single family note sale, Goldman Sachs, BlackRock and their other bidding partners submitted the winning bid as determined by the optimization model. Since the bid was below the unstated minimum for credit scoring purposes, however, the bid had to be rejected.

67. Bypassing any pretense of fairness, Hamilton then secretly gave Goldman Sachs and BlackRock the opportunity to increase their bid and thereby win an \$876 million dollar portfolio. Goldman Sachs and BlackRock, believing that HUD was bluffing, refused to increase their bid.

68. Offering only one party in an auction the ability to increase its bid to beat the winning bidder, if not illegal, is

at best highly unusual and erodes the confidence in the government and the note sales process.

69. In what appears to have been a makeup call, Goldman Sachs and BlackRock were able to subsequently purchase about 3,100 unsold assets in a quick follow-up auction, where Ervin believes that they were the only bidder. Because the follow-up auction occurred so quickly, the chances were minimal that another bidder would have the resources, financial wherewithal or understanding of the process to meaningfully or competitively participate in the process.

70. Ervin believes that allowing a single inside bidder to improve its bid or to receive a non-competitive "make-up" call, as was done in the first single family note sale, was inappropriate and illegal, unless such opportunity was made available to all bidders.

**The Illegal Disclosure of Material and Confidential Inside Bid Information**

71. At least one, if not both, of the firms of Goldman Sachs and BlackRock is acting, or has acted, as a subcontractor to Hamilton, HUD's Financial Advisor. If true, such firms would be privy to HUD's processes and methods for selecting winners for note sales, including the single family note sales, which should automatically disqualify them from participating as a bidder on any such note sales. Ervin believes these firms have unfairly utilized their insider understanding of the note sales process to purchase single family notes in each note sale.



72. In order to bid in the second single family note sale, a bidder was required to post a bid deposit of at least 10% of its largest bid. The bid deposit had to have been wire transferred to a designated depository account by 2:00 PM on the day bids were due. The bids themselves, however, were due by 3:30 PM, ostensibly to allow HUD's financial advisor to verify the receipt and amounts of the deposits that bidders made.

73. In a sealed bid note sale, the amounts of the required 10% bid deposits that have been made by potential bidders is extremely sensitive information. Not only does such information reveal who intends to bid, more importantly, it also indicates the maximum amount of their intended bid.

74. Based on the evidence it has been able to gather, Ervin believes that BlackRock made a winning bid in the second single family note sale based on inside knowledge of the amount of the largest deposits made by the next highest bidder, Lehman Brothers. Ervin understands that the Lehman Brothers team bid approximately \$618,000,000 for the portfolio offered in the second single family note sale. Ervin also understands that BlackRock bid approximately \$620,000,000 for the same portfolio, thereby winning the "competition" by a very small margin -- approximately \$2 million.

75. Ervin understands that the BlackRock deposit that was wire transferred to the depository was approximately \$67,000,000, allowing for a maximum bid by BlackRock of approximately \$670,000,000. Ervin also understands that the Lehman Brothers

team made the next highest deposit of approximately \$61,800,000, allowing for a maximum bid by the Lehman Brothers team of approximately \$618,000,000. The difference between these two maximum possible bids was approximately \$52,000,000.

76. According to information provided to Ervin, Ervin believes that a representative of BlackRock was stationed in the lobby of the hotel where Hamilton was verifying bid deposits and waited until the last possible minute to submit BlackRock's bid. Ervin believes that Hamilton caused information about the other bid deposits to leak to BlackRock in order to permit BlackRock to tender a winning bid, but by an amount that was no more than necessary to do so. Indeed, BlackRock's winning bid was a mere approximately \$2 million more than Lehman's bid.

77. Given the large sums of money involved and the cost of those funds, especially if a bidder does not win, it is reasonable that a bidder would make a deposit only equal to 10% the amount of its bid, absent some other motive. Given that BlackRock deposited approximately \$67,000,000, which was \$5 million more than was necessary for the bid it made, it was obviously prepared to bid as high as \$670,000,000. It appears that if BlackRock knew the amount of the Lehman Brothers' team bid deposit, it was able to save itself approximately \$50 million at the expense of the U.S. Government, and hence, the American taxpayers.

78. Ervin believes the Government was cheated out of approximately \$50 million as a result of the acts set forth above.

**The Defective "Optimization Model"**

79. For its sealed bid auctions, including the single family and multifamily auctions, HUD and its Financial Advisor have embraced and are utilizing a Bell Labs computer program that is advertised as producing the maximum dollar return to the government when evaluating pools of assets for sale. It is flawed because it is predicated on the concept of a totally perishable commodity, i.e., the allocation of airline crews on a certain day, instead of the reality, which is tangible assets with ongoing value. The model assumes that if all assets are not sold in the sale they are scheduled for, they will immediately lose all of their value. This is obviously invalid when dealing with real estate, and in effect allows only the largest investors to be successful.

80. There are two other major flaws in this program that people have used to gain an unfair advantage:

- 1) No minimum price is assigned to assets not bid on; and
- 2) People who understand the optimization model but cannot afford to bid for all of the assets being offered (typically in excess of \$500 million) recognize that they have little realistic chance to win. With this understanding, they elect not to invest substantial time and money to participate in the note sales, thereby reducing the competition for the assets. This exacerbates the biased impact of the optimization model.

81. The obvious effect of the optimization model, particularly for single family assets, is that only the biggest, most well capitalized investors who understand the optimization model will be successful, unless there are an extremely large number of other non-overlapping bids. Obtaining such non overlapping bids in the single family note sale context is statistically impossible.

82. The March 20, 1996 single family note sale provides an example of how this model works:

- HUD offered 750 pools of assets for sale totaling 16,240 loans on individual single family homes. Each pool contained about 20 loans, with a pool value of approximately \$1 million each. To enable a potential investor who might have an interest in this type of opportunity to obtain the bidding package, the investor, if it was a company, had to certify that it had assets of at least \$5 million. An individual investor had to have assets of \$1 million or show he or she was actively in the business. There are a limited number of investors who can meet these tests.
- Each qualified bidder was limited to submitting a maximum of 10 bids. Contrary to the approach used for multifamily sales, a bidder could not bid for each of the 750 pools separately.
- A 10% cash bid deposit was required which was not returned for about 10 days. HUD kept the interest on these deposits, making it even less attractive to bid.
- The optimization model effectively starts with the largest dollar bid and then attempts to take other non-overlapping bids, starting with the highest one, and determining if any combination of them can beat the highest dollar bid or combination of bids. A hypothetical example follows:

Bidder #	Pools Bid On	Total Bid	Bid Price/ Pool
1	750	\$600 million	\$800,000
2	350	\$500 million	\$1,428,000
3	425	\$550 million	\$1,294,000
4	30	\$45 million	\$1,500,000

Since bidders two and three must have had to have at least 25 overlapping bids because they total 775 bids out of 750 pools, they cannot both be accepted. Although the laws of probability show that in the vast majority of cases both Bid #2 and Bid #3 will have overlapping bids with bidder #4, it is mathematically possible that they do not. Considering this, the following are the possible bid combinations to be evaluated using the optimization model:

Bidder #	# of Pools	Total Bid	Average \$ per Pool	Pools Left
1	750	\$600 Million	\$800,000	0
3 & 4	455	\$595 Million	\$1,307,692	295
3	425	\$550 Million	\$1,294,118	325
2 & 4	380	\$545 Million	\$1,434,211	370
2	350	\$500 Million	\$1,428,571	400
4	30	\$45 Million	\$1,500,000	720

It is obvious that in the above situation, any prudent seller utilizing common sense would accept bids 2&4 or bids 3&4 and resell the remaining pools at a later time. By accepting bids 3&4, the government would gross only \$5 million less than

bidder #1, but would have 295 pools to offer in another future sale. They would need to gross only \$16,385 per pool to break even. Despite the common sense approach, the optimization model used by HUD demands the government accept bidder #1's bid because the gross proceeds are \$600 million compared to the next bid of \$595 million.

83. This issue is complicated even further by the fact that each bidder, of which there are a limited number in reality, can only make 10 individual bids. To obtain the full coverage that is necessary for individual pool bidders to be able to compete against large pool bidders, there must be a minimum of 75 individual pool bidders, each bidding on 10 separate pools with no overlap, to compete with the single large pool bidders. The probability of such non-overlapping bids in a completely random situation increases the required number of individual pool bidders to at least 500, each of which must bid on the maximum 10 pools. Considering the realistic size of the potential market for these loans, it is statistically impossible for individual pool bidders to be successful.

84. HUD and its advisors, however, have implemented a public relations disinformation campaign designed to convince smaller bidders that they actually have a chance to be successful. This campaign is designed to minimize the risk of the preferred players being caught in what obviously is an insider deal. A publication entitled Update, dated Spring 1996, and issued by Hamilton and HUD, discusses single family sales and states:

"The sale features new auction procedures designed to attract a wide range of buyers - including small firms,

institutional investors, commercial banks and companies wishing to develop ongoing business around the purchase of FHA loans."

85. The simple fact is that considering the nature of the optimization model, stating that small players have a chance to win is an outright lie and is calculated to cloak the note sales process in the cloth of fairness when, in fact, it is not.

**Misrepresentation of True Nature of Portfolios**

86. Hamilton has knowingly and continuously misrepresented both the opportunities available from the note sale portfolios being offered, particularly the single family portfolios, and the chance of small investors to participate in these opportunities by:

- referring to the single family portfolio as consisting of less attractive non-performing loans when in fact the majority of the notes are actually performing;
- misclassifying single family properties included in the sale. In the second single family note sale, 1,256 properties were advertised as non-performing when using HUD's own criteria they were in fact performing;
- allowing a process that, by requiring a combination of a limited number of bids, large deposits and a one-sided optimization model, slants the playing field to favor only full pool bidders (typically those with in excess of a half billion dollars); and
- allowing or even encouraging the creation of bidding groups made up of the largest participants significantly limits competition and comes close to allowing collusion.

87. The result of these and other factors is a bid process that can only be won by a select group of a few extremely wealthy investors, some of which have and continue to use inside

knowledge of the process to be successful. This is in violation of HUD's own multifamily note sale rule promulgated on September 22, 1994, to encourage participation by small investors by offering non-performing loans in small pools.

88. HUD has also misdefined the loans to make them appear less attractive than they actually were. The first line of the Spring 1996 edition of *Update* stated:

"The Federal Housing Administration (FHA) has set March 20, 1996 as the bid date for the sale of \$760 million of non-performing single family mortgage loans"  
(emphasis added)

The fact is that of the 16,240 loans being sold, 8,393 or almost 52%, were in fact performing loans, which are much more attractive to an investor, and are much more valuable and marketable than non-performing loans. By telling potential bidders that only non-performing loans are available encourages many otherwise potential bidders not to even investigate the possibility of bidding (on the premise that many bidders do not wish to incur the risks associated with non-performing loans), thereby reducing the competition and driving down the price of the loans.

89. In addition to the above misinformation, 1,256 loans were classified by HUD in the non-performing loan categories in the offering memorandum, but were in fact, performing, further reducing the possible competition and driving down the price for the loans.



### Sales to State Housing Finance Agencies

90. HUD has entered into a program where it intends to sell/transfer its HUD-held subsidized multifamily loans to state Housing Finance Agencies on a negotiated, noncompetitive sale basis. A demonstration program has been undertaken and negotiations are proceeding with three to six states.

91. The presumption is that the state agencies are best able to make decisions regarding how affordable housing will be handled within their state. Although this logic is credible, since HUD has announced that it intends to implement some type of undefined portfolio re-engineering process, the risks associated with these projects become very difficult to deal with. Since state Housing Finance Agencies are very protective of their bond ratings and are very risk adverse, HUD has in effect proposed a program that will be very difficult to implement directly with state HFA's.

92. Conspiring to take advantage of this situation, Goldman Sachs, BlackRock or both have made offers to be the equity/debt partner to one or more of the three first round state HFA'S HUD is now negotiating with. The effect of this is to reduce the risk to the state FHA's while positioning Goldman/BlackRock to reap enormous rewards. In effect, these firms have taken inside knowledge obtained by being a subcontractor to Hamilton, HUD's Financial Advisor, to develop a program that will enable them to gain control of these mortgages and projects on a negotiated basis, effectively utilizing the state HFA'S as a front and

circumventing HUD's rule which prohibits negotiated sales to private entities.

93. Goldman Sachs and BlackRock, in effect, promise to put up the small amount of equity money needed, and take effective control of the real estate, paying a small fee to the state HFA for acting as a conduit. The "tag team" will then securitize the debt and collect very large fees. Ervin believes that HUD and its advisors are aware of this scheme to effectively transfer HUD's affordable housing inventory to these few private sector inside Wall Street firms with connections to the Administration, and in fact, approve of it as one of the solutions to deal with HUD's problems.

#### Structured Transactions - Trusts

94. Because of the size and nature of the transactions, especially the upcoming Partially Assisted Mortgage Note Sale transaction, HUD's note sales activities fall into the category of securities. As a result, everyone involved with the sales are subject to Federal and State securities laws. These laws are intended to ensure fairness by restricting both insider trading and the improper disclosure of material inside information, as well as intentional misrepresentations of the facts.

95. Although HUD and its advisors vehemently deny that these are securities and ignore the disclosure requirements that would apply in connection with such sales, HUD and its advisors recognize that the loans being sold are in fact securities. In early 1995, HUD's Financial Advisor concluded that Ervin's

servicing files had to be made available for due diligence purposes, with the reason given for forcing Ervin to give up those files being that securities laws demanded full disclosure. Additionally, the bidder qualifications questionnaire appears to be designed to meet certain securities laws requirements.

96. Considering the extremely large value of notes being sold and the risks of corruption, fraud, and abuse, it is obvious that some governmental agency should be in a position to ensure and guarantee the fairness and integrity of the process. Since this process is being dominated by major Wall Street type players and it is clear that those Wall Street players understand the risks and consequences of inappropriate activities when securities are involved, the Federal and State securities laws must be applied. It does not seem appropriate that the risks and consequences of improper activities should simply disappear or be covered up by HUD.

97. HUD is currently marketing a note sale that is similar to a structure developed by the RTC called an N series transaction. The Unpaid Principal Balances of the mortgages in the HUD portfolio totals \$883,500,000. Under this structure a trust will be created and will sell approximately \$515 million in rated debt, the proceeds of which is to be paid to HUD. Investors who must team up with one of only 10 rated servicers in the country are then allowed to bid to purchase between 50% and 70% of the ownership interests in the trust, with HUD retaining the balance as a silent partner.

98. This structure is unnecessarily complex and results in excessive financial advisory and due diligence fees and limited competition for the assets. As with the single family note sale, however, it is the complexity that creates a very unlevel playing field that again benefits a few selected Wall Street insiders. The winner of this transaction has not yet been announced. Ervin believes, however, that Goldman Sachs will be very competitive and as a result, will win this portfolio because of the inside advantage it has through its partner, BlackRock, and its relationships to Hamilton, HUD's Financial Advisor, on other transactions.

99. BlackRock, a subcontractor to the Financial Advisor, is providing Hamilton and HUD with advice on the structuring of the bonds such that BlackRock really controls this transaction. BlackRock is the same Wall Street firm that told Ervin that for the purposes of HUD note sales, it and Goldman Sachs were to be considered as one entity.

100. As with the single family note sale, this transaction provides complications, rules and uncertainties that are unnecessary, except to scare off the competition, particularly with regard to the bond structure. This results again in a very unlevel playing field, which significantly favors a single bidding group. The effect of this type of uncertainty, which was unnecessarily built into the process, forces the bid prices down and will (unless the bond buyer is linked to the equity purchaser) drive down competition. Additionally, Ervin does not

understand the economic rationale as to why floating rate bonds, which are priced based on a spread over an index, should allow the spread to be increased after a buyer purchases equity, unless such complication and uncertainty was intended to favor a certain purchaser.

**"Crosscutting" Task Order**

101. To maintain absolute control over the entire note sale and portfolio re-engineering processes, Dunlap has corrupted the procurement process at HUD. After contract awards in the most recent "competition" for Financial Advisors to HUD, Dunlap created a massive crosscutting task order designed for the specific purpose of ensuring that Hamilton maintains control over all of the other financial advisors and the note sales process. This task order was not described in the Request for Proposals for this solicitation.

102. It is obvious that the crosscutting task order was written by Dunlap and Hamilton for Hamilton, and that the "competition" for the crosscutting task order was rigged for Hamilton. Only two of the four Financial Advisor awardees, Hamilton and Cushman & Wakefield, bid on what has become an extremely lucrative assignment. Ervin has learned that Cushman & Wakefield bid \$3 million per year to perform the crosscutting services over 2 years, or \$6 million. On the other hand, Hamilton bid \$8 million per year for 2 years, plus a 25% incentive, or \$20 million. Since both firms were determined just weeks before to be qualified financial advisors, saving the

government, and hence the taxpayers, \$14 million seems to make sense.

103. Ervin understands that Dunlap ordered HUD's contracting office to award the contract to Hamilton. HUD's contracting office capitulated to Dunlap's instructions, however, when it recommended that the only way to make the award to Hamilton was for HUD to find Cushman & Wakefield technically unqualified to perform the services required under the task order. Thereupon, HUD rejected Cushman & Wakefield's much lower bid on the grounds that Cushman & Wakefield was purportedly technically unqualified. Hamilton's much higher bid was accepted and Dunlap once again maintained her ability to cover up the conspiracy. Ervin believes that Dunlap went to extraordinary lengths to disqualify Cushman & Wakefield from winning the cross-cutting task order because she did not want anyone other than Hamilton involved in controlling the note sales process. Ervin believes that Dunlap feared Cushman & Wakefield's involvement because it would enable Cushman & Wakefield to discover the instances of past misconduct by Hamilton and would prevent the scheme from continuing.

104. Arguably, the responsibility to supervise and control other contractors should not be delegated by HUD to another contractor. First, this amounts to unlawful personal services contracting as proscribed by Federal Acquisition Regulations 37.104 et. seq. As such, these responsibilities are only appropriate for a HUD employee. Second, providing this responsibility to Hamilton allows it to cover up its and others

prior misdeeds vis-a-vis note sales. Third, the idea of a crosscutting task order is duplicative, resulting in a waste of taxpayers' money when one realizes that Hamilton is overseeing the likes of Merrill Lynch, Cushman & Wakefield, or CS First Boston. (This cast of advisors may soon change as Ervin has learned that CS First Boston has resigned, and HUD is in the processing of awarding a fourth contract to another firm.)

#### The Need for Cover-Ups

105. The ability of Dunlap and others at HUD to implement their own personal and political agendas has been accomplished by squashing any dissenting opinions or facts that might contradict that agenda. Ervin can demonstrate credible evidence in support of its belief that Dunlap will retaliate against anyone who stands in her way. The problems are varied and complex and few people are sufficiently involved in all aspects of HUD's single family and multifamily activities to understand the extent of the improprieties. Those limited few who are in a position to know or suspect the truth are either paid off through lucrative "honey pot" type contracts or if they are employees are rewarded by being placed in positions of higher responsibility. Alternatively, if understanding what is really going on starts to become a risk, contractors are fired or forced to resign or are blackballed and HUD employees have their careers placed in jeopardy. In either case, the truth is very costly in today's HUD.

**COUNT I**  
**VIOLATION OF 31 U.S.C 3729(a)(1) AND CONSPIRACY**  
**(False Claims in Connection With the Secret**  
**Opportunity to Increase Bids and the Sale of 3,100 Loans)**

106. The allegations in paragraphs 1 through 105 of this Complaint are incorporated as if fully set forth herein.

107. Plaintiffs allege that in performing the acts alleged herein in connection with the secret opportunity to increase bids and the note sale of 3,100 loans to Goldman Sachs and BlackRock, Defendants, through the acts of their officers, knowingly presented or caused to be presented a false or fraudulent claim paid or approved by the Government to the damage of the Treasury of the United States.

108. Plaintiffs further allege that in performing the acts alleged herein in connection with the secret opportunity to increase bids and the note sale of 3,100 loans to Goldman Sachs and Blackrock, Defendants, through the acts of their officers, aided and abetted by Dunlap, acting outside the scope of her employment and her official capacity, conspired to defraud the Government by knowingly presenting or causing to be presented a false or fraudulent claim paid or approved by the Government to the damage of the Treasury of the United States.

**COUNT II**  
**VIOLATION OF 31 U.S.C 3729(a)(2) AND CONSPIRACY**  
**(False Statements or Records Submitted in**  
**Connection With the Secret Opportunity to**  
**Increase Bids and the Sale of 3,100 Loans)**

109. The allegations in paragraphs 1 through 108 of this complaint are incorporated as if fully set forth herein.



110. Plaintiffs allege that in performing the acts alleged herein in connection with the secret opportunity to increase bids and the note sale of 3,100 loans to Goldman Sachs and Blackrock, Defendants, through the acts of their officers, knowingly made or caused to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the Government to the damage of the Treasury of the United States.

111. Plaintiffs further allege that in performing the acts alleged herein in connection with the secret opportunity to increase bids and the note sale of 3,100 loans to Goldman Sachs and Blackrock, Defendants, through the acts of their officers, aided and abetted by Dunlap, acting outside the scope of her employment and her official capacity, conspired to defraud the Government by knowingly making or causing to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the Government to the damage of the Treasury of the United States.

### **COUNT III**

#### **VIOLATION OF 31 U.S.C 3729(a) (7) AND CONSPIRACY (Reverse False Claims in Connection With the Secret Opportunity to Increase Bids and the Sale of 3,100 Loans)**

112. The allegations in paragraphs 1 through 111 of this Complaint are incorporated as if fully set forth herein.

113. Plaintiffs allege that in performing the acts alleged herein in connection with the secret opportunity to increase bids and the note sale of 3,100 loans to Goldman Sachs and Blackrock, Defendants, through the acts of their officers, knowingly made or

caused to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the Government to the damage of the Treasury of the United States.

114. Plaintiffs further allege that in performing the acts alleged herein in connection with the secret opportunity to increase bids and the note sale of 3,100 loans to Goldman Sachs and Blackrock, Defendants, through the acts of their officers, aided and abetted by Dunlap, acting outside the scope of her employment and her official capacity, conspired to defraud the Government by knowingly making or causing to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the Government to the damage of the Treasury of the United States.

#### **COUNT IV**

#### **VIOLATION OF 31 U.S.C 3729(a) (1) AND CONSPIRACY (False Claims in Connection With HUD's Second Single Family Note Sale)**

115. The allegations in paragraphs 1 through 114 of this Complaint are incorporated as if fully set forth herein.

116. Plaintiffs allege that in committing the acts alleged herein in connection with HUD's second single family note sale, Defendants, through the acts of their officers, knowingly presented or caused to be presented a false or fraudulent claim paid or approved by the Government to the damage of the Treasury of the United States.

117. Plaintiffs further allege that in committing the acts alleged herein in connection with HUD's second single family note sale, Defendants, through the acts of their officers, aided and abetted by Dunlap, acting outside the scope of her employment and her official capacity, conspired to defraud the Government by knowingly presenting or causing to be presented a false or fraudulent claim paid or approved by the Government to the damage of the Treasury of the United States.

**COUNT V**  
**VIOLATION OF 31 U.S.C 3729(a)(2) AND CONSPIRACY**  
**(False Statements or Records in Connection With**  
**HUD's Second Single Family Note Sale)**

118. The allegations in paragraphs 1 through 117 of this complaint are incorporated as if fully set forth herein.

119. Plaintiffs allege that in committing the acts alleged herein in connection with HUD's second single family note sale, Defendants, through the acts of their officers, knowingly made or caused to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the Government to the damage of the Treasury of the United States.

120. Plaintiffs further allege that in performing the acts alleged herein in connection with HUD's second single family note sale, Defendants, through the acts of their officers, aided and abetted by Dunlap, acting outside the scope of her employment and her official capacity, conspired to defraud the Government by knowingly making or causing to be made or used a false record or statement to get a false or fraudulent claim paid or approved by

(

the Government to the damage of the Treasury of the United States.

**COUNT VI**  
**VIOLATION OF 31 U.S.C 3729(a) (7) AND CONSPIRACY**  
**(Reverse False Claims in Connection With**  
**HUD's Second Single Family Note Sale)**

121. The allegations in paragraphs 1 through 120 of this complaint are incorporated as if fully set forth herein.

122. Plaintiffs allege that in performing the acts alleged herein in connection with HUD's second single family note sale, Defendants, through the acts of their officers, knowingly made or caused to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the Government to the damage of the Treasury of the United States.

123. Plaintiffs further allege that in performing the acts alleged herein in connection with HUD's second single family note sale, Defendants, through the acts of their officers, aided and abetted by Dunlap, acting outside the scope of her employment and her official capacity, conspired to defraud the Government by knowingly making or causing to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the Government to the damage of the Treasury of the United States.

(

**COUNT VII**

**VIOLATION OF 31 U.S.C 3729(a) (1)  
(False Claims in Connection With Misdeshribing  
Assets Sold or Offered for Sale in the Note Sales)**

124. The allegations in paragraphs 1 through 123 of this complaint are incorporated as if fully set forth herein.

125. Plaintiffs allege that in performing the acts alleged herein in connection with misdescribing the nature of assets being sold or being offered for sale in the note sales process, Hamilton, through the acts of its officers, knowingly presented or caused to be presented a false or fraudulent claim paid or approved by the Government to the damage of the Treasury of the United States.

**COUNT VIII**

**VIOLATION of 31 U.S.C 3729(a) (2)  
(False Statements or Records in Connection With  
Misdeshribing Assets Sold or Offered for Sale in the Note Sales)**

126. The allegations in paragraphs 1 through 125 of this complaint are incorporated as if fully set forth herein.

127. Plaintiffs allege that in performing the acts alleged herein in connection with misdescribing the nature of assets being sold or being offered for sale in the note sales process, Hamilton, through the acts of its officers, knowingly made or caused to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the Government to the damage of the Treasury of the United States.

**COUNT IX**  
**VIOLATION OF 31 U.S.C 3729(a) (7)**  
**(Reverse False Claims in Connection With Misdeshribing**  
**Assets Sold or Offered for Sale in the Note Sales)**

128. The allegations in paragraphs 1 through 127 of this complaint are incorporated as if fully set forth herein.

129. Plaintiffs allege that in performing the acts alleged herein in connection with misdescribing the nature of assets being sold or being offered for sale in the note sales process, Hamilton, through the acts of its officers, knowingly made or caused to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the Government to the damage of the Treasury of the United States.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray that judgment be entered in their favor and against these Defendants as follows:

A. On Counts I through IX, the maximum civil money penalty allowed by the False Claims Act for each violation thereof and monetary damages sustained by the Government in an amount not less than three (3) times the amount of damages determined according to proof at trial;

B. That Relator Ervin and Associates, Incorporated, as Qui Tam Plaintiff, be awarded the maximum dollar amount allowed pursuant to 31 U.S.C. 3730(d) of the False Claims Act and/or other applicable provisions of the law;

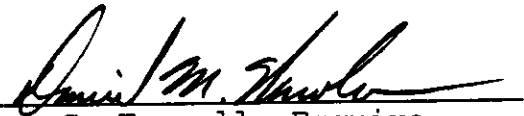
C. Attorneys' fees and other costs including Court costs incurred in connection with this case;

D. Ervin be awarded appropriate relief pursuant to § 3730(h) including an injunction enjoining and restraining Defendants or Dunlap from harassing it or otherwise retaliating against Ervin; and

E. Such other and further relief as this Court may deem just and equitable.

Respectfully submitted,

TUCKER, FLYER & LEWIS,  
a professional corporation



Wayne G. Travell, Esquire  
D.C. Bar No. 372658  
Daniel M. Hawke, Esquire  
D.C. Bar No. 424874  
1615 L Street, N.W., Suite 400  
Washington, D.C. 20036  
(202) 452-8600  
Counsel for Qui Tam Plaintiff  
Ervin and Associates

Dated: June 6, 1996

Exhibit A

Analysis of Problems With Single Family Note Sales

HUD's Single Family Note Sale procedures have been structured to allow Hamilton Securities and/or others associated with Hamilton to accurately predict the maximum bid amount that will be made by each potential purchaser in advance of the time such bids are due. By obtaining the amount of the bid deposits, insiders have been able to determine what the highest bid will be even before all bids are received. They are then able to pass this inside information on to the BlackRock/Goldman team, their favored bidder, in time for BlackRock/Goldman to adjust their bid accordingly and win by a very small margin.

In HUD's Second Single Family Note Sale, this inside information allowed BlackRock to bid less than 0.5% more than the second highest bidder. Despite the closeness of the bids, Hamilton further ensured success for the BlackRock/Goldman team by declining to conduct a best and final round of bids which could have only benefited the Government in these circumstances. When the shoe was on the other foot in the first note sale, however, BlackRock was given the secret opportunity by Hamilton to increase its bid and win even though the bidding instructions did not allow for such best and final action.

The amount of information that is required to accomplish this type of fraud is very limited. Because the big entire portfolio bidders who understand the Optimization Model know they can only be beat by the few other entire portfolio bidders who can afford to invest between \$500 million and \$1 billion at a time, only one number (the highest total deposit) needs to be disclosed.

By structuring the Note Sales to favor an entire portfolio bidder while ensuring that all other reasonable and rational bidders will limit their bid deposit to the required 10% of their highest bid, Hamilton Securities has created a system by which they can back into the anticipated bids from only the bid deposits. The three functions that have been intentionally built into the Note Sale Procedures to allow this to happen are the use of an Optimization Model, limiting the number of bids that are allowed from each bidder, and not paying interest on deposits. Each of these approaches is in fact unnecessary and Ervin believes HUD would be more successful if they were modified:

- 1) The use of the Optimization Model provides entire portfolio bidders with an unsurmountable advantage over small or medium size bidders. This Optimization Model was not originally intended for use with non-perishable assets and gives only the largest investors (with over a half billion dollars to invest) any chance;



- 2) Limiting the number of bids one may submit to a maximum of 10 while considering the very limited number of investors that exist, the optimization model advantage is increased exponentially; and
- 3) Because of the loss of interest on such deposits, bidders are heavily discouraged from making bid deposits greater than the required 10% of their highest bid. Unsuccessful bidders' deposits can be held by Hamilton until 6 business days from the Award date. Successful bidder(s) deposits, including any portion over 10% of the winning bid(s), is held until closing. If bidder's deposit is less than the 10% requirement, the risk is run of having the corresponding bid disqualified.

### FHA Single Family Mortgage Loan Sale #2

The circumstances surrounding the FHA Single Family Mortgage Loan Sale #2, held on March 20, 1996, produce extremely strong circumstantial evidence that Hamilton and BlackRock fixed the Note Sale so that BlackRock would be the successful bidder:

- 1) BlackRock, the eventual winner, made the highest bid deposit of approximately \$67 million, allowing them to place a maximum bid of approximately \$670 million.
- 2) Lehman, the runner up, made the second highest bid deposit of approximately \$61.8 million, allowing them to place a maximum bid of approximately \$618 million.
- 3) Bid deposits are not made in cash but through Federal Wire Transfers which had to be cleared by 2:00 PM on the day of the bid. This was 1 ½ hours before the close of the prescribed bid time.
- 4) A representative from BlackRock hung around the hotel where bids were being accepted all day long, but did not submit the bid until just prior to the 3:30 p.m. deadline. It would have been very easy for someone to advise him to modify the bid amount once the wire transfer deposits were in and he was aware of the amount of the competing bid deposits.
- 5) Lehman submitted a bid for approximately \$617 million for 734 of the 750 mortgage loan blocks, or approximately \$840,000 per mortgage loan block.
- 6) BlackRock submitted a bid for just under approximately \$620 million for all 750 mortgage loan blocks, or approximately \$826,666 per mortgage loan block.

- 7) BlackRock has worked with Hamilton as a Note Sale advisor for other HUD Note Sales, particularly the Partially Assisted Mortgage Loan Sale and may have had access to the bid deposits at the hotel where bids were accepted or at Hamilton's office.
- 8) Since BlackRock was so clearly associated with Hamilton while this bid was going on, it would have been prudent for HUD to have disqualified them as a bidder because of the appearance of a conflict of interest. HUD did not.
- 9) BlackRock has been a successful bidder in other HUD Note Sales, including the first Single Family Note Sale. It is also using State Agencies as a front to effectively acquire multifamily properties through negotiated sales with HUD, making it prudent to be extremely careful about potential conflicts, which it is not.
- 10) Although HUD had the option of conducting a best and final round and the two highest bids differed by less than 0.5%, Hamilton did not exercise HUD's right to conduct a best and final round. This best and final round could have only improved the government's position because bidders would only have been allowed to increase their bid.

The bid package states that:

"FHA reserves the right to conduct a "best and final" round among the top Bidders (either the highest Bidders or any Bidder within 5% of the highest Bid(s)) for Mortgage Loan Blocks and/or Mortgage Loan Pools which it selects at its sole discretion... Hamilton will send notice by facsimile to those Bidders selected for participation in the "best and final" round and present them with the opportunity to increase their Bid(s)... The conducting of a "best and final" shall not be construed as a rejection of any Bid made by a Bidder or preclude Seller from thereafter accepting any Bid made by a Bidder."

There could not have been a more opportune situation to conduct a best and final round. For all intents and purposes, these bids were identical. If a best and final round had been conducted and Lehman had extended their bid to include all loan pools at the same price per pool, this would have resulted in a total bid of approximately \$630 million, or about \$10 million more than BlackRock's winning bid. If BlackRock had

increased their bid to 10 times the amount of their bid deposit, it would have resulted in about \$50 million more to the government. The fact is there was absolutely no downside to the government conducting a best and final round, and the upside was tremendous. It is absolutely incomprehensible that Hamilton would not exercise HUD's right to conduct a best and final round between these two bidders.

The only plausible reason Hamilton would not conduct a best and final was that there was a conspiracy in place designed to ensure that BlackRock would win by the lowest margin possible.

- 11) On the first Single Family Note Sale, when BlackRock did not meet the unstated minimum, Hamilton provided only BlackRock the opportunity to secretly increase its bid and win. There was no language in the bid package for the first Note Sale like there was in the second sale, allowing this type of best and final round, so Hamilton had no legal authority to offer BlackRock the opportunity to change its bid, much less tell it the acceptable minimum bid that would win. BlackRock, believing HUD was bluffing, refused to increase its bid.
- 12) In what appears to have been a makeup call, another very quick follow up auction was authorized where BlackRock was the only bidder. This allowed BlackRock to acquire 3,100 assets with an unpaid balance of over \$200 million. Most other bidders would not have had the opportunity to react and obtain all of the necessary appraisals within the time allowed.

The only logical explanation for BlackRock making a \$67 million bid deposit, which indicated it was willing to pay up to \$670 million, but then only bidding only approximately \$620 million, is that BlackRock learned of the approximately \$61.8 million dollar deposit by Lehman and assumed it would be for an entire pool bid. Since under the rules a bid higher than approximately \$618 million could have been disqualified, it was obvious that the approximately \$620 million bid BlackRock/Goldman actually submitted was sufficient to win it all. BlackRock and Goldman were able to save approximately \$50 million by knowing the next highest bidder's deposit amount and the highest price it could bid.

By depositing an extra approximately \$5 million over what BlackRock was required to would have been intentionally wasting \$5,000 to \$10,000 in lost interest. It is not logical that BlackRock and Goldman would have done this unless the auction was fixed.

Although BlackRock assumed correctly that the approximately \$61.8 million deposit was for an approximately \$618 million dollar bid, they were incorrect in assuming it was for the entire portfolio. Instead, it was for only 734 of the 750 mortgage loan blocks. This resulted in the Lehman bid averaging \$13,666 more per pool than the BlackRock bid. As it was designed to do and as BlackRock understood, however, the Optimization Model determined that BlackRock's bid was most advantageous to the government because there were no cover bids for the remaining 16 pools, so they were assigned no value in evaluating Lehman's bid. Had a conservative residual value been assigned to each mortgage loan block or had other bidders been able to bid on more than 10 pools, Lehman's bid would have been the winner.

It is important to note that when HUD started selling notes in the Southeast Note Sale, it paid interest on bid deposits. Although eliminating this practice may have increased the investment income HUD would earn, it might also reduce the number of participants, particularly small participants. More importantly, however, eliminating paying interest on deposits helped assure that winning deposits would not be excessive, which allows the bids to be predicted with reasonable accuracy.

As an aside, demanding cash deposits from small investors which is invested by HUD, knowing that the true workings of the Optimization Model will prevent all but the largest players from winning, is nothing more than defrauding such small investors. This lost interest should be returned to these investors by the government.

### Asset Strategies

Hamilton Securities initial Financial Advisor proposal listed a company called Asset Strategies as a subcontractor to provide expertise in the sales of Single Family notes. Asset Strategies worked with Hamilton during the first Note Sale. According to Deborah Kooney of Asset Strategies, however, Asset Strategies elected to remove itself from the process because it was very distressed about the way Hamilton Securities chose to manage the pooling and bidding of the assets. Specifically, Asset Strategies believes that the AT&T Bell Labs bidding award system (the Optimization Model) and the process implemented by Hamilton:

- Is not fair;
- Overly complicates the process for bidders;
- Is contrary to the way single family assets should be sold to maximize value and is not necessary for homogeneous asset pools;
- Locks small bidders out of the process;

- Heavily favors the "big boys" like BlackRock and others;
- Is not the way HUD should sell affordable housing loans because smaller banks, mortgage bankers, and investors cannot participate;
- Does not get HUD the highest price;
- Misleads smaller participants into thinking they can win while making Hamilton look good for producing a large bidder turnout;
- Is not in the taxpayers interest; and
- Does not produce the highest possible return to the U.S. taxpayer.

Ms. Kooney has said that she has gone "on record" with HUD to advise the Department of the above, to no avail. Her experience has been that HUD believes everything that Hamilton tells them, so objections to Hamilton's recommendations fall on deaf ears. Ervin understands that HUD's Office of Inspector General has been apprised of these concerns but has ignored them.

#### The Optimization Model

For all sealed bid Note Sales thus far, including the Single Family Note Sales, HUD has used an Optimization Model to determine winning bidders. This model was originally designed by Bell Labs to schedule flight crews for major airlines. When used for HUD's Note Sales, it calculates the highest gross return to the Government from the bids submitted but does not produce the highest per unit bid price. By eliminating overlapping bids, it is designed in such a way that small players have no chance and big players become frustrated if they spend a lot of money only to lose and give up in future sales.

By publishing this very complicated Optimization Model, Hamilton and HUD attempted to persuade bidders that favoritism could not exist in the selections of winning bids. In fact, exactly the opposite is true. The following three inherent flaws with the Optimization Model used for Single Family Note Sales all but eliminate small or medium size bidders:

- 1) Overlapping bids cannot be accepted;
- 2) There is no residual value assigned to mortgage loan blocks that are not sold; and
- 3) Only 10 bids can be submitted on approximately 750 available pools.

With today's technology, a single bidder could easily make 750 separate bids on a portfolio with 750 mortgage loan blocks, thereby creating additional coverage and eliminating medium sized pool bids being disqualified as overlapping. This would open up competition to small bidders and drive up the prices.

Hamilton uses a computer program to select the winning bids and all bids are submitted on diskette, so there is no valid reason why Hamilton should limit the number of bids a bidder may submit. However, bids are limited to 10 bids each, which eliminates multiple bids. If someone elected to bid multiple times on individual assets by creating separate bidding entities, separate deposits would be required, making the cost of overcoming the bias against small bids in the Optimization Model prohibitive.

The fact is that utilizing random techniques would require that over 500 separate bidders, each of which made the maximum 10 individual bids (a total of 5,000 bids) to statistically provide the coverage necessary to cover 750 bids and to effectively compete against the entire portfolio bidders. The fact is that there are nowhere near this many possible qualified bidders that exist.

The bidding rules do not allow collusion, thereby precluding small players from identifying each other or working together to avoid non-overlapping bids and providing the necessary coverage. However, collusion rules do not preclude large bidding teams which by themselves limit the competition from the other large bidders. Considering this, the real potential buyers for Single Family Note Pools are realistically limited to no more than 5 teams. The last bid included 26 separate bidders, 21 of which never had a chance.

Hamilton is not only aware of the ramifications of the Optimization Model, but used it specifically to eliminate all but entire portfolio bidders. As Hamilton admitted in its best and final submission for the initial Financial Advisory services contract:

"if pressure is put on HUD to run a 'small investor program' we could structure the auction this way also, but still would expect one large buyer to purchase all lots."

In accordance with HUD's rule and its propaganda, Hamilton has aggressively advertised that small bidders have opportunities to purchase loans through these note sales, while at the same time they have done their best to eliminate all opportunity for such small bidders. Quite simply, this is dishonest.

## Bid Deposits

The first unsubsidized multifamily Note Sale conducted by Hamilton Securities, the Southeast Note Sale, required only a 5% bid deposit that was refunded **with interest** if a bid was unsuccessful. In this situation, submitting a bid deposit greater than was required would have little financial impact on the bidder. Many bidders may have deposited extra to give themselves room for last minute modifications to their bid price, or even just to round off to a whole number, or if they were nervous about the integrity of the process to provide misinformation. Although one might have been able to speculate as to what the bids would come in at based on the bid deposits, the possibility of overstating many bids would have been significant, making the knowledge of the amounts of the deposits of a much smaller intelligence value.

In subsequent Note Sales, the bid deposit procedures were changed so that a 10% deposit was required and interest was no longer paid. These changes have had two dramatic effects:

- 1) Small bidders are further discouraged from bidding. The 10% bid deposit is harder to come by and any lost interest is harder to absorb for a small investor, especially when there is little chance of winning; and
- 2) All prudent entire portfolio bidders who implicitly trust the system and who do not want to give up interest on their capital will deposit almost exactly 10% of their bid. Being over costs them money where being under brings the risk of disqualification.

Hamilton may attempt to justify the change from 5% to 10% because in the Southeast Note Sale there was some concern that the major successful bidder was going to take the hit on the deposit and not close after having second thoughts about their bid. However, the only result in increasing the deposit would be to decrease bidder interest in the Note Sale and ensure that deposits are not made for a greater amount than is necessary.

All bid deposits must be made via wire transfer either the day before or the day of the bids being due. If a bid is received without the appropriate deposit, the bid may be rejected as nonconforming. Although it is a common industry norm to require deposits to be submitted via wire transfer for convenience reasons, the significance of the fact that they are being transmitted to a Federal Reserve Bank cannot be overlooked. Since Federal Reserve banks close at 2:00 p.m., for a wire transfer to be received before the 3:30 p.m. bid time, it must be received prior to 2:00 p.m. This gives anyone who has access to the wire transfer records the ability to back into what the highest possible conforming bid is a full one and one half hours

before all bids are even due. This provides a huge opportunity for fraud.

### Intentional Disinformation

To maximize the advantage insider bidders like BlackRock/Goldman are provided, Hamilton also provides misinformation on the true nature of the portfolio, thereby driving down the extent of the competition and the price the competition is willing to pay:

- Continually referring to the Single Family portfolio as consisting of less attractive "non-performing" loans when the majority of such Notes are actually performing;
- Misclassifying Single Family properties as non-performing when using HUD's own criteria they were in fact performing. This occurred on 1,256 properties in the second Single Family Note Sale; and
- Allowing and even encouraging the creating of bidding groups for the larger players but warning small players that such action might constitute collusion.

For a bidder to even learn about these type of problems (or missed opportunities) would require a substantial investment in due diligence. Many investors who misunderstand the true nature of the portfolio would instead chose simply not to participate at all. This decision obviously benefits others who are bidding like the BlackRock/Goldman team.

Despite this very high risk, reasonable safeguards to ensure honesty such as having the process be audited from start to finish by a reputable independent CPA firm have not been employed. This loose approach to dealing with billions of dollars of assets makes no sense. The fact is that the people who are running these sales are just too smart to not consider the appropriate safeguards. The only logical conclusion is that they do not want the necessary controls in place.

### Coverups - Eliminating the Threats

There has been a conscious effort by Helen Dunlap and Hamilton Securities to ensure that none of their indiscretions are discovered by any contractor, HUD employee, or anyone else working on the Note Sale who may understand the process and object to it like Asset Strategies did. Considering this, Dunlap has taken absolute control over and corrupted the contracting process at HUD. This contracting corruption, which has laid the groundwork for this action, is being addressed in a separate lawsuit which Ervin and Associates is filing against the Department of Housing and Urban Development. Helen Dunlap and



others. Although a separate issue, it must be summarized here to show the extent Helen Dunlap has gone to in allowing the fixing of the Note Sales:

- 1) Hamilton Securities was awarded the initial Financial Advisory contract on an hourly basis with a contract maximum of 2 years at \$1 million per year. In a classic bait and switch, this \$2 million maximum contract was increased over and over again until its final maximum was for \$19 million over two years. If HUD had competitively procured additional Financial Advisors, perhaps these internal control weaknesses that have been allowed to occur would have been resolved.
- 2) Brown and Company, an 8(a) firm, submitted a proposal for the due diligence work (including Single Family Due Diligence) that included using Ervin and Associates as a subcontractor. Although this team was selected by the Source Evaluation Board as one of the successful bidders, they were disqualified after Helen Dunlap ordered the re-scoring of proposals. This is another instance where Dunlap went out of her way to ensure that an objective and honest contractor would not again embarrass HUD by asking the "wrong" questions.
- 4) Hamilton Securities has recently been awarded a previously non-disclosed crosscutting task order to oversee and control all other Note Sale contractors. They were awarded this task order despite their price bid being significantly higher than the other bidder (\$16 million plus 25% incentives over 2 years for a total of \$20 million, as opposed to \$6 million, costing the U.S. Taxpayer an unnecessary \$14 million). After political interference by Dunlap, the other bidder (Cushman & Wakefield) was disqualified and Hamilton was allowed to continue to cover up the misdeeds. The only need for one qualified contractor to oversee another is to prevent the new contractor from discovering corruption that has occurred in the past.

#### The BlackRock/Goldman Connection

In the fall of 1995, Ervin and Associates met at the invitation of Goldman Sachs and BlackRock to discuss HUD's portfolio opportunities. During the meeting, Goldman and BlackRock were advised by Hamilton that they were successful in acquiring about 3,100 Single Family notes from HUD in the first Note Sale. At that meeting both Goldman and BlackRock advised Ervin that for the purpose of all HUD Note Sales they should be considered as one firm. Ervin believes this partnership still exists.

Ervin has learned from a reliable Wall Street source that BlackRock has bragged on the street that it is also going to win the next two Single Family Note Sales, the first of which is scheduled for this summer. Although this could be simply psyching out the competition in an attempt to prevent them from participating, it could also be an indication of a level of hubris that is probably a precondition of participating in the type of behavior described herein.

### Conclusion

Helen Dunlap, Hamilton Securities, BlackRock and Goldman Sachs have collectively just begun their swindling of the American Taxpayer with regard to HUD's Single Family and other Note Sales. The following is an indication of other possibilities for abuse by this same group. Since none of the transactions they are involved in has closed, however, our suspicions cannot be proven:

- BlackRock and Goldman has teamed with various State HFA's in purchasing HUD-held multifamily properties under the guise of negotiated sales to State Agencies. They are attempting to acquire these properties at significant discounts under the assumption that State HFA's are the beneficiaries; however, they are simply a front for BlackRock and Goldman and will collect fees from the deal. We have further heard that BlackRock was demanding a minimum 25% internal rate of return for such involvement. The only company that is in a position to see through this charade is Hamilton, who obviously will not. What is particularly offensive about this approach is that money that should be used to provide affordable housing is instead being diverted to BlackRock.
- There are three more Single Family Note Sales planned, and without intervention, there is nothing to prevent the team of Dunlap/Hamilton/BlackRock/Goldman from repeating the same scam.

Partially Assisted Mortgage Loan Sale - BlackRock acted as Co-Financial Advisor to Hamilton. It has been involved in structuring an unnecessarily complex trust vehicle which obtains debt utilizing rated bonds. One of the major parties bidding on the bonds and equity is BlackRock's partner, Goldman Sachs.

Ervin is also concerned that such structure is intended to be the model for HUD to utilize in its portfolio re-engineering initiatives. Considering the insider involvement in these activities, HUD should declare both BlackRock and Goldman ineligible.

Based on the above and recognizing how smart the people at BlackRock, Goldman and Hamilton are, it seems impossible that the issues discussed in this analysis were a result of chance. The only reasonable explanation is that the entire Single Family Note Sales Process is fixed and Helen Dunlap and Hamilton are going to great lengths to ensure that the fix is not discovered.

We recognize that this leads to the inevitable conclusion that this represents a massive scandal that could surpass the recent Wall Street scandals. The fact that billions of dollars in assets are at stake makes arrogant people who think they are smarter than everyone else combine the arrogance with greed. We believe that is exactly what has occurred here.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

\_\_\_\_\_)  
UNITED STATES OF AMERICA, et al., )  
 )  
Plaintiffs, )  
 )  
v. ) Civil Action No. \_\_\_\_\_  
 )  
THE HAMILTON SECURITIES GROUP, INC., )  
et al., )  
 )  
Defendants. )  
\_\_\_\_\_)

**WRITTEN DISCLOSURE OF MATERIAL  
EVIDENCE PURSUANT TO 31 U.S.C. 3730(B)(2)**

Qui Tam Plaintiff Ervin and Associates, Incorporated ("Plaintiff"), by and through counsel, pursuant to 31 U.S.C. 3730(b)(2), hereby submits the following written disclosure of material evidence in support of its claims on behalf of itself and the United States of America against the Defendants named herein. Plaintiff continues to investigate the bases for its claims alleged herein and will provide the Government with additional material evidence as soon as it becomes available.

In addition, Plaintiff would like to confer with the attorneys at the Department of Justice who will be responsible for determining whether the Government will intervene in this matter. At such meeting, Plaintiff will provide the Government with documents and information that Plaintiff possesses in support of its claims.

Plaintiff submits the following material evidence corresponding to the claims in its Complaint herein:

I. Hamilton's providing Goldman Sachs and BlackRock with the secret opportunity to increase sealed bids:

Our sources:

Jeff Parker - Cargill (a bidding partner of BlackRock/Goldman Sachs in the first single family note sale - subsequently dropped off the BlackRock/Goldman bidding team); Terry Dewitt - J-Hawk Corporation (a business associate of Mr. Parker); Michael Nathans - Penn Capital Corporation (a business associate of Mr. Parker, Mr. Dewitt and Ervin)

Others who we believe would know about this:

Austin Fitts and Jim Ladd, the individual in charge of the first single family note sale - Hamilton Securities; Helen Dunlap - HUD

Documentary Evidence we have:

None

Other Documentary Evidence to look for:

Bid sheets; depositary receipts of bidding team(s); wire transfers; telephone records; cellular phone records

II. Hamilton's illegal disclosure of material and confidential inside bid information to the "tag team" of Goldman Sachs and BlackRock:

Our sources:

William Richbourg - HUD (FHA Controllers Office)

Others who we believe would know about this:

Austin Fitts and Jim Ladd, the individual in charge of the first single family note sale - Hamilton Securities; Helen Dunlap - HUD; John Doe (the person who was waiting in the hotel lobby and made the BlackRock bid) - BlackRock

Documentary Evidence we have:

None

Other Documentary Evidence to look for:

Bid sheets; deposit receipts; wire transfers; telephone logs; cellular phone logs

**III. Hamilton's misapplication of a defective "optimization model" to limit competition:**

Our sources:

None

Others who we believe would know about this:

Austin Fitts and the individuals in charge of each note sale - Hamilton Securities; Helen Dunlap - HUD

Documentary Evidence we have:

Copy of the mathematical formula for the optimization model; Ervin's analysis of the optimization model

Other Documentary Evidence to look for:

Bid sheets evidencing the bidding history by note sale; memoranda internal to Hamilton and HUD

**IV. Hamilton's misdescribing the true nature of the assets offered for sale:**

Our sources:

Offering memorandum, published information by Hamilton and HUD

Others who we believe would know about this:

Austin Fitts and the individuals in charge of each applicable note sale - Hamilton Securities; Helen Dunlap - HUD

Documentary Evidence we have:

Various issues of Update (a quarterly publication by Hamilton); bidder information packages for each applicable note sale; data diskettes or CD-ROMs containing the due diligence information on loans in a given sale

Other Documentary Evidence to look for:

Memoranda internal to Hamilton and HUD

V. Other Sources of General Information on HUD's Entire Note Sales and Contracting Processes:

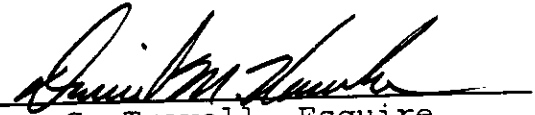
Ervin has submitted multiple FOIA Requests, primarily to HUD, on a variety of topics, including the following requests have been received or are pending:

First Financial Advisor Contracts	Hamilton Securities - multiple requests Coopers & Lybrand
Second Financial Advisor Contracts	Hamilton Securities Cushman & Wakefield Merrill Lynch CS First Boston
SWAT contracts	The Kerry Company DFW
Due Diligence contracts	Soza Tradewinds Gardner, Kamy Williams, Adley (SBA in addition to HUD) Deva
Ernst & Young	Mark-to-market (Portfolio Re-engineering)
Nancy Andrews	contracting/ subcontracting
Marta Anguara	contracting/ subcontracting
Aspen Systems	
State Housing Finance Authority transactions	
List of all contracts over \$50,000 awarded by HUD since 6/18/93	
Offering documents from each note sale.	

In addition, Ervin has had many discussions, too numerous to list here, summaries of which are available, with various parties internal and external to HUD. These parties have included successful and unsuccessful bidders, former and current HUD employees, including HUD employee(s) who have called and left anonymous voice messages for Ervin on where to look for wrongdoing.

Respectfully submitted,

TUCKER, FLYER & LEWIS,  
a professional corporation



Wayne G. Travell, Esquire  
D.C. Bar No. 372658  
Daniel M. Hawke, Esquire ✓  
D.C. Bar No. 424874  
1615 L Street, N.W., Suite 400  
Washington, D.C. 20036  
(202) 452-8600  
Counsel for Qui Tam Plaintiff  
Ervin and Associates

Dated: June 6, 1996