



U.S. DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT  
OFFICE OF INSPECTOR GENERAL

September 28, 2018

**MEMORANDUM NO:**  
2018-AT-0801

## *Memorandum*

TO: Dominique Blom, General Deputy Assistant Secretary for Public and Indian Housing, P  
Robert Mulderig, Acting Deputy Assistant Secretary for Public Housing Investments, PIU

*//Signed//*

FROM: Nikita N. Irons, Regional Inspector General for Audit, 4AGA

SUBJECT: HUD's Improper Approvals Resulted in Invalid Exemptions and an Ineligible Capital Funds Expenditure for the Lexington-Fayette Urban County Housing Authority

### INTRODUCTION

We reviewed the U.S. Department of Housing and Urban Development's (HUD) approval of the Lexington-Fayette Urban County Housing Authority's Moving to Work (MTW) Demonstration plan and capital funds drawdowns. The review was performed based on risk indicators identified during audits of the Authority's Rental Assistance Demonstration Program (RAD) conversion and its Section 8 Housing Choice Voucher Program.<sup>1</sup> The objective was to determine whether HUD properly approved the (1) Authority's exemption from HUD's third-party requirements for unit inspections in the Authority's MTW plan for fiscal year 2017 and (2) capital funds drawdowns after the RAD conversion.

This memorandum contains eight recommendations for corrective action. HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of this review.

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<sup>1</sup> We issued two external audit reports on the Authority's Section 8 Project-Based Voucher Program following the RAD conversion and Section 8 Housing Choice Voucher Program in July 2018.

## METHODOLOGY AND SCOPE

To accomplish our objective, we interviewed HUD program staff and the Authority's employees. In addition, we obtained and reviewed the following:

- Applicable laws; HUD's regulations at 24 CFR (Code of Federal Regulations) Parts 982 and 983; and Office of Public and Indian Housing (PIH) Notices PIH 2012-18 and PIH 2012-32, REV-1.
- The Authority's RAD application; MTW agreement, dated November 10, 2011, MTW plan for fiscal year 2017; housing assistance payments; tenant files; and HUD's Line of Credit Control System reports.

We performed our onsite work between August 2017 and February 2018 at the Authority's office located at 300 West New Circle Road, Lexington, KY, and in our Atlanta, GA, office. Our review period was July 1, 2012, through October 31, 2017. To determine whether HUD's approval of its third-party requirements' exemption for the Authority was proper, we reviewed the MTW agreement, dated November 10, 2011, approved by HUD's Assistant Secretary, plus attachments C and D of that agreement. The review considered 100 percent of the units owned by the Authority. The Authority owned 206 units at the Centre Meadows Apartments, a RAD-converted project, and 33 units<sup>2</sup> in its Section 8 Housing Choice Voucher Program. In addition, to determine whether HUD's approval of the Authority's use of capital funds after the RAD conversion was appropriate, we reviewed 100 percent of the Authority's capital funds totaling more than \$1.5 million, which were identified as a funding source for its RAD conversion.

We also conducted a brief scan review of other MTW public housing agencies' annual MTW plans to determine whether HUD properly approved exemptions from HUD's third-party requirements for unit inspections in those plans.

However, this was a limited scope review, and we did not review HUD's internal and information systems controls and procedures. Therefore, the review was not performed in accordance with generally accepted government auditing standards. To meet our objective, it was not necessary to fully comply with the standards, nor did our approach negatively affect our review results. In addition, computer-processed data generated by the Authority were not used to materially support our findings, conclusions, and recommendations. Thus, we did not assess the reliability of these computer-processed data. Instead, our conclusions were based on the supporting documentation obtained during the review, including but not limited to written agreements.

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<sup>2</sup> The specific scope for our review for the Authority's Section 8 Housing Choice Voucher Program was July 1, 2015, through October 31, 2017; therefore, the number of Authority-owned units identified for the program is limited to this scope.

## **BACKGROUND**

MTW is a demonstration program for public housing agencies, which is intended to provide an opportunity to design and test innovative, locally designed strategies that use Federal dollars more efficiently and effectively, help residents find employment and become self-sufficient, and increase housing choices for low-income families. MTW gives public housing agencies (1) exemptions from existing public housing and voucher rules and (2) more flexibility in how they use their Federal funds. This flexibility is authorized via exemptions from program requirements approved by HUD's Secretary, which are identified in the public housing agencies' MTW agreement, attachments C and D.<sup>3</sup> To use an exemption, the public housing agency identifies the specific authorized exemption in any of its annual plans. In November 2011, the Authority entered into an MTW agreement, which was signed by HUD's Assistant Secretary. HUD's Office of Public Housing Investments oversees MTW activities. As established under the Omnibus Consolidated Reversions and Appropriations Act of 1996, 39 public housing agencies participated in the MTW program as of April 2018. The 2016 Consolidated Appropriations Act authorized HUD to expand the MTW demonstration to include 100 additional public housing agencies, which had not been selected as of August 2018.

RAD was authorized to preserve and improve public housing properties and address a \$26 billion nationwide backlog of deferred maintenance. Specifically, RAD's purpose is to provide an opportunity to test the conversion of public housing and other HUD-assisted properties to long-term, project-based Section 8 rental assistance properties to achieve certain goals, including preserving and improving these properties by enabling public housing agencies to use private debt and equity to address immediate and long-term capital needs. Under the first component of RAD, the Authority converted 206 of its 1,303 public units to the Project-Based Voucher Program on March 4, 2014. HUD's Office of Recapitalization oversees the RAD activities.

The Section 8 Housing Choice Voucher Program assists very low-income families, the elderly, and the disabled in affording decent, safe, and sanitary housing in the private market. The program regulations include basic housing quality standards, which all units must meet before assistance can be paid on behalf of a family. HUD's housing quality standards establish the minimum criteria for the health and safety of program participants. The Authority administered more than 2,400 tenant-based housing choice vouchers and disbursed more than \$17.7 million in program funding for fiscal year 2017.

## **RESULTS OF REVIEW**

HUD improperly approved the (1) Authority's exemption from HUD's third-party requirements for unit inspections in the Authority's MTW plan for fiscal year 2017 and (2) capital funds drawdowns after the Authority's RAD conversion. Specifically, HUD's Office of Public Housing Investments' approval of the Authority's exemption resulted in the Authority's failing to comply with HUD's third-party requirements for an independent entity to conduct unit inspections on the Authority-owned units. HUD's Louisville, KY, PIH field office improperly

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<sup>3</sup> 77 Federal Register 66864 and 80 Federal Register 18645 granted only the Secretary, Assistant Secretary, Principal Deputy Assistant Secretary, and General Deputy Assistant Secretary of HUD the legal authority to waive each regulatory requirement.

approved a drawdown after the Authority's RAD conversion, resulting in an inappropriate use of the Public Housing Capital Fund program.

### **HUD Did Not Properly Approve the Authority's Exemption From HUD's Third-Party Requirements**

We reviewed the Authority's MTW plan for fiscal year 2017 and its MTW agreement, dated November 10, 2011, to determine whether HUD's Office of Public Housing Investments' approval of program exemptions<sup>4</sup> for the Authority's Section 8 Project-Based Voucher and Housing Choice Voucher Programs was valid. Specifically, for exemption from HUD's third-party requirements, the Authority's MTW plan stated that according to attachment C, paragraph D.5, of its MTW agreement, the Authority was authorized to certify that housing assisted under MTW would meet housing quality standards established or approved by HUD. It also stated that this authorization waived certain provisions of section 8(o)(8) of the Housing Act of 1937 and 24 CFR Part 982, subpart I, as necessary to implement the Authority's annual MTW plan.

Although the Authority contended that HUD's approval of its 2017 MTW plan granted it the exemption, any purported exemption was invalid. We determined that all valid Secretary-authorized exemptions are contained in attachment C to the standard agreement and not the annual plan. Therefore, in seeking to implement an exemption, the Authority would reference the applicable pre-approved waiver or exemption from Attachment C in its annual MTW plan. However, the exemption referenced by the Authority in its 2017 annual MTW plan did not waive section 8(o)(11) of the 1937 Act or subpart C of Part 983 and subpart H of Part 982, which required the Authority to comply with HUD's third-party requirements. Specifically, the 2017 MTW plan referenced a waiver in paragraph D.5 of attachment C to the Authority's MTW agreement and stated that the waiver in paragraph D.5 waived section 8(o)(11) of the 1937 Act and 24 CFR 983.103(f)(1). However, the waiver in paragraph D.5 explicitly stated that it waived only section 8(o)(8) of the 1937 Act and 24 CFR Part 982, subpart I. Further, paragraph D.5 of attachment C to the agreement did not mention or reference section 8(o)(11) of the 1937 Act or subpart C of Part 983 and subpart H of Part 982.

Nonetheless, HUD's Office of Public Housing Investments contended that the Authority's standard MTW agreement provided the necessary authority to waive the third-party requirements via D.1.f, D.7.a, and D.7.d in attachment C to the standard MTW agreement in addition to the already cited paragraph D.5. HUD's Office of Public Housing Investments stated that not referencing D.1.f, D.7.a, and D.7.d in the 2017 annual MTW plan was a technical oversight that can be easily remedied. However, we determined that the citations of D.1.f, D.7.a, and D.7.d also do not exempt the third-party requirements at section 8(o)(11) of the 1937 Act or subpart C of Part 983 and subpart H of Part 982. Specifically, paragraph D.1.f simply authorized the Authority to determine property eligibility criteria, including types of housing currently prohibited by Section 8 regulations, and waived certain provisions of section 8(p) of the 1937

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<sup>4</sup> HUD's program requirements at 24 CFR 983.103(f)(1) and 24 CFR 982.352(b)(1) provided that in the case of Authority-owned units, the unit inspections could not be performed by the Authority but needed to be performed instead by an independent entity approved by HUD for the Section 8 Project-Based Voucher and Housing Choice Voucher Programs, respectively. Both of these requirements are found in section 8(o)(11) of the 1937 Act or subpart C of Part 983 and subpart H of Part 982, respectively.

Act and 24 CFR 983.53-54 and Part 982, subparts H and M, as necessary to implement the Authority's annual MTW plan. Viewed in their proper context, these waived provisions are focused on eligible versus ineligible units and not inspections. Although subsection H contains a requirement for independent inspections for Authority-owned units to be eligible, D.1.f is silent on the issue of independent inspection, and the waiver language indicates that only certain unidentified provisions are waived.

Further, paragraph D.7.a authorized the Authority to project-base assistance at properties it owned directly or indirectly that were not public housing, subject to HUD's requirements regarding subsidy layering, and indicated that project-based assistance for such units did not need to be competitively bid. D.7.a is silent on the issue of third-party independent inspections. Similarly, paragraph D.7.d also did not exempt HUD's third-party requirements for inspections on units owned by the Authority. The exempted requirements referenced at paragraph D.7.d stated that all units that received project-based Section 8 assistance must meet either existing housing quality standards established by HUD's Secretary or a local standard for communities receiving project-based Section 8 assistance developed by the Authority and approved by the Secretary under this MTW agreement as applicable. This authorization waived certain provisions of section 8(o)(8) of the 1937 Act and 24 CFR Part 982, subpart I, as necessary to implement the Authority's annual MTW plan. As stated above, HUD required third-party inspections to be conducted by an independent entity on units owned by the Authority under section 8(o)(11) of the 1937 Act or subpart C of Part 983 and subpart H of Part 982.

Lastly, HUD provided that the purpose of having a standard MTW agreement was to reduce confusion for MTW agencies by providing consistent, clear, and standardized language. However, requiring citation to four seemingly unrelated provisions of Attachment C to the standard agreement, all of which are silent as to the third-party inspection requirement, and arguing for that waiver by implication, is neither consistent, clear, nor standardized. Further, HUD's most recent guidance, 82 Federal Register 8056, which pertains solely to the new MTW agencies to be selected under the MTW expansion, reiterates HUD's Section 8 Project-Based Voucher and Housing Choice Voucher Programs requirement for third-party inspections.

In addition, regarding waiver authority, 77 Federal Register 66864 and 80 Federal Register 18645 granted only the Secretary, Assistant Secretary, Principal Deputy Assistant Secretary, and General Deputy Assistant Secretary of HUD the legal authority to waive each regulatory requirement. The Appropriations Act of 1996 (Public Law 104 – 134) does not permit any further delegations down to the MTW Director's level.

Neither the Authority's MTW agreement nor its 2017 MTW plan contained or referenced a valid waiver of HUD's third-party requirements for the Authority's Section 8 Project-Based Voucher and Housing Choice Voucher Programs' unit inspections. HUD's Office of Public Housing Investments improperly approved the Authority's MTW plan for fiscal year 2017, which did not cite a valid waiver relating to Authority-owned units' inspections. As a result of the improper approval, the Authority provided more than \$1.2 million in housing assistance payments and received more than \$156,000 in associated administrative fees for the period August 6, 2016, through October 31, 2017. This condition occurred because HUD's Office of Public Housing

Investments did not ensure that reviews of the MTW annual plans were thorough by verifying that the referenced exemption was valid and appropriate.

### **HUD Did Not Properly Approve Capital Funds Drawdowns After the Authority's RAD Conversion**

We reviewed the Authority's use of capital funds after its RAD conversion and determined that HUD's Louisville, KY, PIH field office improperly approved the Authority's request to draw down public housing capital funds following its RAD conversion. Paragraph 1.5.A of Notice PIH 2012-32, REV-1, issued on July 2, 2013, provides that public housing agencies are permitted under RAD to use available public housing funding, including capital funds, for the conversion. However, public housing program funds may not be used for a project following conversion. In addition, 24 CFR 905.202 states that costs not associated with a Public Housing Capital Fund program public housing project or development are inappropriate activities and costs. In other words, following the RAD conversion, the project was transferred out of the Public Housing Capital Fund program; therefore, the capital funds should not have been used for costs associated with the Section 8 Project-Based Voucher Program.

However, the Authority drew down the funds for the Section 8 Project-Based Voucher Program units from HUD's Line of Credit Control System in August 2015 after completing its RAD conversion in March 2014, based on an improper approval from HUD's Louisville, KY, PIH field office in June 2015. Before HUD's approval of the drawdown, the Authority informed the field office that the construction process had experienced unexpected issues, which increased costs. The Authority added that the funds were needed for construction change orders and due to the depletion of its contingency budget. Therefore, these funds were not identified as a funding source in the Authority's RAD financing plan, which was submitted to HUD for review during the application process.

We informed HUD's Office of Recapitalization of the issue, and it explained that the review and approval should have come from the Office of Recapitalization and not the field office. The Office of Recapitalization added that the Authority could not use capital funds on Section 8 Project-Based Voucher units after the RAD conversion. We discussed the issue with HUD's Louisville field office, and it agreed that the funds should not have been drawn down. The condition occurred because the field office did not follow program requirements for approving capital funds after RAD conversion. As a result, more than \$38,000 in capital funds was inappropriately used for the Authority's Section 8 Project-Based Voucher Program.

### **Conclusion**

HUD's Office of Public Housing Investments improperly approved the Authority's request for exemption from HUD's third-party requirements for unit inspections in its MTW plan for fiscal year 2017. As a result, the Authority (1) did not comply with HUD's third-party requirements and (2) lacked support that it acted in the best interest of its program households when it conducted in-house inspections of units it owned, provided more than \$1.2 million in housing assistance payments, and received more than \$156,000 in associated administrative fees for those units. In addition, HUD's Louisville, KY, PIH field office improperly approved the Authority's

request to draw down its public housing capital funds after the RAD conversion for units in the Section 8 Project-Based Voucher Program. As a result, \$38,411 in capital funds, which should have been used for the remaining units in the Authority's public housing portfolio, was used inappropriately.

### Other MTW Housing Authority

We conducted a brief review of the annual plans for 38 public housing agencies<sup>5</sup> to determine whether appropriate exemptions were authorized by HUD on its third-party requirements for unit inspections. We identified that the Housing Authority of Santa Clara, CA, received an approval of the exemption regarding HUD's third-party requirements, which was also improper. Specifically, in its fiscal year 2011 MTW plan approved by HUD's MTW Director in the Office of Public Housing Investments, the Housing Authority of Santa Clara proposed to eliminate requirements for obtaining HUD's approval of an independent entity for units owned by it under the Section 8 Project-Based Voucher and Housing Choice Voucher Programs and stated that attachment C, paragraphs D.2.b, D.2.c, and D.5, of its MTW agreement authorized it to be exempt from the requirements. However, the requirements exempted at attachment C, paragraph D.5,<sup>6</sup> authorized the Authority to certify that units met housing quality standards and waived only certain unspecified provisions of section 8(o)8 of the 1937 Act and subpart I, as necessary, but did not waive any portion of section 8(o)(11) of the 1937 Act, subpart C of 24 CFR Part 983, or subpart H of 24 CFR Part 982, which required inspections to be conducted by a HUD-approved third party.

### RECOMMENDATIONS

We recommend that the Acting Deputy Assistant Secretary for Public Housing Investments

- 1A. Ensure that \$1,385,791 (\$1,229,684 in housing assistance payments and \$156,107 in associated administrative fees) used by the Lexington-Fayette Urban County Housing Authority is supported through a valid and retroactive exemption from HUD's third-party requirements. If a retroactive exemption cannot be issued, HUD should follow recovery procedures prescribed in HUD Handbook 2000.06, REV-4.
- 1B. Revise the standard MTW agreement for all existing 39 MTW housing agencies to clearly and specifically support which provision(s) waive the third-party inspection requirements.
- 1C. Issue clarifying guidance to all existing 39 MTW housing agencies advising that HUD intended to waive the third-party inspection requirements via attachment C to the standard agreement.

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<sup>5</sup> As of April 2018, 38 public housing agencies, excluding the Lexington-Fayette Urban County Housing Authority, actively participated in the MTW program throughout the Nation. Specifically, we reviewed 29 annual plans, including any amendments, for fiscal year 2018 that had been submitted and approved at the time of our review.

<sup>6</sup> Paragraphs D.2.b and D.2.c of the MTW agreement discussed contract rents and rent reasonableness.

- 1D. Ensure that reviews of MTW annual plans are thorough by verifying that the MTW plan accurately identifies the appropriate exemptions as authorized in the MTW agreements.
- 1E. Verify that the Office of Public Housing Investments' approvals of all MTW public housing agencies' MTW plans' exemptions from HUD's third-party requirements were valid and appropriate.

We recommend that the General Deputy Assistant Secretary for Public and Indian Housing

- 1F. Require the Authority to reimburse its Public Housing Capital Fund program \$38,411 from nonproject funds for the inappropriate use of funds for the Section 8 Project-Based Voucher Program units.
- 1G. Ensure that the Louisville, KY, PIH field office sends to the Office of Recapitalization any requests it receives for approving capital funds expenditures after the RAD conversion is complete.
- 1H. Require the Authority to ensure that capital funds are used in accordance with the program requirements for any future RAD conversions.

# Appendixes

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## Appendix A

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**Schedule of Questioned Costs**

<b>Recommendation number</b>	<b>Ineligible 1/</b>	<b>Unsupported 2/</b>
1A		\$1,385,791
1F	\$38,411	
<b>Totals</b>	<b>38,411</b>	<b>1,385,791</b>

- 1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or Federal, State, or local policies or regulations.
- 2/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.

# Appendix B

## Auditee Comments and OIG's Evaluation

### Ref to OIG Evaluation

### Auditee Comments



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

**DATE:** September 14, 2018

**MEMORANDUM FOR:** Nikita N. Irons, Regional Inspector General for Audit, Atlanta Region, 4AGA

**FROM:** Robert E. Mulderig, Acting Deputy Assistant Secretary for Public Housing Investments, PI *R. E. Mulderig*

**SUBJECT:** PIH Response to Office of Inspector General Draft Memorandum: HUD's Improper Approvals Resulted in Invalid Exemptions and an Ineligible Capital Funds Expenditure for the Lexington-Fayette Urban County Housing Authority

This is in response to the September 2018 Office of the Inspector General (OIG) draft memorandum entitled "HUD's Improper Approvals Resulted in Invalid Exemptions and an Ineligible Capital Funds Expenditure for the Lexington-Fayette Urban County Housing Authority (LHA)". We appreciate the opportunity to provide comments to this review of the Lexington-Fayette-Urban County Housing Authority, which was conducted between August 2017 and February 2018.

OIG suggests in this draft review that the Office of Public and Indian Housing (PIH), acting through the MTW Program, inappropriately approved a waiver of the requirement for third-party inspections for PHA-owned and -controlled properties. OIG suggests that this waiver was not valid, since LHA's MTW Agreement does not specifically waive Section 8(o)(11) of the 1937 Act and related sections in 24 CFR 983, Subpart C and 24 CFR 982, Subpart H.

PIH maintains its position that the waiver approval was valid and appropriate. In a September 14, 2018 memorandum (attached), the Program's Associate General Counsel agrees that citation Section 8(o)(11) is not explicitly waived in the MTW agreement; however, Counsel finds support for PIH's position that the authority to provide exemption from third-party inspections, as well as the intent to waive, can be found in the MTW Agreement.

The decision to waive the third-party requirement is consistent with the narrative language in the MTW Agreement concerning requirements pertaining to PHA-owned HCV and PBV units, alternative housing quality standards, and inspection protocols (Sections D.5, D.1.f, D.7.a. and D.7.d of Attachment C) as approved by the Secretary. Counsel suggests that, without expressly addressing property inspections, D.7.a. of Attachment C nevertheless provides broad authority to waive requirements pertaining to PHA-owned units—making allowable the waiver of inspections for PHA-owned properties, which is a requirement pertaining to PHA-owned units. That is, D.7.a. covers third-party inspections as part of the flexibilities granted to waive requirements pertaining to PHA-owned units.

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Comment 1

Comment 1

**Ref to OIG  
Evaluation**

**Auditee Comments**

Comment 2

Finally, Counsel concludes that omission of the explicit citation, Section 8(o)(11), is akin to a technical oversight, rather than a lack of authority in the MTW Agreement, because the implementing regulations are waived therein.

Comment 3

The OIG memorandum states that the MTW Director does not have the authority to waive regulations. It is important to note that MTW "waivers" are granted through the MTW Agreement, which is executed by the Assistant Secretary. The implementation of the MTW waivers are ultimately approved by HUD through the MTW Director. PIH understands that the MTW Director does not have the authority to add waivers that are not included in the MTW Agreement. The MTW Director is not waiving regulatory provisions by approving MTW Plans and is acting in accordance with delegated authority.

Comment 4  
and 1

The OIG also conducted a review of the Housing Authority of the County of Santa Clara (HACSC) and found that HACSC had received HUD approval to waive the requirement to use a HUD-approved independent entity for PHA-owned and controlled properties. PIH once again asserts that Attachment C, in Sections D.1.f., D.2.b., D.2.c., D.5. and D.7.a of the MTW Agreement, provides the support for waiving the requirement that a HUD-approved independent entity be used for inspections.

Comment 5

The OIG also found that the Louisville HUD Field Office had given approval to LHA to use FY2014 Replacement Housing Factor funds in a RAD project after conversion, even though the request should have gone through the Office of Recapitalization.

Thank you for the opportunity to respond to the subject review. The staff of the Office of Public Housing Investments/MTW Program within PIH look forward to continued dialogue and collaboration as you complete your analysis relative to this review.

Attachment

## OIG's Evaluation of Auditee Comments

Comment 1 HUD provided its program Associate General Counsel's (Counsel) memorandum dated September 14, 2018, and provided its comments based on this memorandum. HUD agreed that section 8(o)(11) of the 1937 Act was not explicitly cited in the standard MTW agreement. However, it asserted that its waiver approval was valid and appropriate. Specifically, HUD stated that its Counsel concurred that the authority to provide exemption from third-party inspections, as well as the intent to waive, can be found in the standard MTW Agreement. This authority to waive third-party inspections requirement is broadly provided in paragraph D.7.a, without expressly addressing property inspections.

We did not include the Counsel's memorandum in this memorandum as it was not necessary for understanding HUD's comments. Nonetheless, the Counsel's memorandum is available upon request.

We appreciate HUD's acknowledgement that section 8(o)(11) was not explicitly waived in the standard MTW agreement. However, as stated in this memorandum, neither the Authority's MTW agreement nor its 2017 MTW plan contained or referenced a valid waiver of HUD's third-party requirements for the Authority's Section 8 Project-Based Voucher and Housing Choice Voucher Programs' unit inspections. Specifically, paragraph D.7.a authorized the Authority to project-base assistance at properties it owned directly or indirectly that were not public housing, subject to HUD's requirements regarding subsidy layering, and indicated that project-based assistance for such units did not need to be competitively bid. D.7.a is silent on the issue of third-party independent inspections. Therefore, HUD should implement the recommendations provided in this memorandum.

Comment 2 HUD stated that its Counsel concluded that the omission of the explicit citation, section 8(o)(11), is similar to a technical oversight, rather than a lack of authority in the MTW Agreement, because the implementing regulations are waived therein.

Considering HUD's most recent guidance, 82 Federal Register 8056, which pertains solely to the new 100 MTW agencies to be selected under the MTW expansion that reiterates, and does not explicitly waive HUD's Section 8 Project-Based Voucher and Housing Choice Voucher Programs requirement for third-party inspections, HUD needs to determine whether its formal position is its published guidance to public housing authorities or the third-party inspections are waived for all 39 housing authorities since they have attachment C as part of their agreement with HUD. In other words, given HUD's stance, it exempts only the 39 housing authorities that have an attachment C but it does not exempt the 100 MTW agencies to be selected under the MTW expansion. We encourage HUD to further consult with its Counsel in identifying a formal position on the third-party requirements for authority-owned unit inspections.

Comment 3 HUD agreed that the MTW Director does not have the authority to add waivers that are not provided in the standard MTW agreement, which includes waivers appropriately approved by the Assistant Secretary. Further, HUD explained that the MTW Director was not waiving regulatory provisions by approving MTW plans and was acting in accordance with delegated authority in ultimately approving the implementation of the MTW waivers.

We appreciate HUD's understanding and encourage it to ensure that any future waivers are also approved at the appropriate level as required.

Comment 4 HUD disagreed with our conclusion of the Housing Authority of the County of Santa Clara that its standard MTW agreement did not waive any portion of section 8(o)(11) of the 1937 Act, subpart C of 24 CFR Part 983 or subpart H of 24 CFR Part 982, which required inspections to be conducted by a HUD-approved third party. Instead HUD asserted that Attachment C to the standard MTW agreement in paragraphs D.1.f, D.2.b, D.2.c, D.5, and D.7.a provided support, which waived the requirement that a HUD-approved independent entity be used for inspections.

We disagree with HUD's assessment that five different paragraphs in Attachment C to the standard MTW agreement provided support to waive the requirement of the independent entity to be used for inspections needing to be approved by HUD. As discussed in this memorandum and in comment 1 above, the paragraphs cited by HUD did not waive any portion of section 8(o)(11) of the 1937 Act, subpart C of 24 CFR Part 983 or subpart H of 24 CFR Part 982, which required inspections to be conducted by a HUD-approved third party.

Comment 5 HUD acknowledged our finding that the Louisville HUD Field Office had given approval to the Authority to use fiscal year 2014 capital funds in a RAD project after conversion, even though the request should have gone through HUD's Office of Recapitalization.

We appreciate HUD's acknowledgement on its field office's inappropriate approval of funding and encourage it to implement recommendations in this memorandum to address the condition identified.