



Summit Bradford Apartments, Tulsa, OK

Section 8 Project-Based Program



Issue Date: April 9, 2014

Audit Report Number: 2014-FW-1001

TO: Kelly M. Haines
Hub Director, Fort Worth Multifamily Hub, 6AHMLAS

//signed//

FROM: Gerald R. Kirkland
Regional Inspector General for Audit, Fort Worth Region, 6AGA

SUBJECT: Summit Bradford Apartments, Tulsa, OK, Did Not Comply With the
Requirements of Its Housing Assistance Payments Contract

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG), final results of our review of Summit Bradford Apartments' Section 8 program.

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 the audit.

The Inspector General Act, Title 5 United States Code, section 8M, requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://www.hudoig.gov>.

If you have any questions or comments about this report, please do not hesitate to call me at 817-978-9309.



April 9, 2014

Summit Bradford Apartments, Tulsa, OK, Did Not Comply With the Requirements of Its Housing Assistance Payments Contract

Highlights

Audit Report 2014-FW-1001

What We Audited and Why

We audited the Section 8 program administered by Summit Bradford Apartments in Tulsa, OK. We selected Bradford because we were informed that its management agent may have received Section 8 subsidies for vacant units. Our objective was to determine whether Summit Bradford Apartments, LP, the owner, and Summit Housing Partners, LLC, the management agent, administered Bradford's Section 8 program in compliance with its housing assistance payments contract with the U.S. Department of Housing and Urban Development (HUD).

What We Recommend

We recommend that the Director of the Fort Worth Office of Multifamily Housing Programs require the owner to either support or repay HUD more than \$177,000 spent on vacant, substandard, or over subsidized units. Further, the management agent should implement controls to prevent future questionable payments.

What We Found

Bradford received more than \$81,000 in Section 8 rental subsidies for units with questionable occupancy and that did not meet HUD requirements. In addition, HUD may have paid more than \$96,000 for over subsidized units. These conditions occurred because the management agent did not establish effective control systems for its onsite manager, who did not keep accurate or complete records. As a result, Bradford did not effectively and efficiently operate its Section 8 program and incurred questioned costs totaling more than \$177,000. Bradford's owner benefited from these conditions because it may have received more Section 8 subsidies than allowed.

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BACKGROUND AND OBJECTIVE

Summit Bradford Apartments is located at 564 East 32nd Street North, Tulsa, OK. The property is a 191-unit rental housing project. The U.S. Department of Housing and Urban Development (HUD) provided Section 8 housing assistance payments to subsidize the tenants' rents in accordance with the United States Housing Act of 1937. HUD regulated the property's rent amounts and operating methods.

HUD controlled the property through a housing assistance payments contract that was renewed with Summit Bradford Apartments, LP, the owner, on September 23, 2007, for 20 years. The agreement summarized the terms and conditions for the Section 8 housing assistance payment amounts, including establishing the initial contract rents. The agreement also provided that housing assistance payments would be made only for decent, safe, and sanitary units occupied by eligible families.

The property's management agent, Summit Housing Partners Management, LLC, was an identity-of-interest management agent. A majority of the property's day-to-day activities were managed at the property, while most of the financial operations were managed at the agent's home office in Montgomery, AL. The owner was responsible for any action taken by the agent at the property.

The Oklahoma Housing Finance Agency was the contract administrator of Bradford's Section 8 program. The Agency had an annual contributions contract with HUD identifying it as Bradford's contract administrator. However, due to litigation between HUD and other parties, HUD amended the latest contract on October 1, 2011. The amended contract did not allow the Agency to monitor Bradford. As a result, it had not performed an onsite monitoring review of Bradford since June 6, 2011.

As contract administrator, the Agency reviewed and approved the housing assistance payment vouchers before sending them to HUD for payment. The vouchers contained information on the subsidies requested for the occupied units. Between August 1, 2011, and July 31, 2013, Bradford received more than \$2.3 million in Section 8 subsidies.

According to program rules, HUD expected residents to contribute to their rent and utility payments. The lease agreements required residents to maintain their own utility accounts. As part of the housing assistance payment calculation, HUD included a utility allowance, which was to be passed through to the resident by Bradford.

Our objective was to determine whether the owner and its agent administered Bradford's Section 8 program in compliance with its housing assistance payments contract with HUD.

RESULTS OF AUDIT

Finding: The Management Agent Did Not Administer Bradford's Section 8 Program in Accordance With Requirements

Summit Housing Partners, LLC, Bradford's management agent, did not adequately manage its Section 8 program as required by its housing assistance payments contract. It billed HUD for vacant or substandard units. The units did not have electricity and therefore, were substandard. Further, the agent did not maintain adequate records. In addition, the agent ignored its and HUD's occupancy standards when Bradford over subsidized families by housing them in units with more bedrooms than they were authorized based upon the family composition. Further, it should improve the physical conditions of the units to better comply with its housing assistance payments contract. These conditions occurred because the agent did not comply with HUD's and its own requirements and establish effective control systems for its onsite manager, who did not keep accurate or complete records. As a result, Bradford did not effectively and efficiently operate its Section 8 program and incurred questioned costs totaling more than \$177,000.

Bradford Apartments Received Section 8 Subsidies for Vacant or Substandard Units

Contrary to HUD regulations, Bradford improperly submitted housing assistance payment vouchers to HUD for 17 substandard units that did not have electricity or were vacant.¹ As a result, HUD paid Bradford \$70,497 in ineligible housing assistance. Sixteen of the units did not have electricity, and one unit's electricity account was in Bradford's name. The improper payments occurred because the agent ignored HUD requirements for managing its Section 8 housing. Further, Bradford's controls did not always follow requirements, and management officials did not keep accurate or complete records. They failed to establish controls to determine when tenants moved out or did not have electricity. Bradford's owner benefited from these conditions because it received more Section 8 subsidies than allowed.

Bradford improperly reported occupancy and collected housing assistance payments for units that did not have electricity. According to HUD requirements, Bradford was required to bill only for occupied units that were decent, safe, and sanitary. For 30 unit utility records reviewed,² Bradford incorrectly reported occupancy for 17 units (57 percent) that either did not have electricity or the

¹ According to section 4d(2) of its housing assistance payments contract, Bradford could accept housing assistance payments only for occupied units that were decent, safe, and sanitary.

² In response to a subpoena, American Electric Power provided the utility records for the 30 units.

electricity was in Bradford’s name during periods when Bradford claimed occupancy. Three units did not have electricity during the entire time that Bradford claimed they were occupied.

Bradford’s agent should have known that 4 of the 30 units were vacant because it maintained the electric utility accounts for these units when it claimed they were occupied. According to management officials, Bradford did not maintain the utility accounts for its units unless the units were vacant. Unit 585D had electricity in Bradford’s name for the entire 8 months during which Bradford claimed the unit was occupied. The remaining three units did not have electricity during all or part of the periods for which Bradford certified occupancy and received housing assistance payments. Table 1 shows the number of months in which Bradford collected housing assistance payments for these units and the number of months the units did not have electricity.

Table 1: Subsidized units with Bradford utility accounts

Unit number	Months covered by housing assistance funds	Months without electricity
506D	11	4
551D	7	1
573B	17	4
585D	8	0
593D	11	1

Bradford improperly billed HUD and kept the rental income for units in which the electricity was in Bradford’s name and for units that did not have electricity. HUD authorized Bradford’s gross rent, which included utility allowances. Bradford’s policies required the property manager to review and approve all utility reimbursements paid to tenants. However, a review of Bradford’s check register confirmed that HUD paid Bradford utility allowances for electricity that was in its name.³ For example, Bradford held the electric account for unit 585D in its name for 8 months, claiming that a tenant lived in the unit. Utility allowance checks written to the tenant for the months of November 2011 through February 2012 were voided nearly a year later. After the checks went unclaimed, Bradford certified and continued receiving housing assistance payments for this unit through March 2, 2012.

Bradford also collected and kept utility allowance funds for units that did not have electricity and were vacant. For example, Bradford collected HUD utility allowance funds for 5 months after a tenant moved out of unit 518C, although the unit did not have electricity. Bradford later voided the checks that it had written to the tenant. In both instances, Bradford did not repay the utility allowances to HUD. Bradford’s voiding of the utility allowance checks further demonstrated

³ According to section 7 of the lease agreements, Bradford did not maintain utility accounts for its occupied units.

that the tenants did not pick up their checks and cash them, indicating that the units were vacant during those months.

Two Apparently Occupied Units Did Not Have Electricity

During site visits of 22 units in August 2013, 2 of the 11 (18 percent) units that were listed on the housing assistance payment vouchers as occupied did not have electricity as required.⁴ The two units, units 506A and 585B, were infested with flies. On the week of the visit, the heat index reached as high as 110 degrees, which could lead to dangerous conditions for a resident. Despite substandard conditions that violated HUD regulations and the lease agreements, Bradford claimed and received \$10,516 in housing assistance for these units when they did not always have electricity.

Bradford reported that unit 506A had been rented since February 1, 2013.⁵ The December 2013 housing assistance payment voucher showed that the resident still lived in the unit. Management officials did not ensure that the occupied unit was habitable as it did not have electricity on the day of the visit.

Bradford reported that a resident had rented unit 585B on July 3, 2013, and still lived there in December 2013. Since the unit did not have electricity, food in the refrigerator had spoiled, producing a foul smell throughout the unit. The utility records for this unit showed that the resident had opened a utility account but had made no payments, including the required utility deposit. On July 31, 2013, less than a month after the resident opened the account, the utility company sent a disconnect notice.

Bradford should not have collected housing assistance payments for these two units that did not have electricity because they were not decent, safe, and sanitary.⁶

Bradford Maintained Substandard Records

Management officials should have known that Bradford's units did not have electricity or were vacant. They asserted that they walked the property daily and looked for tagged electric meters.⁷ However, if they did so, they failed to either identify units without electricity, confirm whether the units were occupied, or

⁴ 24 CFR (Code of Federal Regulations) 5.703 required the owner to keep the kitchen, lighting, outlets, switches, and electrical systems of the units free of health and safety hazards, functionally adequate, and operable.

⁵ This unit was not included in the utility subpoena.

⁶ The management agent continued billing for the units through at least its December 2013 housing assistance payment voucher, which it submitted on October 29, 2013.

⁷ The utility company also placed yellow 4.25" by 11" disconnect notices on the front doors. Management officials should have seen these as they walked around the property.

remove the units from Bradford's housing assistance payment vouchers because they were either vacant or not in decent, safe, and sanitary condition. As a result, Bradford collected improper rent subsidies and utility allowances for ineligible units.

The improper payments occurred because Bradford did not have adequate controls and did not follow requirements.

- Bradford did not have controls in place to follow up on tenants when they did not pick up their utility allowance checks. Thus, management officials took an average of 257 days to void unclaimed utility checks.
- Bradford did not comply with HUD requirements. When the units did not have electricity or Bradford's tenants vacated units, management officials continued billing HUD and receiving housing assistance payments for the units. Contrary to Bradford's practice, HUD required that Bradford stop billing for units that did not have electricity⁸ or when vacancies were discovered.⁹
- Oklahoma State law¹⁰ required the owner to store the property in a place of safekeeping. However, the housing assistance payment contract did not authorize the owner to charge HUD for vacant units. Instead of moving the tenants' abandoned property to a storage unit, the owner elected to keep the abandoned property in the units and inappropriately billed HUD for the subsidies. For example, a site visit showed that unit 510C was clearly vacant on August 27, 2013. However, management officials reported on Bradford's housing assistance payment voucher that the tenant moved out on September 16, 2013, 20 days later.

Due to the significant control deficiencies, Bradford may have received improper housing assistance payments for other vacant or substandard units not included in the 30 units sampled.

Management Officials May Have Placed Tenants into Units That Were Larger Than Authorized

HUD required the owner to establish proper occupancy standards to identify whether a unit was the appropriate size. Further, Bradford was to certify annually that each family was in the proper unit,¹¹ maintain a transfer list for families that

⁸ 24 CFR 5.703 required the owner to keep the property decent, safe, sanitary, and in good repair.

⁹ HUD Handbook 4350.3, REV-1, Occupancy Requirements of Subsidized Multifamily Housing Programs, effective August 1, 2009, paragraph 9-12(E)

¹⁰ Oklahoma Residential/Non-Residential Landlord and Tenant Acts, title 41, section 130C

¹¹ HUD Handbook 4350.3, REV-1, Occupancy Requirements of Subsidized Multifamily Housing Programs, effective August 1, 2009, chapter 7

requested or needed a move,¹² and give families currently living in units that were not of the appropriate size priority to transfer into appropriate-size units before renting units to families that did not live at Bradford.¹³

Management officials may have inappropriately placed tenants into units that were larger than they were authorized. This condition occurred because Bradford's agent did not follow Bradford's occupancy standards or HUD requirements for housing tenants. Specifically, it did not

- Keep its records updated,
- Maintain appropriate transfer lists,
- Document annual recertifications,
- Follow appropriate procedures, and
- Implement proper controls to ensure tenants were living in proper size housing.

As a result, Bradford may have collected \$96,249¹⁴ in improper subsidies¹⁵ for units that exceeded its and HUD's occupancy requirements.¹⁶

Generally, Bradford's written occupancy standards did not allow one person to have two or three bedrooms.¹⁷ If Bradford placed the family into a unit that was larger than defined in the occupancy standards, the lease agreement required the family to move to a smaller unit as it became available.

Data Analysis Results

Based upon analysis of Bradford's September 12, 2013, data, Bradford may have incorrectly claimed and HUD paid \$87,173¹⁸ in excess housing assistance for the 46 occupied units that were larger than Bradford's occupancy standards authorized.

¹² HUD Handbook 4350.3, REV-1, Occupancy Requirements of Subsidized Multifamily Housing Programs, effective August 1, 2009, paragraph 7-16(C)

¹³ Required by Bradford Apartment Homes Tenant Selection Plan

¹⁴ The \$96,249 consisted of \$87,173 from the data analysis and \$9,076 from a review of the tenant files. Of this amount, \$7,947 was ineligible and \$88,302 was unsupported.

¹⁵ The total questioned costs were \$102,230. However, \$5,981 of the costs was included as questioned costs due to a lack of electricity. So as to not duplicate costs, the \$5,981 was removed from this calculation.

¹⁶ HUD Handbook 4350.3, REV-1, Occupancy Requirements of Subsidized Multifamily Housing Programs, effective August 1, 2009, paragraph 3-23(A), required Bradford to develop and follow occupancy standards that took into account the size and number of bedrooms based on the family size.

¹⁷ Bradford Apartment Homes Tenant Selection Plan

¹⁸ This amount consisted of \$2,735 in ineligible costs and \$84,438 in unsupported costs.

Tenant File Review Results

Based on a review of tenant files for 25 units, Bradford housed families in 5 HUD-subsidized units that were larger than allowed by its occupancy plan and HUD requirements.¹⁹

For these five units, management officials ignored the forms HUD-50059 that listed the family members, did not follow up on expected changes in family size, and did not follow up on questionable custodies.

- For more than a year, management officials inappropriately billed HUD for a two-bedroom unit, unit 509C, that was occupied by one tenant and his 18-year-old son, as reported on the form HUD-50059, which the management agent signed. This was improper because Bradford required children that age to enter into a lease agreement and HUD required them to submit consent forms and verification documents. Further, Bradford policies required the onsite manager to immediately include the son's income in the family's income. However, due to mismanagement, the son remained in the unit for 6 months without signing any of the required documents. The father wrongly continued to live in the unit by himself after the son moved out despite submitting an updated form HUD-50059, which management signed.
- Management officials allowed a family with temporary custody of children to remain in unit 585B after the children left, although the signed forms HUD-50059 showed that two family members lived in the three-bedroom unit. The family wrongly remained in the unit for more than 2 years.
- For units 585D and 534D, management officials did not follow up on expected changes in family size. The two families were provided additional bedrooms for expected children, but the tenant files did not contain evidence that the children had lived in the units. Unit 534D did not have electricity for 4 months after the expected birth of twins. Management officials should have attained evidence from the families following the births, such as copies of birth certificates, Social Security numbers, or other evidence to support occupancy of the larger units.
- Management officials did not follow up on reported discrepancies regarding child custody. For nearly 7 years, a single father claimed custody of three children to live in unit 522D, a three-bedroom unit. However, the tenant file showed that the father had visitation rights only. If the father reported incorrect occupancy information on the application, certification, or recertification, the lease agreement required him to repay

¹⁹ HUD Handbook 4350.3, REV-1, Occupancy Requirements of Subsidized Multifamily Housing Programs, effective August 1, 2009, paragraph 3-23(A), required Bradford to develop and follow occupancy standards that took into account the size and number of bedrooms based on the family size.

Bradford excess rent paid, and Bradford would then reimburse HUD.²⁰ The management agent did not have documentation to show that it followed up on this discrepancy.

Bradford should have transferred these five families to smaller units because there were an adequate number of available appropriate-size units. The tenant files did not contain documented reasons for keeping the families in the larger units or Bradford's notification that the families needed to move to smaller units. Further, Bradford could not support that it used a transfer list to keep track of families that needed to move and followed up on its progress in moving them. As a result, HUD paid Bradford \$9,076²¹ in excess housing assistance on these five units.

Bradford collected \$96,249 in improper Section 8 subsidies because its management agent did not have the controls needed to ensure that it placed families into the proper sized units. In addition, Bradford gave larger units to families that had questionable temporary custody of children, even when the forms HUD-50059 showed that the families were smaller than authorized for the units. The owner benefited from these improper controls because it received more Section 8 subsidies than allowed.

**Bradford's Management Agent
Should Improve the Unit
Conditions.**

Bradford's management agent should improve the unit conditions at the property. HUD's latest physical inspection on February 19, 2013, rated the property at 67c*.²² During site and unit observations with staff in August 2013, 6 of the 11 occupied units did not appear to meet HUD requirements.²³ As previously discussed, two of the occupied units did not have electricity. Deficiencies in the occupied units included

- Safety and sanitation violations inside the properties, including foul smells from spoiled food due to no electricity, defective electrical switches, insect and rodent infestation, unsecured or damaged water heaters, missing window screens, and damaged or leaking ceilings.
- Visible signs of damage such as holes in walls; damaged walls, doors, and knobs; and cracks in tiles.

²⁰ HUD Handbook 4350.3, REV-1, Occupancy Requirements of Subsidized Multifamily Housing Programs, effective August 1, 2009, section 8-20

²¹ This amount consisted of \$5,212 in ineligible costs and \$3,864 in unsupported costs.

²² The c in the score meant that HUD noted life threatening issues. Specifically, 5 of 24 units inspected (21 percent) had life threatening issues. A 60 is considered a passing score.

²³ 24 CFR 5.703 required the owner to keep the property decent, safe, sanitary, and in good repair.

- Damaged or low-performing appliances and fixtures, such as kitchen range burners, garbage disposals, and faucets.

Additionally, 10 of the 11 vacant units visited were in poor condition. It appeared that some of these units would need major repairs as a possible result of the agent not making repairs in a timely manner. According to the October 2013 housing assistance payment voucher,²⁴ Bradford showed 28 vacant units at the complex. Bradford would need to make significant repairs to provide acceptable living conditions before tenant occupancy.

Based on observations of the units and discussions with tenants, it appeared that Bradford did not always conduct unit site visits as required. One tenant stated that he felt rushed into moving in and management officials did not conduct a proper site visit of the property. The unit included a bathroom ceiling that leaked when his neighbor upstairs used the facilities (figure 1). Another occupied unit had a rodent infestation according to the tenant and a hole in the pantry closet wall (figure 2). Another tenant complained that her unit had outlets and switches that emitted electrical sparks and her flooring included several pieces of cut up carpeting. Another occupied unit had a cracked and damaged water heater.



Figure 1: Leaking bathroom ceiling



Figure 2: Hole from rodent infestation

Bradford asserted that it spent significant funds on security. However, some residents indicated that they did not feel safe living at Bradford, despite onsite private security. As a result, some residents stated that they barricaded their front door at night due to fear of break-ins. Some did not leave their units if possible due to potentially dangerous individuals loitering around the property. Others stated that they had reason to suspect that there were drug dealers and users on the property.

²⁴ The management agent certified this voucher on September 3, 2013.

Conclusion

Bradford violated its housing assistance payments contract with HUD for its Section 8 program by charging HUD for vacant or substandard units and units that exceeded its and HUD-authorized occupancy standards. Further, it did not maintain complete records in its tenant files or maintain the property in a decent, safe, and sanitary condition in accordance with requirements. These conditions occurred because its agent had not implemented effective controls. As a result, HUD paid Bradford at least \$177,262 for ineligible and unsupported housing assistance payment subsidies and utility allowances.

Recommendations

We recommend that the Director of the Fort Worth Office of Multifamily Housing Programs require Bradford to

- 1A. Repay \$70,497 to HUD for units that either did not have electricity or were vacant. Repayment should be from non-Federal funds.
- 1B. Provide documentation to support \$10,516 in housing assistance payments for two units that did not have electricity during an August 2013 site visit or repay any unsupported amounts to HUD from non-Federal funds.
- 1C. Repay \$7,947 to HUD from non-Federal funds for subsidies on units exceeding HUD's occupancy standards.
- 1D. Provide documentation to support \$88,302 in housing assistance payments for apparently over subsidized units or repay any unsupported amounts to HUD from non-Federal funds.
- 1E. Implement adequate written procedures and effective controls to ensure that it administers its Section 8 program in accordance with requirements. Minimally, the procedures and controls should ensure that
 - Units are occupied; the appropriate size; and decent, safe, and sanitary;
 - Family composition is verified, including ensuring that all reported family members live in the units and are eligible;
 - Families in over subsidized units are transferred to appropriate-size units in compliance with HUD requirements;
 - Bradford maintains waiting lists and transfer lists that are current and available to all staff members who process move-ins and move-outs;

- Bradford maintains and frequently updates tenant files and processes known changes in family composition within HUD-required timeframes;
 - Bradford maintains accurate records in the tenant files supporting reasons for allowing families to reside in units that exceed the published occupancy standards; and
 - Housing standard deficiencies are identified and corrected in a timely manner.
- 1F. Submit a monthly paper voucher in addition to the electronic voucher submitted in HUD's tenant rental assistance certification system. The paper voucher documentation should include the corresponding form HUD-50059 for each individual rental assistance payment requested and an active property rent roll that provides a date stamp that corresponds with the submission date of the electronic voucher. This documentation should be submitted to the Tulsa staff on or about the 15th of each month for review.
- 1G. Perform a 100 percent tenant file review within 45 days from the issuance of the audit report. This should include a certification to the HUB upon completion and should include confirmation of compliance with HUD rules and regulations.
- 1H. Certify that it corrected the physical deficiencies identified in the units during our site visits in August 2013.

We also recommend that the Director

- 1I. Perform a standard management and occupancy review, including site visits of the 161 units that were not included in our sample, to ensure that Bradford has implemented adequate procedures and has corrected the deficiencies identified in this report.
- 1J. Compare the occupancy noted in the housing assistance payment vouchers to the actual occupancy noted during the site visits of the 161 units that were not included in our sample.

SCOPE AND METHODOLOGY

We performed our fieldwork at Bradford's office located in Tulsa, OK, and our offices in Fort Worth, TX, and Oklahoma City, OK, from July through November 2013. Our audit scope was August 2011 through July 2013. However, in one instance, we expanded our scope to May 1, 2011. Also, we expanded our scope through December 31, 2013, for all over subsidized units and the two units without electricity that we visited in August 2013.

To accomplish our objective, we

- Reviewed relevant HUD guidance and requirements.
- Reviewed the agent's policies and procedures.
- Reviewed and analyzed the owner's housing assistance payments contract with HUD.
- Reviewed Bradford's December 31, 2011, and 2012, audited financial statements.
- Reviewed the contract administrator's management review report for Bradford, dated July 5, 2011.
- Reviewed Bradford's February 19, 2013, physical inspection report.
- Subpoenaed American Electric Power's policies and its utility records for 30 of Bradford's units.
- Interviewed agent, contract administrator, and HUD officials.
- Selected a nonstatistical sample of 25 of 191 (13 percent) subsidized units to verify that the tenant files supported the vouchers. The results were not projected to the population.
- Selected a nonstatistical sample of 30 of 191 (16 percent) subsidized units to review for occupancy. We compared subpoenaed utility records provided by American Electric Power to housing assistance payment vouchers. The results were not projected to the population.
- Selected and visited a nonstatistical sample of 22 units.
- Analyzed the September 12, 2013, tenant unit voucher data provided by the owner for 335 records. We identified 50 potentially over subsidized tenants in 46 units and selected a nonrepresentative sample of 7 tenant files for testing. For the remaining 43 tenants, we calculated the difference between unit gross rents for the family's actual household size and the housing assistance payment voucher amounts Bradford charged for the actual unit size reported. We validated tenant move-in and move-out dates based on Bradford's housing assistance payment vouchers through December 2013. We did not project the results to the population.

To achieve our audit objective, we relied in part on computer-processed data from the agent. We analyzed the computer-processed data to determine whether the agent housed tenants in potentially over subsidized units and whether it complied with procedures for tenant utility allowance checks. We did not perform a detailed assessment of the reliability of the data. However, we assessed the reliability of data adequate for the analysis conducted.

We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate

evidence to provide a reasonable basis for our findings and conclusions based on our audit objective(s). We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

INTERNAL CONTROLS

Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

We determined that the following internal controls were relevant to our audit objective:

- Policies and procedures that Bradford's management agent had implemented to ensure that its Section 8 program met its objectives.
- Policies and procedures that Bradford's management agent had implemented to ensure that it complied with laws and regulations.
- Policies and procedures that Bradford's management agent had implemented to ensure that its resource use was consistent with laws and regulations and that its resources were safeguarded against waste, loss, and misuse.

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

Significant Deficiencies

Based on our review, we believe that the following items are significant deficiencies:

Bradford did not establish effective systems and controls to ensure that it

- Requested housing assistance payments only for occupied units that were in decent, safe, and sanitary condition;
- Maintained adequate documentation in its tenant files;
- Housed families in appropriate-size units; and
- Maintained its units in decent, safe, and sanitary condition (finding).

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS

Recommendation number	Ineligible <u>1/</u>	Unsupported <u>2/</u>
1A	\$ 70,497	
1B		\$ 10,516
1C	7,947	
1D		88,302
Totals	<u>\$ 78,444</u>	<u>\$ 98,818</u>

- 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



March 24, 2014

Gerald R. Kirkland
Regional Inspector General for Audit
Office of Audit (Region 6)
U.S. Department of Housing and Urban Development
819 Taylor Street, Suite 13A09
Fort Worth, TX 76102

RE: Response of Summit Bradford Apartments, LP to Office of Inspector General
Draft Audit Report Issued February 28, 2014

Dear Mr. Kirkland,

Thank you for the opportunity to respond to the U.S. Department of Housing and Urban Development ("HUD") Office of Inspector General ("OIG") draft audit report regarding Summit Bradford Apartments (the "Property" or "Bradford"), a 192-unit apartment community located in Tulsa, Oklahoma. Summit Bradford Apartments, LP (the "Owner") owns the Property, which was managed during the audit period by Summit Housing Partners, LLC, and its successor, BSR Trust, LLC (the "Management Agent"). The OIG draft report examined the Owner's and the Management Agents' administration of the Property's project-based Section 8 Housing Assistance Payments ("HAP") Contract, (No. OK56-E000-025), which provides assistance for 191 units. The OIG audit period spanned, in general, a 29-month period, dating from August 1, 2011 to December 31, 2013.

As you are aware, the OIG issued its draft report on February 28, 2014, and conducted an exit conference on March 10, 2014. While we appreciate the one-week extension granted to respond to the draft report's claims, as detailed below, the OIG was unable to provide critically needed information requested by the Owner, thus hindering the Owner's ability to address all of the allegations in the brief time allotted to respond.

Additionally, we disagree with the OIG's interpretations of HUD policy and its conclusions, and trust that the OIG will give the Owner's entire response full and fair consideration.

Comment 1

I. Background

Staffing the Property with qualified managers was unusually challenging during the audit period, as four onsite community managers received verbal and/or written counsel for poor performance, and a number were fired. This is uncharacteristic of our managed portfolio where managers typically serve without incident. We suspect that some of the very persons terminated at Bradford for unsatisfactory performance may have informed the OIG of suspected irregularities, paradoxically drawing attention to the very problems they created by failing to follow HUD's and the Management Agent's requirements. Thus, the conditions cited in the draft report for the most part reflect problems in the Property's past that were caused by onsite staff members terminated for poor performance. The OIG report should acknowledge these circumstances.

All employees of Bradford, including the regional property manager, received position-appropriate training from qualified independent trainers, including an emphasis on utilizing the features of various electronic systems to enhance compliance. The regional property manager is responsible for ensuring that each employee is properly trained and complies with HUD's and the Owner's directives. Onsite and regional property managers are encouraged to attend local, state and federal training as may be available in their area or via the internet. Staffing problems are taken seriously, and the regional property manager is responsible for monitoring staff performance, and addressing issues with verbal and/or written counseling statements that are reviewed and approved by Human Resources. The corporate Human Resource Department is also available to discuss performance and methods to coach and counsel employees as appropriate.

Additionally, the Owner consistently places the needs of the Property ahead of its own interests and pecuniary gain. To protect the Property's limited resources, the Owner has deferred collection of a staggering \$1,564,545 in overdue management and development fees owed to it. Since acquiring and re-developing this troubled property in 2007, the Owner spent on average \$13,885 per unit on renovations, and has collected only 29 percent of its earned fees.

II. Rebuttal of OIG Allegations Regarding Vacant or Substandard Units

The OIG alleged that \$81,013 in HAP assistance payments may have been improperly collected for 17 non-randomly selected units claimed to be vacant or substandard. OIG based its determination of substandard condition on a single factor: an alleged lack of tenant-provided utilities. The majority of the claim (\$70,497) is apparently based on calculations derived by comparing electricity service records subpoenaed from American Electric Power ("AEP") to the Owner's HAP payment requests. The balance (\$10,516) represents allegedly unsupported HAP payment requests for two occupied units inspected by the OIG during August 2013 that were found to lack electricity.

Comment 1

A. Recommendations 1A and 1B Are Based on Misinterpretations of HUD Policy, and the OIG Failed to Provide the Owner With Requested Data Needed to Disprove the Findings

1. *The OIG Failed to Provide Requested Data Supporting its Claims Thus Frustrating the Owner's Ability to Defend its Actions*

In a highly unusual exercise of authority, the OIG utilized its subpoena power to compel AEP to release tenant electric utility records for 30 non-statistically selected units at the Property. Such information is typically off-limits and protected by state privacy laws, and Oklahoma is no exception.¹ Even in states without such protections, landlords are routinely denied information about tenant-provided utilities because the contractual relationship exists exclusively between the tenant and the utility company.

The Oklahoma Electric Usage Data Protection Act restricts the disclosure of customer information except if required by law (for example, obtained by warrant or court order), involves a business transaction involving the electric utility, in an emergency situation, or if the customer provides written consent to disclosure.² The fact that the OIG had to resort to such extreme measures to obtain the electricity service records underscores that this information is outside of the Owner's control and thus cannot and should not be held against the Owner.

Without copies of the subpoenaed electricity service records, the Owner is unable to determine which units are said to lack electricity and for which time periods. Despite repeated requests for copies of the subpoenaed records, including most recently on March 10, 2014, the OIG is unable or unwilling to provide these records, making it impossible for the Owner to rebut the allegations. The OIG provided a list of affected units, but no corroborating information.

Comment 3

Therefore, the Owner respectfully requests, and basic due process considerations require, that at a minimum the \$70,497 in "improper" HAP payments be reclassified as "unsupported", subject to later verification by the Owner working with the HUD field office. More importantly, however, and for the reasons discussed below, the OIG misinterpreted and misapplied relevant HUD regulations and guidance and discovered violations where none exist, thus the claim for the entire \$81,013 of the alleged improper HAP payments should be removed from the final report.

2. *The OIG Applied the Wrong Policy Standards and/or Misread the Relevant Lease and HAP Contract Provisions*

¹ Okla. Stat. tit. 17, Sec. 710.1 et. seq.

² *Id.* at Sec. 710.4.

Comment 4

We are troubled by the OIG's selective citation of HUD requirements that ignore the most fundamental determinate of what constitutes decent, safe and sanitary housing: the Real Estate Assessment Center ("REAC") Dictionary of Deficiency Definitions regulation.³ With its nearly 500 physical condition classifications, including degrees of severity, the REAC Dictionary implements HUD's Uniform Physical Condition Standards ("UPCS") and Physical Inspection Requirements, which elaborate on the basic statutory requirements outlined at 5 C.F.R. Section 5.703. In the 15 years since implementation, REAC criteria have become the gold standard for evaluating the physical condition of HUD's assisted portfolio,⁴ supplanting the far less specific and more subjective Housing Quality Standards. In contrast, the OIG merely cited the general regulation, which is inadequate and provides no analytical framework to determine the condition of the Property's units.

Comment 4
Comment 5

Contrary to the OIG's assertions, units lacking electricity do not necessarily violate the decent, safe and sanitary standard, but will cause a unit to lose points per the UPCS inspection protocol.⁵ OIG's assumption that the 17 units alleged to lack electricity are "substandard" is subjective and unfounded because it ignores the only relevant, established and accepted HUD guidance on this topic. Conveniently dismissed by the OIG was the February 19, 2013 REAC inspection report that scored the Property as a passing 67 out of 100.⁶ Two of the units cited by the OIG (Units 506A and 522D) were inspected by REAC and yet no violations were noted for a lack of electricity. In fact, none of the 24 units inspected by REAC included deficiencies for a lack of electrical service.

Comment 6

Furthermore, if tenants' failure to maintain utilities actually amounted to a decent, safe and sanitary violation, the HUD Model Lease would not classify this as merely a "minor" lease violation – one that prevents the owner from terminating tenancy unless there are repeated violations.⁷ Additionally, the HUD Occupancy Handbook affirmatively confirms that tenant non-payment of utilities is a minor lease violation,⁸ and directly contradicts the OIG's erroneous claims. Despite

³ Originally issued Dec. 8, 2000 (65 Fed. Reg. 77230) and revised Aug. 9, 2012 (77 Fed. Reg. 47708).

⁴ See

http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/reac/aboutreac

⁵ REAC Dictionary of Deficiency Definitions, 77 Fed. Reg. 47708, 47752-56 (Aug. 9, 2012).

⁶ HUD regulations prohibit owners from appealing REAC inspection scores unless the appeal would elevate the property to the next condition level, which for Bradford meant it would have had to reach a score of 80 or better to even mount an appeal. 24 CFR Sections 200.857(c)(3) and (d)(4).

⁷ HUD Model Lease for Subsidized Programs (Form HUD-90105-A), Section 23(d): "The term material noncompliance with the lease includes: ... (2) repeated minor violations of the lease that (a) disrupt the livability of the project, (b) adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment to the leased premises and related project facilities, (c) interfere with the management of the project, or (d) have an adverse financial effect on the project." ... "The payment of rent or other financial obligation due under the lease after the due date but within the grace period permitted under State law constitutes a minor violation."

⁸ HUD Housing Handbook 4350.3 REV-1 CHG-4, Para. 8-13(A)(4) [hereafter "HB 4350.3"].

numerous Owner requests, the OIG has not provided sufficient data or information to determine if repeated utility payment violations occurred.

Comment 6

Contrary to the OIG's allegations, the Owner and Management Agent followed appropriate procedures to determine whether units were occupied and had utilities when it vouchered for HAP assistance payments. At a minimum, HUD requires owners to conduct annual inspections of HAP assisted units.⁹ However, the Owner surpasses the HUD minimum by conducting quarterly inspection of all units on a rotating basis,¹⁰ an industry best practice. As previously noted and per HUD requirements, the Owner is prohibited from terminating tenancy unless the tenant *repeatedly* fails to maintain utilities.¹¹

Comment 7

Comment 8

It is impractical and unrealistic for owners and management agents to know instantaneously when tenants vacate their units without notice or if tenant-provided utilities are terminated for non-payment, nor are they expected to. HUD confirmed this in the preamble to the recent notice revising the UPCS standards where REAC inspection findings may reveal tenant-caused damage or tenant failure to maintain utilities. HUD affirmed "the citation of the deficiency will *alert* the multifamily owner/PHA to the existence of the problem."¹² Furthermore, the Owner's monthly certifications in support of HAP voucher payment requests are made "to the best of its knowledge and belief."¹³ By conducting quarterly unit inspections on a rotating basis, the Owner actually exceeds the HUD oversight requirements.

Comment 9

With a total of 191 tenant units, a limited budget and staff, and tenants' right to the quiet enjoyment of their premises, it is infeasible and unreasonable for the OIG to suggest that all 191 tenant units must be inspected monthly, particularly when HUD only requires annual inspections.¹⁴ The OIG also claims that on-site staff should have seen certain disconnect notices that AEP supposedly affixed to tenants' doors. However, on-site staff advised us that they have never seen these notices, meaning that the utility company either failed to affix them or the tenants removed them.

Comment 4

Additionally, pursuant to Bradford's HAP Contract, the Owner agrees to maintain the Property and related facilities to provide decent, safe and sanitary housing including *only those utilities that the Owner is responsible for*, which for Bradford includes water and gas only.¹⁵ The HAP Contract specifically exempts

⁹ Management Review for Multifamily Housing Projects (form HUD-9834) Addendum A, Section C(7). See also Addendum C.

¹⁰ See Tab A, BSR Preventative Maintenance Procedures.

¹¹ HB 4350.3 at para. 8-13(A)(4).

¹² 77 Fed. Reg. at 47711 (Aug. 9, 2012) (emphasis added).

¹³ Bradford HAP Contract No. OK56-E000-025, Section 2.4(h)(2).

¹⁴ See Form HUD-9834.

¹⁵ Bradford HAP Contract No. OK56-E000-025, Sections 1.1(e)(3), 2.5(a).

tenant-provided utilities from this requirement. There is an inherent conflict in the long-standing established contract language and HUD's regulations that shift the burden of tenant-caused violations to owners. HUD should abide by its contract language.

Comment 10

Moreover, if the units are deemed out of compliance and not decent, safe and sanitary, the HAP Contract requires the Contract Administrator to first notify the Owner of the same and provide an opportunity to take corrective action.¹⁶ The OIG provided the Owner no opportunity to cure the alleged violations before imposing financial sanctions, in direct violation of the HAP Contract.

With respect to tenant utility payment checks, Bradford's policy was to retain unclaimed checks for a year before voiding them; however, it adopted a new policy in August 2012 where unclaimed checks were voided after six months.¹⁷

Comment 11

Finally, the OIG cited an incorrect (nonresidential) provision of Oklahoma state law regarding retention of tenants' abandoned property. Contrary to the OIG's assertions, owners are *not* required to move abandoned tenant property to a storage unit, and instead may store tenant property in the abandoned unit.¹⁸ Furthermore, Oklahoma law permits the owner to charge storage costs to the tenant, provided they do not exceed the fair market rental value of the unit.¹⁹ HUD, however, tightly controls which fees may be charged to tenants in addition to rent, and storage fees for abandoned property are not included.²⁰ Thus, off site storage of abandoned tenant property is not required under Oklahoma law, and fees for storage of tenant property are not permitted by HUD.

III. Rebuttal of OIG Occupancy Allegations

Comment 12

Based on a tenant file review of 50 households and with scant explanation, the OIG deemed \$96,249 in HAP payments to be potentially unauthorized because of alleged occupancy violations. The OIG claimed the Owner placed tenants into inappropriately sized units and did not require tenants to relocate when certain changes in family size or composition occurred. A small portion of these findings (\$9,076) was apparently based on a review of five tenant files. The vast majority of the government's claim (\$87,173 or 91%) is said to be unsupported, meaning the OIG could not determine whether occupancy violations actually occurred. Instead, it appears that the OIG extrapolated the potential damages for the 45 files based on a cursory review of move-in and move-out dates.

Comment 13

¹⁶ *Id.* at Section 2.5(c).

¹⁷ Tab B, Bradford Onsite Accounting Procedures.

¹⁸ Okla. Stat. Ann., title 41, section 130C (2013).

¹⁹ *Id.*

²⁰ HB 4350.3, Chap. 6, Section 3.

We appreciate that the Owner will have an opportunity to support these payments and work with the field office to resolve this matter; however, as discussed below, the OIG misinterpreted HUD occupancy guidelines and found potential violations where none existed.

A. Recommendations 1C and 1D Are Based on Misinterpretations of HUD Occupancy Policy, and the OIG Failed to Justify its Findings Properly Regarding Unsupported HAP Payments

Most disturbing is that OIG provided negligible information about how it derived the \$87,173 in allegedly unsupported HAP payments. The OIG claims that it calculated the difference between unit gross rent for the family's household size and the HAP voucher amounts requested by Bradford. Aside from the five units discussed in the draft report, the OIG never explained how it determined the 45 other households may have been over housed.

Missing from the draft report is a discussion of applicable HUD occupancy guidance regarding family size, unit placement and transfer policies. Instead, OIG cited only certain general principles without delving into the many nuances impacting this matter, where a number of different and sometimes competing policies must be reconciled.²¹

For example, unacknowledged by the OIG is owner discretion to develop specific occupancy standards.²² The OIG also failed to recognize Fair Housing Act prohibitions of discrimination against families because of the presence of children,²³ including grandchildren.²⁴ OIG also ignored whether any of the tenants were placed in larger units due to reasonable accommodation requests, whether any were remaining family members, displaced persons, or elderly persons with a verified need for a larger unit.²⁵ Additionally, bedroom size must be considered, as some bedrooms may be too small to fit two people, the customary occupancy load per bedroom.²⁶

Furthermore, with respect to changes in family composition that may trigger unit transfers, the OIG neglected to apply the HUD required factors to determine if a

²¹ HB 4350.3 at para. 3-23(E)(4)(d). "Owners must avoid making social judgments on a family's sleeping arrangement." *Id.* at para 3-23(E)(3).

²² *Id.* at paras. 3-23(B)(2) and (E)(1).

²³ *Id.* at para. 3-23(D)

²⁴ *Id.* at Appx. 3. See also Section 2(9)(B)(iii) of The LEGACY Act of 2003 (S. 381) 108th Cong., Feb. 12, 2003.

²⁵ HB 4350.3 at para 3-23(E)(5).

²⁶ See HB 4350.3 at para 3-23(E)(2) and Fair Housing Enforcement – Occupancy Standards Statement of Policy; Notice, 63 FR 70256, 70257 (Dec. 18, 1998). The secondary bedrooms in Bradford's two-, three- and four-bedroom units measure only 72-80 square feet, which is on the small size.

Comment 14

transfer was required or appropriate. Once again, the draft report notes only general requirements and draws a number of unsubstantiated conclusions.

There are three HUD required factors bearing on unit transfers: (1) whether there is an appropriately sized unit available at the property, (2) whether there is a market for the unit the tenant would be vacating, and (3) how long the tenant will remain at the property.²⁷ The Occupancy Handbook specifically provides that if there is no demand for the unit currently occupied by the tenant "the owner does not have to require the tenant to move from the larger unit until there is a demand for that size of unit."²⁸ During the audit period, the Property generally experienced soft demand for all except its one-bedroom units, with the two- and three-bedroom units posting the most vacancies.²⁹

With respect to the owner's obligation to repay HUD for alleged overpayments of assistance, the owner is not required to reimburse HUD immediately where overpayments are caused by tenants' submission of incorrect information.³⁰ Additionally, the owner may retain a portion of the repayments actually collected if tenant fraud is at issue.³¹ It does not appear from the draft report that the OIG took any of these factors into consideration.

With respect to the five units' tenant files reviewed by the OIG, we have the following comments:

Unit 509C – A Father and son moved into this two-bedroom unit on March 26, 2010. After the son turned 18 years old he failed to execute verification or consent forms, and moved out to live with his Mother.³² As a remaining family member, the Father was not required to move to a different unit because there was no demand for his unit.³³ The Father moved out of the Property on May 15, 2013.

Unit 585B – The OIG expanded the audit period to examine the May 1, 2011 annual recertification paperwork for this tenant with four children whose grandchildren lived with her from time to time. During the expanded audit period, the tenant added a granddaughter to the household (May 31, 2012) and removed a daughter (April 11, 2013).³⁴ Approximately one month later, the family moved out on May 15, 2013. Because the family was only expected to remain at the Property

²⁷ HB 4350.3 at para. 7-16(A)(2)(a)-(c).

²⁸ *Id.* at para. 7-16(A)(2)(b).

²⁹ Tab C, Bradford Vacancy Spreadsheet.

³⁰ HB 4350.3 at para 8-21(B)(1).

³¹ *Id.* at para. 8-21(B)(2).

³² See Tab D, Unit 509C, relevant Interim Recert. documents (July 1, 2012).

³³ See Tab C, Bradford Vacancy Spreadsheet, and HB 4350.3, para. 3-23(G)(2)(d).

³⁴ Tab E, Unit 585B, relevant documentation from May, 1 2011 Ann. Recert., May 3, 2012 Interim Recert. and April 11, 2013 Interim Recert.

for a short time after removal of the daughter, they were not required to move to a smaller unit.³⁵

Unit 585D – The tenant moved in July 2011, and certified on April 12, 2012 that she was expecting twins with an August 9, 2012 due date.³⁶ The tenant moved out before the next annual recertification was completed.

Unit 534D – The resident moved in on April 18, 2012 and submitted a declaration of expected birth of twins with her application.³⁷ While the OIG claims the unit lacked electricity for four months after the twins were born, the Owner can only verify that utilities were off effective June 13, 2013 because they were in the resident's name prior to this.

Unit 522D – This unit was occupied by a divorced Father with visitation rights regarding his three daughters, aged 11, 13, 15 when the family moved out.³⁸ With respect to the housing needs of such a household, we are not aware that Oklahoma law draws a distinction between custodial and visitation rights.

V. Rebuttal of Physical Condition and Security Allegations

Based on an on-site visit of 22 non-statistically selected units, the OIG made broad and unsubstantiated claims about the units' physical condition and used improper standards to evaluate the conditions observed. As noted above in Section II.A.2 of the Owner's response, the only HUD-accepted standards for evaluation of physical condition are the REAC standards. Additionally, and in violation of the REAC protocol, the OIG erroneously held vacant units to the same standards as occupied units.³⁹

Despite repeated requests for a listing of affected units and the specific conditions observed during its August 2013 site visit, the OIG never provided this information. In fact, Bradford personnel who accompanied the OIG during the visit reported that OIG staff took notes on alleged deficiencies and in some cases failed to call out their observations orally, which is also a violation of the REAC protocol.⁴⁰ By failing to share vital information, the OIG frustrated the Owner's ability to respond to the alleged deficiencies with appropriate documentation.

³⁵ HB 4350.3 at para 7-16(A)(2)(c).

³⁶ See Tab F, Unit 585D certification paperwork.

³⁷ See Tab G, Unit 534D relevant documents re: move-in (April 18, 2012).

³⁸ See Tab H, Unit 522D certification.

³⁹ See REAC Compilation Bulletin REY 2.1 available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/reac/products/gaaa/gaaa_bulletin

⁴⁰ *Id.* at Part I, General Information, Sec. F(1).

Finally, we are perplexed by the allegation that some residents expressed security concerns because the OIG only mentioned a single resident who expressed an opinion. Had the OIG shared its concerns, we would have been able to provide 1,013 security reports documenting the comprehensive security coverage provided during the audit period. During this timeframe, Bradford spent approximately \$560,200 on private security services, staffed in part with off-duty police officers. We also note that the most recent management and occupancy review, issued on July 5, 2011, determined that the Property's security was satisfactory.

VI. Technical Corrections

In the interest of ensuring issuance of the most technically accurate report, the following errors in the draft report require correction:

Comment 16

- On the Highlights page, in the "What We Found" section, the draft report inaccurately states that the Property received "more than \$81,000" in Section 8 rental subsidies when the questioned payments totaled \$78,444. Furthermore, because the Owner will have an opportunity to document and justify more than half of the challenged costs, the final sentence should more accurately read "Bradford's owner benefited from these conditions because it may have received more Section 8 subsidies than allowed." Much of the draft report includes similar errors, where the OIG made declarative statements about claims that the Owner will have an opportunity to support.

Comment 16

- Page 3, the fourth paragraph gives the mistaken impression that the Property has been unmonitored since June 6, 2011, when the Contract Administrator conducted the last management and occupancy review; but the OIG neglects to mention that the Property was inspected on February 19, 2013, and received a passing physical inspection score of 67.

Comment 4

- Page 4, the second and third paragraphs misstate the decent, safe and sanitary unit condition standards, as discussed in more detail above in Section II.A.2 of the Owner's response.

Comment 16

- Page 6, the final paragraph regarding the two units at issue misstates the lease agreement provisions. As explained above, the OIG has failed to show how the units violated the decent, safe and sanitary housing conditions on the basis of tenant-provided utilities alone. Furthermore, the lease forbids the owner from terminating the lease for non-payment of utilities unless such non-payment is repeated, and the IG provided no data to support a finding of repeated violations.

Comment 15

- Footnote 4 on page 6 includes the wrong reference to the decent, safe and sanitary standards, and more appropriately should refer to the REAC

physical inspection standards. See also footnote 21 on page 10 that repeats this error.

Comment 6

- Page 7, second bullet item, misrepresents the owner's lease termination authority. Nonpayment of tenant-provided utilities is a minor lease violation and must be a repeated violation in order to trigger lease termination.

Comment 5

- Footnote 9 on page 7 mistakenly cites to the Oklahoma non-residential rental property provisions and accordingly misstates the statutory requirements. The correct citation is Okla. Stat. Ann., title 41, section 130C, which gives the owner the option of retaining abandoned tenant property in the abandoned unit, as discussed in detail above.

Comment 14

- Regarding OIG's occupancy statements on pages 7-10, the vast majority of the government's claim (\$87,173 or 91%) is alleged to be "unsupported". Accordingly, it is more accurate to say that violations "may have" occurred rather than make outright claims of this nature.

Comment 17

- Footnotes 11, 15, 18 and 19 on pages 8 and 9 all cite to an incorrect version of HUD Housing Handbook 4350.3, and should actually refer to REV-1, CHG-4, issued August 2013. Because of this error, footnote 19 references the wrong paragraph number, which should properly be paragraph 8-21.

Comment 4

- On page 10, the characterization of the Property's February 19, 2013 REAC inspection score of 67 as "slightly better than poor condition" is offensive and inaccurate and should be removed.

Comment 15

- Many of the descriptions of the unit conditions observed on pages 10 and 11 are vague (e.g. "low performing") and fail to clarify how the observations violate the REAC standards, the only HUD-accepted measure of decent, safe and sanitary conditions.

Comment 4

Comment 15

- Page 17, as noted in detail in our rebuttal, we disagree with all of the findings of significant deficiencies, particularly because the OIG applied incorrect or arbitrary standards regarding unit physical condition and misinterpreted or misapplied the HUD occupancy standards.

Comment 18

- Page 18, the calculation for Recommendation 1D does not agree with the figures on page 8 or footnote 17 (\$87,173).

VII. Conclusion

The Owner and Management Agent disagree with the OIG's interpretations of HUD policy and the conclusions reached in the draft report, and instead offer reasonable alternatives to resolve these matters. The draft report is a distinctly

one-sided presentation, and nowhere did the OIG take into account staffing and training enhancements implemented by the Owner and Management Agent, nor the Owner's significant financial sacrifices that benefitted the Property.

Most alarming, however, was the OIG's selective citation of HUD requirements and misinterpretation of those it did mention. With respect to the allegedly "substandard" units, the OIG neglected to address critically important relevant guidance, such as the REAC physical condition standards, the HUD Model Lease provisions and the Property's HAP Contract terms. Also missing from the draft report is a discussion of applicable HUD occupancy guidance regarding family size, unit placement and transfer policies including demand for certain units, and Fair Housing Act requirements, among others.

The OIG also resorted to an unusual use of its subpoena power to compel the electric utility to divulge Bradford tenants' account information, which underscores the Owner's argument that this information is outside of its control. The OIG also failed to provide requested data or information which would have enabled the Owner to respond adequately; or it provided only a cursory or ambiguous justification for its decisions, which deprived the Owner of due process.

The errors in policy interpretation alone are enough to invalidate the OIG's demands for repayment. At a bare minimum, \$70,497 in "improper" HAP payments for allegedly "substandard" units should be reclassified as "unsupported" and subject to later verification.

Thank you for the opportunity to respond to the OIG draft audit report and rebalance the discussion and presentation. We take these allegations seriously, and look forward to working with HUD to resolve these matters. Should you have any questions about the Owner's response, please feel free to contact me at 334-954-4458.

Sincerely,



Blake Brazeal
General Partner
Summit Bradford Apartments LP

Attachments

cc: Lisa Tunick, Tunick Law LLC (*via electronic mail without attachments*)
Richard Riggs, McAfee & Taft P.C. (*via electronic mail without attachments*)

OIG Evaluation of Auditee Comments

- Comment 1** On December 9, 2013, OIG sent Bradford a list of the tenants that did not have electricity and the dates that electricity was not in an individual's name. Further, OIG provided Bradford copies of the subpoenaed records in Bradford's name. Contrary to the management agent's response it is not unusual for OIG to subpoena information, especially when that information contains personally identifiable information.
- Comment 2** The report shows that either HUD paid Bradford \$70,497 in ineligible housing assistance for 17 units that did not have electricity, or the electricity was in Bradford's name. During a site visit, units 506A and 585B also did not have electricity, resulting in an additional \$10,516 unsupported costs. Besides not having electricity, the two allegedly occupied units were questionable in other ways. Unit 506A had some furniture in it, but appeared to be vacant. Two unauthorized people who were not on the lease occupied unit 585B. They claimed to have temporarily moved into the unit to housesit and babysit three children, who were 1, 4, and 7 years old. However, none of the children were in the unit during the visit. Management agent staff was present during these visits.
- Comment 3** We disagree. We did not change the classification from ineligible to unsupported as requested because the criteria, 24 CFR 5.703 states electrical systems must be operable and in good repair. It is not feasible to check the safety of the electrical system and whether it is operable if there is no electricity. For example, Ground Fault Circuit Interrupter and outlets must be checked to ensure they are properly grounded and working. With no electricity, this cannot be done. Without electricity, the refrigerator, ventilation systems and some other appliances cannot be checked to see they are operable. These appliances are required to be operating in the unit.
- Comment 4** The criteria, 24 CFR 5.703 clearly supports that units without electricity were not decent, safe, and sanitary.
- Comment 5** We have modified the language in the body of the report regarding the condition of the units. We stand by our observations made and reiterate that management agent staff was present for the visits.
- Comment 6** When Bradford identifies a unit with no electricity, it should require the tenant to immediately reinstate their account. If the tenant refuses or if the instance is repeated, the lease should be terminated as the lease specifically requires. If management performed quarterly inspections as it asserts, it should have found that 8 of the 17 units reviewed did not have electricity for more than 3 months.
- Comment 7** The finding did not imply that management should know instantaneously when tenants vacate their units without notice or if tenant-provided utilities are terminated. However, when management changes the utility account from the

tenant's name to the property, or when tenant utility checks go uncashed for months, management should at a minimum determine if the tenant still occupies the unit and that the unit meets basic HUD requirements.

- Comment 8** HUD's statement about alerting the multifamily owner to problems, as referred to by Bradford, was a response to a comment concerning tenant-paid utilities that were shut off shortly before HUD's physical inspection of any HUD-subsidized property. The commenter stated that the property owner had no time to take action. HUD responded that, under statute and contract, it was the owner's responsibility to schedule regular housekeeping and preventative maintenance site visits to ensure that its units met the required physical condition standards.
- Comment 9** We did not suggest that Bradford inspect all 191 tenant units monthly. However, with onsite management, maintenance, and security, it is not unreasonable for them to have seen disconnect notices, and report and follow up on suspected vacant units. Further, the onsite manager claimed that she walked the property every morning and looked for the electric company's shut off notices on the front doors of the units, indicating that someone may have left without notice. She also explained that American Electric Power left red tags on the group electric meters. When she saw those, she would call the electric company to find out which unit had an electric shut off notice.
- Comment 10** Section 2.5c of the housing assistance payments contract applies to the results of contract administrator inspections. For the items identified in this report, Bradford will need to work with HUD to cure violations including financial sanctions.
- Comment 11** While Oklahoma state law did not require owners to move abandoned property to a storage unit, the owner is not entitled to HUD subsidies for vacated units. We made clarifications in the finding.
- Comment 12** We classified the costs as unsupported because the management agent's data indicated that occupancy violations may have occurred. 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. As stated in footnote number 18, the \$87,173 includes \$2,735 in ineligible costs and \$84,438 in unsupported costs.
- Comment 13** Refer to the Scope and Methodology section of the report for a description of our analysis.
- Comment 14** We recognize that there are numerous factors that can affect the unit size, which is in part why we classified the costs as unsupported. Bradford will need to

provide support to HUD so that it can make a determination regarding all of the units we questioned.

Comment 15 The report focused on deficiencies found in the occupied units. Our unit observations were not inspections and were not intended to use the Real Estate Assessment Center's methodology or criteria as it was not our intent to cite every physical deficiency. Rather, our purpose was primarily to determine whether the units were occupied, and if so, by whom. As part of the review, we noted only serious, readily identifiable violations of HUD requirements. We discussed the issues with management, and management was taking notes, as we observed the units. The problems that we noted were major deficiencies that management should have noted.

Comment 16 We modified the report as needed.

Comment 17 The HUD Handbook 4350.3, REV-1, effective August 1, 2009, is the correct criterion for the audit period of August 1, 2011, through July 31, 2013.

Comment 18 As discussed in footnote 14, the total questioned costs were \$96,249, including costs for the data analysis and from the tenant files. Of the \$96,249, \$7,947 was ineligible and \$88,302 was unsupported.