



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

December 29, 2017

MEMORANDUM NO:
2018-AT-1802

Memorandum

TO: LaDonna Mills, Director, Production Division, Atlanta Regional Office,
4AHMLAP

Laurelei McKnight, Director, Asset Management Division, Jacksonville
Satellite Office, 4GHMLM

//Signed//

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

SUBJECT: Yabucoa Housing Project, Yabucoa Volunteers of America Elderly Housing,
Inc., Yabucoa, PR, Section 202 Supportive Housing for the Elderly Program

INTRODUCTION

The U.S. Department of Housing and Urban Development (HUD), Office of Inspector General (OIG), audited the Yabucoa Volunteers of America Elderly Housing, Inc., Section 202 Supportive Housing for the Elderly Program. We selected the Yabucoa housing project for review based on concerns regarding the slow progress of the project as noted during the audit of the Puerto Rico Department of Housing multifamily special escrow funds.¹ The objective of this audit was to determine whether Volunteers used Section 202 funds in accordance with HUD agreements and requirements.

This memorandum contains four 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 the review.

¹ Audit report number 2017-AT-1003, issued March 2, 2017

METHODOLOGY AND SCOPE

To accomplish our objective, we performed the following associated with the project:

- reviewed applicable laws, regulations, relevant HUD program requirements and agreements;
- reviewed Volunteers' project and disbursement records;
- conducted an inspection of the project site; and
- interviewed HUD and Volunteers officials.

Volunteers' records showed that it made 28 disbursements totaling more than \$1.8 million between October 13, 2009, and January 4, 2012. We selected for review 12 disbursements greater than \$20,000 totaling more than \$1.7 million, about 94 percent of the Section 202 disbursements made during the period.

Volunteers' records also showed that it received from the Puerto Rico Department of Housing more than \$1.8 million from a multifamily special escrow program. We examined all of the escrow payments Volunteers received and the related supporting documents.

To achieve our audit objective, we relied in part on computer-processed data provided by HUD and Volunteers. Although we did not perform a detailed assessment of the reliability of the data, we performed a minimal level of testing and found the data to be adequate for our purposes. We did not select 100 percent of the transactions for testing as the selection made provided sufficient evidence for the findings presented. The results of the audit apply only to the items selected for review and cannot be projected to the universe or population.

The audit generally covered the period September 30, 2009, through January 31, 2017. We performed our onsite fieldwork from March 8 through May 31, 2017, at Volunteers' office in Alexandria, VA, and our office in San Juan, PR. We also conducted a site inspection of the project on February 28, 2017. This was a limited scope audit, and we did not review Volunteers' internal and information system controls and procedures. Therefore, the audit 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. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

BACKGROUND

The Section 202 Supportive Housing for the Elderly Program is authorized by Section 202 of the Housing Act of 1959 (12 U.S.C. (United States Code) 1701q) as amended. This program helps expand the supply of affordable housing with supportive services for the elderly. It provides very low-income elderly persons with options that allow them to live independently but in an environment that provides support activities, such as cleaning, cooking, transportation, etc.

Under the Section 202 program, HUD provides capital advances to finance the construction, rehabilitation, or acquisition with or without rehabilitation of structures that will serve as supportive housing for very low-income elderly persons, including the frail elderly, and provides rent subsidies for the projects to help make them affordable. HUD provides capital advances to private, nonprofit sponsors to finance the development of supportive housing for the elderly. The capital advance does not have to be repaid as long as the project serves very low-income elderly persons for 40 years. No funds were appropriated for new Section 202 capital advances for fiscal years 2012 through 2015.

Volunteers is a nonprofit corporation that was incorporated on October 26, 2005, under the law of the Commonwealth of Puerto Rico to provide elderly persons with housing facilities and services, among other things. Volunteers' books and records are maintained at 1660 Duke Street, Alexandria, VA. On September 30, 2009, Volunteers and HUD signed an agreement to use more than \$3.26 million in Section 202 funds for the construction of a 3-story building with 38 1-bedroom units for low-income elderly persons in the Municipality of Yabucoa, PR. On that date, the Puerto Rico Department of Housing approved an additional \$2 million in multifamily special escrow funds for the construction of the project.² According to the agreement, the expected completion of the project was December 2010.

RESULTS OF REVIEW

Volunteers disbursed Section 202 funds for a housing project that was incomplete and charged the project unallowable construction costs. In addition, Volunteers was paid for duplicate construction costs. These deficiencies occurred because the contractor filed for bankruptcy, Volunteers was not able to reach an agreement with the bonding company to pay the bond or complete the project, and Volunteers did not receive the special escrow funds in a timely manner. As a result, more than \$1.8 million was disbursed for a project that did not meet HUD requirements. In addition, Volunteers received more than \$1 million in duplicate payments.

Incomplete Project

HUD approved \$3.26 million in Section 202 funds for a project that was incomplete and abandoned. The construction of the project began in August 2010 but stopped in June 2011 with roughly 50 percent of the work completed. The contractor went bankrupt in December 2011 and was not able to finish the project. Volunteers terminated the contractor but did not reach an agreement with the bonding company to pay the bond or complete the project. Volunteers did not agree to sign a takeover agreement with the bonding company because the bonding company did not agree to include Volunteers' claim for attorney's fees. Volunteers had ongoing litigation with various entities, including the bonding company, pertaining to the project. On February 28, 2017, we performed a site visit to the project and confirmed that it had not been completed. At the time of our inspection, the project site looked abandoned.

² On October 24, 1997, the Department and HUD signed a memorandum of understanding that authorized the sale of certain multifamily projects belonging to the former Puerto Rico Urban Development and Housing Corporation. According to the Department's records, it had planned to sell 10 multifamily projects with projected net sales proceeds of more than \$40 million. The proceeds were to be placed into an independent escrow account to be used to meet affordable housing needs of the citizens of Puerto Rico.



The pictures above show that the project site was abandoned and construction work was substantially deteriorated.

Volunteers did not continue construction of the project. In a letter, dated February 10, 2016, Volunteers informed HUD that the project was no longer viable as originally planned and the costs per unit to complete it would exceed HUD requirements. The letter proposed to demolish a portion of the deteriorated structure, complete the community center, and create a community garden at the site. Volunteers requested that HUD release the Section 202 funds that remained in the construction escrow account to facilitate the demolition of the remaining structure and approve the release of the project site to the Municipality of Yabucoa for the construction of a senior center.

On June 28, 2016, HUD informed Volunteers that it would allow the use of Section 202 funds remaining in the project's construction bank account, less any interest earned, to cover the costs related to the demolition and remediation of the project site. In addition, HUD instructed Volunteers to return any funds recovered from the ongoing litigation and stated that it would not release the project until the litigation had finalized and a cost certification submitted. The letter also stated that Volunteers could not use the undrawn Section 202 funds remaining in HUD's account.

HUD's system showed that it had disbursed to Volunteers more than \$1.8 million of the \$3.26 million in Section 202 funds approved for the project. In addition, more than \$1.44 million in

undrawn Section 202 funds remained in HUD’s account. More than 7 years had passed since Volunteers signed the grant agreement, and based on the project’s condition, the project did not meet HUD requirements.

Ineligible Costs

Volunteers charged the project \$140,000 for ineligible survey and land improvement costs and architect fees. According to paragraph 11(b)2 of the firm commitment agreement, Volunteers was required to establish an escrow fund in the amount of \$138,500, from other than Section 202 capital advance funds, to pay for the survey and improvement costs. However, Volunteers incorrectly charged the Section 202 program for these costs. In addition, Volunteers was reimbursed \$1,500 in architect fees, although the contractor was paid for the services. Therefore, the \$1,500 reimbursement to Volunteers was an ineligible duplicate payment. Volunteers informed us that it believed these were eligible Section 202 program costs and HUD had approved the expenditures. Although HUD approved the draw of funds, the supporting documents Volunteers provided during the audit showed that the costs were not allowable.

Duplicate Billings

Volunteers submitted more than \$1.05 million in duplicate construction cost billings to HUD and the Puerto Rico Department of Housing. Between January and March 2011, HUD reimbursed Volunteers more than \$1.05 million in Section 202 funds pertaining to construction costs related to the project. According to Volunteers’ records, the same construction costs were also submitted for reimbursement to the Puerto Rico Department of Housing under its multifamily special escrow grant program. As a result, Volunteers received more than \$1.05 million in duplicate payments between February and May 2011. The table below shows the duplicate payments.

| HUD Section 202 funds | | | | Puerto Rico Department of Housing multifamily special escrow funds | | |
|------------------------|-----------------------------------|-------------------------------|------------------------------|--|-------------------------------|------------------------------|
| HUD requisition number | Contractor’s certification number | Reimbursed construction costs | Yabucoa account deposit date | Contractor’s certification number | Reimbursed construction costs | Yabucoa account deposit date |
| 2 | 1 | \$ 188,563 | Jan. 13, 2011 | 1 | \$188,563 | Feb. 16, 2011 |
| 3 | 2 | 225,703 | Jan. 18, 2011 | 2 | 225,703 | Feb. 16, 2011 |
| 4 | 3 | 220,460 | Feb. 10, 2011 | 3 | 220,460 | Feb. 16, 2011 |
| 5 | 4 | 143,567 | Feb. 25, 2011 | 4 | 143,567 | Apr. 7, 2011 |
| 6 | 5 | 279,174 | Mar. 28, 2011 | 5 | 279,174 | May 12, 2011 |
| Total | | 1,057,467 | | Total | 1,057,467 | |

The duplicate multifamily escrow payments were not allowable project expenditures because HUD paid Volunteers for the construction costs with Section 202 funds. Volunteers informed us that it submitted duplicate bills because the Puerto Rico Department of Housing was slow in disbursing the multifamily special escrow funds for the construction of the project. In addition, HUD authorized Volunteers to use the Section 202 first to pay the contractor. However, HUD’s approval to use Section 202 funds first did not authorize Volunteers to collect funds for the same costs from both sources.

RECOMMENDATIONS

We recommend that the Director of the Atlanta Regional Office of Production

- 1A. Track and ensure that Volunteers returns to the Treasury any funds recovered through the ongoing litigation pertaining to the Yabucoa housing project.
- 1B. Deobligate and recapture \$1,440,165 in undrawn Section 202 funds assigned to the project.
- 1C. Require Volunteers to reimburse to the United States Treasury \$140,000 from non-Federal funds for ineligible project construction costs charged to the Section 202 project.

We also recommend that the Director of the Jacksonville Office of Asset Management require Volunteers to

- 1D. Return to the Puerto Rico Department of Housing \$1,057,467, plus any interest earned, for the duplicate special escrow fund payments it received.

Appendix A

**SCHEDULE OF QUESTIONED COSTS
AND FUNDS TO BE PUT TO BETTER USE**

| Recommendation number | Ineligible 1/ | Funds to be put to better use 2/ |
|------------------------------|----------------------|---|
| 1B | | \$1,440,165 |
| 1C | \$140,000 | |
| 1D | 1,057,467 | |
| Totals | 1,197,467 | 1,440,165 |


- 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/ Recommendations that funds be put to better use are estimates of amounts that could be used more efficiently if an Office of Inspector General's (OIG) recommendation is implemented. These amounts include reductions in outlays, deobligation of funds, withdrawal of interest, costs not incurred by implementing recommended improvements, avoidance of unnecessary expenditures noted in preaward reviews, and any other savings that are specifically identified. In this instance, if HUD implements our recommendation, Section 202 funds will be deobligated.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments



National Office
1660 Duke Street
Alexandria, VA 22314-3427
703.341.5000
www.VolunteersofAmerica.org

November 7, 2017

Ms. Nikita N. Irons
Regional Inspector General for Audit
HUD Office of Inspector General
75 Ted Turner Drive
Room 330
Atlanta, GA 30303

RE: Yabucoa Volunteers of America Elderly Housing, Inc., Section 202 Supportive Housing for the Elderly Program

Dear Ms. Irons:

This letter is in response to the revised draft Audit Memorandum ("the Audit Memorandum") which was provided to Yabucoa Volunteers of America Elderly Housing, Inc. ("YVOA") on or about October 11, 2017, regarding the Yabucoa Housing Project ("the YVOA project"). The Audit Memorandum involves the use of HUD 202 funds from the Supportive Housing for the Elderly Program and was also the subject of an exit conference on October 27, 2017 ("the Exit Conference"). As we discussed at the Exit Conference, the Audit Memorandum and the recommendations contained therein (1) would take away needed resources from low income elderly victims of Hurricane Maria; (2) fail to recommend enforcement action against the surety company that

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Comment 1

caused modifications and delays to the development and falsely blame YVOA for the same; (3) contain incomplete and inaccurate descriptions of relevant facts; and (4) attempt to recapture funds which the HUD OIG states belong to the Commonwealth of Puerto Rico, and thus are outside of the scope of HUD OIG's jurisdiction.

1. HUD OIG's Recommendation Takes Away Resources from Low Income Elderly Residents of Puerto Rico Devastated by Hurricane Maria

On September 20, 2017, Hurricane Maria decimated the island of Puerto Rico leaving many, particularly the poor and vulnerable, without food, shelter, water, power and other basic human needs. The City of Yabucoa, where the YVOA project is being developed, was one of the hardest hit parts of the Island. The many seniors that live in this community continue to struggle daily to address their health and other needs. Within the context of the devastation, YVOA, through its related entity, Volunteers of America, Inc., is one of the few groups that have renewed their commitment to Puerto Rico and its citizens rather than walking away from them.⁴ In addition to our existing programs, we recently launched Project Esperanza through which we have organized and supported volunteers from across the country to bring much needed aid and comfort to the low income senior citizens of Puerto Rico. HUD OIG's recommendation to redirect funds away from assisting low income senior citizens of Puerto Rico by completing construction of the YVOA project, even in the face of HUD's express approval of the YVOA plan, will only exacerbate the poor conditions and is particularly disturbing at this time.

The YVOA project, which has been modified in accordance with a HUD approved plan, has converted from a senior housing project to the

⁴ It should be noted that not only was YVOA prepared to continue with the YVOA project as modified with HUD's approval to create a community center, but it is also currently running both a Re-entry Program pursuant to a contract with the Federal Bureau of Prisons and an affordable housing community, Victor Hernandez, in Aguadilla.

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Comment 1

development of a senior center that will provide services for low income elderly in this community. This investment is needed now more than ever. Contrary to the statements in the Audit Memorandum, the YVOA project was never abandoned. In fact, at the time of Hurricane Maria, YVOA had completed remediation work on the site and was in the process of obtaining building permits for the construction of the senior center. We explained to HUD OIG on at least two occasions that this work was taking place and provided HUD OIG with the following photos showing the completion of the demolition and remediation phases of the YVOA project for inclusion in the Audit Memorandum. HUD OIG chose not to include these facts.



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Comment 2

2. HUD OIG Failed to Audit the Documents Related to the Litigation Against the Surety Company Which Caused The Delays, then Modification, in the YVOA Project or Recommend Enforcement Action Against the Surety

The HUD OIG's report and corresponding findings and recommendations fail to demonstrate an understanding of the facts. The YVOA project has a long and complicated history. In short, the construction began in August 2010 and stopped in June 2011 when the contractor breached the contract and subsequently filed for bankruptcy. YVOA worked diligently to move the project forward, however, litigation with the bonding company for the contractor is still on-going.

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Auditee Comments

Comment 2

YVOA has already spent significant amounts of its own money on legal costs in an effort to recover on the HUD required bond. YVOA offered to provide HUD OIG with significant amounts of additional documentation related to the litigation and the surety company's refusal to honor the HUD required bond with hope that HUD OIG would consider recommending debarment or other enforcement action against the company as its refusal to pay is the only reason the YVOA project was not constructed as originally planned. Unfortunately, HUD OIG did not consider this information.

Comment 3

Given delays caused by the circumstances beyond YVOA's control that resulted in the cost of completing the original plan to exceed the available resources, the project objective shifted. Pursuant to YVOA's Feb. 10, 2016 letter to HUD, which was approved by HUD by letter dated June 28, 2016, the remaining funds in the construction escrow account were approved to be used for demolition and remediation of the YVOA project site. As discussed above, YVOA continues to proceed with this plan. Based on this HUD-approved plan, and in light of the on-going litigation, YVOA is in compliance with all HUD requirements. Below is the letter YVOA received from HUD approving its modified plan:



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-1000

OFFICE OF HOUSING

June 28, 2016

Mr. Patrick Sheridan
Executive Vice President, Housing
Volunteers of America
National Office
1660 Duke Street
Alexandria, VA 22314-3427

Dear Mr. Sheridan:

Thank you for your correspondence to the Department, dated February 10, 2016, regarding your award for the development of a three-story building with 39 units in Yabuoco, Puerto Rico under the Department Fiscal Year 2004 Section 202 Supportive Housing for Elderly Persons Capital Advance Program. Under this award, a total of \$1,826,135 in Section 202 Capital Advance funds has been disbursed. Currently \$1,966,657.56 remains in the Construction Escrow Account.

The Department has been in continued communication with VOA, as the Sponsor, and understands that the construction that began in August of 2010 resulted in a work stoppage in June of 2011. At that point, roughly 50 percent of the work was completed. The Sponsor was forced to terminate the contractor and seek payment of the construction bond. The general contractor subsequently declared bankruptcy and is effectively out of business. The subcontractor initiated litigation against the Owner, and VOA has initiated litigation against the bonding company in order to secure the funds necessary to complete the work and defend the suit filed by the subcontractor. It is further understood that in the five years since the work stoppage, the site remains with partially constructed walls and continues to be a blight to the community.

Based on these facts, VOA has requested that Section 202 Capital Advance funds remaining in the Construction Escrow Account be released to them, as the Sponsor, to facilitate the demolition of the remaining structures on the site, perform site clean up and grading. VOA is also requesting HUD's approval to release the cleared site to the City of Yabuoco, which will now be used for a senior center and community garden.

In making this determination, HUD reviewed all construction-related documents: Completion Assurance Agreement and Performance Bond-Dual Obligor, as well as the Capital Advance Agreement. As the controlling document, the Capital Advance Agreement provides that failure to complete construction shall be a default and HUD, at its option, may terminate the Capital Advance Agreement. If HUD so elects to terminate the Capital Advance Agreement, it may use

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and apply any funds deposited by the Owner, regardless of the purpose for which such funds were deposited, in such manner and for such purposes as it may prescribe.

After a review of this matter, the Department will allow for the use of remaining Section 202 Capital Advance funds in the Construction Escrow Account, less any interest earned on Section 202 Capital Advance funds, to cover costs related to the demolition and remediation of the partially built Yabacoa site. Further, any available and disbursed Section 202 Capital Advance funds remaining in the Construction Escrow Account may also be used towards related litigation costs.

The Comptroller General has consistently held that, except as otherwise provided by law, interest earned by grantees on funds advanced by the United States under an assistance agreement pending their application to grant purposes belongs to the United States rather than to the grantee; therefore, the Owner/Sponsor must return to Treasury any interest earned on these HUD Section 202 Capital Advance funds.

Since the statutory intent of these funds is for the development of affordable rental housing for elderly persons, any funds recovered through the Owner/Sponsor's litigation must be used to reimburse the Department. Once litigation has been finalized, the Department will approve the release of a cleared site to the City of Yabacoa. However, to secure the Department's interest, the Capital Advance Use Agreement and Regulatory Agreement will not be released until the litigation has been finalized and the Owner/Sponsor has submitted a Cost Certification to the Department. HUD will retain the right to terminate the Section 202 Capital Advance, the Use Agreement and the Regulatory Agreement so as to potentially recover any portion of these disbursed Section 202 Capital Advance funds due to HUD that may be received through the action against the Surety Agreement. Subject to approval by HUD, the Owner/Sponsor may be allowed to net out litigation costs, before remitting a portion or all of the balance to satisfy the disbursed amount.

No undistributed HUD Section 202 funds shall be made available to the Sponsor/Owner for any reason. Any undistributed funds remaining in the HUD account must be recaptured. This determination set forth in this letter is limited to Section 202 Capital Advance funds; permissibility of any other funds must be based on guidance from awarding office/costly.

I hope this information is helpful to you in responding to your constituent. Please contact me if you have any questions or need additional information at (202) 402-6937.

Sincerely,



Robert G. Ber
Acting Director Asset Management and
Portfolio Oversight

Ref to OIG Evaluation

Auditee Comments

Comment 4

Comment 5

Comment 6

3. The Audit Memorandum Contains Inaccurate Facts as YVOA's Actions Related to the YVOA Project Have Been Reviewed and Approved By HUD

The facts in the Audit Memorandum are neither complete nor accurate as it relates to actions YVOA took after receiving various approvals from HUD. First, HUD OIG failed to even include the explanation provided to the auditors regarding the eligibility of the \$140,000 referenced in Recommendation IC. Of that amount, \$138,500 was HUD-approved survey and land improvement costs. HUD OIG misunderstood the purpose of the escrow agreement for \$138,500, contending, without support, that HUD 202 funds could not be used for this purpose. As we explained numerous times, the escrow agreement was intended as an "insurance policy", insuring that any unusual land improvements work was performed. The Firm Commitment Agreement lists as one of the Special Conditions an escrow for \$138,500, but it did not require that the unusual land improvements not be paid from HUD 202 funds. In fact, HUD separately **approved** the use of 202 funds to pay the construction contract, which was itemized to include the \$138,500 in unusual land improvement costs. After that land work was done and was paid for pursuant to HUD-approved draws, YVOA requested and HUD approved the release of the escrow funds back to YVOA. HUD's approval to pay the costs from HUD 202 funds and to release the escrow was appropriate, as the escrow fund required in the Firm Commitment Agreement had served its purpose and the funds were no longer required to be held in escrow. This is a common HUD practice and consistent with our experience on dozens other HUD Section 202 developments across the country.

The additional \$1,500 of the \$140,000 questioned by the auditors was an invoice for some additional permitting work that the architect completed. It was not included in draw #4 and thus was paid to the

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Comment 6

architect separately as part of the \$5,313 payment on February 28, 2011. We provided HUD OIG with email back-up showing HUD approval in addition to the evidence that HUD had signed off on the draws on these items. HUD OIG did not even acknowledge this information or include it in its audit.

Comment 7

Second, HUD OIG states that YVOA received “duplicate payments.” Again, the findings and recommendations fly in the face of the acknowledged fact that, near the beginning of the project, HUD expressly approved and directed that, in order to keep the project moving, YVOA could use HUD 202 funds first to pay the contractor, as YVOA documented that the Puerto Rico Department of Housing (“the Vivienda”) had failed to pay on time, although requests were timely submitted by YVOA. As noted in the Audit Memorandum, the Vivienda agreed to provide \$2,000,000 toward the YVOA project. During the course of the YVOA project, YVOA timely submitted requests for payment to the Vivienda, as it was to pay prior to the use of the HUD 202 funds. The delay in payments by the Vivienda began to have an impact on the progress of the YVOA project. YVOA contacted HUD and received permission to pay the early invoices with HUD 202 monies first in order to expedite the construction work. The Vivienda funds were then going to be used to replenish the already drawn down HUD 202 funds. We provided HUD OIG with the attached e-mails which indicate our correspondence with HUD on this topic:

1. **From:** Hutchins, Tracy [<mailto:THutchins@voa.org>]
Sent: Monday, January 03, 2011 2:43 PM
To: [REDACTED]
Subject: Yabucoa Capital Advance funds

[REDACTED]
Happy New Year!

Any news on the Capital Advance funds for Yabucoa?

Thanks!

Tracy Hutchins | Senior Financial Analyst,
Affordable Housing Development
[Volunteers of America](#) | Thutchins@voa.org

T: 850.497.8116 | F: 703.997.0702

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2. **From:** [REDACTED]
Sent: Tuesday, January 04, 2011 6:35 AM
To: Hutchins, Tracy
Subject: RE: Yabucoa Capital Advance funds

Hi Tracy:

Happy New Year to you too. Yesterday, we were told that the 185 which is the form used to assign funds was in the signature traffic in HQ. I am assuming that this will be resolved before the end of the week.

[REDACTED]

3. **From:** Hutchins, Tracy [<mailto:THutchins@voa.org>]
Sent: Tuesday, January 18, 2011 10:00 AM
To: [REDACTED]
Subject: Yabucoa

[REDACTED]

I hope you are feeling better. I now have funds from draws 2 and 3 and want to know if it is OK to send the contractor his money. As you know we don't have the Department of Housing's funds and I want to make sure I have your approval to send the funds to Sun. If OK with you, when I do receive the DOH funds, I will deduct from subsequent draws.

I have no phone service today and they tell me it may be tomorrow evening before it is restored, so please respond via email.

Thanks!!

Tracy Hutchins | Senior Financial Analyst,
Affordable Housing Development
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4. **From:** [REDACTED]
Sent: Tuesday, January 18, 2011 11:11 AM
To: Hutchins, Tracy
Subject: RE: Yabucoa

Hi Tracy:

I am doing a lot better, thanks. You can paid the contractor everything you requested on both requisitions submitted to HUD. I don't know anything about your requests to DOH.

[REDACTED]

5. **From:** [REDACTED]
Sent: Thursday, January 20, 2011 8:00 AM
To: Hutchins, Tracy
Subject: RE: Yabucoa Elderly

Thank you..

6. **From:** [REDACTED]
[REDACTED]
Sent: Thursday, January 20, 2011 08:22 AM
To: Hutchins, Tracy
Subject: RE: Yabucoa Elderly

Hi Tracy:

I just want to know if payment to the contractor have been completed for Draws 2 & 3.

Thanks,

[REDACTED]

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Auditee Comments

Comment 7

7. From: Hutchins, Tracy [<mailto:THutchins@voa.org>]
Sent: Thursday, January 20, 2011 9:33 AM
To: [REDACTED]
Subject: Re: Yabucoa Elderly

Yes. Wire was sent to him for both draws on Tuesday.

This is exactly what transpired. Although YVOA informed the auditors of this fact, and provided documentation for these transactions, the auditors appear not to have understood or chose not to acknowledge the process. In fact, there were no duplicate payments, as HUD merely paid the first draw requests, whereas the Vivienda funded later requests.

Comment 8

4. Recommendation ID is Outside the Jurisdiction of the HUD OIG

Recommendation ID represents a fundamental departure from the express objective of the audit, which “was to determine whether Volunteers used Section 202 funds in accordance with HUD OIG agreements and requirements.” Curiously, notwithstanding the objective as stated by HUD OIG on page 1 of the Audit Memorandum, on page 2, it notes: “Volunteers’ records also showed that it received from the Puerto Rico Department of Housing more than \$1.8 million from a multifamily special escrow program. We examined all of the escrow payments Volunteers received and the related supporting documents.” It is outside of the auditors’ purview and jurisdiction to determine if Vivienda funds were used appropriately. The HUD OIG has no jurisdiction and correspondingly no enforcement power over Vivienda funds. Inspector General Act of 1978, as amended, 5a U.S.C.

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Comment 9

App. 3 §2 (2016). Therefore, Recommendation ID should be withdrawn as outside the scope of the audit and the jurisdiction of the auditors.

5. The HUD OIG Did Not Follow Generally Accepted Government Auditing Standards and Therefore, Its Findings and Recommendations Should Be Withdrawn as Without Adequate Basis

The Audit Memorandum admits that “the audit 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.” Respectfully, YVOA disputes the conclusion that it was not necessary to comply with government auditing standards. According to the last available HUD OIG Audit Operations Manual, “All performance audits conducted by OIG staff must comply with Generally Accepted Government Audit Standards (GAGAS)” HUD OIG Audit Operations Manual Section 3-1. The HUD OIG’s audit work was not complete and accurate, as it is required to be.²

In light of the above, we reiterate our request that Recommendations A-D be withdrawn in their entirety, as they result from a lack of understanding of various items, namely, the YVOA project objective; the proper accounting standards; the HUD directive to pay invoices with HUD 202 funds; and the June 28, 2016 HUD approval for the conclusion of the YVOA project.³

² The lead auditor on this matter retired before the exit conference and therefore, YVOA had no opportunity to discuss the findings with that HUD OIG auditor prior to the HUD OIG generating a final audit report.

³ At the very least, YVOA submits that the audit conclusions and recommendations be revised to reflect that YVOA acted at the direction of HUD and that its findings with respect to the Vivienda funds are subject to the Vivienda’s decision whether or not to approve YVOA’s plan for closing out the project.

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Comments 5
and 6

Comment 8

Comment 10

Response to specific Recommendations:

IA: Track and ensure that Volunteers returns to the Treasury any funds recovered through the ongoing litigation pertaining to the YVOA project. Response: As previously articulated in HUD’s June 28, 2016 letter, any net funds recovered in the on-going litigation will be returned to HUD. As YVOA explained to the auditors, the litigation is still pending and the timeline for the litigation has been understandably affected by the devastating effect of Hurricane Maria.

IB: Deobligate and recapture \$1,440,165 in undrawn HUD 202 funds assigned to the project. Response: YVOA will manage the HUD 202 and other funds assigned to the YVOA project consistent with HUD’s letter dated June 28, 2016, a copy of which was provided to the auditors. HUD has already indicated, and YVOA agrees, that undrawn HUD 202 funds are not to be used.

IC: Require Volunteers to reimburse to the United States Treasury \$140,000 from non-Federal funds for ineligible project construction costs charged to the Section 202 project. Response: YVOA has provided substantial documentation that demonstrates that the \$140,000 in federal funds was used for eligible architectural costs on the YVOA project consistent with HUD and YVOA’s past practice. HUD OIG simply misreads the applicable documents. This recommendation is without merit and should be withdrawn.

ID: Return to the Puerto Rico Department of Housing \$1,057,467, plus any interest owed, for the duplicate special escrow fund payments it received. Response: The HUD OIG has no jurisdiction over these funds. See above discussion. YVOA has had multiple conversations with Vivienda over the last few years regarding this project, and has shared with Vivienda the HUD-approved modified plan. Vivienda has voiced no objection to YVOA proceeding with the modified project. At the Exit

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Comment 11

Conference, HUD OIG stated that it did not discuss this recommendation with Vivienda. Under the circumstances, this Recommendation is without basis and should be withdrawn.

Conclusion

It is unfortunate that the YVOA project was unable to move forward under its original plan due to no fault of YVOA. As described above, YVOA has worked with HUD and Vivienda every step of the way in an effort to come up with and execute on an alternative plan to build a senior center to support the low income elderly consistent with program requirements. This effort has been at considerable time and expense to YVOA; however, YVOA has persevered as it remains committed, now more than ever, to serving the low income seniors in the Yabucoa community. It is truly unfortunate that the Audit Memorandum does not provide a complete and accurate view of the facts and includes recommendations that would take resources away from the victims of Hurricane Maria just when they are needed most. Please contact me if you would like to discuss this matter.

Very truly yours,



Clare Ann Fitzgerald

Vice President and Counsel for
Litigation, Risk Mgmt., & Compliance

OIG Evaluation of Auditee Comments

Comment 1 Volunteers stated that the recommendations would take away resources from low-income elderly residents of Puerto Rico by redirecting funds away for the completion of the Yabucoa project. Volunteers added that HUD approved the modified plan to convert the housing project to a senior center. Volunteers also mentioned that the housing project was not abandoned, that remediation work was completed before Hurricane Maria made landfall, and that it was in the process of obtaining building permits for the construction of the senior center. Volunteers claimed that on at least two occasions it informed and provided OIG with photographs showing that demolition and remediation work took place at the project site and that OIG chose not to include this information in the memorandum.

We do not agree with Volunteers. Volunteers disbursed more than \$1.8 million in Section 202 funds for a project that did not meet HUD requirements and failed to expand the supply of affordable housing with supportive services for the elderly. The recommendations seek the reimbursement of \$140,000 for unallowable construction costs and the return of \$1 million in duplicate construction costs paid to Volunteers.

HUD approved the use of Section 202 funds remaining on the project's bank account only for the demolition and remediation of the site. A HUD official informed us that Section 202 funds could not be used for the construction of a senior center because it would not be consistent with program requirements. On February 28, 2017, we performed a site visit to the project and confirmed that it had not been completed. At the time of our inspection, the project site looked abandoned. The OIG auditors met with Volunteers' officials on two occasions, including the exit conference that took place on October 27, 2017, and during the meetings Volunteers' officials did not mention that the project was demolished and no pictures were provided to the audit staff showing the demolition and remediation of the site.

Comment 2 Volunteers stated that it worked diligently to move the project forward, that litigation against the bonding company is still ongoing, that it had spent a significant amount of its own money on legal costs, and that OIG did not consider this information in the memorandum. In addition, that it hoped that OIG consider recommending the debarment of the surety company.

We do not agree with Volunteers. The OIG auditors did review about 500 pages of litigation documents that Volunteers provided during the audit. Only relevant information was included in the report. The memorandum does include information describing why the construction was not completed as well as information on Volunteers ongoing litigation with various entities, including the bonding company. Volunteers and HUD signed an agreement to use Section 202 funds for the construction of the Yabucoa housing project. The review was

related to Volunteers' compliance with HUD requirements; the surety company did not have an agreement with HUD.

- Comment 3 Volunteers indicated that the project objective changed due to circumstances beyond its control, and that in a letter dated June 28, 2016, HUD approved to use the remaining funds in the construction account for demolition and remediation of the Yabucoa project site. Volunteers also stated that it continues with the HUD-approved plan and it is in compliance with all HUD requirements.

The HUD letter dated June 28, 2016, authorized the use of unexpended Section 202 funds only for demolition and remediation work at the project site. The HUD letter also stated that permissibility of any other funds must be based on guidance from the awarding office or entity. Volunteers' accounting records reflected that most of the funds left in the construction account (more than \$1 million) were multifamily special escrow funds awarded by the Puerto Rico Department of Housing. Therefore, the June 2016 approval letter was not applicable to the unexpended multifamily special escrow funds. Volunteers did not provide any documentation showing that HUD or the Puerto Rico Department of Housing authorized a change in scope of work and the use of multifamily special escrow funds for demolition and remediation work at the Yabucoa project site.

- Comment 4 Volunteers stated that the audit memorandum contained inaccurate and incomplete information and that OIG failed to include the explanation provided to the auditors regarding the eligibility of the \$140,000 questioned in recommendation 1C.

We do not agree with Volunteers. The audit memorandum did include the explanation provided pertaining to the questioned costs. Volunteers informed us that it believed these were eligible Section 202 program costs and HUD had approved the expenditures.

- Comment 5 Volunteers indicated that HUD approved the \$138,500 for survey and improvement costs, that OIG misunderstood the purpose of the escrow agreement, and that without support the memorandum stated that Section 202 funds could not be used for survey and improvement costs. Volunteers stated that HUD's approval to pay the costs from Section 202 funds and to release the escrow funds was appropriate.

According to paragraph 11(b)2 of the firm commitment agreement, Volunteers was required to establish an escrow fund in the amount of \$138,500, from other than Section 202 funds, to pay for the survey and improvement costs. However, Volunteers incorrectly charged the Section 202 program for these costs. Although HUD approved the draw of funds, the supporting documents Volunteers provided during the audit showed that the costs were not allowable. In addition, a HUD official informed us that Section 202 funds should not have been used to pay for

the survey and improvement costs. Volunteers did not provide additional documentation supporting the allowability of the costs.

- Comment 6 Volunteers stated that the \$1,500 questioned costs pertained to some additional work the architect completed, that HUD approved the draw, and that it provided support, but OIG did not acknowledge the information or include it in the memorandum.

Although HUD approved the draw of funds, all costs need to be supported. Volunteers did not provide documentation supporting the eligibility of the costs or that it was not a duplicate payment.

- Comment 7 Volunteers stated that HUD approved to pay early invoices with Section 202 funds first to expedite the construction work. Volunteers also stated that the multifamily special escrow funds from the Puerto Rico Department of Housing were to be used to replenish the Section 202 funds already drawn. According to Volunteers there were no duplicate payments, as HUD paid for the first draw requests, whereas the Puerto Rico Department of Housing funded the later requests.

We agree with Volunteers that HUD authorized the use of Section 202 funds because the Puerto Rico Department of Housing was slow in disbursing the multifamily special escrow funds for the construction of the project. However, HUD's approval to use the Section 202 funds first did not authorize Volunteers to collect funds for the same costs from both sources. Although Volunteers stated that the multifamily special escrow funds were to be used to replenish the Section 202 funds already drawn, there is no evidence that funds were returned to HUD. In a January 2011 email, Volunteers informed HUD that it would deduct from subsequent Section 202 draws the multifamily special escrow funds it receives from the Puerto Rico Department of Housing. However, Volunteers did not adjust the subsequent Section 202 draws and submitted duplicate construction cost billings to HUD and the Puerto Rico Department of Housing. The duplicate multifamily escrow payments were not allowable project expenditures because HUD paid Volunteers for the construction costs with Section 202 funds.

- Comment 8 Volunteers indicated that recommendation 1D was a departure from the audit objective and that OIG had no jurisdiction and correspondingly no enforcement power over the Puerto Rico Department of Housing funds. Volunteers also stated that Recommendation 1D should be withdrawn.

We do not agree with Volunteers. The OIG is authorized to conduct audits, reviews, inspections and evaluations related to HUD programs. The multifamily special escrow fund administered by the Puerto Rico Department of Housing is subject to HUD requirements, per the October 24, 1997, memorandum of understanding. In addition, the grant agreement signed with the Puerto Rico Department of Housing provides that Volunteers shall comply with HUD

regulations in accordance with the memorandum of understanding and all federal regulations and policies issued. In addition, the agreement provides that all of Volunteers' records related to the Yabucoa housing project shall be made available to the grantor agency, their designees, or the Federal government to audit, examine and make excerpts, photocopies or transcripts of all relevant data. We did not remove recommendation 1D.

- Comment 9 Volunteers stated that HUD OIG did not follow Generally Accepted Government Auditing Standards (GAGAS) and therefore, the findings and recommendations 1A through 1D should be withdrawn.

We do not agree with Volunteers. The OIG is allowed to perform non-GAGAS reviews and the audit memorandum is consistent with Sections 7.30 and 7.31 of the Government Auditing Standards, 2011 revision. We did not withdraw the findings and recommendations from the memorandum.

- Comment 10 Volunteers stated that it shared with the Puerto Rico Department of Housing the modified plan and there were no objections.

Volunteers did not provide any evidence that the Puerto Rico Department of Housing had approved the change in scope pertaining to the Yabucoa housing project. Therefore, we did not change recommendation 1D.

- Comment 11 Volunteers stated that the memorandum is not complete and accurate, and that recommendations will take away resources from low-income elderly residents of Puerto Rico by redirecting funds away for the completion of the Yabucoa project.

We do not agree with Volunteers. Volunteers disbursed Section 202 funds for a project that did not meet HUD requirements and failed to expand the supply of affordable housing with supportive services for the elderly. The recommendations seek reimbursement from Volunteers for the unallowable construction costs and the return of funds that Volunteers was paid for duplicate construction costs.