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Audit Report Number	2009-CH-1015
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TO: Lucia M. Clausen, Director of Public Housing Hub, 5KPH

FROM: 
Heath Wolfe, Regional Inspector General for Audit, 5AGA

SUBJECT: The Public Housing Agency of the City of Saint Paul, Minnesota, Needs to Improve Its Administration of Its Section 8 Project-Based Voucher Program

HIGHLIGHTS

What We Audited and Why

We audited the Public Housing Agency of the City of Saint Paul's (Agency) Section 8 Project-Based Voucher program (program). The audit was part of the activities in our fiscal year 2009 annual audit plan. We selected the Agency's program based upon our internal audit survey of the U.S. Department of Housing and Urban Development's (HUD) oversight of the program and our analysis of risk factors relating to the housing agencies in Region V's jurisdiction. Our objective was to determine whether the Agency effectively administered its program in accordance with HUD's and its own requirements.

What We Found

The Agency needs to improve the administration of its program. It was unable to provide documentation showing that it conducted initial inspections before executing housing assistance payments contracts to support more than \$1.3 million in housing assistance and utility allowance payments. The Agency also did not ensure that more than \$12,000 in duplicate housing assistance payments were not made to owners of program projects. Additionally, it did not obtain subsidy layering reviews of program projects as required by HUD's regulations.

The Agency substantially complied with HUD's and its requirements regarding housing assistance payments calculations. However, the Agency incorrectly calculated households' payments, resulting in more than \$7, 200 in overpayments and more than \$9,500 in underpayments for the period January 1, 2007, through December 31, 2008.

We informed the Agency's executive director and the Director of HUD's Minneapolis Office of Public Housing of minor deficiencies through a memorandum, dated September 24, 2009.

What We Recommend

We recommend that the Director of HUD's Minneapolis Office of Public Housing require the Agency to reimburse its program from nonfederal funds for the improper use of more than \$26,000 in program funds, provide documentation or reimburse its program more than \$1.3 million, and implement adequate procedures and controls to address the findings cited in this audit report.

For each recommendation without a management decision, please respond and provide status reports in accordance with HUD Handbook 2000.06, REV-3. Please furnish us copies of any correspondence issued because of the audit.

Auditee's Response

We provided our review results and supporting schedules to the Director of HUD's Minneapolis Office of Public Housing and the Agency's executive director during the audit. We provided our discussion draft audit report to the Agency's executive director, its board chairman, and HUD's staff during the audit. We held an exit conference with the executive director on September 9, 2009.

We asked the executive director to provide comments on our discussion draft audit report by September 17, 2009. The executive director provided written comments, dated September 17, 2009. The executive director disagreed with finding 1 and generally agreed with finding 2. The complete text of the written comments, along with our evaluation of those comments, can be found in appendix B of this report except for 18 pages of documentation that was not necessary for understanding the Agency's comments and the last four numbers of a tenant's Social Security number that the executive director included in his comments. A complete copy of the Agency's comments plus the documentation was provided to the Director of HUD's Minneapolis Office of Public Housing.

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BACKGROUND AND OBJECTIVE

The Public Housing Agency of the City of Saint Paul (Agency) was created by the Minnesota State Legislature, separate from the City of Saint Paul (City), and has been an independent governmental unit since 1977. The Agency was created to own and manage public housing properties and to administer the tenant-based Section 8 program in the City. Its historical roots are in the Housing and Redevelopment Authority of the City of Saint Paul, a unit of the City established by the Minnesota State Legislature in 1947. The Housing and Redevelopment Authority's initial goal was to remove slums and construct low-income housing in the City. In the early 1970s, the Housing and Redevelopment Authority began administering a federal rent subsidy program for eligible low-income households living in privately owned housing. The program evolved into the Section 8 Existing Housing Assistance Program. That program now serves more than 4,000 families. The Agency is funded by federal housing subsidies, rents paid by residents, special purpose grants, and investment revenues. It receives no financial support from City or county taxes and makes a payment in lieu of taxes to defray the cost of City and county services.

A board of commissioners governs the Agency. The seven commissioners are appointed by the City's mayor and approved by the city council. Two commissioners represent public housing residents. The board makes operational and budgetary decisions regarding the use of federal funds allocated for housing. The Agency's executive director is appointed by the board of commissioners and is responsible for coordinating established policy and carrying out the Agency's day-to-day operations.

The Agency administers a Section 8 Housing Choice Voucher program funded by the U.S. Department of Housing and Urban Development (HUD). It provides assistance to low- and moderate-income individuals seeking decent, safe, and sanitary housing by subsidizing rents with owners of existing private housing. As of June 30, 2009, the Agency had 3,699 units under contract with annual housing assistance payments totaling more than \$25 million in program funds.

In July 1999, the Agency's board approved an initial limit of 100 program units that provide rental assistance for eligible families who live in specific developments or units. On February 1, 2002, the Agency executed its first Project-Based Voucher program (program) housing assistance payments contract. The Agency may use up to 20 percent of its Section 8 Housing Choice Voucher program funding for its program. It is permitted to provide program funds to newly constructed, existing, or rehabilitated units. Families must live in the unit for a minimum of one year. After the initial year, the family may join the Section 8 Housing Choice Voucher program, provided there is a voucher available. During November 2000, the Agency's board increased the initial limit of 100 units to 544 units for the program. As of November 26, 2008, the Agency's board had approved 403 program units in 21 projects. From February 1, 2002, through December 31, 2008, the Agency made housing assistance and utility allowance payments totaling nearly \$17 million to program projects.

Our objective was to determine whether the Agency effectively administered its program in accordance with HUD's and its own requirements to include determining whether the Agency (1)

adequately administered its program, and (2) accurately computed housing assistance and utility allowance payments for program households.

RESULTS OF AUDIT

Finding 1: The Agency Needs to Improve the Administration of Its Program

The Agency needs to improve the administration of its program. The problems occurred because the Agency failed to exercise proper supervision and oversight of the program and also lacked adequate procedures and controls to ensure that HUD's requirements and its program administrative plan were appropriately followed. As a result, it was unable to support more than \$1.3 million in housing assistance and utility allowance payments, and that \$12,300 in program funds was not used for duplicate housing assistance payments.

The Agency Lacked Documentation to Support Its Projects' Eligibility

We reviewed 100 percent of the Agency's program projects under housing assistance payments contract and/or receiving housing assistance payments as of December 31, 2008. The 18 program projects contained 372 units. The program project files were reviewed to determine whether the Agency maintained documentation to support that its projects were eligible. Our review was limited to the information maintained by the Agency in its program project files and HUD's Minneapolis Office of Public Housing's project files for the Agency. The Agency lacked documentation to support that

- 230 units in 10 projects had a subsidy layering review,
- 156 units in 13 projects had an initial housing quality standards inspection conducted from February 2002 through December 2004, and
- Duplicate housing assistance payments were not paid to owners.

In response to our draft finding outline, the Agency provided documentation to support more than \$6 million in housing assistance and utility allowance payments. The documentation included an initial inspection conducted in July 2001.

The Agency's Procedures and Controls Had Weaknesses

The weakness regarding missing initial inspection documentation occurred because the Agency lacked adequate procedures and controls to ensure that the required documents were completed and maintained in the program project files to determine project eligibility in accordance with HUD's and its own

requirements. Contrary to its stated method of keeping unit records in participant files, the Agency maintained its initial inspections for Sankofa Apartments in the project file. The housing assistance payments contract for this project was executed in November 2008.

We observed 10 units in seven of the Agency's program projects during our audit and determined that the units were in substantial compliance with HUD's housing quality standards. Of the 10 units observed, the Agency was unable to provide documentation to support that initial inspections were conducted for four units in the Agency's program projects.

The Agency's Section 8 programs manager said that the program units were treated similarly to its Section 8 Housing Choice Voucher units in that they were inspected at least annually and before a new household moved into a unit.

The error regarding subsidy layering reviews occurred because HUD's headquarters Office of Public Housing and Voucher Programs incorrectly advised HUD's Minneapolis Office of Public Housing and the Agency that subsidy layering reviews were not required for new construction and rehabilitation projects unless tax credits were involved. We provided this information to HUD's Associate Deputy Assistant Secretary for Public Housing and Voucher Programs, who agreed that subsidy layering reviews were required for new construction and rehabilitation projects whether tax credits were involved or not.

The duplicate housing assistance payments occurred because the Agency made a mistake.

Conclusion

As a result of its weaknesses, HUD and the Agency lacked assurance that program funds were used efficiently and effectively. The Agency did not properly use program funds when it did not comply with HUD's requirements. The Agency disbursed \$1,250,868 in program housing assistance and utility allowance payments for program units without proper documentation showing that an initial inspection was conducted before the housing assistance payments contracts were executed, and made \$12,395 in duplicate housing assistance payments.

In accordance with HUD's regulations at 24 CFR (*Code of Federal Regulations*) 982.152(d), HUD may reduce or offset any administrative fee to the public housing agency, in the amount determined by HUD, if the public housing agency fails to perform public housing agency administrative responsibilities correctly or adequately under the program. The Agency received \$114,491 in administrative fees related to the housing assistance payments that were made without evidence of an initial inspection having been conducted.

Recommendations

We recommend that the Director of HUD's Minneapolis Office of Public Housing require the Agency to

- 1A. Provide supporting documentation or reimburse its program \$1,365,359 from nonfederal funds (\$1,250,868 in housing assistance and utility allowance payments plus \$114,491 in administrative fees) for the housing assistance payments related to the units lacking evidence of an initial housing quality standards inspection.
- 1B. Reimburse its program \$12,395 from nonfederal funds for the duplicate housing assistance payments cited in this finding.
- 1C. Implement adequate procedures and controls to ensure compliance with all federal requirements for the operation of its program.
- 1D. Obtain the appropriate subsidy layering reviews for the program projects cited in this finding.

Finding 2: The Agency Substantially Complied with HUD's and Its Requirements for Program Housing Assistance Payments

The Agency substantially complied with HUD's and its requirements for program housing assistance payments. However, it inaccurately computed payments when it overpaid more than \$7,200 and underpaid more than \$9,500 in housing assistance and utility allowances. These deficiencies occurred because the Agency needs to improve its existing procedures and controls to ensure that its calculations were accurate and that HUD's requirements and its program administrative plan were appropriately followed.

The Agency Made Incorrect Housing Assistance and Utility Allowance Payments

We statistically selected 116 household files, with a total of \$1,148,084 in housing assistance and utility allowance payments, from a universe of 613 households receiving program housing assistance payments during the period January 1, 2007, through December 31, 2008, using data mining software. Our sampling criteria used a 90 percent confidence level and precision of plus or minus 10 percent. Our methodology for the sample selection is explained in the Scope and Methodology section of this audit report. The 116 files were reviewed to determine whether the Agency correctly calculated households' housing assistance and utility allowance payments. Our review was expanded as necessary and was limited to the information maintained by the Agency in its household files, HUD's Enterprise Income Verification system, and the LexisNexis Research system.

According to HUD's regulations at 24 CFR 5.240(c), public housing authorities must verify the accuracy of the income information received from program households and change the amount of the total tenant payment, tenant rent, or program housing assistance payment or terminate assistance, as appropriate, based on such information.

The Agency's calculation errors resulted in overpayments of \$7,259 and underpayments of \$9,563 in housing assistance and utility allowances. The Agency incorrectly calculated housing assistance and utility allowances for 33 (28 percent) households in one or more certifications. The 33 files contained errors in the calculation of the households' annual income, income deductions, and adjustments and the use of incorrect utility allowances.

The 33 files contained the following errors:

- 22 had annual income calculation errors by the Agency for one or more certifications,

- Six had incorrect adjustment calculations for one or more certifications,
- Five had incorrect disability allowances for one or more certifications, and
- Four had incorrect utility allowance calculations for one or more certifications.

The Agency received \$6,971 in program administrative fees related to the 18 households that were overpaid housing assistance and utility allowances for the period January 1, 2007, through December 31, 2008.

The Agency's Procedures and Controls Had Weaknesses

The weaknesses regarding incorrect calculations and inappropriate payments occurred because the Agency needs to improve its procedures and controls to ensure that it appropriately followed HUD's regulations and its program administrative plan.

The Agency's Section 8 programs manager said that the program technicians checked each other's work and that all housing assistance payment calculations were reviewed by a coworker. Quality control reviews were selected randomly for Section Eight Management Assessment Program compliance. Each file also contained a checklist to ensure that all required items were in the file. The supervisors might also conduct quality control reviews randomly. There was no set amount of files that were checked by supervisors.

The Agency's manager also said that at least one household failed to reverify its disability. Therefore, the Agency did not give this household the disability allowance of \$400. This amount would have been deducted from the household's annual income. The Agency's program administrative plan did not state whether households were required to reverify their disabilities and when the reverifications would be required.

Conclusion

As a result of its procedural and control weaknesses, HUD and the Agency lack assurance that program funds were used efficiently and effectively. The Agency overpaid \$7,259 and underpaid \$9,563 in housing assistance and utility allowances. The Agency did not properly use program funds when it failed to comply with HUD's regulations and its program administrative plan. In accordance with HUD's regulations at 24 CFR 982.152(d), HUD may reduce or offset any administrative fee to the public housing agency, in the amount determined by HUD, if the public housing agency fails to perform public housing agency administrative responsibilities correctly or adequately under the program.

Recommendations

We recommend that the Director of HUD's Minneapolis Office of Public Housing require the Agency to

- 2A. Reimburse its program \$14,230 (\$7,259 in housing assistance and utility allowance payments plus \$6,971 in associated administrative fees) for the overpayment of housing assistance and utility allowances cited in this finding.
- 2B. Reimburse the appropriate households \$9,563 for the underpayment of housing assistance and utility allowances cited in this finding.
- 2C. Improve its existing procedures and controls to ensure that it complies with HUD's regulations and the Agency's program administrative plan regarding its housing assistance and utility allowance payments.

SCOPE AND METHODOLOGY

To accomplish our objective, we reviewed

- Applicable laws; regulations; *Federal Register* notices; HUD's program requirements at 24 CFR Parts 5, 35, 58, 982, and 983; Public and Indian Housing Notices 2001-04, 2004-01, and 2005-29; HUD's Voucher Management System, HUD's Public and Indian Housing Information Center, and the LexisNexis Research system.
- The Agency's accounting records; annual audited financial statements for fiscal years 2007 and 2008; program administrative plans, effective December 2008; program household files; project files; computerized databases; policies and procedures; program annual contributions contracts; board meeting minutes pertinent to the program; and organizational chart.
- HUD's files for the Agency.

We also interviewed the Agency's employees, HUD staff, and program households.

Finding 1

We reviewed 100 percent of the Agency's program projects under housing assistance payments contracts and/or receiving housing assistance payments as of December 31, 2008. The 18 program projects contained 372 units.

Our results determined that the Agency did not maintain initial inspection documentation for 156 units in 13 projects. The Agency provided the earliest inspections it maintained for the units; therefore we limited our calculation of unsupported housing assistance and utility allowance payments and administrative fees to the period between the housing assistance payments contract execution date and the date of the earliest inspection provided.

Finding 2

We statistically selected 116 of the Agency's program household files from the 613 households that received housing assistance payments from January 1, 2007, through December 31, 2008, using data mining software. The 116 household files were selected to determine whether the Agency appropriately calculated the households' housing assistance and utility allowance payments and maintained documentation to support the households' program eligibility. Our sampling method was an unrestricted variable sample with a 90 percent confidence level and precision level of plus or minus 10 percent.

Our sample results determined that 18 of the 116 (15.5 percent) households' housing assistance and utility allowances were overpaid, that 21 of the 116 (18 percent) household's housing assistance and utility allowances were underpaid.

We performed our on-site audit work between January and March 2009 at the Agency's office located at 555 North Wabasha Street, Suite 400, Saint Paul, Minnesota, and at HUD's

Minneapolis field office. The audit covered the period January 1, 2007, through December 31, 2008, but was expanded when necessary to include other periods.

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. 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 an integral component of an organization's management that provides reasonable assurance that the following objectives are achieved:

- Program operations,
- Relevance and reliability of information,
- Compliance with applicable laws and regulations, and
- Safeguarding of assets and resources.

Internal controls relate to management's plans, methods, and procedures used to meet its mission, goals, and objectives. They 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:

- Program operations – Policies and procedures that management has implemented to reasonably ensure that a program meets its objectives.
- Validity and reliability of data – Policies and procedures that management has implemented to reasonably ensure that valid and reliable data are obtained, maintained, and fairly disclosed in reports.
- Compliance with laws and regulations – Policies and procedures that management has implemented to reasonably ensure that resource use is consistent with laws and regulations.
- Safeguarding resources – Policies and procedures that management has implemented to reasonably ensure that resources are safeguarded against waste, loss, and misuse.

We assessed the relevant controls identified above.

A significant weakness exists if management controls do not provide reasonable assurance that the process for planning, organizing, directing, and controlling program operations will meet the organization's objectives.

Significant Weakness

Based on our review, we believe that the following item is a significant weakness:

- The Agency lacked adequate procedures and controls to ensure compliance with HUD's requirements and its program administrative plan regarding the administration of its program (see finding 1).

Separate Communication of Minor Deficiencies

We informed the Agency's executive director and the Director of HUD's Minneapolis Office of Public Housing of minor deficiencies through a memorandum, dated September 24, 2009.

APPENDIXES

Appendix A

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

Recommendation number	Ineligible 1/	Unsupported 2/	Funds to be put to better use 3/
1A		\$1,365,359	
1B	\$12,395		
2A	<u>14,230</u>		
2B			<u>\$9,563</u>
Totals	<u>\$26,625</u>	<u>\$1,365,359</u>	<u>\$9,563</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.
- 3/ Recommendations that funds be put to better use are estimates of amounts that could be used more efficiently if an Office of Inspector General (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.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

September 17, 2009

Mr. Heath Wolfe
Regional Inspector General for Audit
U.S. Department of Housing & Urban Development
77 West Jackson Boulevard, Suite 2646
Chicago, Illinois 60604-3507

Re: St. Paul PHA Response to HUD-OIG Discussion Draft Audit Report

Dear Mr. Wolfe:

We have reviewed the draft audit report of the Office of Inspector General (OIG) of the U.S. Department of Housing & Urban Development (HUD), based on your audit of the Saint Paul Public Housing Agency's Section 8 Project-Based Voucher (PBV) program. We are pleased with the OIG's finding that the PHA "substantially complied" with HUD's regulations and the PHA's own policies governing Housing Assistance Payments. The other draft finding, that the PHA "needs to improve" its administration of the PBV program, is based on the OIG's conclusion that the PHA should have done two things differently (conducting subsidy layering reviews, filing initial unit inspection reports) when it began the PBV program and approved the original assistance contracts with the project owners. (The first contracts were signed in 2002.) The OIG concedes that the PHA relied on guidance from HUD that subsidy layering reviews were not required for some projects. The OIG also concedes that there was and is no specific HUD regulation, notice or guidance that obligated the PHA to retain original unit inspection reports past the general three-year record retention requirement. If the PHA enters into any new PBV agreements, we will comply with the OIG's interpretation of the requirements by conducting subsidy layering reviews on all new projects and by filing reports of the initial HQS inspections in a "project file" that will be available for audit purposes at any time during the life of the PBV HAP contract. As a result of this audit and similar audits of other housing agencies' PBV programs, HUD's Office of Public and Indian Housing should issue more guidance to field offices and housing agencies on these issues.

Comment 1

Comment 2

Comment 3

The OIG auditor determined that the PHA made some errors in determining participant incomes, rents or utility allowances. We agree that the PHA made subsidy overpayments totaling \$5385 and underpayments totaling \$4649, in the 116 files audited. That represents an accuracy rate of 99.13% for the total of \$1,148,084 the PHA paid in subsidies for those units, which is outstanding performance in any industry. The PHA stands ready to reimburse HUD and program participants (using non-HUD funds) for the subsidy overpayments and underpayments.

Ref to OIG Evaluation

Auditee Comments

We appreciated the opportunity to present the PHA’s position on all of these issues at some length during the exit conference on September 9, 2009. We were pleased that the OIG revised the draft findings based on the additional materials and legal citations we presented then.

We have great respect for the mission of the HUD Office of the Inspector General, and we are pleased that after the OIG’s staff spent almost eight months scrutinizing every detail of PBV project selection and program administration over an eight year span, the OIG makes NO findings of mismanagement, fraud or abuse. The PHA has paid almost \$17 million in connection with the PBV program, and we believe this audit confirms that the money was spent correctly. In all, the PHA provided electronic records of 27,808 checks totaling \$16,765,331 paid in connection with PBV units from their original contract dates through December 31, 2008. The OIG’s staff scrutinized these records carefully and cross-checked them against tenant file records. We are gratified that they found no evidence of financial mismanagement or malfeasance.

Comment 2

And as we will detail below, we believe the OIG exceeded its authority by attempting to hold the PHA accountable to a filing/record retention standard that does not exist in statute or regulation. The PHA disagrees with the OIG’s conclusion that the Agency did not prove that it inspected every PBV unit before signing the original subsidy contracts with the project owners. Despite our repeated requests for specific written evidence, OIG failed to cite any statute, regulation, notice, or other written guidance that specifically required the PHA to keep unit inspection records in paper in a “project file” from 2002 to the present.

Comment 4

The PHA has established beyond any reasonable doubt that it performed all PBV unit inspections at the appropriate time and in the appropriate manner prior executing the contracts and before approving PBV assistance for any individual unit, and the dates of the inspections are contained in HUD’s official PIC records. Furthermore, the PHA maintained records of these unit inspections in accordance with all of the requirements of HUD regulations.

The operative federal regulation (24 CFR Sec. 982.158) specifically requires the PHA to maintain inspection records for a period of three years. The PHA fully complies with that regulation. The federal regulations also required regulations for the tenant-based program in Part 982 be applied to the PBV program except as otherwise expressly modified or excluded by Part 983. In other words, absent specific written regulation about how inspection records are to be maintained, the PHA should keep them the same way it does for its tenant-based program. The PHA fully complies with that regulation.

Ref to OIG Evaluation

Auditee Comments

The PBV-specific regulation on records retention that was in effect when the PHA began its PBV program listed [only] two types of PBV records that had to be kept longer than the usual three-year retention period:

During the HAP contract term, and for at least three years thereafter, the HA must keep a copy of:

- (1) The HAP contract; and
- (2) Records to document the basis for determination of the initial rent to owner, and for the HA determination that rent to owner is a reasonable rent (initially and during the term of the HAP contract).

24 CFR Sec. 983.12(b) (eff. 6/1/1998 – 11/14/2005)

This regulation is where HUD could have or would have directed PHA's to retain initial inspection records "during the HAP contract term, and for at least three years thereafter" if that had been HUD's intent. HUD chose not to make that a requirement, instead leaving the three year record retention requirement as the operative standard.

Another federal regulation (24 CFR Sec. 908.101) requires PHA's to complete and electronically submit a data form (HUD-50058) whenever a new tenant moves into a rental unit that will be subsidized by Section 8. The form includes the "Date unit last passed HQS inspection." (Sec. 5h) The requirement to electronically file the form has been in place since 1995; and the regulation now says that: "Electronic retention of form HUD-50058 fulfills the retention requirement under this section." HUD's own electronic data storage system (PIC - Public and Indian Housing Information Center) contains every single HUD-50058 report, including the inspection dates, for every PBV unit subsidized by the Saint Paul PHA throughout the OIG audit period. Those records clearly confirm the original inspection dates (on or before the contract date) for many of the PBV units for which the original paper inspection reports have been destroyed.

Comment 5

The OIG asserts that the PHA should have maintained the original unit inspection reports (forever?) in each "project file". This PHA, and others we have contacted, files the inspection reports in participant files (tenant files) and retains them for the required period of time. The PHA's method of keeping unit records, including inspection records, in the participant files not only complies with federal regulation, it made and continues to make eminent sense.

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Comment 2

The OIG has conceded that there is no specific regulation or other written guidance from HUD that required the PHA to maintain original inspection booklets in PBV project files from 2002 to the present. The PHA accepts that it is “okay” for OIG to cite the Agency for mistakes or violations of existing law and regulation it might have inadvertently made. However, the OIG should not invent standards it wished had been in place 10 years ago and then cite the PHA for failing to live up to this invented standard.

The OIG should have conducted a review of the PHA’s administration of the PBV program for the time frame during which the PHA was actually required to maintain records. We are confident that an OIG audit of the program covering the time frame for which documents are required to be kept would have yielded little more than routine file discrepancies endemic to operating a program with as much complexity as the Section 8 PBV program. (In fact, this OIG audit did include some PBV projects for which the contracts were executed within the last three years, and the PHA did produce all of the original inspection reports for all of those units.)

Comment 6

Finding 1: The PHA disagrees with the OIG’s finding that “The [PHA] needs to improve its administration of its [PBV] program,” because we relied on HUD guidance on subsidy layering reviews and records retention. However, IF the PHA enters into any new PBV agreements, we will comply with the OIG’s interpretation of the requirements by conducting subsidy layering reviews on all new projects and by filing reports of the initial HQS inspections in a “project file” that will be available for audit purposes at any time during the life of the PBV HAP contract. Our PHA staff worked in close cooperation with the Minneapolis HUD Field Office staff as the PBV program developed, and we appropriately relied on the advice they provided directly, and the guidance they received from HUD Washington and relayed to us. In fact, had we done otherwise and ignored or violated HUD guidance we would have been properly criticized for that action.

The specific findings under this heading and the PHA’s responses, as discussed in detail below, are as follows:

1. Subsidy layering reviews. The PHA appropriately relied on guidance from HUD Washington via HUD Minneapolis Field Office.
2. Original unit inspection reports. The PHA inspected all units before executing PBV contracts, and before approving a subsidy for any individual unit. The PHA disagrees with the OIG’s finding that the PHA should have retained original inspection documents longer than the three year period required by HUD regulations. We also disagree with the OIG’s recommendation that HUD require the PHA to repay HAP subsidies and

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Auditee Comments

administrative fees for time periods before the earliest inspection reports in our participant files.

1. Subsidy Layering. In this finding the OIG acknowledges that the PHA relied on advice given by HUD Washington officials, that a “subsidy layering” review was not required unless a PBV project was also receiving Low Income Housing Tax Credits (LIHTC). Following that guidance from HUD Washington, the HUD Minneapolis staff did not require the PHA to provide information for HUD to conduct a subsidy laying review. (Subsidy laying reviews were conducted for the PBV projects that had tax credits.) Given the guidance from HUD Washington, we fail to see now what the PHA and HUD Minneapolis staff should have done differently: Ask some one else at HUD Washington? Conduct a subsidy layering review anyway, “just in case?” No. Operating in the real world in real time, PHA’s have no reason to second-guess guidance from HUD or to seek a “second opinion”.

Comment 7

We agree that the OIG is entitled, even obligated, to exercise its independent judgment on issues such as this. However, we strongly disagree that this should be an audit finding directed at the PHA. The proper result, we believe, would be for the OIG to state in the audit report that the PHA (and HUD Minneapolis staff) acted in accordance with guidance from HUD Washington, so there was no fault on the part of the PHA and local HUD. The fault lies in Washington; HUD headquarters should provide clearer guidance to its own staff and to the field.

Comment 8

In fact, the financing packages for the PBV projects in question were reviewed extensively by the professional staff at the Minnesota Housing Finance Agency (MHFA, now “Minnesota Housing”) and other local agency staff and consultants. Any possible excess subsidization would have been discovered and prevented at that stage. The projects were proposed, reviewed and selected for subsidies through an open, public MHFA process called the Consolidated Request for Proposals (the “SuperRFP”). The project developers were knowledgeable and experienced practitioners who pulled together sufficient resources from a variety of public and private sources, to create viable, affordable supportive housing and mixed income housing developments. MHFA’s professional staff who reviewed each funding package that went through the SuperRFP process were aware that the PHA might award PBV assistance to the project in a subsequent selection process. (The possibility that a project might be approved subsequently by the PHA for PBV was not a factor in the MHFA selection process, however.) In reality, the PBV project developers here, most of who are non-profit organizations, have not been susceptible to “oversubsidization.

Comment 2

2. Initial Project Inspections. The draft OIG audit report finding states that, “The [PHA] failed to ensure that ... 156 units in 13 projects had an initial housing quality standards (HQS) inspection conducted.” Aside from the inaccuracy of this statement, this finding is based on novel OIG interpretations of filing procedures and document retention requirements. The OIG faults the PHA for not keeping original unit inspection reports in the PBV “project files” from 2002 (when the first contracts were signed) to December 2008.

2.1. PHA provided the OIG with original printed inspection reports for about half of the units (184 out of 372) initially, and many more after further manual review of participant files.

2.2. The PHA could not produce copies of the original inspection reports for the remaining units (42% of the total) for several (legally valid) reasons:

2.2.1. Some original inspection reports were destroyed in the normal course of business, when participant files were purged for tenants who moved out over 3 years ago.

2.2.2. Some original or early inspection reports were destroyed during file purges of non-essential documents from files of then-current tenants, if the documents were more than five years old.

2.2.3. Some PBV units did not lease up for months after the original pre-contract inspection, so staff inspected them again before a tenant moved in. In those cases staff retained the later inspection report in the tenant file and usually did not keep the original inspection report. The later inspection was required to avoid “late inspection” penalties under SEMAP.

One example is the PBV project now called Seventh Landing, located at 1360 West Seventh Street in St. Paul. R.S. Eden developed and manages the project to provide supportive housing for homeless youth coming out of the Minnesota foster care system. The contract was executed on July 3, 2003.

The project was approved for 12 PBV units. We have records of original inspections on July 3, 2003 (the contract date) or earlier for seven of the units. The available records clearly support the conclusion that all twelve units were inspected on or before July 3, 2003; and furthermore, it is clear that no subsidy was paid for any unit before it passed an HQS inspection.

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Some units did not lease up until several months after the contract date so the PHA inspected those units again and retained those inspection reports. For example, for Unit #201, the first tenant [REDACTED] moved into the unit on December 15, 2003, after the unit passed an HQS inspection on November 4, 2003. The PHA's HAP register, provided to OIG, shows that no subsidy was paid for that unit before that tenant moved in.

2.2.4. 24 CFR Sec. 982.159(e) requires the PHA to retain copies of unit inspection reports for three years (only). At any time during that "window" the OIG or other HUD staff, or the PHA's own independent public auditor, could have verified that the original unit inspections were conducted. (The only exceptions would have been as stated in 2.2.3. above. Some, but not all, original inspection reports were retained when a second inspection was conducted before the first tenant moved in.)

2.3. HUD-50058 Reports. For each PBV unit for which the PHA paid a HAP subsidy, there is a record (Form HUD-50058) on file with HUD in its PIC tenant data system, showing the date that the unit passed the HQS inspection, before the subsidy began. It is noteworthy that 24 CFR Sec. 908.101 has required the HUD-50058 form to be electronically submitted since 1995 and that effective September 30, 2009, "Electronic retention of form HUD-50058 fulfills the retention requirement under this section." These records are "business records" created and maintained in the normal course of business (and subject to audit), so we believe they provide sufficient evidence that the PHA conducted timely initial inspections.

Comment 9

The HAP register and HUD-50058 reports in combination create an irrefutable written record that verifies that no subsidies were paid for any PBV unit before the unit passed an HQS inspection. Combined with the original inspection reports the PHA retained, we believe the documents demonstrate that the PHA did inspect all units before executing the initial HAP contract for each PBV project.

2.4. Owner Affidavits. The PHA has now obtained sworn affidavits from all of the owners of the 14 projects for which the OIG has questioned the original inspections. (Attachment C) Most of those owners worked with the PBV projects from the start, and they have affirmed that the PHA required every unit to pass the HQS inspection before the PHA would execute the contract for PBV assistance.

2.5. The OIG's staff inspected a sample of ten PBV units in ten separate projects in 2009 and confirmed that those units complied with HQS. Although some conditions in a unit may change while it is occupied (due to wear and tear, other damage, etc.), most of the design and structural elements required by HUD's housing quality standards would not change over time. In those respects and as a practical matter, a unit that meets HQS now would have met HQS when it was first approved for the program.

2.6. St. Paul PHA staff who have worked with Section 8 since the first PBV projects began attest that the PHA always required every unit to pass an HQS inspection before the PHA would execute the original Housing Assistance Payments (HAP) contract for the project. That requirement is explicitly stated in a December 19, 2001 staff report to the PHA Board, recommending approval of a PBV project with the YWCA. (See Attachment D) The HUD regulations have been clear on this requirement and PHA staff followed it to the letter.

2.7. Other large housing authorities in the Twin Cities area recently confirmed to PHA staff that they file original inspection reports in tenant files for PBV projects, not in project files. If the OIG disagrees with this practice, it could recommend that HUD's Office of Public and Indian Housing issue guidance to instruct all PHA's to file original inspection reports in project files and to retain them in perpetuity going forward. That sort of recommendation would be rational and a legitimate outcome of the OIG review of the St. Paul PHA's PBV program administration. A retroactive unsubstantiated negative finding by OIG is not a rational or legitimate outcome.

2.8. The PHA actually conducts more PBV unit inspections than are required by HUD, since we inspect every unit in the program at least annually. As an OIG staff member noted in an August 5, 2009 e-mail, the PHA is only required to select a random sample of 20 % of the contract units in each building for the annual inspections. PHA staff were aware of that option, but we have always inspected every unit annually to ensure that the entire property continues to be maintained well.

Finding 2: Income, Rent and Utility Allowance Determinations. The OIG found that the PHA "substantially complied" with HUD's regulations and the PHA's own policies governing Housing Assistance Payments.

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The PHA does agree with the draft audit report that some of our staff's individual calculations for participant incomes, rents and utility allowances were incorrect. However, we do not agree with the OIG's count of how many files contained calculation errors, or the total amounts overpaid or underpaid. By any measure, the number of significant errors cited (some of which are still in dispute) is very small.

Again, we respect the OIG's diligence in carefully reviewing a large number volume of tenant files and records and financial records (including the 27,808 checks totaling **\$16,765,331**) related to the 372 PBV units from their original contract dates through December 31, 2008. The auditor randomly selected 116 individual tenant files and checked every calculation for income, rents, utility allowances and subsidies. Of those 116 files, the PHA agrees with the OIG auditor that the PHA overpaid the HAP subsidy for one or more months for nine participants, for a total overpayment of \$5385. The PHA also agrees with the OIG auditor that the PHA underpaid the HAP subsidy for one or more months for twelve participants, for a total underpayment of \$4649. That represents an accuracy rate of 99.13% for the total of \$1,148,084 the PHA paid in subsidies for those units, which is outstanding performance in any industry. The PHA stands ready to reimburse HUD and program participants (using non-HUD funds) for the subsidy overpayments and underpayments.

We appreciated that the OIG staff shared information during the course of the audit, including their periodically providing lists of the files in which they questioned our calculations. The PHA sent a written response to the OIG auditor on every one of those file discrepancies. Our responses generally fell into three categories: (1) The PHA agrees with OIG calculation; or (2) the PHA disagrees with OIG calculations (followed by an explanation); or (3) "PHA cannot determine OIG calculation". In some cases the OIG's staff accepted the PHA's explanation and cleared the finding; and in other cases the OIG provided additional explanation for its calculations. But in some cases the PHA still disagrees with the OIG calculations or application of the rules.

For example, we believe the OIG's staff incorrectly calculated income and rents when the participant received Unemployment Insurance (UI) benefits (cited in four of the 116 files).

Tenant file #89 illustrates this: The file contains a written statement from the Minnesota Department of Employment and Economic Development (DEED) that the participant/worker's weekly unemployment benefit will be \$254 per week. It also states that the maximum amount of benefits available during the worker's benefit year is \$5,503. The PHA calculated this income as \$254 x 52 weeks or \$13,208 annualized and set the rent (participant's payment) and HAP amount accordingly. When and if the UI benefit ends, the tenant would request an interim adjustment.

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Comment 10

In contrast, the OIG used the \$5,503 as the annualized income amount, resulting in a lower adjusted income, a lower participant payment for the rent, and a higher housing assistance payment. The OIG reported this case as a subsidy underpayment by the PHA.

The PHA disagrees with the OIG’s method. Accepting the \$5,503 as the annual income reduces the \$254/week actual income received to \$105.82 per week (\$5503/52 weeks). The \$5,503 will be received only for a period of 21-22 weeks, and the rent/subsidy should be calculated on that basis.

Our staff’s interpretation is supported by written materials from Nan McKay & Associates, one of the premier training providers and a frequent HUD contractor. (Housing Choice Voucher Master Book, 12/1/2004 edition, Section 3.1, page 3.1-12, copy attached as Attachment B).

If anything, these disagreements between the OIG and the PHA on income, rent and utility allowance determinations underscore the frustrating complexity of the current rules and procedures governing income and rent calculations in the Section 8 voucher program. It is not surprising to us that our experienced, trained and well-supervised Section 8 staff would still make some interpretations (and a few outright errors) that will be detected and challenged by an experienced, knowledgeable professional OIG auditor who spent months reviewing every calculation and monthly payment for 116 PBV participants over a two year period.

Our staff must administer the program in “real time”, daily interviewing clients, receiving and verifying information from them and from third parties and online sources (HUD’s EIV system), making decisions as accurately and as promptly as possible, and then moving on to the next case. As the OIG notes in the draft audit report, PHA staff cross-check each other’s rent calculations, and Section 8 supervisors spot-check a number of randomly selected files during the year. In addition, supervisors annually select a random sample of files for the required SEMAP self-audits and check the documentation, income determinations and rent calculations. Every year those SEMAP self-audits turn up a small number of file errors, but few enough that the PHA continues to earn the SEMAP High Performer rating (now eight years).

As stated above, reviewers from the HUD Minneapolis Field Office also review the PHA’s file documentation, income determination and rent calculation for a random selection of HCV files, which include the PBV files, during “Rental Integrity Monitoring” (RIM) reviews. Those reviews last occurred in 2003 and 2008 (the latter review was part of a larger “Tier 1” review). The HUD reviewers generally find some files where they disagree with the PHA’s calculations. In many of those cases the HUD reviewers agree with the PHA’s determination after discussing the staff’s

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method, and any remaining files identified as errors are corrected by PHA staff. In the 2003 RIM review the HUD staff concluded that the number of actual file errors was low enough that they would not conduct a follow up review the next year.

The PHA certainly aspires to “zero-error” performance levels, but we also are responsible for making the most efficient use of the scarce public resources entrusted to our agency. We probably could reduce the number of Section 8 file errors to near zero by employing more supervisors or internal auditors, or hiring auditors from outside the agency, who could review every file calculation, say, within 30 days of staff’s initial action on the file. Clearly that would be a waste of scarce resources that are intended to support affordable housing for households with very-low or extremely low incomes.

The PHA stands ready to reimburse any of the PBV participants identified in the OIG audit who may have overpaid their share of the rent and utilities because the PHA paid too low a subsidy. The PHA will also use non-HUD funds to reimburse HUD for any excess HAP subsidies or utility allowances it paid on behalf of participants identified in the OIG audit. As explained above, the PHA agrees with the auditor on subsidy overpayments totaling \$5385 and underpayments totaling \$4649. The OIG’s auditor accepted the PHA’s explanations and cleared the initial findings of incorrect calculations in several other files. We suggest that staff from the PHA and HUD’s Field Office jointly review the remaining file calculations cited by the auditor, analyze why the PHA’s and OIG’s results differed, and determine which of those files constitute subsidy overpayments or underpayments. The PHA will then issue reimbursement checks.

Section 8 Administrative Plan. We note that the OIG draft (p. 10) faults the PHA for not stating in our Section 8/HCV Administrative Plan “whether quality control reviews would be conducted and how they would be selected.” The OIG’s Recommendation 2C. is that the PHA “Improve its existing procedures and controls....”

Comment 11

We disagree that the PHA’s administrative plan should include many of the procedures recommended by the OIG. The declaration of policy and public housing agency organization that begins the U.S. Housing Act of 1937 as amended states the following:

It is the policy of the United States

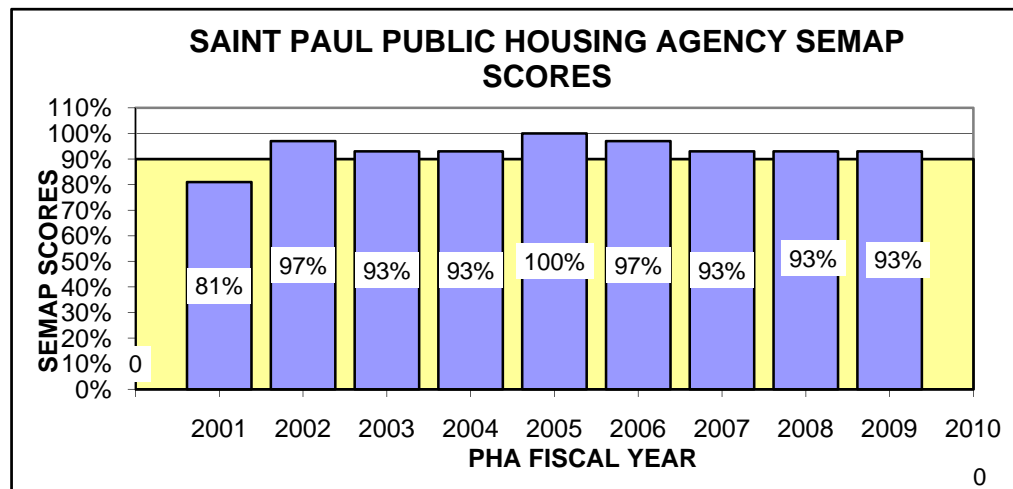
(1) to promote the general welfare of the Nation by employing the funds and credit of the Nation, as provided in this chapter— . . .

(C) consistent with the objectives of this subchapter, to vest in public housing agencies that perform well, the maximum amount of responsibility and flexibility in program administration, with appropriate accountability to public housing residents, localities, and the general public.... (42 USC Sec. 1437; emphasis added)

We have intentionally limited our Administrative Plan to policy issues and other specific provisions dictated by HUD. (Many regulations direct, “The housing agency shall state in its administrative plan....”) The PHA Board approves policy changes, which occur less frequently than procedure changes. Seeking Board approval for administrative procedures is undesirable for several reasons, including the following: (1) It can delay implementing procedural changes promptly; (2) it consumes the Commissioners’ time, which should be spent on “big picture” issues; and (3) most importantly, it distorts the Board’s role, inviting micromanagement of administrative details that should be staff’s purview. Furthermore, keeping procedural matters out of the Administrative Plan keeps the plan to a reasonable length and makes it more readable.

CONCLUSION:

We believe the PHA has administered the PBV program in an exemplary manner, as measured by eight consecutive years of High Performer SEMAP ratings. (The PHA’s rating was “Standard Performer in SEMAP’s first year, due to a very tight rental market that depressed the voucher utilization rate.)



Another headline confirming the PHA’s high performance and attention to details is the Agency’s record of zero audit findings on annual financial and compliance audits by independent professional auditors for twelve consecutive years. For an entity with an annual budget of approximately \$64 million, the absence of any audit findings over a sustained period is a remarkable accomplishment.

The PHA has been awarded a Certificate of Achievement for Excellence in Financial Reporting by the Government Finance Officers Association of the United States and Canada (GFOA), for four consecutive years, honoring the PHA’s “Comprehensive

Annual Financial Report” (CAFR). The Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by the management and staff of a governmental unit or agency.

The PHA has also received favorable ratings in other HUD audits for Rental Integrity Monitoring (RIM; 2003, 2004, 2008), the Voucher Management System (VMS) and others. The PBV program, with its 18 projects and 372 units, is a small subset of the more than 4000 units in our overall Housing Choice Voucher program, which has an annual budget of about \$34 million. In addition to tenant-based Housing Choice Vouchers, the PHA administers Disability Vouchers (Mainstream), Section 8 Moderate Rehabilitation Single Room Occupancy Vouchers, and now Veterans Administration-Supportive Housing (VASH) vouchers and Family Unification Program (FUP) vouchers. The PHA’s staff has implemented and managed each of the voucher programs diligently, with appropriate oversight by the PHA’s Board of Commissioners and senior staff. The Section 8 staff members are experienced, well trained and well supervised. Many of the line staff and most of the supervisors have decades of experience with Section 8, and they have developed a deep understanding of this important but complex program.

Comment 2

The OIG characterizes as “unsupported costs” the \$1.2 million paid as HAP subsidies to PBV units for which the PHA can no longer produce an original pre-contract inspection report. In fact, the full amount is accounted for and supported by thorough documentation. The PHA used those funds to pay properly-calculated rent subsidies, to eligible PBV project owners, on behalf of eligible Section 8 participants, who were living in eligible units that passed HQS inspections before the subsidies started. There is no justification for the OIG's recommendation that HUD ask for the money back, or the related administrative fees.

Under no circumstances should the PHA be required to repay any administrative fees it earned for operating the PBV program. As explained above, the PHA relied on guidance from HUD on the subsidy layering issue. The PHA fully complied with the records retention requirements in HUD regulations. The PHA did not pay any duplicate HAP subsidies. And finally, although the PHA’s staff erred on some calculations of income and rents, there is no evidence of systemic deficiencies in the PHA’s processes, training or supervision. Just as the PHA would not “dock” a worker’s pay for making an honest mistake on the job, HUD should not ask the PHA to repay Section 8 administrative fees because the Agency made a relatively small number of errors in paying subsidies.

For all of the reasons set forth above, the PHA respectfully but strongly disagrees with the primary findings in the draft audit report issued by the Office of the Inspector General. We request that the OIG retract and revise significant portions of the

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findings. We believe the PHA did appropriately administer the PBV program and the OIG should affirm that fact.

Comment 12

Comment 13

Comment 14

- The PHA retained all unit inspection reports as required by HUD regulations, and produced sufficient evidence to show that all PBV units in all projects were inspected before the original subsidy contracts were signed. Each unit was inspected again, as needed, before any subsidies were paid.
- The PHA and Minneapolis HUD staff relied on guidance from HUD Washington staff in deciding which PBV projects required subsidy layering reviews.
- The PHA did not make any duplicate subsidy payments.
- The relatively few and minor disagreements over participants’ income, rent and utility allowance calculations, some of which are still in dispute, are not the result of inadequate procedures, training or supervision. The OIG should recommend that Minneapolis HUD office staff review those file calculations with the PHA and, if subsidy underpayments occurred in the past for participants who are still in the program, corrections should be made. The PHA will repay to HUD (from non-HUD funds) any subsidy overpayments. The OIG should withdraw its recommendation to HUD that the PHA should repay any administrative fees.
- Most importantly, the OIG should withdraw its recommendation that HUD should require the PHA to repay any housing assistance payment amounts related to initial unit inspections. The OIG should direct its recommendations about retaining initial unit inspection reports and conducting subsidy layering reviews to HUD’s administrators in Washington so they can issue appropriate guidance to housing authorities administering PBV going forward.

Sincerely,

Jon M. Gutzmann
Executive Director

JMG/FAH/MFD

Enclosures:

- [Attachment A deleted; finding cleared]
- Attachment B, Nan McKay & Associates HCV “Master Book” p. 3.1-12
- Attachment C, PBV Owner Affidavits (Inspections)
- Attachment D, 12/19/2001 PHA Board report (“The [PBV] units must pass the Section 8 Housing Quality Standards (HQS) before PBA contracts can be executed.”)

OIG Evaluation of Auditee Comments

- Comment 1** We did agree that the Agency could not be expected to conduct the subsidy layering reviews since HUD's headquarters Office of Public Housing and Voucher Programs incorrectly advised HUD's Minneapolis Office of Public Housing and the Agency that subsidy layering reviews were not required for new construction and rehabilitation projects unless tax credits were involved.
- Comment 2** The first two citations from the *United States Code* in the criteria section of this report contain the applicable requirements to retain the initial inspection documents. Since the housing assistance payments contracts are for a 10-year period, the only way to determine whether the dwelling units meet the housing quality standards at the time the contracts were initiated is to maintain the initial inspection documents.
- Comment 3** The Agency is required to follow the program requirements.
- Comment 4** The Agency was unable to provide documentation showing that it conducted initial inspections before executing housing assistance payments contracts.
- Comment 5** The Agency maintained its initial inspections for Sankofa Apartments in the project file, contrary to its stated method of keeping unit records in participant files. The housing assistance payments contract for this project was executed in November 2008.
- Comment 6** The improvement of its administration of the program is not limited to ensuring that subsidy layering reviews are conducted when required. The finding also refers to the missing documentation for the initial inspections and the duplicative housing assistance payments.
- Comment 7** The discussion draft audit report and this final report stated that the Agency acted as advised by HUD headquarters.
- Comment 8** HUD headquarters acknowledged that an error was made when it did not conduct subsidy layering reviews for 10 projects. This error does not waive the requirement for the subsidy layering reviews to be conducted.
- Comment 9** We consider the actual inspection report to be evidence of the inspection results and date as opposed to a date of the form 50058 that an inspection was performed.
- Comment 10** We used the Agency's program administrative plan when performing our reviews and recalculations.
- Comment 11** We agree and removed the statement from the finding.
- Comment 12** The Agency did not provide sufficient documentation to support that the cited duplicative housing assistance payments were not made.

Comment 13 HUD's Minneapolis Office of Public Housing and the Agency will have the opportunity to review the cited file calculations during the audit resolution process.

Comment 14 The Agency did not provide any supporting documentation to warrant additional changes to the findings and recommendations.

Appendix C

FEDERAL REQUIREMENTS AND THE AGENCY'S PROGRAM ADMINISTRATIVE PLAN

Finding 1

United States Code, title 42, chapter 8, subchapter I, part 1437f(o)(8)(A) states that except as provided in paragraph (11), for each dwelling unit for which a housing assistance payments contract is established under this subsection, the public housing agency shall inspect the unit before any assistance payment is made to determine whether the dwelling unit meets the housing quality standards under subparagraph (B).

United States Code, title 42, chapter 8, subchapter I, part 1437f(o)(8)(D) states that each public housing agency providing assistance under this subsection shall make an annual inspection of each assisted dwelling unit during the term of the housing assistance payments contract for the unit to determine whether the unit is maintained in accordance with the requirements under subparagraph (A). The agency shall retain the records of the inspection for a reasonable time and shall make the records available upon request to the Secretary, the Inspector General for the Department of Housing and Urban Development, and any auditor conducting an audit under section 1437c(h) of this title.

United States Code, title 42, chapter 8, subchapter I, part 1437f(o)(13)(F) states that a housing assistance payments contract pursuant to this paragraph between a public housing agency and the owner of a structure may have a term of up to 10 years, subject to the availability of sufficient appropriated funds for the purpose of renewing expiring contracts for assistance payments, as provided in appropriations acts and in the agency's annual contributions contract with the Secretary, and to annual compliance with the inspection requirements under paragraph (8), except that the agency shall not be required to make annual inspections of each assisted unit in the development.

HUD issued a notice for fiscal year 2001, Revision to the Public Housing Agency Project-Based Assistance Program, Initial Guidance, in the *Federal Register*, dated January 16, 2001, stating that as in the tenant-based voucher program, a public housing agency must inspect 100 percent of the project-based voucher units before entering into the housing assistance payments contract and may only enter into a housing assistance payments contract for units that fully comply with the housing quality standards.

HUD's regulations at 24 CFR 983.52(c) state that before an agreement for rehabilitated units can be executed, the public housing agency must obtain subsidy layering contract rent reviews from HUD or a housing credit agency and obtain environmental clearance in accordance with 24 CFR 983.11.

HUD's regulations at 24 CFR 983.55(b) state that before executing an agreement for new construction units, the public housing agency must seek and obtain subsidy layering contract rent

reviews from HUD or a housing credit agency and seek and obtain environmental clearance in accordance with 24 CFR 983.11.

HUD's regulations at 24 CFR 983.257(b) state that the public housing agency may only approve or assist a project in accordance with HUD regulations and guidelines designed to ensure that participants do not receive excessive compensation by combining HUD program assistance with assistance from other federal, state or local agencies or with low-income housing tax credits.

HUD's regulations at 24 CFR 983.55(a) state that the public housing agency may provide program assistance only in accordance with HUD subsidy layering regulations (24 CFR 4.13) and other requirements. The subsidy layering review is intended to prevent excessive public assistance for the housing by combining (layering) housing assistance payments subsidy under the program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits. (b) The public housing agency may not enter into an agreement or housing assistance payments contract until HUD or an independent entity approved by HUD has conducted any required subsidy layering review and determined that the program assistance is in accordance with HUD subsidy layering requirements.

HUD's regulations at 24 CFR 983.153(a) state that the public housing agency may not enter the agreement with the owner until the subsidy layering review is completed (see 24 CFR 983.55).

HUD's regulations at 24 CFR 983.103(a)(1) state that the public housing agency must examine the proposed site before the proposal selection date.

HUD's regulations at 24 CFR 983.103(a)(2) state that if the units to be assisted already exist, the public housing agency must inspect all of the units before the proposal selection date and must determine whether the units substantially comply with the housing quality standards. To qualify as existing housing, units must substantially comply with the housing quality standards on the proposal selection date. However, the public housing agency may not execute the housing assistance payments contract until the units fully comply with the housing quality standards.

HUD's regulations at 24 CFR 983.103(b) state that the public housing agency must inspect each contract unit before execution of the housing assistance payments contract. The public housing agency may not enter into a housing assistance payments contract covering a unit until the unit fully complies with the housing quality standards.

Appendix K, I.C.4., of the Agency's program administrative plan states that before the Agency will provide voucher rent assistance, all developments must have Agency board and HUD approval, meet HUD's housing quality standards, and have an executed housing assistance payments contract.

Finding 2

HUD's regulations at 24 CFR 983.2(a) state that Part 982 is the basic regulation for the tenant-based voucher program. However, paragraphs (b) and (c) of this section describe the provisions

that do not apply to the Project-Based Voucher program. Therefore, the rest of Part 982 applies to the program.

HUD's regulations at 24 CFR 982.54(c) state that the public housing agency must administer the program in accordance with the public housing agency's administrative plan.

HUD's regulations at 24 CFR 982.153 state that the public housing agency must comply with the consolidated annual contributions contract, the application, HUD regulations and other requirements, and its program administrative plan.

HUD's regulations at 24 CFR 982.516(f) state that the public housing agency must establish procedures that are appropriate and necessary to ensure that income data provided by applicant or participant families is complete and accurate.

HUD's regulations at 24 CFR 982.517(d) state that the public housing agency must use the appropriate utility allowance for the size of dwelling unit leased by the family.

HUD's regulations at 24 CFR 5.240(c) state that public housing agencies must verify the accuracy of the income information received from program households and change the amount of the total tenant payment, tenant rent, or program housing assistance payment or terminate assistance, as appropriate, based on such information.

HUD's regulations at 24 CFR 5.609(a)(2) state that annual income means all amounts, monetary or not, which are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date.

HUD's regulations at 24 CFR 5.611(a)(2) state that in determining adjusted income, the responsible entity must deduct from annual income \$400 for any elderly family or disabled family.

Part one, section IV.A.1., of the Agency's program administrative plan states that annual income will be anticipated for the 12-month period following the effective date of initial determination of eligibility or the effective date of the reexamination of income. If it is not feasible to anticipate a level of income for a 12-month period, the income anticipated for a shorter period may be annualized, subject to a redetermination at the end of the shorter period.

Part three, section II.D.3., of the Agency's program administrative plan states that a person with a disability is a person with disabilities as defined in the Section 223 of the Social Security Act or who has developmental disabilities as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act. The following is a summary of these requirements:

“a. Section 223 defines a disability as an inability to be employed due to:

- (1) Any physical or mental impairment that is expected to last continuously for the next 12 months or is expected to be fatal.
- (2) If a person over age 55 is blind, their blindness must prevent them from substantial employment comparable to what they did previously when they had eyesight.

b. Section 102(7) defines developmental disability as:

(1) A severe chronic condition that is due to a mental or physical impairment, or combination of both, which:

- Was evident before the person was age 22;
- Is likely to continue indefinitely; and
- Results in substantial functional limitations.”