U. S. Department of Housing and Urban Development
Office of Inspector General
New York-New Jersey Office
26 Federal Plaza – Room 3430
New York, NY 10278-0068

MEMORANDUM NO: 2012-NY-1801

May 17, 2012

MEMORANDUM FOR: Luigi D’Ancona, Director, Office of Public Housing, 2APH

Edgar Moore

FROM: Edgar Moore, Regional Inspector General for Audit, New York-New Jersey, 2AGA

SUBJECT: New York City Housing Authority Hotline Complaint
Case Number HL-2011-0705

INTRODUCTION

We performed a review of the New York City Housing Authority’s use of Federal funds. We selected this auditee based on a hotline complaint, case number HL-2011-0705. On May 20, 2011, the U.S. Government Accountability Office referred a confidential complaint alleging waste and mismanagement of Federal funds at the Authority to the U.S. Department of Housing and Urban Development, Office of Inspector General (HUD OIG), Program Integrity (hotline) Division. On June 23, 2011, the Division referred the hotline complaint to Region 2’s Office of Audit for review. The complaint alleged a pattern of waste, overspending, and abuse by the Authority. Specifically, the complaint alleged that the Authority (1) froze its Section 8 vouchers due to lack of available funds, (2) overpaid at least one housing manager with an annual salary of $187,000, (3) paid 51 defense attorneys more than $4 million annually, and (4) used Section 8 Federal funds to inefficiently lease office space. The objectives of the review were to determine whether the complaint alleging waste and mismanagement of Federal funds at the Authority had merit and whether there were indications that the Authority did not operate in accordance with HUD requirements.

This report contains two recommendations. In accordance with HUD Handbook 2000.06, REV-4, within 60 days, please provide us, for each recommendation in this memorandum, a status report on (1) the corrective action taken, (2) the proposed corrective action and the date to be completed, or (3) why action is considered unnecessary. Additional status reports are required 90 and 120 days after this memorandum is issued for any recommendation without a management decision. Also, please furnish us copies of any correspondence or directives issued because of this review.

Should you or your staff have questions, please contact Karen A. Campbell, Assistant Regional Inspector General for Audit, at (212) 542-7977.

METHODOLOGY AND SCOPE

To accomplish our objectives, we

- Obtained and reviewed HUD handbooks, public and Indian housing (PIH) notices, Code of Federal Regulations requirements applicable to our review objectives, and the New York Code for Public Housing;
- Interviewed HUD and Authority staff;
- Reviewed the Authority's audited financial statements, general ledger, annual contributions contract, 5-year operating budget, employee union contracts, board meeting minutes, and board of directors certificates of appointment if applicable;
- Reviewed the Authority's procurement policies and procedures and summarized bidding and selection documentation;
- Reviewed the Authority's payroll documentation for housing managers, in-house attorneys, and its board of directors;
- Analyzed Authority office space leasing rates and contracts for 250 Broadway and 90 Church Street, New York City; and
- Reviewed documentation related to HUD Section 8 funding.

We selected a nonstatistical sample of two invoices to perform limited testing of tort legal expenditures. The two invoices we tested totaled $29,764 of the more than $11.1 million in total tort legal expenditures. We performed our onsite work from October 2011 to January 2012 at the Authority's office, located at 250 Broadway, New York City, NY. The review period covered January 1, 2010, to September 30, 2011, and was expanded as deemed necessary.

BACKGROUND

The Authority was created in 1934 and provides public housing for low- and moderate-income residents throughout the five boroughs of New York City. It is the largest public housing authority in North America and is considered to be the most successful big-city public housing authority in the country. Whereas most large public housing authorities in the United States (Chicago, St. Louis, Baltimore, etc.) have demolished their highrise projects and in most cases, replaced them with lower scale housing, the Authority's developments continue to be fully occupied. Most of its market-rate housing is also in highrise buildings, and the Authority maintains a long waiting list for its apartments. In addition, it administers a citywide Federal

Housing Choice Voucher program, which it calls the Section 8 Leased Housing program. HUD provides funding for rent subsidies for those tenants eligible for the Section 8 voucher program. The Authority is governed by a board of directors, which oversees the activities of the Authority. The board of directors includes three commissioners and a resident board member. The New York State Public Housing Law Section 402 provides for the appointment of three full time paid Board members and a resident Board member. The appointments are made by the Mayor of the City of New York.

RESULTS OF REVIEW

Our review determined that although the facts of some allegations were substantiated, the four complaint allegations pertaining to waste and mismanagement of Federal funds at the Authority did not violate regulations and thus, required no further action. Specifically, the allegations related to (1) frozen Section 8 vouchers, (2) housing manager salaries, (3) office space rentals, and (4) unreasonable legal expenditures did not conflict with regulations and did not warrant further audit work. However, although the Authority compensated three of its commissioners with salaries and a resident board member with a stipend, Authority officials did not have adequate documentation to support how the salaries were determined and were unable to provide a personnel action request for the board chair. A personnel action request is an in-house form used by Authority officials to document a budget-approved salary for each member of the board. The specific results of the review are discussed below.

Section 8 Vouchers

The allegation related to frozen Section 8 vouchers was valid and substantiated; however, the freezing of Section 8 vouchers is allowable. Due to calendar year 2009 Federal budget cuts, which caused the Authority to experience an operating shortfall of $ 8.1 million, it did not have sufficient funds to lease up the pending Section 8 vouchers that had not yet resulted in an executed housing assistance payments contract. The October 23, 2009, Notice PIH 2009- 44 (HA) provides that a public housing authority may stop issuing turnover vouchers and consider pulling back outstanding vouchers for applicants searching for housing that have not yet resulted in an executed housing assistance payments contract.

Housing Manager Salaries

The complaint allegation regarding an overpaid housing manager did not have merit because housing managers' salaries are set by a union contract. The complainant alleged that the Authority overpaid at least one housing manager with an annual salary of $187,000. As of September 30, 2011, the Authority's housing manager payroll list did not include any housing manager salary exceeding $80,887. Therefore, the Authority complied with its union contract, which dictates that housing manager salaries fall within the range of $59,087 to $80,887, effective January 1, 2010. There was no indication that the Authority did not operate in accordance with HUD requirements pertaining to housing manager salaries. However, a review of the Authority's payroll documentation disclosed that the employee mentioned in the complaint as a housing manager was actually a member of the board of directors, who earns an annual salary of $187,147 (see board of directors salaries section below).

Commercial Office Space
The complaint allegation related to the Authority's office space rental rates at 90 Church Street and 250 Broadway, New York City, had no merit. The complainant alleged that the Authority was wasting Federal funds by being located in two locations, specifically 250 Broadway and 90 Church Street, a New York City Federal facility. The allegation was not valid because (1) the leases for both office locations were noncancellable, with commencement dates of September 1, 2004, and January 1, 2000, and term leases expiring in 2024 and 2019, respectively, and (2) a private assessment of commercial market rental rates showed that rental rates paid by the Authority for both locations were less than market value. Further, according to Authority officials, the unoccupied space in 90 Church Street and 250 Broadway was the result of a reduction in employees and a mandatory cessation in hiring. Therefore, we recommend that the Authority be instructed to conduct an office space analysis to explore the possibility of reallocating existing spaces at 250 Broadway and 90 Church Street. Despite our recommendation to conduct an office space analysis, there was no indication that the Authority did not operate in accordance with HUD requirements.

Legal Expenditures
The complainant alleged that the Authority paid more than $4 million annually in legal expenditures for its 51 defense attorneys, 10 of whom were retained attorneys with compensation of $90,000 annually. There were 21 retained attorneys, including 18 responsible for tort cases and 3 responsible for nontort cases, who performed work for the Authority during the audit period, January 1, 2010, to September 30, 2011. Of the 21 retained attorneys, 14 were each paid more than $90,000 annually. The allegation regarding compensation of more than $4 million annually and retained attorneys being paid more than $90,000 annually was valid. During the audit period, the Authority used Federal funds to pay $11.2 million in attorney compensation related to tort cases. The legal expenditures were justified as the Authority maintained the appropriate supporting documentation for its tort cases. Further, it used non-Federal funds to pay approximately $1.4 million in attorney compensation related to nontort cases. However, during our audit period, the Authority exceeded one of the nontort retainer agreements by approximately $50,000. It paid $1.15 million to a law firm for nontort legal work, although a March 11, 2010, amendment to the December 18, 2009, nontort retainer agreement allowed only $1.1 million. Nevertheless, we did not take exception since the Authority used non-Federal funds for the nontort legal work; therefore, these expenditures were outside the scope of our review.

The complainant also alleged that the Authority's 41 in-house attorneys earned salaries from $60,000 to $77,000. There were 91 in-house attorneys, including 31 managerial attorneys with salaries ranging from $80,371 to $173,542, and 60 nonmanagerial attorneys with salaries ranging from $60,354 to $82,015. The Authority complied with its union contract, which stipulates that in-house nonmanagerial attorney salaries must fall within a range of $52,482 to $105,712. Thus, the allegation regarding salaries ranging from $60,000 to $77,000 annually for nonmanagerial attorneys was true; however, we did not take exception since the salaries fell within the union contract range.

Board of Directors Salaries
While determining whether the allegation pertaining to housing managers earning as much as $187,000 had merit, our review of annual payroll documentation disclosed that three members of the Authority's board of directors earned annual salaries ranging from $187,147 to $197,364 and

the fourth member, the resident board member, was paid a $250 monthly stipend. However, Authority officials did not have adequate documentation to support how the salaries for the board of directors were determined. According to an Authority official, the initial salary of a successor board member was based on the previous board member's departing salary. We did not take exception with the board of directors being compensated. The New York Code for Public Housing, article 13, title 1, section 402, allows the Authority to compensate its board members as long as they work full time, and the resident board member can receive a $250 monthly stipend. In addition, the Authority paid the board of directors' salaries using non-Federal funds, which complied with its annual contributions contract. Specifically, part A of the July 1995 contract, section 14, Employer Requirements, provides that "No funds of any project may be used to pay any compensation for the services of members of the housing authority (HA) Board of Commissioners." However, Authority officials should be instructed to establish a written process related to the assignment of board members' salaries or compensation, thus ensuring that the Authority's basis for the salaries is fair, reasonable, and documented in its personnel files. There were no further indications that the Authority did not operate in accordance with HUD requirements, as it relates to the board of directors' salaries.

CONCLUSION

Our review determined that the four allegations did not violate regulations and the Authority paid its board of directors' salaries with non-Federal funds. Thus, there were no indications that the Authority did not operate in accordance with HUD requirements pertaining to the four complaint allegations and the board of directors' salaries.

RECOMMENDATIONS

We recommend that the Director of HUD's New York City Office of Public Housing instruct Authority officials to

1A. Conduct an office space assessment to determine whether it is cost effective to reallocate existing space at 250 Broadway and 90 Church Street.

1B. Establish a written process regarding the assignment of its board of directors' salaries to ensure that the Authority sets the salaries at reasonable levels and documents this process.

Appendix A

AUDITEE COMMENTS AND OIG'S EVALUATION

Refer to OIG Evaluation **Auditee Comments**

NEW YORK CITY HOUSING AUTHORITY
250 BROADWAY • NEW YORK, NY 10007
TEL: (212) 306-3000 • http://nyc.gov/nycha

NEW YORK CITY
HOUSING
AUTHORITY

April 25, 2012

Edgar Moore,
Regional Inspector General for Audit
U.S. Department of Housing and Urban Development
New York-New Jersey Office
26 Federal Plaza – Room 3430
New York, NY 10278-0068

Re: Draft Audit Memorandum on New York City Housing Authority ("NYCHA") Hotline Complaint Case Number HL-2011-0705

Dear Mr. Moore:

The following are our responses to the recommendations in the draft memorandum.

Recommendation: Conduct an office space assessment to determine whether it is cost effective to reallocate existing spaces at 250 Broadway and 90 Church Street.

Comment 1

NYCHA Response: As mentioned during the audit process, NYCHA launched an exercise to formally assess its central office space during 3Q 2011. On February 16, 2012, the Office of Facility Planning and Administration issued its final report entitled "Central Office Consolidation" in which several different suggests were proposed to reduce leasing costs. The proposal that was selected was confirmed by John Rhea, the Chairman of NYCHA, in an email to all NYCHA employees dated April 12, 2012, part of which is included below.

"As outlined in *Plan NYCHA,* we are currently engaged in an effort to analyze our operations and find ways to save money without reducing services. One of the cost reduction

Refer to OIG Evaluation **Auditee Comments**

Comment 1

opportunities we have identified is the potential disposition of excess office space at 90 Church Street and 250 Broadway. Over the past 10 years our Central Office headcount has declined by approximately 20 percent, while the amount of space we lease in lower Manhattan has remained constant. With approximately 1,950 employees occupying office space originally designed to house over 2,700, we must take steps to reduce this expense.

Following a thorough assessment of our current office occupancy and a review of options and costs, we have decided to vacate and offer for commercial rent the 12th floor at 90 Church Street, as well as floors 24 through 29 at 250 Broadway. The offices currently occupying these floors will be consolidated into existing NYCHA space elsewhere in those two buildings and the money saved will be reinvested into our day-to-day operations."

Recommendation: Establish a written process regarding the assignment of its Board of Directors' salaries to ensure that the Authority sets the salaries at reasonable levels and documents this process.

Comment 2

NYCHA Response: The support for the salaries of the Board of Directors is set by the City through local law. Historically, the salaries of the current members of the Board are established at the salary level of the outgoing member. Periodic increments are generally based on patterns established during collective bargaining rounds that are negotiated by the City's Office of Labor Relations. It should be noted that effective March 2008 and March 2009, the NYC managers were awarded 4% salary increases in each of those years. However, due to fiscal constraints at NYCHA, manager salary increases were limited to 2% for each of those years, including the salaries of all Board members. Meanwhile, we will work with the City of New York to obtain documentation that prescribes how the salaries of NYCHA's Board of Directors were established.

Other Comments

1. In the Background section of the memo, the following statement was made:

Comment 3

All commissioners are appointed by the mayor, and the resident board member is selected by the board.

This should read:

The New York State Public Housing Law Section 402 provides for the appointment of three full time paid Board members and a resident Board member. The appointments are made by the Mayor of the City of New York.

2. In the Legal section of the memo, first paragraph, you state the following:

Comment 4

However, during our audit period, the Authority exceeded one of the nontort retainer agreements by approximately $50,000. It paid $1.15 million to a law firm for nontort legal

Refer to OIG Evaluation **Auditee Comments**

work, although a March 16, 2010 amendment to the December 18, 2009 nontort retainer agreement allowed only $1.1 million.

NYCHA response:

Comment 4

Services billed by Ballard Spahr LLP for legal services provided to NYCHA during the period December 2009 through March 2010 until the closing of the mixed finance transaction, totaled $1.09 million, just within the $1.1 million not-to-exceed amount of the December 18, 2009 retainer agreement and subsequent amendment under which these services were provided.

Separately, NYCHA Public Housing Preservation I, LLC ("LLC-I") executed a retainer agreement on March 16, 2010 with Ballard Spahr to provide for legal services through January 2013 in connection with the mixed finance transactions. The retainer agreement was approved by NYCHA, as Managing Member, and by Citibank, NA, the investor member. The retainer agreement provided that Ballard Spahr would use the same discounted rates schedule as set forth in the NYCHA Ballard Spahr agreement of December 18, 2009, but did not set a not-to-exceed amount. Funding for this retainer agreement is provided by LLC-I

The total billed for these services through the end of the specified audit period (September 2011) is $441,677, and includes $26,000 of the $42,541 invoice (#2010073378) identified by HUD OIG as being part of the earlier retainer agreement with the $1.1 million cap. The remaining $16,541 was paid under the terms of the December 2009 agreement. The two other invoices (#2011053176 and #2011045801) that HUD OIG had identified as being paid under the earlier agreement and which totaled $36,077.68 were paid out of the Law Department's operating fund. Ballard Spahr LLP had provided legal services related to NYCHA's funding for additional interior work performed in the LLC-I apartments as part of the mixed finance transaction. Because the legal services were provided to NYCHA in its role as lender to LLC-I, the cost was appropriately charged to NYCHA and not to LLC-I.

NYCHA was pleased to note that there were no indications that the Authority did not operate in accordance with HUD requirements pertaining to the four complaint allegations and Board of Director activities.

Sincerely yours,

Emily Youssouf

John B. Rhea FOR

OIG Evaluation of Auditee Comments

Comment 1 Authority officials state that on February 16, 2012, the Office of Facility Planning and Administration issued its final report on NYCHA's central office space assessment. However, OIG was not notified about the completion of the report until April 16, 2012, subsequent to the completion of the onsite audit work. Nevertheless, we reviewed the space assessment report, which proposed nine different scenarios for cost consolidation. Officials advised at the exit conference that they have decided to vacate and offer for commercial rent the 12th floor at 90 Church Street, as well as floors 24 through 29 at 250 Broadway, as proposed in Scenario 2. The action taken by the authority officials to conduct an office space assessment are responsive to our recommendation, which will be recorded in the departmental audit resolution tracking system as an implemented final action when the audit memorandum is issued. However, HUD officials, during their monitoring, may want to verify whether NYCHA staff has been relocated to save costs.

Comment 2 Authority officials contend that the salaries of the Board of Directors is set by the City through local law, nevertheless, the officials agree that NYCHA should have a documented written process regarding the assignment of salaries to ensure that they are set at reasonable levels. Thus, the officials agree to work with the City of New York to obtain documentation that prescribes how the salaries of NYCHA's Board of Directors are established so that the recommendation can be implemented.

Comment 3 Based on Authority officials' written comments, we have revised the first paragraph on page 3 of the memorandum to reflect that the New York State Public Housing Law Section 402 provides for the appointment of three full time paid Board members and a resident Board member.

Comment 4 Authority officials contend that $62,078 ($26,000 + $36,078) was paid under an earlier retainer agreement with Ballard Spahr LLP, therefore, the total amount paid to the law firm under the retainer agreement and a subsequent amendment was approximately $1.09 million ($1.15 million less $62,078), which is within the $1.1 million cap. Although Authority officials are now stating that they did not exceed the amount of the December 18, 2009 retainer agreement and subsequent amendment, they did not provide support for their position. As a result, since during the audit Authority officials confirmed that approximately $1.15 million was paid under the December 18, 2009 retainer, which exceeded the contract amount by $50,000; we did not make any changes to this memorandum related to their new statement. Furthermore, we did not take exception for exceeding the nontort retainer agreement by approximately $50,000 since it was determined that officials used non-Federal funds for the nontort legal work.