



Issue Date September 30, 2002
Audit Case Number 2002-PH-1006

TO: Charles H. Williams, Director, HUD's Office of Multifamily Housing Assistance Restructuring, HY

*Daniel G. Temme*

FROM: Daniel G. Temme, Regional Inspector General for Audit, Mid-Atlantic, 3AGA

SUBJECT: AUDIT MEMORANDUM – Congressionally Requested Audit of the Outreach and Training Assistance Grant awarded to Legal Aid Bureau, Incorporated, Grant Number FFOT0020MD  
Baltimore, Maryland

### INTRODUCTION

We completed an audit of the Legal Aid Bureau, Incorporated \$450,000 Outreach and Training Assistance Grant (OTAG). The objectives of the review were to determine if the Legal Aid Bureau, Incorporated used Section 514 grant funds for only eligible activities as identified in the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), their agreements, and/or other requirements to further the Mark-to-Market Program. Also we wanted to determine if the Legal Aid Bureau, Incorporated expended Section 514 funds for any lobbying activities. MAHRA specifically identified lobbying as an ineligible activity.

The audit identified that the grantee could not provide adequate support for \$90,904 in disbursements it made for salaries and fringe benefits, and \$22,676 in indirect costs. In addition, the grantee charged \$3,198 of ineligible expenditures to the grant. We also noted the grantee did not comply with other requirements of the Office of Management and Budget's (OMB) Circular A-122, Cost Principles for Non-Profit Organizations, which included using grant funds to participate in lobbying activities. Our report contains eight recommendations to address the issues identified in the report and to strengthen the grantee's management controls.

Section 1303 of the 2002 Defense Appropriation Act (Public Law 107-117) requires the HUD Office of Inspector General to audit all activities funded by Section 514 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA). The directive would include the Outreach and Training Assistance Grants (OTAG) and Intermediary Technical Assistance Grants (ITAG) administered by the Office of Multifamily Housing Assistance

Restructuring (OMHAR). Consistent with the Congressional directive, we reviewed the eligibility of costs with particular emphasis on identifying ineligible lobbying activities.

In conducting the audit, we reviewed the grantee's accounting records and interviewed responsible staff. We also reviewed the requirements in MAHRA, the OTAG Notice of Fund Availability, the OTAG grant agreement, HUD's requirements for grant agreements or nonprofit entities, and Office of Management and Budget's guidance on the allowability of costs for nonprofit grantees.

The audit covered the period January 2001 through June 2002 for the OTAG grant awarded to Legal Aid Bureau, Inc. We performed the fieldwork at the Office of Legal Aid Bureau, Inc., located at 500 East Lexington Street, Baltimore, MD during June and July 2002. We conducted the audit in accordance with Generally Accepted Government Auditing Standards. We held an exit conference with the Executive Director of the Legal Aid Bureau on September 6, 2002.

We appreciate the courtesies and assistance extended by the personnel of the Legal Aid Bureau, Incorporated during our review.

In accordance with HUD Handbook 2000.06 REV-3, within 60 days please provide us, for each recommendation without a management decision, 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 at 90 days and 120 days after report issuance for any recommendation without a management decision. Also, please furnish us copies of any correspondence or directives issued because of the audit.

Should you or your staff have any questions please contact Christine Begola at (410) 962-2520.

### **SUMMARY**

We found that Legal Aid Bureau, Incorporated (Legal Aid) did not maintain adequate accountability over its OTAG funds in accordance with OMB Circular A-122. Specifically, Legal Aid did not maintain personnel activity reports to support \$90,904 in salaries and fringe benefits charged to the grant and disbursed \$3,198 for ineligible expenditures, which included computers, entertainment and lobbying activities. In addition, the grantee did not prepare a cost allocation plan per the guidance in OMB Circular A-122, Attachment A, thus causing \$22,676 in unsupported indirect costs to be allocated to the grant.

Also, according to the grantee's reports to OMHAR, the grantee participated in a number of teleconferences that included sessions on how the NAHT affiliates were to lobby legislators. Further, we identified an instance where the OTAG coordinator participated in a letter writing campaign in an attempt to influence HUD and local elected officials. Under OMB Circular A-122, these activities are prohibited and any associated costs ineligible. However, since the grantee did not maintain detailed time records, we could not determine the actual amount of time and associated costs expended for these ineligible activities.

## **BACKGROUND**

The Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) established the Office of Multifamily Housing Assistance Restructuring (OMHAR) within HUD. Utilizing the authority and guidelines under MAHRA, OMHAR's responsibility included the administration of the Mark-to-Market Program, which included the awarding, and oversight of the Section 514 Outreach and Training Assistance and Intermediary Technical Assistance Grants. The objective of the Mark-to-Market Program was to reduce rents to market levels and restructure existing debt to levels supportable by these reduced rents for thousands of privately owned multifamily properties with Federally insured mortgages and rent subsidies. OMHAR worked with property owners, Participating Administrative Entities, tenants, lenders, and others to further the objectives of MAHRA.

Congress recognized, in Section 514 of MAHRA, that tenants of the project, residents of the neighborhood, the local government, and other parties would be affected by the Mark-to-Market Program. Accordingly, Section 514 of MAHRA authorized the Secretary to provide up to \$10 million annually (\$40 million total) for resident participation, for the period 1998 through 2001. The Secretary authorized \$40 million and HUD staff awarded about \$26.6 million to 40 grantees (a total for 83 grants awarded). Section 514 of MAHRA required that the Secretary establish procedures to provide an opportunity for tenants of the project and other affected parties to participate effectively and on a timely basis in the restructuring process established by MAHRA. Section 514 required the procedures to take into account the need to provide tenants of the project and other affected parties timely notice of proposed restructuring actions and appropriate access to relevant information about restructuring activities. Eligible projects are generally defined as HUD insured or held multifamily projects receiving project based rental assistance. Congress specifically prohibited using Section 514 grant funds for lobbying members of Congress.

HUD issued a Notice of Fund Availability in fiscal year 1998 and a second in fiscal year 2000 to provide opportunities for nonprofit organizations to participate in the Section 514 programs. HUD provided two types of grants, the Intermediary Technical Assistance Grant (ITAG) and the Outreach and Training Assistance Grants (OTAG). The Notice of Fund Availability for the ITAG states that the program provides technical assistance grants through Intermediaries to sub-recipients consisting of: (1) resident groups or tenant affiliated community-based nonprofit organizations in properties that are eligible under the Mark-to-Market Program to help tenants participate meaningfully in the Mark-to-Market process, and have input into and set priorities for project repairs; or (2) public entities to carry out Mark-to-Market related activities for Mark-to-Market-eligible projects throughout its jurisdiction. The OTAG Notices of Fund Availability state that the purpose of the OTAG program is to provide technical assistance to tenants of eligible Mark-to-Market properties so that the tenants can (1) participate meaningfully in the Mark-to-Market Program, and (2) affect decisions about the future of their housing.

OMHAR also issued a December 3, 1999 memorandum authorizing the use of OTAG and ITAG funds to assist at-risk projects. OMHAR identified these as non-Mark-to-Market projects where the owners were opting out of the HUD assistance or prepaying the mortgages.

Title 24 Code of Federal Regulation (CFR) Part 84 contain the uniform administrative requirements for grants between HUD and nonprofit organizations. The regulations (24 CFR Part 84.27) require that nonprofit grantees utilize the OMB Circular A-122, Cost Principles for Non-Profit Organizations, in determining the allowability of costs incurred to the grant. OMB Circular A-122 outlines specific guidelines for allowability of charging salaries and related benefits to the grants and the records needed to support those salaries. For indirect costs charged to the grant, the Circular establishes restrictions for indirect costs, and specific methods and record keeping to support the allocation of costs.

The Circular also establishes the unallowability of costs associated with Federal and State lobbying activities. Simply stated, the use of Federal funds for any lobby activity is unallowable. OMB Circular A-122 identifies some examples of unallowable activities of lobbying. These include any attempt to influence an elected official or any Government official or employee (Direct Lobbying) or any attempt to influence the introduction, enactment or modification of any pending legislation by propaganda, demonstrations, fundraising drives, letter writing, or urging members of the general public either for or against the legislation (Grassroots Lobbying).

Legal Aid applied for an OTAG grant in fiscal year 2000 for \$450,000, and was authorized \$350,000 in January 2001, however, they did not start expending the grant until July, 2001. As of June 2002, \$116,778 was expended against the grant. Legal Aid received an annual financial audit for their activities for the period ending December 31, 2001. The auditor provided an unqualified opinion for that year.

In addition to the OTAG grant, Legal Aid received grants from other Federal and non-Federal sources. For example, from non-Federal sources, Legal Aid's operations are funded through grants from the Maryland Legal Services Corporation. During fiscal year 2001, Maryland Legal Services Corporation provided Legal Aid \$3,808,740 in funding. During that same time period, an organization funded by a non-profit corporation established by Congress, Legal Services Corporation, provided Legal Aid with \$3,461,370 in funds. Legal Aid's total funding from all sources for fiscal year 2001 was \$14,367,308.

**FINDING: The Grantee Did Not Comply With HUD and OMB Requirements**

Contrary to the requirements of OMB Circular A-122, Legal Aid did not maintain adequate time records to support salary and benefit costs charged to the grant, nor did they maintain adequate documentation to support the cost allocation method it used to charge indirect costs to the grant. In addition, we identified a number of ineligible lobbying expenditures were charged to the grant. This occurred because the grantee simply did not have a full understanding of the requirements under the grant and related Federal Regulations. As a result, Legal Aid charged the grant \$90,904 in unsupported salaries and benefits, \$22,676 in unsupported allocated indirect costs, and another \$3,198 in ineligible expenditures, which included computers, entertainment and lobbying activities. However, we could not determine the complete amount of lobbying activities due to the lack of adequate time records. When asked why the grantee did not follow OMB Circular A-122, the Controller stated because they followed OMB Circular A-133, Audits of States, Local

Governments, and Non-Profit Organizations, they were not required to maintain a cost allocation plan, as noted in OMB Circular A-122. We could not determine how the Controller came to this incorrect conclusion.

### **Compensation for Personal Services**

OMB Circular A-122, Attachment B, Paragraph 7, Compensation for Personal Services, states that reasonable compensation and fringe benefits to employees are grant fundable costs. The Circular also places specific salary record keeping requirements on the grantee. Specifically, the grantee must maintain reports that: (1) account for the total activity for which an employee is compensated for in fulfillment of their obligations to the organization; (2) reflect an after the fact determination of actual activity for each employee; and (3) reflect the distribution of activity of each employee (professionals and nonprofessionals) whose compensation is charged, in whole or in part, directly to awards and requires the employee or a responsible supervisor to sign the report. Further, the OMB Circular states that budget estimates do not qualify as support for charges to the grant. In addition, in order to support the allocation of indirect costs, such reports must also be maintained for other employees whose work involves two or more functions or activities if a distribution of their compensation between such functions or activities is needed in the determination of the organization's indirect cost rate.

We found Legal Aid did not maintain detailed supporting employment records reflecting employees' activity per OMB Circular A-122 guidance. Instead, all salary charged to the grant was based upon a percentage rate, calculated by using the number of employees assigned to the OTAG grant divided by the number of full time employees in the Support Unit Cost Center, in which the OTAG grant was located. This rate was then applied to all salaries charged to the Support Unit Cost Center to come up with the total salaries charged to the OTAG grant. The grantee explained this cost allocation method for salaries was made to provide for increased efficiency for the entire organization. However, when we tried to verify the allocation rate, the grantee's Deputy Director told us the percentage rate used was based upon an educated guess of the hours charged by the employees working on the grant and not the actual hours.

At the time of our review, five staff members were assigned to work on the grant on a full time basis. This included a law graduate, three paralegals, and an administrative assistant. The rest of the staff worked on the grant periodically, thus their time was estimated in order to arrive at an equivalent number of full time employees assigned to the grant. For example, in February 2002 the number of attorneys charged to work on the grant was 1.75. This represented one full time attorney and two other attorneys whose combined time accounted for  $\frac{3}{4}$  of a full time employee equivalent. By using this allocation method, there was no accounting for the actual number of hours charged to the grant, especially for the lawyers that only worked on the grant periodically. When we attempted to verify the hours charged by the staff, we were told that the lawyers did not track their time using the amount of detail needed to support the grant. Also, the time sheets of the OTAG coordinator provided no detail and only annotated a flat eight hours per day were charged against the grant. Altogether, the grantee charged \$90,904 in salary costs to the grant. OMB Circular A-122 states that all of the activity and the distribution of that activity must be documented for both professional and non-professional staff assigned to the grant. Based upon

the review of the time sheets, Legal Aid did not follow this requirement, and thus we question the entire \$90,904.

In our review, we tested the entire amount of salaries and benefits charged against the grant up to June 2002. Since the grantee didn't maintain detailed time records, we reviewed the grantee's quarterly reports to OMHAR to determine the types of activities the grantee was charging against the grant and if the work was completed only on eligible properties. While reviewing these reports we noted all properties listed were eligible properties. However, we also noted the OTAG coordinator charged time against the grant for activities that appeared to be completed in previous quarters. For example, in the September 2001 Mark-to-Market Activity Report, the coordinator documented under the "Analysis of Properties" section of the report she "visually assessed" seven properties for their "likelihood of Mark-to-Market participation", charging 15 hours per property. Three of the properties listed, Foxwell Memorial, Fairfax Gardens and Glenarden I, are also listed on the December 2001 report under the same activity, with 15 hours being charged to the grant. In fact, two of the properties continue to be listed in the March 2002 report.<sup>1</sup>

The grantee disagreed with our interpretation of the information presented in the quarterly reports. The grantee said the OTAG coordinator performed different activities for the properties listed in successive reports under the category of "Analysis of Properties" and subcategory "visual assessment". However, since these reports show evidence the assisted properties are receiving "direct outreach services", in all three quarterly reports for this grant, we question why the OTAG coordinator would need to document that she was still trying to make a determination as to the properties likelihood to participate in the Mark-to-Market Program. Based on the OMHAR quarterly reports it appears this determination had already been made by the OTAG coordinator.

### **Allocating Indirect Costs to the Grant**

The grantee also allocated certain costs to the grant that included travel, training, telephone, facilities cost and consumable supplies. OMB Circular A-122 Attachment A, provides guidance on the basic considerations for grant fundable costs and allocation of indirect costs. The guidance provides that the grantee must support a cost allocation that takes into account all activities of the organization. Unless different arrangements are agreed to by the agencies concerned, the Federal agency with the largest dollar value of awards with an organization will be designated as the cognizant agency for the negotiation and approval of the indirect cost rates. A non-profit organization that does not have an approved cost allocation plan must submit an initial cost allocation plan within three months of receiving the award.

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<sup>1</sup> These same properties are also noted in the "initial assessment" phase of the Quarterly reports under the first OTAG grant received by Legal Aid. A review of the prior grant reports note that Foxwell Memorial was originally "initially assessed" in September 2000, Glenarden I in March 2000 and Fairfax Gardens in July 2001. These reports also show that "direct outreach services" were being provided during the same time period.

When we requested a copy of the cost allocation plan, the grantee's Controller simply provided the rates used to calculate indirect costs. The grantee explained these rates are based upon the number of staff assigned to a particular job category, made up of similar projects sharing in the same expenses. For example, in the first quarter of 2000, all of the project coordinator's time and .21 full time equivalent attorney's time was charged to the OTAG project. At the time there was 8.8 legal staff sharing costs in the support unit. Therefore,  $1.21/8.8$  of the costs of the unit were allocated to the OTAG grant. Although this plan appears to be reasonable, the rate is based upon the assumption the number of full time staff assigned to work on the OTAG grant is accurate. As we previously discussed, the grantee calculates the number of full time employee equivalents working on and charged to the grant, based on an educated guess. Since both the part time and full time staff do not maintain their time in accordance with OMB Circular A-122, we question the accuracy of any of the calculated salaries charged to the grant.

We also noted the grantee never received approval from their cognizant agency to use this plan nor had they provided a copy of the cost allocation plan to HUD. The Controller stated Legal Aid did not have to complete a cost allocation plan in accordance with OMB Circular A-122 because they received an unqualified opinion on their audit under OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, and, as such, were in full compliance with all Federal requirements. We found no sound basis as to how the Controller formulated this opinion since no provision under either Circular states a grantee is exempt from completing a cost allocation plan if they receive an unqualified opinion on their audit under the Single Audit Act.

The grantee expended \$25,874 in indirect expenditures charged to the grant from July 2001 to June 2002. The majority of these expenditures were accounted for in the categories of travel, equipment, training, management, and general type expenditures. The Notice of Fund Availability dated February 24, 2000 Section III C & D provides guidance on what types of expenditures are considered eligible and ineligible under this grant. For example, computer purchases are eligible with a reimbursement limit of \$1,000 while entertainment, including food and beverages are ineligible expenses.

In our review, we noted Legal Aid purchased six computers valued at \$8,970 in December 2001 and allocated \$3,356 to the OTAG grant. Per the Notice of Fund Availability only \$1,000 can be allocated to the grant, thus \$2,356 of the equipment is an ineligible expense.

Also, we noted the grantee allocated entertainment costs (food, beverages and flowers) for the office coffee fund, OTAG resident meetings, and annual holiday parties to the grant. We also questioned telephone costs associated with an employee that did not work on the OTAG grant. In total, ineligible entertainment and telephone costs totaled \$362.

Since the grantee did not maintain detailed time records as required under OMB Circular A-122, we could not determine if the cost allocations applied by the grantee were reasonable. Thus, excluding the \$2,718 in ineligible computer, phone and entertainment expenses, the remaining \$22,676 of indirect expenditures is unsupported (\$25,874 less \$2,718).

## **Lobbying**

MAHRA specifically prohibited the use of Section 514 funds to lobby members of Congress or their staff. OMB Circular A-122, Attachment B, Paragraph 25, Lobbying, places additional limitations on the grantee's use of Federal funds for lobbying. As identified in the background section, Legal Aid also receives non-Federal funds from a number of other sources. The allowability and use of these funds for lobbying activities would not be restricted by the guidance of OMB Circular A-122.

We reviewed the grantee's quarterly reports to OMHAR, travel vouchers, and staff time sheets to identify meetings with legislative members or their staff. We also reviewed these reports to determine if the grantee worked on activities that did not meet the requirements of MAHRA and to determine if these activities were considered Grassroots lobbying.

We identified one instance where the OTAG coordinator participated in a Tenant Association meeting to begin a letter campaign to owners, the local housing authority, HUD, and the City's Mayor to stop the prepayment and garner support for the preservation of the property. In addition, the grantee paid membership dues to, and participated in teleconferences, sponsored by the National Alliance of HUD Tenants (NAHT), which included ineligible lobbying activities. For example, the grantee provided examples of four different conference agendas identified as the teleconferences they had participated in. Specifically, these sessions included discussions on how the NAHT affiliates are to lobby both Democratic and Republican Senators to co-sponsor Preservation Matching.

On average the teleconferences were scheduled to last one hour and thirty minutes with a substantial amount of time devoted to discussing lobbying issues, while only five minutes related to the Mark-to-Market Program. Based upon OMB's guidance, only the portion of the activity related to the purpose of the grant can be charged to the grant and lobbying is not considered an allowable activity. However, the grantee charged the full amount to the OTAG grant. While reviewing the expenditures we noted a charge of \$480 in association with the teleconference. The grantee explained that each grantee is requested to pick up the expenditure for the cost of the conference call; this charge represents the time Legal Aid picked up the charge. The grantee contends its staff did not engage in prohibited lobbying activities.

We attempted to verify the grantee's claim and determine the amount of unallowable lobbying activities being charged to the grant; however, since Legal Aid does not maintain adequate travel and time records, with the exception of the charge noted above, we could not determine the actual costs associated with these expenditures. We consider the teleconference cost to be ineligible because it involved lobbying activities.

## **AUDITEE COMMENTS**

We provided our draft report to the grantees for their comments on September 9, 2002. The grantee provided their comments on September 20, 2002. A copy of the narrative portion of the

grantee's response is attached in Appendix B. However, due to the overall volume of the grantee's response, the attachments were not included in this audit memorandum.

Except for Legal Aid's concurrence that it was not permitted to charge \$2,718 in computer and food costs to the grant, which it has agreed to reimburse HUD, Legal Aid strongly disagrees with the findings of our review. Specifically, they believe they are in full compliance with all Federal regulations relating to their accounting for the compensation of personal services, indirect costs and lobbying type activities.

Legal Aid stated they maintain appropriate and adequate documentation to support the compensation for personal services and it meets the requirements of OMB Circular A-122. They believe since the auditors did not find any evidence to support that the work completed on the OTAG project was used for any other purpose, the time is supported. Legal Aid also noted they offered to provide the documentation to the auditors after the discussion draft was issued in order to clear up the finding, before the final report was issued.

Further, Legal Aid stated their method of allocating costs to the grant is in compliance with OMB Circular A-122. However, they acknowledge their plan had not been submitted to their Cognizant agency or HUD for approval.

Finally, Legal Aid strongly disagrees with our finding pertaining to lobbying activities. They state although their staff did attend NAHT conferences, they did not participate in any lobbying activities and used that time to meet with other OTAG project grantees to discuss their experiences. The grantee also contends that NAHT conference calls provide a further opportunity for the grantees to share their experiences and NAHT requested all grantees to share in the cost of the calls so everyone has the opportunity to gain from the information. Legal Aid also states that their employees did not participate in the discussions about lobbying on these calls and noted that their quarterly reports to OMHAR reflect these calls and HUD has never questioned the expense. As for the letter writing campaign in which the OTAG coordinator assisted, they assert it was an attempt to bring to their representative's attention the fact that the district was in danger of losing affordable housing.

### **OIG EVALUATION OF AUDITEE COMMENTS**

Except for our agreement on the ineligible computer and food expenses, we disagree with the grantee's assessment of the review. However, based on our review of their comments and attachments, we made changes to the report where it was deemed necessary.

We disagree with Legal Aid's conclusion that they maintained their salary documentation in accordance with OMB Circular A-122 and that the records were available at the time of our review. As defined in the findings, we noted the grantee did not follow OMB Circular A-122 when accounting for staff compensation and we questioned several of the activities they performed. We do acknowledge after the discussion draft was issued the grantee offered to provide us the documentation they felt would clear the finding. However, this offer entailed the grantee estimating the time by reviewing emails, calendars, correspondence, etc. to satisfy the

audit issue over a two-week period. In our opinion, this estimate would still not satisfy the requirements of OMB Circular A-122.

We are encouraged that the grantee has submitted their allocation plan to OMHAR for approval, and even did so prior to OMHAR making the request. However, as noted in the report we have concerns over how the calculation of full time equivalents is being calculated. Since the grantee's full time equivalent calculation is based upon an educated guess and is used in determining the allocation of salaries and indirect costs to the grant, we believe there is a flaw in their methodology.

Finally, based on the requirements of OMB Circular A-122 and grantee's records, we believe our conclusions concerning the lobbying issues are fully supported and were presented in a balanced fashion in the report.

### **RECOMMENDATIONS**

We recommended that the Director of OMHAR require Legal Aid Bureau, Incorporated to:

- 1A. Repay to HUD from non-Federal funds the \$3,198 in ineligible computer, food, phone and lobbying expenditures that were charged to the grant.
- 1B. Maintain detailed time records in accordance with OMB Circular A-122.
- 1C. Provide proper support for all unsupported salary and benefit costs totaling \$90,904, and repay to HUD from non-Federal funds amounts it cannot adequately support.
- 1D. Prepare and submit an acceptable cost allocation plan that fairly allocates indirect costs among funding sources, and based on the plan make appropriate adjustments to the \$22,676 in indirect costs and repay to HUD from non-Federal funds any overcharges.
- 1E. Stop charging the grant for activities related to lobbying as defined by MAHRA and OMB Circular A-122.
- 1F. Establish policies and procedures for identifying grantees engaged in housing advocacy, to ensure Federal funds are not used to support direct or indirect lobbying activities.

We recommend that the Director of OMHAR:

- 1G. Restrict all remaining grant distributions to the Legal Aid Bureau, for this grant and any future grants, until the grantee demonstrates they have established the necessary policies and procedures to ensure they can administer the grant in accordance with OMB Circulars A-122 and the MAHRA.
- 1H. Make a determination on the lobby issues presented to determine if sanctions should be imposed as provided for in the 2002 Defense Appropriations Act.

### **MANAGEMENT CONTROLS**

In planning and performing our audit, we considered the management controls relevant to the Legal Aid Bureau's Section 514 program to determine our audit procedures, not to provide assurance on the controls. Management controls include the plan of organization, methods, and

procedures adopted by management to ensure that its goals are met. Management controls include the processes for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance.

We determined that the following management controls were relevant to our audit objectives:

- Identification of projects and activities eligible for assistance,
- Controls and documents to support costs of assistance provided, and
- Controls and procedures over the reporting of activities and cost.

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

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

- Lack of policies and procedures to ensure that allocation rates meet the standards of OMB Circular A-122,
- Lack of policies and procedures to ensure that salaries and time records meet the standards of OMB Circular A-122,
- Lack of policies and procedures to ensure that lobbying activities are not directly or indirectly funded by Federal sources.

#### **FOLLOW-UP ON PRIOR AUDITS**

This was the first audit the Office of Inspector General completed on the Legal Aid Bureau, Incorporated.

**SCHEDULE OF QUESTIONED COSTS**

Recommendation Number	Type of Questioned Costs	
	Ineligible 1/	Unsupported 2/
1A	\$3,198	
1C		\$90,904
1D		\$22,676
Total	\$3,198	\$113,580

- 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 costs charged to a HUD-financed or HUD-insured program or activity and eligibility cannot be determined at the time of audit. The costs are not supported by adequate documentation or there is a need for a legal or administrative determination on the eligibility of the costs. Unsupported costs require a future 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.

**AUDITEE COMMENTS**

**LEGAL AID BUREAU, INCORPORATED**

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September 20, 2002

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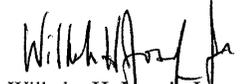
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Dear Mr. Temme:

In response to the draft audit memorandum issued by your office, enclosed are the Legal Aid Bureau's comments on the memorandum.

Please do not hesitate to contact me with questions or concerns.

Yours very truly,



Wilhelm H. Joseph, Jr.  
Executive Director

cc: Christine Begola



## LEGAL AID BUREAU, INCORPORATED

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### **RESPONSE OF LEGAL AID BUREAU, INC. TO HUD OIG DRAFT AUDIT MEMORANDA REGARDING OTAG GRANT NOS. FFOT98012MD and FFOT0020MD**

#### **I. SUMMARY**

This document constitutes the response of the Legal Aid Bureau, Inc. (LAB) to the draft audit memoranda prepared by U.S. Department of Housing and Urban Development (HUD) Office of the Inspector General (OIG) regarding grants FFOT98012MD and FFOT0020MD. The grants (hereinafter referred to as OTAG I and OTAG II) were awarded by HUD to the Bureau to conduct outreach and training and provide related assistance to residents of certain HUD-subsidized properties. Out of \$160,000 paid to LAB under OTAG I and \$116,778 paid to LAB to-date under OTAG II, OIG questions \$4,402 in costs as "ineligible" and \$272,083 as "unsupported" under OMB Circular A-122 guidelines. Except for \$2,718 in purchases of computers and food costs mistakenly charged to HUD under OTAG II, LAB disputes the findings of both "ineligible" and "unsupported" costs.

LAB disputes the findings of the HUD OIG as follows:

- **LAB maintained appropriate and adequate documentation of compensation for personnel services.**

The OIG questions as "unsupported" \$198,738 in compensation (salaries, fringe benefits and clerical support) for personnel services - \$107,834 in OTAG I and \$90,904 in OTAG II. Those charges to HUD represent the full-time work of the project coordinator, a law school graduate, for more than three years (approximately \$126,663), the full-time work of two paralegals for ten months (\$41,806) and the part-time work of at least nine lawyers over more than three years of LAB work under the grant (\$31,815).



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The contention that LAB lacked documentation to support the allocation of salaries and fringe benefits charged to the grants ignores the fact that the vast majority of the costs charged to the grants for compensation for personnel services were for the project coordinator and paralegals who were assigned to the project exclusively. Their time is accounted for in daily time records, signed by the staff member and a supervisor and submitted to LAB on a biweekly basis. This documentation meets the requirements of A-122.

Although a number of LAB attorneys worked on both OTAG I and II, LAB only charged HUD for a .32 full-time equivalent (FTE) attorney for the entire OTAG I grant and a .25 FTE attorney for the OTAG II grant through March 2002. Program records demonstrate that LAB performed more work for both OTAG I and OTAG II than that for which HUD was charged. Furthermore, at no time during the eight weeks the auditors were on-site did they question the adequacy of supporting documentation for work performed on the project. Supporting documentation for work performed on the project that demonstrates the work and time spent on the projects by LAB lawyers and the full-time OTAG staff is available for inspection and review by HUD audit and program staff.

- **LAB Properly Allocated Indirect Costs under the principles of A-122.**

Outside of non-personnel costs expended for activities OIG improperly categorizes as lobbying and a small amount of computer and food costs mistakenly charged under OTAG II, OIG has not questioned any of LAB's non-personnel expenditures charged to the grants. The contention that LAB lacked support for the method it used to charge indirect costs to the grants ignores LAB's repeated explanation of the allocation methodology it used and had in writing and the plain language of A-122. LAB also has followed the course of action of other audited grantees and submitted an indirect cost allocation plan to HUD, pursuant to HUD's August 29, 2002 instructions to OTAG grantees. See Exhibits 1 and 2.

- **LAB did not assist ineligible properties.**

Contrary to the audit findings, LAB did not assist, and therefore did not charge, time for work spent on ineligible properties. The properties the auditors questioned appeared on HUD, state or local subsidized housing lists of eligible properties. Although the property lists which included the questioned properties were provided to the auditors at the exit conference, they did not remove the finding from the draft report. At no time during the audit did the auditors seek information about these or any other properties.

- **LAB did not charge HUD for work performed in prior quarters.**

The auditors incorrectly suggest LAB charged time for the same work on certain properties. LAB staff explained at the exit conference that the fact that the same property appears in the same category of activities in multiple quarterly reports reflects continuing

work on the same property. At no time during the audit did the auditors seek information about the work performed on these or any other properties.

- **LAB did not engage in lobbying.**

The auditors are treating events such as a press conference with a Congressman announcing the grant award and tenant requests for constituent services from local representatives as lobbying. Such activities do not constitute lobbying. They were not attempts to influence a legislator's position on legislation. The findings also incorrectly assume, without any evidence, that staff was involved in lobbying activities while attending conferences, which the project coordinator has denied. Finally, LAB's payment for teleconference bills was a requirement for participating in an ongoing series of teleconferences among grantees, which the auditors acknowledge addressed a variety of non-lobbying housing preservation issues critically important to the OTAG projects.

## **II. BACKGROUND**

### **A. Legal Aid Bureau**

The Legal Aid Bureau provides civil legal services to low income residents of Maryland from twelve offices across the state. The size of its offices varies, depending upon the poverty population in the counties each office serves. All offices are expected to provide certain basic services to residents in their jurisdictions, including assisting individuals with a broad array of civil legal problems. The demand for legal services from low-income persons substantially exceeds LAB's resources. Therefore, until it received the OTAG grants, LAB was not able to educate, train or otherwise meet HUD's express goal for the OTAG program to enable residents of expiring subsidy properties to "participate meaningfully in decisions that would shape the future of their housing."<sup>1</sup>

### **B. The OTAG grants**

In 1998, HUD notified LAB that it had been awarded an OTAG grant in the amount of \$160,000 to conduct outreach and training to HUD tenants in properties eligible to participate in the Mark to Market program.<sup>2</sup> The grants were awarded to enable recipients to conduct outreach and training to residents of certain HUD subsidized

<sup>1</sup> Notices of Funding Availability (NOFAs) for OTAG I and OTAG II.

<sup>2</sup> OTAG I originally encompassed under two dozen Maryland properties. However, the scope of the grant was expanded dramatically in December, 1999, when HUD informed grantees that any property "at-risk" of a subsidy loss -- whether due to owner prepayment of the existing mortgage, sale of the property or opting out of the subsidy program -- was an OTAG-eligible property. The expansion increased the number of eligible properties in Maryland to several hundred. The HUD OIG auditors acknowledge the HUD directive and the increased breadth (and responsibility) that it gave grantees. No additional money was provided to grantees to support this substantially expanded scope.

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properties so that the residents could "(1) participate meaningfully in changes occurring at the property and (2) affect decisions about the future of their housing."<sup>3</sup> The NOFAs announcing the availability of grant funds included an expansive list of activities that OTAG work could encompass. LAB hired a law school graduate with a Master's Degree and prior experience in working with community groups, to coordinate the program. It obtained the services of several "volunteers" whose salaries were paid by the Americorps/VISTA program.<sup>4</sup> In 2000, LAB was awarded a second OTAG grant (OTAG II) for \$450,000 to continue and to expand its work. LAB hired three paralegals and a student to work on OTAG II with the project coordinator on a full-time basis. The projects have been supervised by a LAB attorney with over twenty years of housing law experience.

The OTAG staff developed an outreach program to identify residents in eligible properties and provide them with training to explain the impending changes in their housing, as the OTAG contract specified. Staff established an organizational structure for the project and attended training offered to (and at times required of) OTAG grantees on the substantive aspects of the Mark-to-Market and related programs and the technical skills required to deliver the resident training effectively. Initially, they spent a significant amount of time studying, organizing and constantly updating HUD data to identify properties eligible for OTAG assistance and setting up property files.

While each of the hundreds of eligible properties is unique, the OTAG staff established a general approach to its work with residents. First, the staff surveyed properties, giving priority to those with the earliest subsidy termination dates or other at-risk factors. After conducting an initial inspection, staff prepared and distributed flyers to residents of the property, inviting them to a meeting, which they set up on or near the premises, to learn about the changes to their housing.

At the meetings, staff introduced the OTAG project. They explained the status of the property's housing subsidy, the impending changes, the potential impact of those changes on residents and the rights or opportunities residents had under the circumstances. For example, the discussion could include: notice requirements to residents before the owner could effectuate changes; opportunities for tenants to remain at the premises with "enhanced" or other housing vouchers; relocation assistance; or the opportunity to advocate for significant improvements to the property as a condition of the owner's remaining in a HUD-subsidized housing program. Staff listened to tenant concerns and elicited tenant goals. Over the course of the grants, staff conducted many such tenant meetings.

As a result of the meetings, residents at some of the properties expressed an interest in becoming more involved in the future of their housing. In response to such expressions

<sup>3</sup> NOFAs for OTAG I and OTAG II.

<sup>4</sup> HUD was not charged for any salary or fringe benefits relating to the Americorps personnel who worked on the project.

of interest, OTAG staff undertook what often became a long-term role assisting residents in achieving their objectives. Frequently, those longer-term efforts involved addressing problems of sub-standard conditions. LAB assisted residents to form associations that could speak effectively and authoritatively for the group, often helping to draft by-laws and educating residents about the responsibilities and formalities of running an organization. Over the course of OTAGs I and II, LAB staff has provided technical assistance to numerous tenant associations.

Formation of tenant associations has enabled low-income residents of expiring properties to achieve significant goals regarding their housing and, as the OTAG grants directed, to participate meaningfully in changes occurring at their properties and to affect decisions about the future of their housing. For example, tenants in one 200+ unit property were concerned that HUD planned to tear down the property at the expiration of the project-based subsidy because of its horrendous condition. Tenants, however, wanted to retain as many units as possible as affordable and habitable. The OTAG staff helped tenants form their association, negotiated with a buyer of the property and HUD to renovate the complex and preserved at least 80 units for low-income families. Many of the units are handicapped-accessible. With OTAG assistance, tenants successfully negotiated for a neighborhood network center with computer access, enabling residents to pursue employment and educational opportunities. OTAG staff continues to assist the low-income tenants in this and other properties on an on-going basis.

Finally, the OTAG staff is actively engaged in facilitating purchase of OTAG-eligible properties in Baltimore City by developers who will keep some or all of the units as affordable for low income persons. While the outcome of these efforts cannot be predicted, they represent an important effort toward achieving HUD's articulated goals for the program and reflect that tenants at those properties are certainly participating in major changes which affect the future of their housing.

All of the foregoing activities fall squarely within the broad scope of the OTAG contracts and are directly related to achieving their stated objectives.

### **III. The HUD OIG Audit**

#### **A. The Audit Process**

On June 6, 2002, LAB received a letter from Daniel G. Temme, Regional Inspector General for Audit for HUD, notifying LAB that it would be audited for both the OTAG I and OTAG II grants starting on June 10, 2002. Mr. Temme expected "the audit staff to be on site approximately two weeks" and required that an extensive amount of documents be available upon the auditors' arrival. Those documents were promptly made available to the audit team.

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Upon its arrival, the audit team met with LAB's Deputy Director, Chief Financial Officer, Controller and Senior Accountant. LAB provided general background information about the Bureau and the OTAG projects.

The auditor appeared unfamiliar with the OTAG program and its purposes. He met briefly with the project coordinator who provided him with an explanation of the basic work done under the grant, and, in response to his request, a listing of projects assisted and correspondence files.

The auditor spoke often with members of LAB's finance staff, met most weeks with the Deputy Director and requested massive amounts of additional documents, which filled conference rooms and became very disorganized. He requested and received all of the project coordinator's timesheets. He never sought or asked about any other documentation of the work performed on the project. When it became apparent after more than three weeks that he was not progressing at the anticipated rate, his supervisor assigned another auditor to work on the OTAG I audit.

At an informal exit conference on August 2, the auditor gave LAB a document entitled "Results of OTAG 2 Review (subject to supervisory review)" dated August 2, 2002, attached as Exhibit 3. He stated, and the document showed, that the auditors raised questions about only three areas of costs for OTAG II: (1) Legal Aid's \$480.13 payment for a NAHT telephone call, which was being considered lobbying because the agenda showed that lobbying was discussed, (2) \$486.02 for food (which had been permitted under OTAG I but was not permitted under OTAG II) and (3) \$2,097.63 for computers (under OTAG II a maximum of \$1,000 was allowed for computers, regardless of the size of the grant and the staff it supported).<sup>5</sup>

The Deputy Director explained that OTAG programs had agreed, for simplicity's sake, to share the costs of the NAHT calls by having each program pay for a call on a rotating basis, rather than trying to determine each program's share of every call. She also emphasized that LAB staff had not engaged in any lobbying activities. The auditor acknowledged the explanations but stated that charges for the NAHT calls were being disallowed in audits of grantees throughout the country.

At no time during the audit process did the auditor suggest that there was insufficient documentation or support for salaries. He did ask her how LAB allocated the time of two attorneys who performed part-time work on non-OTAG matters. She explained that she estimated their time based upon discussions with staff and historical information about their participation and, by way of example, showed him daily time records for one of the attorneys which were consistent with the estimate. He did not request any further documentation of employee time.

<sup>5</sup> There were 17 items (ranging from \$.41 to \$100.97) for which the auditor had not been able to locate invoices. As soon as LAB provided copies of the invoices (which it did during the week of August 8), those items were removed from the list of questioned costs.

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In another informal exit conference on August 13, the second auditor provided LAB with a document entitled "Results of Outreach and Training Grant #FFOT98012MD" (Exhibit 4) which was based upon a review of training, travel expense, salaries and equipment for OTAG I for 1999, 2000 and a portion of 2001. The auditor claimed that "some of the OTAG federal funds were used directly/indirectly towards lobbying activities." The activities cited were attendance by the coordinator and another attorney at several conferences and payment for a NAHT telephone call in April 2000. The allocated costs claimed for these items totaled \$1,466,19. There was no allegation of "lobbying" elected officials. The auditor stated that, because lobbying appeared as an optional activity on the agenda of the conferences, the entire cost of the conferences would be disallowed. The Deputy Director explained again that LAB did not lobby and provided a statement from the project coordinator regarding her activities during the conferences, which statement was faxed to the auditors on August 22, 2002. (Exhibit 5)

On Friday, August 30, the Deputy Director received a call from the auditor in which, for the first time, he told her that the results of the audit were different from those reviewed at the exit meetings. He told her that all of the personnel costs for both grants were found to be unsupported because of the alleged failure to provide documentation compliant with OMB Circular A-122. He also told her that all of the indirect costs were found to be unsupported because LAB did not provide OIG with an "indirect cost plan" approved by HUD. When asked why these issues never came up during the entire audit, he stated that he had not had time to look at A-122 because he was so busy during the course of the audit and that once he had returned to his office and reviewed A-122 he realized LAB was not compliant with his view of A-122's documentation requirements.

On Tuesday, September 3, the auditors' supervisor faxed to the Deputy Director a "discussion draft" of the audit reports. In subsequent calls and during the exit conference, the supervisor emphasized that the auditors were not making findings about the work itself. In fact, she said that they found no evidence that the work for which the time was charged was not done. She further stated that all of the non-personnel expenditures tested were supported by proper documentation. LAB offered to provide additional documentation of staff time, but the supervisor stated that any documentation would have to be provided directly to OMHAR, since the audit phase was "over" and that OIG would not consider any further documentation in connection with its findings.

At the exit interview, LAB addressed the remainder of the issues raised in the draft report. LAB staff showed the auditors that each of the five properties the audit team had identified as allegedly ineligible for service under OTAG I appeared on HUD, state or local subsidized housing lists as an eligible property. The coordinator explained that certain properties appeared on more than one quarterly report because the work on those properties was continuing. LAB staff members reiterated that they had not engaged in lobbying. In response to newly raised claims of "lobbying" based upon meetings with a Congressman and with City Council members, LAB staff explained that the "meeting"

with the Congressman was a press conference to announce receipt of the OTAG II grant to the media. LAB explained that the meetings with City Council members were to explain the M2M and OTAG programs and to assist tenants in raising their concerns about properties located in the elected officials' districts. LAB also challenged and requested omission of paraphrased comments attributed to its staff members, which comments the staff members did not make. The audit supervisor suggested that LAB could submit language it wished to have used that more accurately reflected the statements made and staff's intent. Those suggestions were submitted within the few hours time permitted to LAB, along with a summary of LAB's other concerns (Exhibit 6), but ultimately appear to have been largely ignored by the auditors.

## **B. Response to Audit Findings**

### **1. LAB can provide support for staff compensation charged to both OTAG I and OTAG II.**

The total amount of compensation for persons assigned exclusively to OTAG I was \$84,707, and the total amount of compensation for part-time OTAG I staff was \$19,818 for an OTAG I personnel compensation total of \$104,525. The total amount of compensation for persons assigned exclusively to OTAG II has been \$83,762, and the total amount of compensation for part-time OTAG II staff has been \$11,996 for an OTAG II personnel compensation total of \$105,758. All of these costs are supportable, as explained below.

LAB's OTAG I \$160,000 grant began on January 1, 1999 and ended September 30, 2001. Before the end of January 2001, LAB had invested substantial resources in the OTAG project and incurred costs exceeding that of the grant award. By the end of the grant period, LAB had expended more than \$199,000 on the OTAG I project and covered without HUD reimbursement nearly \$40,000 in costs so that the work of OTAG I would continue uninterrupted.

During the period of time since the project began in 1999, LAB has dedicated the work of a full time Outreach and Training Coordinator to the project. The coordinator was hired specifically for the project and has worked on no other LAB projects and represented no other LAB clients during her entire tenure with LAB. For OTAG I, the costs of the coordinator's time and associated support costs constituted at least 80% of the costs charged to HUD. For OTAG II, the costs of the coordinator's and the full-time paralegals' time and associated support costs have constituted at least 84% of the costs charged to HUD.

In addition, at least nine other attorneys have devoted time to OTAG work. Although significant amounts of their time were eligible for reimbursement under the project, only

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slightly over \$18,000 in salaries and fringe benefits for those attorneys' time were actually charged to HUD during OTAG I.<sup>6</sup>

LAB's OTAG II \$450,000 grant began in January 2001 and continues to date. Since the beginning of the grant, \$116,778 has been charged to and reimbursed by HUD for expenses incurred through March 31, 2002. During that time, the coordinator has continued to work full-time on the OTAG project. Her time began to be charged to the OTAG II grant in July 2001. Two full-time paralegals were hired in October 2001. Those paralegals also have not worked on projects other than OTAG nor assisted any clients other than those eligible under the OTAG project. Of the approximately \$90,000 charged to OTAG II for attorney and paralegal time thus far, approximately \$80,000 is attributable to these OTAG-dedicated staff members. Approximately \$11,000 in compensation costs for other attorneys were charged to the OTAG II grant.

All OTAG staff keeps contemporaneous biweekly signed timesheets. OMB Circular A-122 requires after-the-fact determination of actual work for each employee in the form of a report prepared no less often than monthly which must be signed by the employee or a supervisor. For LAB's full-time OTAG staff members, none of their time was spent on any projects other than the OTAG project, and the auditors made no findings to the contrary. Those contemporaneous timesheets should satisfy HUD that those employees' complete compensation costs are properly chargeable to the OTAG grants. For the attorneys who worked less than full-time on the project, there is documentation including detailed time reports, quarterly reports to HUD and work recorded in files for OTAG properties to support their time. The auditors never inquired about any such documentation for the part-time attorneys, except during the brief conversation between the auditor and the Deputy Director referenced above. The documentation is available for review.

In addition, as required by HUD, LAB submitted quarterly reports which contain significant information about how staff time was spent on the project. The reports require and provide identification of activities according to HUD-designated categories. Beginning in 2000, the reports also provide a breakdown of program activities, such as certain meetings and outreach activities, by dates and times. While the quarterly reports do not capture all of the time spent by LAB staff on the OTAG project, they provide an important overview of staff activity for the quarter, in a form and level of detail that was acceptable to HUD. In addition, the OTAG staff kept contemporaneous records on the work performed for individual properties. Those property files have always been available for inspection. The auditors never sought to examine any work papers reflecting time spent on the project beyond the actual time sheets submitted by the project coordinator or even inquired about the evidence for, or nature of, work performed.<sup>7</sup>

<sup>6</sup> That \$18,000 represents reimbursement for over 500 hours over two and one-half years for attorneys with experience of up to twenty-four years in housing and other advocacy.

<sup>7</sup> In the section on compensation for personnel services, the OIG commented on LAB's 2000 change in its allocation system for compensation for personnel services alleging that LAB staff said the change was

**2. LAB's method of allocating indirect costs<sup>8</sup> is in compliance with A-122.**

The total amount of indirect costs charged to OTAG I were \$53,476. The total amount of indirect costs charged to OTAG II were \$25,873.

The auditors' finding that the indirect costs were "unsupported" primarily rested on the lack of submission to HUD of an indirect cost proposal. LAB acknowledges that it had not submitted an indirect cost proposal in accordance with OMB Circular A-122, Attachment A, General Principles, E.2.b.<sup>9</sup> LAB, however, now has done so. See Exhibit 2. Furthermore, the indirect cost rate for any given quarter is requested and provided on the quarterly financial report form.

LAB's system for allocating indirect costs complies with the requirements of OMB Circular A-122. LAB is a large, multi-funded non-profit law firm with over 250 employees and more than thirty funding sources. It utilizes an allocation system recognized under A-122 as the "Direct Allocation Method." (Attachment A, General Principles, D.4). The allocation method is described in A-122 as follows:

- a. Some non-profit organizations treat all costs as direct costs except general administration and general expenses. These organizations generally separate their costs into three basic categories: (i) General administration and general expenses, (ii) fundraising, and (iii) other direct functions (including projects performed under Federal awards). Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses and the like are prorated individually as direct costs to each category or other activity using a base most appropriate to the particular cost being prorated.
- b. This method is acceptable, provided each joint cost is prorated using a base which accurately measures the benefits provided to each

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because "the lawyers did not track their time using the amount of detail as needed in order to support the grant." The auditors' attribution of that statement to "the grantee" is simply false. In 1999, LAB as an organization was using a system whereby the actual salaries of staff working on specific projects were allocated directly to the grants or contracts. To reflect more efficiently the method of work of the entire organization, where many projects share staff and staff may have to step in when other staff members are unavailable to ensure the promised work gets done, LAB moved to a system that allocated salaries and fringe benefits based on the number of FTE attorneys working on a project. In response to the auditors' observation, there is nothing per se impermissible about a grantee changing its organization-wide accounting or allocation system. The auditors have not questioned the fairness of either system, both of which are compliant with the principles of OMB Circular A-122.

<sup>8</sup> In the audits, all non-personnel costs are termed "indirect" costs, regardless of the actual method of allocation under A-122.

<sup>9</sup> Contrary to the OIG's assertion that LAB staff said they did not have to follow OMB Circular A-122, LAB staff said that LAB had believed it was in compliance with all federal accounting requirements, including A-122, because it always has received an unqualified opinion on its annual audit done under OMB Circular A-133 single audit requirements.

award or other activity. The bases must be established in accordance with reasonable criteria and be supported by current data. . . .

c. Under this method indirect costs consist exclusively of general administration and general costs. . . .

LAB's non-personnel expenses are allocated using a base that accurately measures the benefits provided to each activity - in this case, to OTAG. OTAG staff are part of a group of staff of like job categories who are doing like work requiring essentially the same non-personnel support, such as workspace, supplies, and communications. The costs of the group are pooled and then prorated based upon the number of staff assigned to each project. For example, in the first quarter of 2000, all of the project coordinator's time and .21 FTE attorney's time was spent on and charged to the OTAG project. At the time, there was 8.8 legal staff sharing costs in the support unit. Therefore,  $1.21/8.8$  or approximately 14% of the costs of the unit were charged to OTAG.<sup>10</sup> The costs and the allocations are reviewed at least quarterly for accuracy.

LAB's allocation system for management and general (M&G) expenses is also permitted under A-122. These costs include the costs of financial, human resources and administrative services units providing services to the OTAG project and LAB's other projects. Using the direct allocation method, the M&G costs are computed as set forth in OMB Circular A-122, Attachment A, General Principles, D.4.c, which incorporates General Principles, D.2 as follows:

a. Where an organization's major functions benefit from its indirect costs to approximately the same degree, the allocation of direct costs may be accomplished by (i) separating the organizations' total costs for the base period, either direct or indirect, and (ii) dividing the total allowable indirect costs (net any applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. . . .

b. The distribution base may be total direct costs. . . , direct salaries and wages, or other base which results in an equitable distribution.

The equitable distribution base used by LAB is all program services costs which include compensation for personnel services and non-personnel expenses. LAB has consistently used a rate that is calculated using the actual experience of the organization as reflected M&G rate for HUD averaged 17% of direct costs. Its audited financial statements for the

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<sup>10</sup> For certain expenses, like rent, the staff with whom costs are shared is the entire staff sharing the building with the OTAG staff.

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years 1999-2001 show that M&G costs averaged 17% of direct costs. In 2001, the audited M&G rate was 17.67% of direct costs.<sup>11</sup>

**3. LAB does not contest the finding that it was not permitted to charge \$2,718 in mistakenly-charged computer and food costs to the OTAG II grant.**

OTAG I did not limit the amount of funds that could be spent on computer equipment. It also permitted charging against the grant the costs of food for tenant organizational meetings. A-122 does not limit the amount of federal funds that may be spent on computer equipment. It allows for the expenditure of reasonable costs for food for purposes such as the tenant organizational meetings that are at the heart of OTAG work. However, LAB acknowledges, the OTAG II NOFA did set such limits. LAB mistakenly and unintentionally charged \$2,356 more than the \$1,000 limit for computer equipment (purchased for the use of the new paralegal staff funded by the expanded OTAG II grant) and \$349.10 in food costs and \$12.90 in telephone costs to HUD. The total amount of costs mistakenly charged to OTAG II is \$2,718. LAB will repay those amounts as soon as it is provided with information on the proper procedure to do so.

**4. LAB did not charge costs attributable to work on ineligible properties to the grant.**

The audit states that, of the 93 properties assisted under OTAG I, 5 were not on a HUD list the audit supervisor has identified as being provided to the OIG from HUD as of May 2002. The auditors therefore assumed, without any further inquiry of LAB staff, that the 5 properties were not eligible for assistance under the grant. The five allegedly ineligible properties are: Ashburton Apartments, Bruce Manor, Drexel Park, Holly Circle and Park Montgomery. At the exit interview, LAB staff presented the auditors with copies of HUD, state and local subsidized housing lists which reflected that the five were eligible properties. Those lists, they explained, were frequently updated by HUD. In light of the fact that contemporaneous documents attest to their eligibility, the auditors should not have reached this conclusion.

**5. LAB did not charge time for activities completed and charged in a previous quarter.**

In both the OTAG I and OTAG II audits, the auditors mistakenly infer that the OTAG coordinator charged time against the grant for activities completed in previous quarters. In the OTAG I audit, the auditors noted that the coordinator "visually assessed" six of the seven properties in the March 2001 report which also appear on various 2000 Mark-to-Market reports "under the same activity". In the OTAG II audit, they noted that, in the

<sup>11</sup> For OTAG II, through the first three quarters, despite LAB's 2000 audited 17.67M&G rate, HUD has been charged only 4.3% M&G rate, for an undercharge to HUD of more than \$14,000.

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July 31, 2001 quarterly report, the coordinator "visually assessed" nine properties and three of the nine appeared in subsequent reports. These statements reflect a misreading of the reports.

Under the general category of "Analysis of Property", there appears a statement that "[a]ll of the properties listed below have been visually assessed to determine the likelihood of M2M participation." To that standard language, the coordinator consistently added activities which were undertaken at the listed properties and which varied over time. Her addition for March 31, 2001, for example, says: "Site visits, local HUD inquiries re property status, and initial meeting with property manager." For the same category in the report for the quarter ending December 31, 2000, however, the coordinator stated, following the same language about visual assessment, "[h]rs include travel, distribution of HUD M2M and resident rights pamphlets, and short form property surveys of residents encountered during walk through." Thus, the suggestion of the auditors that the coordinator listed properties recurrently for "visual assessment" is an inaccurate reading of the quarterly reports. From the face of the report, it is apparent that LAB performed different activities for properties listed in successive reports under the category of "Analysis of Property" and the notation about visual assessment.

At the exit conference, the coordinator explained to the auditors that the reports reflect the OTAG staff's continuing involvement with a property for more than one quarter. She gave the example that staff might inspect the premises before a tenant meeting, conduct a subsequent inspection to view specific items identified by tenants as problems, and, after talking to management about the problems, conduct follow up visits to see whether promised repairs were made or new problems were emerging. Unresolved problems and inadequate repairs often prompted continued OTAG involvement in properties. Before assuming that LAB was wrongly double counting for work performed once, the auditors should have reviewed with staff the chronology of each property about which they had questions. Had they done so, they would have discovered that there was no duplicate reporting of OTAG activity.

**6. LAB did not engage in lobbying activities.**

The total costs that the auditors associate with "lobbying activities" are \$1,204 in OTAG I and \$480 in OTAG II.

The audit reports categorize the following as "lobbying" with respect to OTAG I:

- a meeting between the OTAG coordinator and a Congressman to discuss how the OTAG grant benefits tenants
- payment of dues to and participation in NAHT-sponsored conferences
- participation in NAHT-sponsored teleconferences and payment of \$722 for the cost of one of the conferences

In the OTAG II audit, the following activities were identified as "lobbying":

- two meetings between the OTAG Coordinator and either a Congressman or City Council members to discuss particular Mark-to-Market properties
- the OTAG Coordinator's participation in a tenant association meeting to begin a letter campaign to various persons and officials, including the Mayor, to stop the owner from prepaying the mortgage on a property and to support its preservation as low-income housing
- participation in NAHT teleconferences, as in OTAG I

None of these activities constitutes lobbying or otherwise violates the terms of LAB's OTAG contracts or applicable federal law. First, although it is not specified in the audit report, the "meeting" between the OTAG coordinator and the Congressman, Rep. Elijah Cummings, was a press conference to announce LAB's receipt of the OTAG II grant. It was attended by OTAG and LAB staff, residents of eligible properties in Rep. Cummings' district and the Representative and members of his staff. At that press conference, there was no discussion of legislation, much less any effort to influence Rep. Cummings or members of his staff about the passage or defeat of legislation. Instead, the press conference provided important public information about the status of subsidized properties in Baltimore City and the opportunities available to their residents to become involved in shaping their future housing options. It therefore was squarely in keeping with HUD's goals for the OTAG program.<sup>12</sup>

Second, when OTAG staff attended NAHT-sponsored conferences, they did not participate in any of the lobbying activities in which some conferees participated. Instead, LAB's OTAG staff used the time to meet with OTAG project grantees from other states about preservation efforts and local challenges. Those opportunities to share experiences or obtain suggestions from advocates engaged in similar work and facing similar problems are relatively rare and extremely valuable. They qualitatively enhance the ability of all grantees to achieve the goals of the OTAG program. When the auditors raised questions about these conferences, the OTAG coordinator provided a written explanation of her activities at the specific conferences on the days when others engaged in lobbying. See Exhibit 6. She unequivocally denied that she participated in any lobbying activities.

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<sup>12</sup> The OTAG II NOFA includes among a non-exclusive list of permissible activities for OTAG recipients "[e]ducating parties outside the Department (including but not limited to appraisers, financial institutions officials, state and local government officials, community groups, and owner entities) about changes to Section 8 contracts, impacts on the property, and the OTAG process." It repeatedly emphasizes that outreach to tenants and the dissemination of information (e.g., establishing informational clearinghouses and materials) is a key OTAG activity. Dissemination of information is precisely what the press conference was about.

Third, the NAHT conference calls encompassed a wide variety of issues. They provide an opportunity for OTAG grantees across the country to share experiences, provide assistance to one another and obtain information about developments elsewhere. Such information and opportunities are important to enable OTAG grantees to provide assistance to low income residents. NAHT asks that the cost of the calls be paid for by the grantee-beneficiaries. Accordingly, LAB paid for its share of the calls to gain the values flowing from participation. It did not pay for a specific lobbying effort, and its staff did not engage in discussions about lobbying. Participation in the NAHT conference calls was reflected in the quarterly reports submitted to OMHAR. That activity was never questioned by HUD.

Fourth, the meetings referenced in the OTAG II audit report were meetings that tenants, as constituents, sought with their local representatives, to discuss issues involving their property in the council person's district. They were efforts to seek assistance to resolve specific problems in the representative's community, rather than advocating for a particular policy or passage or defeat of legislation. The activity was not lobbying but the exercise of the prerogative of constituents to seek an elected official's assistance on an issue personal to the constituents.

The letter writing campaign of residents, with which the OTAG coordinator assisted, was a similar attempt to bring to their representative's attention the fact that his district was in danger of losing affordable housing. It was, in fact, entirely consistent with the explicit goal of the OTAG program to enable tenants to "affect decisions about the future of their housing."

### **C. Response to Audit Recommendations**

#### **1. LAB has support for salaries and fringe benefits and strengthened even further its documentation procedures. (OTAG I: Recommendations 1C and 1D; OTAG II: Recommendations 1B and 1C)**

OTAG I Recommendation 1C and OTAG II Recommendation 1D ("provide proper support for all unsupported salary and benefit costs and repay from non-federal funds amounts it cannot adequately support"): As set forth above, LAB has proper documentation for salary and benefit costs. It provided that which was requested (time sheets) to the OIG. Additional supporting documentation for work performed on the project that demonstrates the work and time spent on the projects by LAB lawyers and full-time OTAG staff is available for inspection and review by HUD audit or program staff.

OTAG I Recommendation 1B and OTAG II Recommendation 1C ("maintain detailed time records in accordance with OMB Circular A-122): Beyond its contention that it has maintained time records as required by A-122, LAB has strengthened even further its documentation procedures. It has developed a form that staff working on OTAG

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activities will use that allows staff to attribute time to specific OTAG activities on a daily basis. The form is attached hereto as Exhibit 7.

**2. LAB has submitted an indirect cost plan to HUD which is the only deficiency regarding indirect costs that needs to be addressed. (OTAG I: Recommendation 1E; OTAG II: Recommendation 1E)**

OTAG I Recommendation 1E and OTAG II Recommendation 1D (“prepare and submit an acceptable cost allocation plan that fairly allocates indirect costs among funding sources, and based on the plan make appropriate adjustments to the . . . indirect costs [charged] and repay to HUD from non-federal funds any overcharges”): Only a portion of LAB charges to HUD for non-personnel costs are properly considered “indirect costs” for which A-122 requires approval of an indirect cost allocation plan. As to the indirect costs charged to the grant (\$23,613 to OTAG I and \$4,885 to OTAG II), approval by HUD of the indirect cost allocation plan submitted by LAB should result in resolution of that recommendation. As to the other non-personnel costs charged (29,863 to OTAG I and \$20,988 to OTAG II), the OIG has raised no question as to authenticity or eligibility (except as in (3) and (6) below) and only found them unsupported based upon the (alleged lack of) documentation of staffing for the project to which they are tied. Because that documentation is sufficient, as set forth in (1), above, those charges are not unsupported.

**3. LAB does not contest the challenged OTAG II computer and food costs (OTAG II: Recommendation (part of) 1A)**

OTAG II Recommendation 1A: LAB does not contest the portion of this recommendation concerned with ineligible computer, food and phone costs and remains ready and willing to repay the \$2,718 mistakenly charged.

**4. LAB did not assist ineligible properties and, therefore, did not charge to HUD costs for work on ineligible properties: (OTAG I: Recommendation 1A)**

OTAG I Recommendation 1A (“document the costs . . . associated with the assistance it provided to the ineligible projects and require the grantee to refund the grant for those associated costs”): LAB did not assist ineligible properties, therefore, there are no associated costs to refund.

**5. LAB did not incur ineligible lobbying expenditures and will maintain its consistent policy that staff will not engage in impermissible lobbying. (OTAG I: Recommendations 1A, 1F and 1I; OTAG II: Recommendations 1A, 1E and 1H)**

OTAG I Recommendations 1B, 1F and 1I and OTAG II Recommendations 1A, 1E and 1H (“repay to HUD from non-federal funds . . . ineligible lobbying expenditures that were charged to the grant” and “stop charging the grant for activities related to lobbying

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as defined by MAHRA and OMB Circular A-122"): LAB staff did not lobby and, therefore, did not incur any ineligible lobbying expenditures. LAB staff will continue not to lobby.

**6. LAB should not be penalized by withholding future funding. (OTAG I: Recommendation 1H; OTAG II: Recommendation 1G)**

OTAG I Recommendation 1H and OTAG II Recommendation 1G (determine that LAB has demonstrated that it has "established the necessary policies and procedures to follow OMB guidelines" before awarding any new funds to LAB and "restrict all remaining grant distributions" until LAB has demonstrated "they have established the necessary policies and procedures to ensure that they can administer this grant in accordance with OMB Circular A-122 and the MAHRA"): With the changes set forth above, LAB has more than met the auditors' concerns regarding documentation and adherence to OMB guidelines. There is therefore no reason to withhold future funding.

**IV. CONCLUSION**

For the foregoing reasons, LAB submits that the findings and recommendations of the audit reports for OTAG I and OTAG II are, with minor exceptions, wholly unwarranted. They reflect misconstructions of the applicable requirements and, at times, a failure to review all relevant documents. Often they are based on untested and untrue assumptions about the activities of LAB staff. They attribute statements to LAB staff that are simply false. In light of the serious deficiencies of the draft audit reports, LAB requests that the drafts be withdrawn. LAB requests that, before revised reports are issued, HUD OIG and HUD program officers meet with LAB to make sure that such serious distortions, misunderstanding and/or misconstruction of the law are avoided in the future. Until that time, LAB requests that HUD OIG and the HUD program office keep the reports and the response thereto confidential and avoid publication of either on their website or in any other public forum.

Submitted by:



Wilhelm H. Joseph, Jr.  
Executive Director  
Legal Aid Bureau, Inc.

Enc: Exhibits 1-7

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