



U.S. Department of Housing and Urban Development
Office of Inspector General
Pacific/Hawaii Region
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San Francisco, California 94102-3448

**MEMORANDUM NO:
2002-SF-1805**

September 26, 2002

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

//SIGNED//

FROM: Mimi Y. Lee
Regional Inspector General for Audit, 9AGA

SUBJECT: Congressionally Requested Audit of the Intermediary Technical
Assistance Grant awarded to the Amador-Tuolumne Community
Action Agency, Sonora, California, Grant Number FFIT98001AT
and FFIT98002AT

INTRODUCTION

As directed by Congress, we have completed an audit of the Amador-Tuolumne Community Action Agency (A-TCAA) Intermediary Technical Assistance Grants (ITAG), Numbers FFIT98001AT and FFIT98002AT. This was pursuant to a Congressional directive to audit all grants authorized under Section 514 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA). The primary purpose of the audit was to determine whether grant funds were expended in accordance with the requirements of MAHRA and other applicable regulations and requirements. Consistent with the Congressional directive, we reviewed the eligibility of costs with particular emphasis on identifying ineligible lobbying activities. Although sub-recipients used ITAG funds to send tenants and staff to the National Association of HUD Tenants (NAHT) conferences, which consisted of two days of training and a third day of lobbying activities, most sub-recipients excluded the last day's costs or showed they did not participate in lobbying on the third day. Only one met with Congressional staff while including the last day's costs in its reimbursement request. However, there is no evidence

this resulted in additional grant costs that would not have occurred if activity were limited to the two days of training.

All other grant costs appear to have been incurred in compliance with the applicable regulations and requirements.

BACKGROUND

The Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) established the Office of Multifamily Housing Assistance Restructuring (OMHAR) within HUD. One of OMHAR's responsibilities under MAHRA is the administration of the Mark-to-Market Program, including the award and oversight of the Section 514 Outreach and Training Assistance Grants (OTAGs) and Intermediary Technical Assistance Grants (ITAGs). The objective of the Mark-to-Market Program is 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.

Congress recognized that tenants of the affected projects, as well as residents of the neighborhoods, the local governments, and other parties would be impacted 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 in the Mark-to-Market process, for the period 1998 through 2001. The Secretary authorized \$40 million and HUD staff awarded grants of about \$26.6 million to 38 nonprofit organization grantees (a total for 81 grants awarded). The funds were awarded under Notices of Fund Availability (NOFAs) in fiscal years 1998 and 2000 as either OTAG or ITAG grants. The Notices of Fund Availability say the ITAG 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 Notices of Fund Availability say 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. ITAG grantees serve primarily as pass-through agencies to sub-recipient agencies that carry out the eligible activities whereas OTAG grantees are directly involved in carrying out the activities. ITAG sub-recipients and OTAG grantees are primarily involved in organizing and educating tenants of affected properties. However, Congress specifically prohibited using Section 514 grant funds for lobbying members of Congress.

On July 9, 1998, the A-TCAA applied for ITAG funds under the Notice of funding Availability dated April 30, 1998. The A-TCAA applied for all five state groupings HUD established for ITAG. HUD awarded the A-TCAA two grants covering the Northwest and Midwest areas, each for \$1,800,000. The A-TCAA's Executive Director signed the grant agreements on September 23, 1998 the Director of OMHAR signed on February 12, 1999.

The A-TCAA awarded a total of \$1,072,639 in 34 sub-grants to 14 nonprofit entities under the Northwest ITAG and \$628,244 in 17 sub-grants to ten nonprofits under the Midwest ITAG. As

of the end of May 2002, the A-TCAA had approved sub-grantee vouchers totaling \$382,531 for Northwest ITAG FFIT98001AT and \$261,799 for Midwest ITAG FFIT98002AT. At the end of July 2002, additional vouchers were approved bringing the totals to \$404,953 for Northwest grants and \$277,645 for Midwest grants. The last four audits covering the fiscal years ending June 30, 1998 through June 30, 2001 have expressed unqualified opinions and no findings.

METHODOLOGY AND SCOPE

In conducting the audit, we reviewed the grantee's accounting records and interviewed responsible staff. We also reviewed the requirements in MAHRA, the ITAG Notice of Fund Availability, the ITAG grant agreements, HUD's requirements for grant agreements for nonprofit entities, and Office of Management and Budget's guidance on the allowability of cost for nonprofit grantees. In planning and performing the audit, we considered the relevant grantee management controls to determine our audit procedures, not to provide assurance on the controls. Although the A-TCAA's management controls appear to be effective for limiting risk, we placed no reliance on the controls to limit the scope of our review. This was because the amount of grant activity allowed us to review 100 percent of the expenses charged to the ITAG program as of June 30, 2002 in a relatively expeditious manner.

The audit covered the period from February 1999 through June 2002, and the fieldwork was performed at the A-TCAA offices located in Sonoma and Jackson, California, between July and August 2002. We conducted the audit in accordance with Generally Accepted Government Auditing Standards.

RESULTS OF AUDIT

For the most part, the A-TCAA carried out the grant program and expended grant funds in full accord with the requirements of Section 514 of the MAHRA and other applicable regulations and requirements. Overall, it appeared the A-TCAA did a good job of monitoring the sub-grantees' use of ITAG funds. Most payments were also fully supported or they were disallowed by the A-TCAA. The A-TCAA required time records to support payroll costs, receipts or invoices for other direct costs, and support for sub-grantees allocation methods. In addition, the A-TCAA compared reimbursement requests to the approved activities and budgets to ensure consistency, confirmed the eligibility of sub-grantees, and provided activity reports corresponding to all activities charged to the grants.

Nevertheless, there were a few exceptions noted, including one sub-grantee not providing appropriate time records and support for its allocation method, and one sub-recipient's possible use of grant funds for lobbying related activity. These issues were isolated problems and were not reflective of the A-TCAA's overall monitoring efforts. We have discussed the payroll issue with the A-TCAA and believe the matter will be adequately resolved. We also believe the lobbying related issue would be resolved through additional HUD guidance.

Lack of Payroll Support

The Office of Management and Budget (OMB) Circular A-122, Cost Principles for Non-Profit Organizations, Attachment A, prescribes cost allocation methods including direct and indirect. The Circular also places specific salary record keeping requirements on the grantee. In order to charge an employee's compensation to a Federal grant, the grantee must maintain reports that account for the total activity an employee is compensated for in fulfillment of their obligations to the organization. The reports must reflect an after the fact determination of actual activity for each employee. Grantees must maintain reports reflecting the distribution of activity of each employee (professionals and nonprofessionals) whose compensation is charged, in whole or in part, directly to awards. The Circular also requires the report to be signed by the employee or a reasonable supervisor. 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.

The A-TCAA awarded the National Housing Law Project (NHLP) with two Public Entity Grants (PEG) under the Northwest ITAG, grant numbers MTMNWPEG00022 and MTMNWPEG00023, and another under the Midwest ITAG, grant number MTMMWIPEG00020. NHLP provided inadequate support for direct salaries and allocated expenses for salaries and other costs. Although NHLP provided biweekly time reports showing the hours an attorney (who was the primary person working on grant activities) spent working on each of the PEGs each day, the reports did not meet the requirements of OMB Circular A-122. The attorney or a supervisor did not sign the reports and the reports did not include the time the attorney spent on non-PEG activities for NHLP. Since the percentage of time the attorney spent on the PEGs was the basis for allocated costs, support should have been provided for all of his time.

This problem occurred because the A-TCAA was not fully knowledgeable of the program requirements, believing Federal Agencies did not required this level of support. However, the A-TCAA was receptive to the issue, and agreed additional procedures would be developed to ensure sub-grantees submit appropriate documentation in support of salary and allocated costs. There was no information to suggest costs charged to the grant were inappropriate, and review of other sub-grantees' records did not identify similar problems.

Possible Lobbying Activity

MAHRA specifically prohibits the use of Section 514 funds to lobby members of Congress or their staff. HUD's Director of OMHAR issued a December 3, 1999 letter, which stated expenses related to any days in which lobbying occurred at national conventions, are not eligible to be charged to the grant.

There was one case where a sub-grantee was reimbursed for the entire cost of sending tenants to an annual NAHT conference in Washington DC, giving the appearance of lobbying charges to the grant. The NAHT conferences consisted of two days of training relating to the Mark-to-Market program, and a final day devoted to participants lobbying members of Congress. As a result, *additional* costs associated with the last day of the conference would be ineligible under the ITAG.

Most of the A-TCAA's sub-grantees that attended the conference excluded additional expenses associated with the last day from their reimbursement requests. However, we noted there was no consistency in the number of days grantees included in NAHT costs. The stays ranged from two nights and three days, to four nights and five days. The length of the stay was not necessarily tied to the distance traveled.

In the case of the Cleveland Tenants Organization (Midwest ITAG grant MTMOHPEG01014), the 24 participants sent to the NAHT conference flew back the day of the lobbying activity. In a report submitted to the A-TCAA, the organization stated attendees met with Congressional staffers for a total of 45 minutes. Although the costs associated with the lobby day were charged to the grants, in contrast to OMHAR's December 3, 1999 letter, the sub-recipient believed it had ensured no additional costs had been charged to the grant in relation to lobbying activity. The Cleveland Tenants Organization believed it was acceptable to incur costs for the additional night's stay since prior day conference activity concluded after a full day of training, thus reasonably allowing for travel on the subsequent day. The prior year, the same sub-grantee had allowed tenants to remain in the hotel the night of the lobby day and fly home the following day. The extra day was excluded from the ITAG reimbursement request. This time, by reducing the stay by one day, the grantee ensured they charged the same effective costs to the grant as the prior year. The A-TCAA did not question the last day of the second year, because there was no clear guidance on the matter.

Neither the A-TCAA nor the sub-grantees were aware OMHAR obtained a June 24, 1999 response to its request for a legal opinion regarding the use of OTAG funds for NAHT conference attendance. In the response, an Associate General Counsel noted NAHT's proposal that grantees should only charge two days and two nights to the grants, and exclude one-third of the registration cost. The Associate General Counsel believed NAHT's proposal was a reasonable way of ensuring Federal funds would not be used for lobbying. If OMHAR had set this as a policy for grantees, there would have been no confusion. Instead, OMHAR's December 3, 1999 letter to grantees merely reminded them that they could not use grant funds for lobbying, leaving grantees to come up with various interpretations.

We believe the A-TCAA adequately monitored sub-grantee activity for possible lobbying costs associated with the NAHT conference, based on the guidance provided. In addition, the A-TCAA did not charge the grants for any material *additional* lobbying costs, incurred by the sub-grantees, which would violate program requirements. However, given the appearance that grant funds are being used to fund possible lobbying activity, OMHAR should provide more specific guidance to grantees concerning participation in NAHT activities, to prevent future problems of this nature.

AUDITEE COMMENTS AND OIG EVALUATION

We had an exit conference with grantee officials on September 24, 2002 and the A-TCAA provided a written response to the draft memorandum, which is included as Appendix A.

The A-TCAA agreed with the facts presented in this report. In response to recommendation 1A, the Executive Director said the A-TCAA would obtain a copy of the June 24, 1999 memo from the office of General Counsel to OHMAR. The A-TCAA will use the legal advice contained in the memo to develop new guidelines for use by both the A-TCAA and subrecipients for any activities that include a potential for lobbying. The A-TCAA will also require that subrecipient progress reports provide greater detail regarding time and activities where lobbying might have occurred.

OIG is gratified with the A-TCAA's proactive response to the audit memorandum. We appreciate the courtesies and cooperation the A-TCAA extended to audit staff during this review.

RECOMMENDATIONS

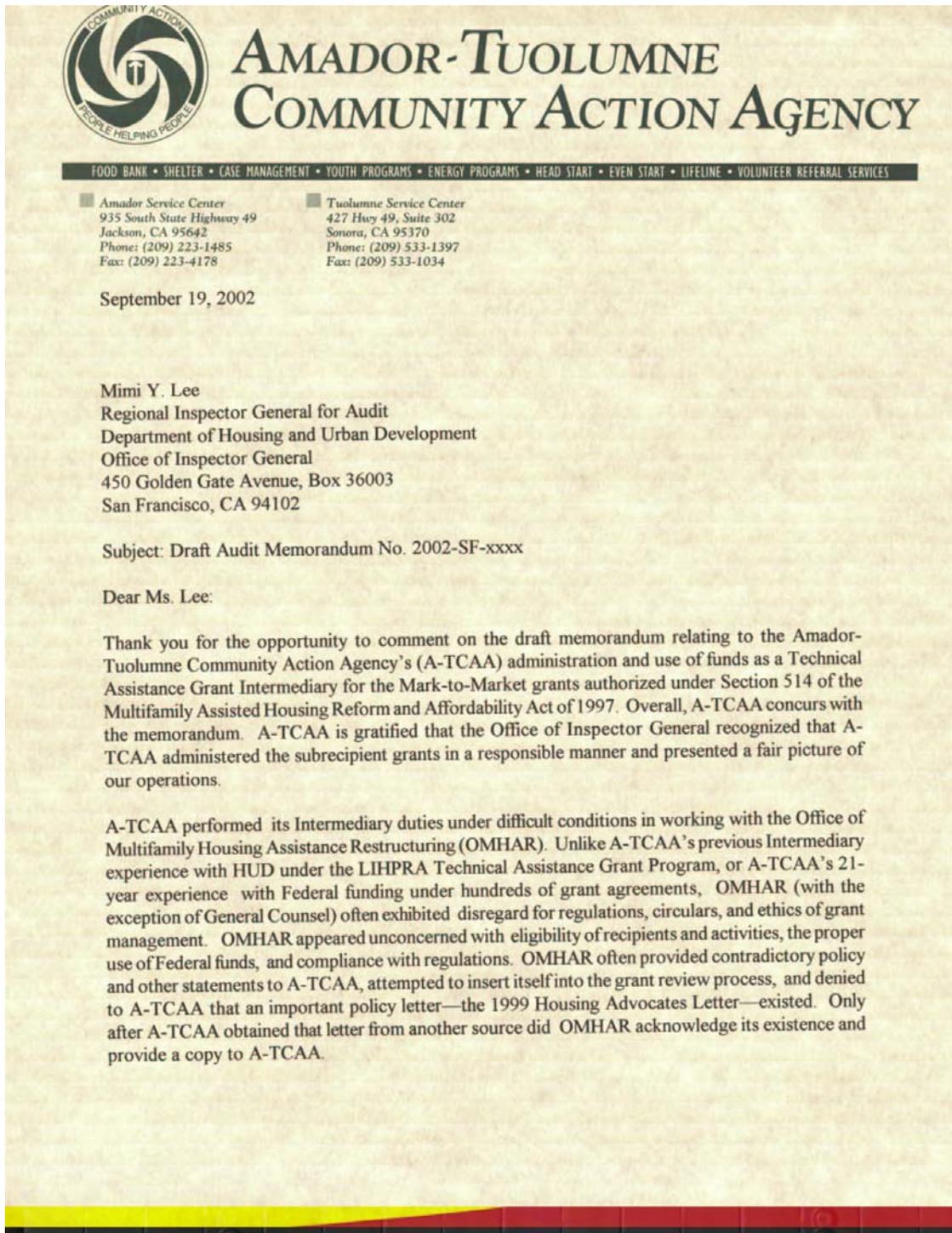
No recommendation will be controlled under this report in relation to the payroll and allocation support, since there is no indication inappropriate amounts were charged to the ITAG and the A-TCAA appears to be taking steps to deal with the matter. We recommend that you:

- 1A. Take appropriate action under Section 1303 of the fiscal year 2002 Defense appropriations Act for the instance where ITAG funds were used for lobbying activity.

Within 60 days please provide us, for the above recommendation, 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. 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 me at (415) 436-8101.

AUDITEE COMMENTS



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September 19, 2002

Mimi Y. Lee
Regional Inspector General for Audit
Department of Housing and Urban Development
Office of Inspector General
450 Golden Gate Avenue, Box 36003
San Francisco, CA 94102

Subject: Draft Audit Memorandum No. 2002-SF-xxxx

Dear Ms. Lee:

Thank you for the opportunity to comment on the draft memorandum relating to the Amador-Tuolumne Community Action Agency's (A-TCAA) administration and use of funds as a Technical Assistance Grant Intermediary for the Mark-to-Market grants authorized under Section 514 of the Multifamily Assisted Housing Reform and Affordability Act of 1997. Overall, A-TCAA concurs with the memorandum. A-TCAA is gratified that the Office of Inspector General recognized that A-TCAA administered the subrecipient grants in a responsible manner and presented a fair picture of our operations.

A-TCAA performed its Intermediary duties under difficult conditions in working with the Office of Multifamily Housing Assistance Restructuring (OMHAR). Unlike A-TCAA's previous Intermediary experience with HUD under the LIHPRA Technical Assistance Grant Program, or A-TCAA's 21-year experience with Federal funding under hundreds of grant agreements, OMHAR (with the exception of General Counsel) often exhibited disregard for regulations, circulars, and ethics of grant management. OMHAR appeared unconcerned with eligibility of recipients and activities, the proper use of Federal funds, and compliance with regulations. OMHAR often provided contradictory policy and other statements to A-TCAA, attempted to insert itself into the grant review process, and denied to A-TCAA that an important policy letter—the 1999 Housing Advocates Letter—existed. Only after A-TCAA obtained that letter from another source did OMHAR acknowledge its existence and provide a copy to A-TCAA.

■ AMADOR-TUOLUMNE COMMUNITY ACTION AGENCY ■

A-TCAA realizes its experiences with OMHAR were aberrations and are not reflective of HUD's operations, professionalism, or ethics. A-TCAA has appreciated the opportunity to work with HUD as a grants pass-through Intermediary and looks forward to a continuing positive working relationship with HUD.

A-TCAA offers the following comments relating to the draft memorandum.

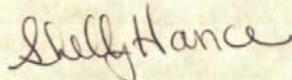
Introduction (page 1): A-TCAA requests that the Introduction be revised to clarify that the Congressional directed audit was of **each grantee** receiving a Section 514 Technical Assistance grant under the Multifamily Assisted Housing and Reform Affordability Act of 1997. A-TCAA was not singled out or specifically identified by Congress for audit.

Recommendations 1.A. (page 6): A-TCAA was distressed read in the draft audit memorandum that OMHAR received a June 24, 1999, legal opinion regarding use of grant funds for NAHT conference attendance and did not share this opinion with OTAG and ITAG grantees. A-TCAA, however, is not surprised at this lack of communication from OMHAR. As our correspondence with OMHAR, reviewed by the OIG Auditor, indicated A-TCAA repeatedly engaged in predominately one-way documented communication with OMHAR for policy interpretations and clarifications, waiting up to 11 months for response from OMHAR.

In response to Recommendation 1.A., A-TCAA will request the June 24, 1999, legal opinion from OMHAR. Using this legal opinion and appropriate regulations and circulars, A-TCAA will develop guidelines and/or a checklist for use by both A-TCAA and subrecipients in submitting and reviewing reimbursement requests for any activities that include the potential for lobbying. A-TCAA will also require that subrecipient progress reports provide greater detail regarding time and activities where lobbying might have occurred.

If you have any questions or need additional information, please contact either Shelly Hance, Executive Director, at 209-533-1397, extension. 236, or Diane Bennett, Intermediary Director, at extension 225.

Sincerely,



Shelly Hance
A-TCAA Executive Director

cc: Diane Bennett, Intermediary Director
Laurie Webb, Chairperson, A-TCAA Board of Directors

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