audit report

Issue Date	July 23, 2004
Audit Case Number	2004-AT-1011

TO: R. Edmond Sprayberry, Director, Office of Public Housing, 4CPH

James D. McKay

FROM: James D. McKay
Regional Inspector General for Audit, 4AGA

SUBJECT: Opelika Housing Authority (OHA)
Public Housing Programs
Opelika, Alabama

INTRODUCTION

We have completed our audit of the Opelika Housing Authority (OHA) and its relationship with an affiliated nonprofit, the Opelika Housing Development Corporation (OHDC). The audit was performed at the request of the Director, Office of Public Housing, in Birmingham, Alabama. The Director requested the audit because a management review of OHA identified improper transfers of land and funds regulated by the Department of Housing and Urban Development (HUD). Our audit objective was to determine the extent of regulated OHA resources that were improperly diverted to the benefit of the OHDC, or pledged to the benefit of other entities, without HUD approval.

To accomplish our objective we reviewed applicable HUD regulations, the Annual Contributions Contract (ACC), and other HUD requirements. We reviewed OHA internal control policies, minutes of Board of Commissioner meetings, financial statements, general ledgers, check vouchers and invoices. We reviewed the OHDC Board minutes, financial statements, check register and supporting documents, project records, and operating agreements. We examined a non-representative sample of 129 OHA expenses totaling $958,492, and traced the selected expenses to invoices, cancelled checks, and bank statements to confirm payment and amounts. We also reviewed the latest HUD management review report on the OHA and interviewed responsible OHA and Birmingham Public Housing officials and staff.

We performed on-site audit work from September through December 2003. Our audit generally covered the period July 1998 through August 2003. We performed the audit in accordance with generally accepted government auditing standards.

We discussed our results with HUD and OHA officials during the audit. Exit conferences were held on April 30 and May 12, 2004, respectively, with HUD and OHA representatives. HUD officials agreed with the findings and recommendations.

The OHA provided a written response to the draft report on June 3, 2004. Their comments are summarized in the finding and included in their entirety as Appendix C.

The Director, Office of Public Housing, Birmingham field office, provided written management decisions for the audit recommendations on July 20, 2004. OIG concurs with HUD's management decisions on all audit recommendations.

In accordance with HUD Handbook 2000.06 REV-3, you should submit final action documentation to your designated audit liaison when actions are completed. 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 (404) 331-3369.

SUMMARY

The OHA improperly sold 9.932 acres of land for $116,000 and loaned $130,000, to its affiliated non-profit, OHDC, without HUD approval. The OHA sold the land to OHDC without a current appraisal of the property. The Executive Director also signed agreements stating that the OHA guaranteed third party obligations for a proposed housing development on the aforementioned land. Additionally, the OHA improperly paid at least $56,098 of OHDC costs, and $91,250 of ineligible housing assistance payments (HAP) to the OHDC. These improper transactions occurred because the Board of Commissioners (Board) and Executive Director served in conflicting roles, respectively, as the Board and President of the OHDC, and did not establish management controls to safeguard OHA resources and ensure compliance with HUD requirements. These improper actions weakened the OHA's financial position to the benefit of the OHDC, and expose the OHA to potential liability if the OHDC or its development project fails.

BACKGROUND

The OHA is a non-profit public corporation established in 1949, and receives its authority from state legislation and from the ACC agreement with HUD. The programs it has chosen to implement in partnership with HUD define its relationship with and accountability to HUD. The consolidated ACC for Low Rent Housing, Section 8 HAP vouchers, and the regulatory and statutory rules governing HUD programs define the terms of that partnership.

The mission of the OHA is to develop and operate each project solely to provide decent, safe, and sanitary housing to eligible families in a manner that promotes serviceability, economy, and stability of the project, and the economic and social health of the tenants. The OHA operates

641 housing units located at 10 different sites in Opelika and Camp Hill, Alabama. The OHA administers 490 Section 8 vouchers.

A five member Board of Commissioners appointed by the Mayor of the City of Opelika governs the Authority. The Board is responsible for approving by-laws, policies, and procedures, selecting or terminating key personnel, and reviewing and monitoring budgets. However, the OHA has complete legislative and administrative authority and it recruits and employs personnel. The Authority adopts a budget that is approved by the Board of Commissioners.

The OHA's Executive Director was hired in 1998. The Chairperson of the Board of Commissioners has served on the Board since 1994. HUD's Alabama State Office, Office of Public Housing, in Birmingham, Alabama, is responsible for overseeing the OHA. The OHA's financial records are maintained primarily at its central office located at 1706 Toomer Street, Opelika, Alabama.

Funding for OHA operations is received primarily from HUD. For calendar year 2003, OHA received \$973,650 in Capital Funds, \$1,663,459 in Low Rent Housing operating subsidy, and \$2,130,879 in Section 8 HAP funds.

FINDING 1 - The OHA Improperly Transferred Land and Funds, And Paid Costs For Its Affiliated Nonprofit Corporation

The OHA improperly sold 9.932 acres of land and loaned $130,000 to its affiliated non-profit, OHDC, without HUD approval. The OHA sold the land to OHDC for $116,000, without an appropriate appraisal for the property. The loan was intended to finance certain housing developments on the land it sold. The Executive Director also signed agreements stating that the OHA guaranteed third party obligations for a proposed housing development on the aforementioned land. Additionally, the OHA improperly paid at least $56,098 of OHDC costs, and $91,250 of ineligible HAP to the OHDC. These improper transactions occurred because the Board and Executive Director served in conflicting roles, respectively, as the Board and President of the OHDC, and did not establish management controls to safeguard OHA resources and ensure compliance with HUD regulatory requirements. All of these improper transactions weakened the OHA's financial position to the benefit of the OHDC, and expose the OHA to potential liability if the OHDC or its development project fails.

Criteria

The ACC Agreement, Part A, Section 7, Covenant Against Disposition and Encumbrances, provides, in part, that the housing authority shall not in any way encumber any such project, or portion thereof, without the prior approval of HUD.

Part A, Section 8, Declaration of Trust, states that "Promptly upon the acquisition of the site of any project, the HA shall execute and deliver an instrument (which may be in the form of a declaration of trust, a trust indenture, or such other document as may be approved by HUD), confirming and further evidencing, among other things, the covenant of the HA not to convey or encumber the project except as expressly authorized in this ACC".

Part A, Section 9, Depository Agreement and General Fund, allows the OHA to withdraw funds from the General Fund only for: (1) payment of the costs of development and operations of the projects under its ACC with HUD; (2) the purchase of investment securities as approved by HUD; and (3) such other purposes as may be specifically approved by HUD.

Part A, Section 19, Conflict of Interest, prohibits the housing authority from entering into any contract or arrangement in connection with a project under this ACC in which any employee who formulates policy or who influences decisions with respect to the project(s), has an interest, direct or indirect, during his or her tenure or for 1-year thereafter.

OHA Improperly Sold Land to OHDC

A HUD review found that the OHA sold 9.932 acres of land to OHDC for $116,000, without obtaining an appraisal for the property, and without HUD's prior approval. Without an appraisal of the land value at the time of sale, the reasonableness of the $116,000 sale price is unknown. HUD's review further cited that the OHA had not amended its ACC and Declaration of Trust to add the vacant land when it was acquired by OHA.

On February 17, 2003, the OHDC issued, and the OHA accepted, a 20-year, interest free, $116,000 note for the land, thus providing the OHDC with a substantial financial subsidy. Assuming a conservative interest rate of 7 percent, the OHA will provide a $99,843 interest subsidy to the OHDC over the 20-year term of the note. The note provided for monthly principal payments of $500 beginning January 2004 and ending April 2023. If the OHDC defaults on any monthly payment, interest will be due on the entire balance at 8 percent per year. No collateral was provided for the note.

The OHDC/OHA Board of Directors then transferred title and donated the land to Ashton Way Apartments, LLC, a for-profit company, on April 18, 2003. Further, the Executive Director signed the statutory warranty deed as the President of OHDC and the Chairman of OHA's Board signed as the Treasurer of OHDC. These transactions occurred because the Executive Director and Board wanted to provide OHDC with capital to contribute toward the development of Ashton Way Apartments, a proposed 70-unit affordable housing project. The donated property is the designated site for the project.

In the Amended and Restated Operating Agreement of Ashton Way Apartments, LLC, dated October 15, 2003, Ashton Way GP, Inc. is the designated "managing member," Housing Consultant, Inc., and the OHDC are the "withdrawing initial members," and Apollo Housing Capital, L.L.C. is the "investor member" for the project. Ashton Way Apartments, LLC's principal place of business is 1706 Toomer Street, Opelika, Alabama, the address of the OHA. Ownership interests in the project are shown in the table below.

Ashton Way Apartments Project

Company	Company Owners	Owner Interests
Ashton Way Apartments, LLC	Housing Consultants, Inc. Ashton Way GP, Inc.	99% 1%
Ashton Way GP, Inc. (managing member)	Housing Consultants, Inc. OHDC	51% 49%

OHA Guaranteed Third Party Obligations

The Executive Director signed a letter of intent on June 12, 2003, which addressed the terms and participants in the Ashton Way Apartments development project, and provided that the OHA guaranteed all obligations of the general partner. The Executive Director, serving in dual roles, signed the letter as a general partner of OHA and also for the OHA as a guarantor. According to OHA attorney, the signature as general partner should have been for the OHDC, not OHA.

Additionally, the Executive Director signed Exhibit D of the Ashton Way Operating Agreement, dated October 15, 2003, which states that the OHA guaranteed all obligations of the managing member and the developer. The managing member is Ashton Way GP, Inc. These actions place all OHA assets at risk of loss in violation of ACC requirements.

HUD received a legal opinion from OHA's attorney stating that the guarantee was merely an accommodation and any judgment against Federal property would not be collectable. The opinion further stated that in the event of a total bankruptcy of all the parties in interest there is an owner's title policy to cover such loss to the equity investor. However, HUD's Office of General Counsel disagreed with the opinion. OGC advised that HUD rarely chooses to intervene to protect housing authority assets in contract dispute lawsuits brought by third parties and that the title policy only protects against clear title errors. Furthermore, the OHA could be exposed to high litigation costs if the project development failed.

OHA Improperly Transferred Funds to OHDC

A HUD review of OHA in November 2002 and January 2003, found that in August 2002 the Executive Director requested, and the Board authorized a $130,000 transfer from OHA's Low Rent Public Housing Reserve to the OHDC. OHDC used these funds to build three houses on a small portion of the land that OHA subsequently sold to OHDC. The OHDC sold the three houses on July 16, July 22, and August 28, 2003, for $70,000 per house.

Since HUD found that the $130,000 was improperly loaned from Low Rent public housing reserves, OHA adjusted its books to fund the loan from its Section 8 reserves. In August 2003, the OHDC repaid the $130,000 to the OHA. However, in an email message to HUD and OIG dated December 10, 2003, the Executive Director proposed to reverse the loan payoff because OHDC did not have sufficient funds to repay the $130,000 and the $116,000 note for the land purchase. A reversal of the loan payoff would perpetuate the non-arms length relationship between OHA and OHDC, and should not be allowed. If HUD decides to allow OHA to loan available funds to OHDC, a new loan with terms (repayment period, interest rate, and collateral) that safeguard OHA resources should be used.

Conflicts of Interest

The Board and Executive Director served in conflicting roles, representing the interests of both OHA and OHDC in financial transactions between the two entities. As previously noted, all the improper transactions benefited the OHDC at the expense of the OHA. We believe this pattern of conduct violates Section 19 of the ACC conflict of interest restrictions. The OHA Board and the OHDC Board were identical, and the Executive Director served as the OHDC President. As previously stated, the OHA Board improperly approved the following transactions, which financially benefited the OHDC and weakened the OHA's financial position.

- August 19, 2002 - the OHA donated $130,000 OHDC to build three houses on a small portion of the 9.932 acres of vacant land belonging, at that time, to OHA. HUD's review objected to the $130,000 donation. OHA subsequently recorded the $130,000 as a loan to OHDC; however, no written loan agreement was executed.

- February 17, 2003 – OHA sold the 9.932 acres to OHDC for $116,000, without a current appraisal of the land value.

- April 15, 2003 – OHA accepted a $116,000 interest free promissory note for the land, with no collateral. The Executive Director signed the note as the OHDC president.

OHA Board Resolution 2003-03, undated, proposed changing the number of directors serving on the OHDC Board from five to three. This change violated Article VI of the OHDC Articles of Incorporation, which states: "A change to the number of Directors of the Corporation shall be made only by amendment to the Bylaws of the Corporation". At the time of our on-site review, there were no amendments or proposed amendments to the Bylaws. On September 15, 2003, the Board approved and adopted Resolution 2003-20, appointing a separate three member OHDC Board of Directors. However, the OHA Board Chairman was appointed to serve on the OHDC Board.

OHA Improperly Paid Costs For OHDC

The OHA improperly paid costs that benefited and should have been paid by OHDC. We reviewed a sample of 129 OHA expense transactions from the period January 1999 through August 2003. We selected the transactions based upon expense types and vendors that may have benefited the OHDC. This testing identified $56,098 in administrative, operational, attorney, and maintenance costs that should have been paid by the OHDC. Appendix B lists the ineligible costs.

The OHDC had no employees and all services and operations were provided by OHA. Notes to the OHA's June 30, 2003, annual financial statements stated that OHA donated labor to OHDC, managed OHDC, and that management fees are not collected by OHA. The value of donated labor and management services was not quantified. As examples, the OHA Executive Director served as OHDC's President and OHA kept accounting records for OHDC, yet no salaries were charged to OHDC. We also found that OHA staff contracted for and managed the construction of three houses on behalf of the OHDC. It was not feasible for our audit to identify all costs and services improperly paid or incurred by OHA on behalf of the OHDC.

We also identified $1,190 of ineligible membership dues paid by OHA. The OHA paid membership dues to the Housing and Development Law Institute on behalf of its attorney. Membership dues for third parties are not a necessary OHA expense.

OHA Paid Ineligible Section 8 Subsidies to OHDC

The OHA paid the OHDC $91,250 in ineligible HAP from February 1993 through December 2003. The OHDC owned three properties that were rented to supposedly eligible tenants, and were therefore receiving HAP subsidies. We found that two of the houses were rented to ineligible tenants: the Domestic Violence Intervention Center and the Alabama Council on Human Relations, two non-profit organizations. Federal regulations at 24 Code of Federal Regulations (CFR) 982.201 provide that only eligible families are admitted to the Section 8

Program. To be eligible, the applicant must be a family and must be income-eligible. Non-profit organizations are not eligible. The Executive Director stated that HAP for the non-profit tenants began before he joined the OHA and he continued the payments. He also said that he saw no reason to stop the HAP, since the organizations were helping individuals in the community.

Board Responsibility

The OHA Board of Commissioners has the ultimate responsibility for public housing operations including approving policies and procedures, monitoring functions, and ensuring that the public housing agency acts legally and with integrity in its daily operations. The transactions cited above demonstrate that the OHA Board and Executive Director did not maintain an arms length relationship between the OHA and OHDC. The OHA Board and Executive Director improperly depleted OHA assets and placed OHA assets at unnecessary risk of loss, to the benefit of the OHDC.

OHA COMMENTS

The OHA concurred with audit recommendations 1B, 1D, 1E, 1F and 1I, but did not provide specific information concerning actions taken or planned. OHA also stated that it had terminated the ineligible HAP per recommendation 1H.

The OHA stated that it purchased the land with the intent of developing elderly or low-income housing. It later decided to partner with the OHDC to develop a housing project, and it requested HUD approval to transfer the land to OHDC. After receiving approval for Low Income Tax Credits to finance the project, it again sought approval of the land transfer from HUD's Special Applications Center but has not received a response.

Regarding the $130,000 loan to OHDC, OHA responded that the funds benefited Family Self-Sufficiency Program participants who bought three homes that were built with the funds and were sold below market value. It stated that neither the OHA nor OHDC profited from the home sales.

The OHA response stated that proper cost allocations will be made and have been accomplished as part of its new accounting software and employment of an accountant.

OHA did not agree that portions of the ineligible costs paid on behalf of OHDC should be recovered. It disputed some of the questioned amounts, and stated that other amounts represented repayment of funds borrowed from OHDC that were not recorded in its accounting records. OHA also disagreed that it should repay all of the ineligible HAP.

OIG EVALUATION OF OHA COMMENTS

OHA's intentions with regard to the sale of land and the $130,000 loan do not excuse violations of its ACC and improper use of ACC regulated resources. Providing new housing units was a laudable purpose, but the improper actions taken by OHA officials depleted housing authority assets and placed its remaining assets at unnecessary risk of loss.

The new accounting software and accountant were in place prior to our audit, but OHA had not made cost allocations to OHDC. As per recommendation 1D, a cost allocation plan must be provided and approved by HUD, which OHA agreed to do.

The ineligible costs must be recovered or paid from non-regulated funds, unless OHA can provide credible evidence that the costs were reasonable and necessary costs of operating the OHA. Merely stating that some costs represented repayment of unrecorded loans from OHDC does not provide credible evidence. OHA's audited financial statements for prior years did not disclose any payables to OHDC (or to OHDC accounts when it was accounted for as part of OHA). Furthermore, since the creation of OHDC, OHA has provided all of its management and administrative services without compensation. Arguments that OHA borrowed OHDC funds in periods more than 2 years ago would also need to consider and document the uncompensated value of management, services, and other overhead costs provided by OHA.

We suggest to HUD that it consult with the OGC to determine if any statutes would limit HUD recovery of ineligible HAP, which occurred from February 1993 through at least December 2003.

HUD concurred with all audit recommendations and provided a detailed corrective action plan. HUD will require the OHA to submit its corrective action plan within 60 days. HUD plans for the OHA to complete each final action within 60 days to 12 months, and will negotiate a repayment plan for ineligible costs cited in this report. OIG concurs with HUD's management decisions for all audit recommendations.

RECOMMENDATIONS:

1A. Consider requiring the Executive Director to resign the Presidency of the OHDC.

1B. Require the Executive Director and OHA Board of Commissioners to attend training in HUD requirements for use of housing authority resources.

1C. Require OHA to obtain an appropriate appraisal of the transferred property and recover any shortage in the sale price. After the appraisal, the OHA should provide the sale price and appraisal information to HUD's Special Applications Center, and request post-approval of the sale.

1D. Require OHA to establish specific internal controls to prevent further improper use of OHA resources. Such controls should include as a minimum: Hiring a separate attorney to represent only OHA in contracts and transactions with related parties, Board notification to HUD of financial transactions with or on behalf of the OHDC and any other related entities prior to Board approval thereof, and the immediate establishment of a cost allocation plan for all services and support provided by OHA to other entities.

1E. Require OHA to collect the $116,000 interest free note, to prevent a $99,843 interest subsidy to OHDC over the 20 year term.

1F. Require OHA to amend the guarantee of general partner and developer obligations on the Ashton Way Apartments project, to limit OHA liability to non-ACC regulated resources.

1G. Require OHA to recover $56,098 it used to improperly pay OHDC costs and to immediately cease paying OHDC costs from HUD regulated resources.

1H. Require OHA to repay HUD $91,250 for ineligible HAP, plus any further ineligible HAP paid after December 2003, and immediately cease paying HAP for ineligible tenants.

1I. Require OHA to recover $1,190 in ineligible attorney membership costs or charge such costs to non-ACC regulated funds.

MANAGEMENT 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:

- Safeguarding of Resources – Policies and procedures that officials of the audited entity have implemented to reasonably prevent or promptly detect unauthorized acquisition, use, or disposition of resources.

- Controls over compliance with applicable laws and regulations and provisions of contracts or grant agreements – Policies and procedures that management has implemented to reasonably ensure that program implementation is consistent with laws, regulations, and provisions of contracts or grant agreements.

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

Based on our audit, we identified the following significant weaknesses:

- Controls to safeguard resources -- The OHA made transfers of property and funds to the OHDC. We found no formal written procedures for management and accounting approval of loans and transfers of resources to other entities. As noted in the Finding, the OHA Board of Commissioners and Executive Director served in conflicting roles with the OHDC, and did not maintain a prudent arms length business relationship between OHA and OHDC.

- Controls over compliance with applicable laws and regulations and provisions of contracts or grant agreements -- The OHA had no controls to ensure compliance with the ACC and other HUD requirements. The OHA Board of Commissioners and Executive Director served in conflicting roles with the OHDC, and did not maintain a prudent arms length business relationship between OHA and OHDC. Also, legal counsel for OHA routinely worked on OHDC business, with OHA paying for this expense, and OHA employees performed all work needed to operate the OHDC without any plan for allocation of costs.

FOLLOW-UP ON PRIOR AUDITS

This was the first Office of Inspector General audit on the Housing Authority of the City of Opelika.

HUD's Public Housing division completed a Management Review of the OHA programs in November 18-22, 2002 and January 27-30, 2003. HUD's report contained six (6) findings and three (3) concerns related to our audit objective. The findings and concerns involved issues that we also reviewed and identified further violations as presented in Finding 1 of this report.

We obtained and reviewed OHA's annual audited financial reports for the fiscal years ended June 30, 2002 and June 30, 2003. The June 2002 audit report did not contain any findings. The June 2003 audit report contained four findings, however the findings replicated findings reported by HUD in its Management Review of OHA. The four findings were not relevant to our audit objective.

SCHEDULE OF QUESTIONED COSTS AND FUNDS PUT TO BETTER USE

Recommendation Number	Type of Questioned Cost Ineligible 1/	Funds Put to Better Use 2/
1E		$ 99,843
1G	$ 56,098	
1H	91,250	
1I	1,190	
Totals	**$ 148,538**	**$ 99,843**

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/ Funds Put to Better Use identifies funds that will not be expended in the future if the audit recommendations are implemented. Funds Put to Better Use may include: Costs not incurred, de-obligation of funds, withdrawal of interest, reductions in outlays, avoidance of unnecessary expenditures, loans and guarantees not made, and other savings.

DETAIL OF QUESTIONED COSTS AND FUNDS PUT TO BETTER USE

OHDC Costs Paid By OHA					
No.	Vendor/Payee	Check Date	Ineligible Costs	Check No.	Exceptions
1	Alabama Homebuilders	6/25/2002	$ 205	34758	Application for new OHDC license attached to OHA check copy.
2	Attorney	6/13/2003	406	4198	Per Attorney $2,027 Invoice; $406 was for opinion of counsel for transfer of property [to Ashton Way LLC].
3	Attorney	2/7/2003	69	35828	Per Attorney $812 Invoice; $69 was Attorney fees for filing OHDC Articles of Incorporation.
4	Attorney	3/25/2003	522	36073	Per Attorney $1,745 Invoice; $522 was Attorney fees for OHDC name, and IRS Tax Exempt Status. All OHDC expenses.
5	Attorney	8/26/2002	510	35057	RE: OHDC. Preparation of Affidavits and resolutions; obtaining signatures; and internet research.
6	Attorney	12/20/2002	688	35598	LIHTC – Ashton Way LLC. Travel to Brundidge to inspect Trustmark project.
7	Attorney	12/23/2002	1,312	35626	Travel costs for Training re: Low-income housing tax credits and tax exempt bonds for Ashton Way Apartments project.
8	Boles Engineering	6/24/2002	1,240	652	Payment for an Erosion control site plan for the OHDC project on Clifford Street.
9	Boles Engineering	5/23/2002	950	645	Payment for the survey of three lots on Clifford Street. OHDC Expense.
10	Boles Engineering	7/22/2002	210	657	Site plan drawing for construction of three homes on Clifford Ave. OHDC expense.
11	City of Opelika	7/22/2002	1,150	34898	Water activation at 110 Clifford Ave. OHDC expense
12	City of Opelika	7/12/2002	1,270	24847	Building permits related to OHDC.
13	Coolhouseplans.com	5/8/2002	1,026	34519	House plans related to OHDC.
14	Hollaway Credit Bureau	6/25/2002	35	34759	Credit Check related to OHDC houses.
15	OHA work orders	12/1998 – 12/2003	7,002	n/a	Labor and Materials supplied for three OHDC owned rental homes. OHDC Expense.
16	OHDC	10/18/2002	204	676	Payment for reimbursement to OHA for the concrete used to pour the driveway at the Maintenance Bldg. However, the invoice from vendor states that the delivery address is Clifford St. HUD identified this expense in its OHA Review.
17	OHDC	4/30/2002	39,299	640	Transfer of funds to OHDC, per Executive Director request. OHA accounting personnel could not find any support for this transfer. HUD identified this expense in its OHA review.
Total OHDC Costs Paid by OHA			**$56,098**		
Ineligible Costs					
1	Housing & Development Law Institute	6/26/03	$ 595	4377	Membership renewal fee for OHA attorney.
2	Housing & Development Law Institute	5/16/02	595	34602	Membership renewal fee for OHA attorney.
Total ineligible costs			**$1,190**		
Ineligible HAP			**$91,250**		Ineligible monthly rent subsidies on two OHDC owned properties from February 1993 through December 2003.
Funds Put To Better Use			**$99,843**		Interest subsidy at 7 percent on 20-year, interest free Note from OHDC to OHA.

Appendix C

AUDITEE COMMENTS

Housing Authority of the City of Opelika

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June 1, 2004

Mr. James D. McKay
Regional Inspector General for Audit
U. S. Department of Housing and Urban Development
Office of the Inspector General for Audit, Region 4
Richard B. Russell Federal Building
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Atlanta, GA 30303-3388

Dear Mr. McKay:

Subject: AUDIT OF THE HOUSING AUTHORITY OF THE CITY OF OPELIKA AND OPELIKA HOUSING DEVELOPMENT CORPORATION

This is in response to the findings regarding the above mentioned subject and the exit conference at the Housing Authority of the City of Opelika's Board Room on Tuesday, May 11, 2004 with Terry Cover and Nicole Jackson from the your office and James Walker from the Alabama HUD office.

The following is our response:

Sale/Transfer of the 9.923 Acre Property:
The Housing Authority purchased the 9.229 acre land a few years ago in anticipation of receiving a Section 202 grant application for the development of an elderly designated complex and/or home ownership program for the Low Rent Public Housing residents. Our Section 202 grant application was not successful but we were advised by a HUD Attorney at the time that we have a better chance if we collaborated with a non-profit organization when writing such grant applications. It became clear to us after the unsuccessful 202 application that the possibility of getting any funding from HUD for a new development was quickly diminishing or impossible. We could either sell the land or use it to benefit the low income citizens of Opelika. Our next alternative was to follow the advice we were given. We applied for the Low Income Tax Credits in collaboration with Opelika Housing Development Corporation and Housing Consultants, Inc.

In your report you mentioned that "OHA improperly sold 9.923 acres of land". Prior to the application being submitted to the financing agency, the Housing Authority began conversations with the Alabama HUD office and HUD's Special Application Center regarding the transfer of the mentioned land. All indications received from these offices were that there would be no problem.

Once the project was approved for funding, we had to proceed within six months of award or loose about $6 million funding. Attached is a letter dated December 18, 2002 to Mr. Ainars Rodiins, Director of the Special Application Center regarding the disposition of the 9.923 acre property. Form HUD-52860 (Demolition/Disposition Application) and a complete Appraisal Report were included in this letter as requested by the Special Application Center. Also attached is a letter dated March 13, 2003 to the same with (1) Support letter from the Mayor (2) Resident Advisory Board Minutes (3) Public Hearing Memorandum (4) Offer to sell letter and (5) Support letter from the Resident Advisory Board. Copies of the letters were also sent to the Alabama HUD office. In this letter, HUD was informed the Tax Credit could be lost if the 9.923 acre was not transferred before the grace period. We have not heard from the Special Application Center to date.

Three (3) houses were built on part (approximately .75 acres with road frontage) of the 9.923 land for the Public Housing FSS participants. Market value of these lots was approximately $15,000 each. OHDC was not compensated at all for these lots.

The OHDC has a promissory agreement to pay back the Housing Authority for the cost of the property. OHDC will begin payment to the Housing Authority as soon as it starts generating income on the 70 elderly complex and will issue whatever security is deemed necessary and appropriate.

The $130,000 Loan

As mentioned in your report this loan has been paid. The $130,000 loan was used to build three (3) single family houses for the Housing Authority's Public Housing Family Self-Sufficiency Program participants. The houses, which could have sold for up to $110,000 each on the open market, were sold for $65,000 each to Housing Authority's residents. This would not have been possible without the in-kind services provided by the Housing Authority. Again, the Housing Authority's FSS Participants were the beneficiaries of this loan. The houses were built by the non-profit for flexibility purposes. We wanted to find a way to sell the houses first to the public housing residents then to Section 8 participants. We know that the majority of our FSS participants do not have good credit. Had the houses been sold on the market, it would have generated about $135,000 profit to the non-profit. This would have been more than enough to pay for the appraised value of the entire 9.923 acre land. The purpose of this project was to help low income people achieve home ownership. Neither the Opelika Housing Development Corporation nor the Opelika Housing Authority profited from these home ownership transactions.

Third Party Obligation Guarantee

The Housing Authority's Board of Commissioners and myself were assured by our attorney that minimal risk exists in signing this document. At the request of HUD, our attorney also wrote an opinion regarding this guarantee. We have agree to attempt to have the guarantee released, or alternatively, to find insurance to cover any potential liability.

RESPONSE TO HUD RECOMMENDATIONS:

1A. After our HUD audit and prior to the OIG audit, changes were made to the structure of OHDC in order eliminate potential conflicts of interest with OHDC. For that reason no further changes are necessary at this time. Future transactions between the two entities will be carefully scrutinized.

1B. We concur.

1C. We did an appraisal as per attached document. If the question is 'What is the value of the raw land today?", then we will have a new appraisal done. However, the appraisal we have was done within eighteen months of the transfer date and the purchase price was increased to cover all Housing Authority expenses. We have applied to the Special Application Center for approval of the land donation in December 2002. (See attached) An answer from them might eliminate the need for this additional expense.

1D. We concur.

1E. We concur.

1F. We concur.

1G. In the future, proper allocations will be made to accurately reflect each entity's financial responsibilities. This has been accomplished as a part of changing the authority's accounting software and employment of an in-house accountant.

$56,098 Paid Expenses

Items 1 through 5 totaling $1,712 will be repaid to the Housing Authority.

The Housing Authority will be managing the Ashton Way Apartments and will receive management fees; items 6 and 7 were Housing Authority's cost of learning and training for the management of a tax credit property. Again, the Housing Authority has to know the various rules and regulations of managing a tax credit property if it is to assume management the property.

Item numbers 8 through 14 totaling 5,881.00 was in-kind from the Housing Authority for the building of the three homes for the Public Housing FSS participants. The brand new single-family houses could not have been sold for $65,000 without the in-kind payments. Again, Public Housing residents were beneficiaries of the houses and we can not legally recoup these funds from the former public housing residents and home owners. Furthermore, the repayment of these funds will be a breach of the agreement between and the intentions of the Housing Authority and Opelika Housing Development Corporation.

Item number 16 was the Housing Authority's allocated portion of the bill for concrete poured at the Maintenance building and at the houses on Clifford Street. The concrete was poured for the side-entrance to the Maintenance Building. This is a legitimate Housing Authority expense.

ITEM #17

Over half-million dollars was transferred from the non-profit for the benefit of and to pay Housing Authority expenses over the years. This was done for numerous reasons which had only to do with financial fluidity and the fact that HUD funds were sometimes delayed due to budgetary and technical restraints.

The sum of $39,299 (item #17) had been dormant in one of the closed grants for about three years before it was transferred to the non-profit. Our old computer system did not automatically account for the accounts payable/receivable.

Clearly, these funds accumulated because of a failure to reimburse OHDC

4

for funds expended on behalf of the Housing Authority.

1H. The Housing Assistance Payments have been terminated. We are in the process of researching initial notification and HUD approval documents.

In the absence of such verification, we believe that it is not reasonable to require this amount to be repaid for a period beyond three years.

1I. Payment will be issued .

Please feel free to contact me at the above mentioned telephone number, address or via email at "akpopoola@opelikaha.org" for further details or information.

Thank you for your cooperation in this matter.

Sincerely,

Akinola Popoola

Akinola Popoola
Executive Director

Attachments:

1. December 18, 2002 request for land disposition letter and application package to the Special Application Center
2. March 13, 2003 request for land disposition letter and supporting documentation to the Special Application Center

cc: R. Edmond Sprayberry, Alabama HUD Office
Mayor Barbara Patton, City of Opelika
OHA Board of Commissioners
OHDC Board of Directors

Electronic Transmission/Original by Fedex Overnight Delivery