



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

ASSISTANT SECRETARY FOR
PUBLIC AND INDIAN HOUSING

AUG - 7 2007

VIA UPS DELIVERY AND FACSIMILE

Hon. Carlos Alvarez
Mayor
Miami-Dade County, Florida
Stephen P. Clark Center
111 N.W. First Street
Suite 2910
Miami, FL 33128-1994

Hon. Bruno A. Barreiro
Chairman of the Board of County Commissioners
Miami-Dade County, Florida
Stephen P. Clark Center
111 N.W. First Street
Suite 2910
Miami, FL 33128-1994

Subject: Declaration of Default – Section 8 Consolidated Annual Contributions Contract

Dear Mayor Alvarez and Chairman Barreiro:

I have received a letter dated May 15, 2007, from the Miami-Dade County Manager, George M. Burgess, on behalf of the Miami Dade Housing Agency (MDHA), responding to the Notice of Default of the Consolidated Annual Contributions Contract for Rental Certificate and Rental Voucher Programs - Section 8 (Section 8 ACC). On April 24, 2007, the Department provided notice to MDHA that it was in default of the Section 8 ACC. Although not required, HUD allowed MDHA a period of 15 calendar days to demonstrate that the Department's determination of default was not substantively accurate or to cure these violations. The Department has carefully reviewed MDHA's response to the Notice of Default and conducted a further on-site review to evaluate MDHA's progress regarding its reexamination activities. HUD's review found that not only has MDHA failed to make any progress in eliminating its backlog of annual reexaminations, the conditions have actually worsened. Moreover, MDHA's financial records remain inaccurate and unreliable, as demonstrated by the need for additional material adjustments reported in its audited financial statements filed in June 2007. Accordingly, for the reasons set forth herein, HUD hereby affirms that MDHA is in default of its Section 8 ACC.

VIOLATIONS SUPPORTING FINDING OF DEFAULT

1) Systemic Failure to Annually Reexamine Section 8 Tenants, in Violation of Sections 3(a), 8(c)(3), and 8(o)(5) of the United States Housing Act of 1937 and 24 C.F.R. § 982.516(a)

Under Section 10(a) of the Section 8 ACC, MDHA must comply with “the requirements of the Act and all HUD regulations and other requirements, including any amendments or changes in the law or HUD requirements.” Congress requires that tenants receiving Section 8 subsidy be initially determined as financially eligible for subsidy and that this determination be revisited at least annually. *See* 42 U.S.C. §§1437a(a)(1), 1437f(c)(3) and (o)(5). Tenant reexamination of income and family composition, and collection of supporting documentation, provides the means by which a public housing agency (PHA) may properly calculate a family’s contribution towards rent which in turn determines the amount of the subsidy the federal government pays on behalf of that family. Reexaminations are not only statutorily required, their importance cannot be overstated. Because the availability of Section 8 funding is far outstripped by the need for that funding, improper calculation of Housing Assistance Payments (HAP) may result in delaying or denying assistance to prospective tenants, already on the waiting list for years to obtain Section 8 subsidies through MDHA.¹

On April 24, 2007, HUD notified MDHA that it was in default of its Section 8 ACC for failure to perform timely annual tenant reexaminations. In its response to HUD’s Notice of Default, MDHA recognized that it was “obligated to ensure that annual recertifications are done in a timely manner.” MDHA also admitted that it was “behind in its annual recertifications.” Although MDHA disputed the extent of its reexamination violations, it conceded that approximately 40% of its required annual reexaminations were late, i.e. had not been performed.

In evaluating MDHA’s responses, HUD conducted a further on-site review of MDHA’s Section 8 voucher program. HUD reviewed MDHA’s database reports and determined that, as of January 18, 2007, approximately 36% of MDHA tenant reexaminations had not been completed within the twelve months immediately prior to the above referenced date. The HUD review also confirmed that, as of June 12, 2007, MDHA’s database reports show that approximately 40% of MDHA’s annual reexaminations had not been performed within the twelve months immediately preceding June 12, 2007. Both of these percentages are dramatically deficient.² As a frame of reference, a HUD study by the Office of Policy Development and Research determined that in FY 2005 the average percentage of untimely reexaminations by public housing authorities, including both those not performed or performed late, was only 5%.

MDHA further stated in its response that it had “already initiated corrective action by identifying the late re-examinations and MDHA has engaged a contractor to complete the back-log. We anticipate that our efforts will continue over the next 90-120 days.” The HUD review discussed

¹ MDHA’s current wait list has been closed since April 2005.

² In determining the reexamination deficiency rate, HUD focused only on instances in which reexaminations had not been performed at all, and did not count as a deficiency a reexamination that had been performed late, even though a late reexamination is also violative of the statute.

above demonstrates, however, that between January and June, 2007, MDHA's reexamination deficiency rate had increased from 36% to 40% based on MDHA's own database reports. The conclusion that MDHA's reexamination performance is worsening is also confirmed by HUD's review of four months of recent MDHA reexamination activity. To remain current in its reexaminations, MDHA would have needed to complete 1,060 reexaminations which were due by February 2007; 987 which were due by March 2007; 866 which were due by April 2007; and 877 which were due by May 2007. HUD's review determined that MDHA was only able to complete a total of 513 reexaminations in February; 683 in March; 716 in April; and 476 in May. Moreover, a portion of the reexaminations completed in each month were ones that had been due to be completed by prior months.

HUD also reviewed MDHA files to evaluate whether the reexaminations, which MDHA claimed to have completed between February and May 2007, complied with federal law and regulations. HUD's review disclosed that between 18.1% and 24.8% of the reexaminations that MDHA claimed to have performed were materially incomplete, which rendered the reexaminations invalid. Specifically this percentage was 24.7% in February; 22.7% in March; 20.2% in April; and 18.1% in May.

MDHA referenced a waiver it received of Section 8 Management Assessment Program (SEMAP) reporting until December 31, 2007. But the requirement to reexamine is a statutory obligation, which HUD has not and cannot waive. MDHA also assured HUD that it will take necessary steps to recover any funds improperly expended pursuant to Notice 2005-07. That Notice, however, does not preclude a declaration of default in order to prevent continued and substantial violations of statutory requirements in a Section 8 program.

Thus, HUD cannot rely on MDHA to adequately address mismanagement in the Section 8 program area or to prevent a recurrence of the current situation.³ The continued deficiency affecting approximately 40% of MDHA's tenant files, based on MDHA's own reports, combined with the additional evidence that reexaminations are being performed improperly, demonstrates the systemic nature of the violation and the inability of MDHA to resolve this violation.

2) MDHA's Financial Statements Have Violated Section 8 ACC, Sections 10(a) and 14(a), and 24 C.F.R. § 982.158(a)

The remaining violations in HUD's Notice of Default, sent April 24, 2007, detailed MDHA's failure to maintain books and records in accordance with HUD requirements. Pursuant to section 14(a) of the Section 8 ACC, MDHA "must maintain complete and accurate books of account and records for a program. The books and records must be in accordance with HUD requirements, and must permit speedy and effective audit."

³ In fact, despite the review and assessment of operations conducted by MDHA's Management Assistance Team, MDHA was unable to even identify the violations alleged in the Notice of Substantial Default.

A) Material Accounting Errors in Annual Financial Statements from 2003 – 2006.

MDHA did not dispute that it reported adjustments in its fiscal year (FY) 2003, 2004, and 2005 audited financial statements, which were caused by MDHA's failure to maintain accurate books and records and to submit accurate financial statements to HUD. The cumulative prior period adjustment reported in the FY 2003 audited financial statements was \$488,990 (representing a 12% adjustment) from its FY 2002 unaudited financial statements.⁴ The cumulative prior period adjustment reported in MDHA's FY 2004 audited financial statements was \$727,378 (representing a 25% adjustment) from its FY 2003 audited financial statements. The cumulative prior period adjustment reported in its FY 2005 audited financial statements was \$3,024,729 (representing a 42% adjustment) from its FY 2004 audited financial statements. Additionally, MDHA reported a cumulative prior period adjustment to the FY 2006 unaudited financial statements of \$2,547,190 (representing an 18% adjustment); in the audited financial statements for FY 2006 submitted to HUD on June 26, 2007,⁵ this adjustment grew to a cumulative \$7,116,871 (representing a 53% adjustment).

MDHA argued that certain adjustments reported in the FY 2003, 2004, and 2005 financial statements were immaterial in light of the total expenditures of the Section 8 Housing Choice Voucher Program. MDHA's argument is unpersuasive. First, prior period adjustments are, by definition, made for material errors in past financial statements.⁶ Second, prior period adjustments are made to the ending balances of prior year net assets (equity) to correct past errors, and are unrelated to current year expenditures. Materiality should be calculated in comparison to the amount that is actually being adjusted, which was the method used for calculating the percentage adjustment set forth in HUD's Notice of Default. Further, because total expenditures include all HAP subsidy payments, which are essentially passthrough funds and constituted 90% of MDHA total expenditures (\$102,042,094 out of \$112,897,302), any calculation of materiality based on the total expenditures would be vastly skewed by the inclusion of these passthrough funds. As such, the prior period adjustments reported by MDHA over the course of several years were material by definition.

In any event, MDHA's financial position was not properly reported to the Department, resulting in MDHA undertaking the constant reporting of prior period adjustments, which reporting has continued through the FY 2006 audited financial statements submitted on June 26, 2007.⁷

⁴ MDHA never filed acceptable audited financial statements for FY 2002. MDHA's two attempted submissions of its FY 2002 audited financial statements were rejected for numerous accounting errors in the Low Rent and HOPE VI programs, among others, and because amounts reported on the Balance Sheet or Statement of Net Assets were not consistent with amounts reported on the Financial Data Schedule.

⁵ MDHA submitted its FY 2006 audited financial statements to the Department on June 2, 2007. This submission was rejected and a resubmission was made on June 26, 2007. The Department is still in the process of reviewing the resubmitted financial statements to determine whether they will be accepted or again rejected.

⁶ Prior period adjustments need only be made for material errors, which rarely occur in modern financial accounting. (See Accounting Principles Board Opinion (APB) 9, paragraphs 17 (as amended by APB 30 and Financial Accounting Standards Board Statement (FAS) 111) and 18 (as superseded by FAS 16)).

⁷ HUD also notes that over the past several years, such material and substantial errors have existed in MDHA's financial reporting that HUD, which conducts a necessarily limited review of the financial submissions of approximately 4,100 PHAs, rejected MDHA's submission of both unaudited and audited financial statements a total of 17 times since electronic reporting to HUD commenced in FY 1999. Each time HUD rejected MDHA's financial

B) MDHA improperly reported a receivable from HUD of approximately \$6 million in both its FY 2005 audited financial statements and its FY 2006 unaudited financial statements.

MDHA's inclusion of a receivable from HUD in its FY 2005 audited financial statements and FY 2006 unaudited financial statements distorted the financial position of MDHA for more than a year. MDHA knew that it was improper to record an approximately \$6 million receivable from HUD, after HUD had specifically notified all PHAs on January 11, 2006 that HUD would not reimburse PHAs for such expenses. MDHA is responsible for its presentation of accurate financial information in accordance with Generally Accepted Accounting Principles (GAAP) in its financial statements submitted to HUD. In its FY 2006 audited financial statements submitted to HUD on June 26, 2007, MDHA corrected this error, which had been reported inaccurately in its FY 2005 audited financial statements and its FY 2006 unaudited financial statements. However, this correction caused MDHA to record another prior period adjustment in its FY 2006 audited financial statements, of which \$5,762,302 was due to this error.

C) MDHA's reporting in the Voucher Management System (VMS) is Inconsistent with its financial statements.

MDHA conceded that the VMS data was inconsistent with the financial statements, but asserted that the cause of the inconsistency was its failure to accurately report \$5.3 million in portability voucher expenses in FY 2005 and FY 2006. MDHA's May 15, 2007 response to HUD's Notice of Default was the first time MDHA had apprised HUD of the problem with incorrect expensing of portability vouchers in FY 2005. MDHA stated that it would make the necessary adjustment in its FY 2006 audited financial statements. MDHA's audited financial statements for FY 2006 submitted on June 26, 2007 identify a cumulative prior period adjustment of \$1,192,621 that was attributable to this error.

CONCLUSION

Because of the serious nature of these violations, pursuant to Section 15 of the Section 8 ACC, HUD is upholding its determination that MDHA is in default of its Section 8 ACC. Therefore, in accordance with Section 15 of the Section 8 ACC, HUD is hereby taking possession of all MDHA property, rights or interests in connection with its Section 8 programs, including funds held by a depository, program receipts, and rights or interests under a contract for housing assistance payments with an owner. Pursuant to previous stipulation in court proceedings, HUD will implement this decision ten business days from the date of this letter. Please be advised that

statement submission, HUD provided MDHA with a list of reasons for the rejection; however, MDHA continues to submit financial statements fraught with errors. This pattern of adjustments undercuts any confidence that HUD must, by necessity, place on the financial statements submitted by MDHA.

this letter constitutes final agency action, and there is no further right to administrative review by HUD.

Sincerely,

A handwritten signature in black ink, appearing to read 'Orlando J. Cabrera', with a stylized flourish at the end.

Orlando J. Cabrera
Assistant Secretary

cc: George M. Burgess, County Manager