



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

March 24, 2000

Audit Memorandum  
No. 00-NY-209-1801

**MEMORANDUM FOR:** Carmen Valenti, Director, Office of Public Housing, 2FPH

*Alexander C. Malloy*

**FROM:** Alexander C. Malloy, District Inspector General for Audit, 2AGA

**SUBJECT:** Atlantic City Housing Authority  
Low Rent Housing Program  
Atlantic City, New Jersey

In response to a request received by the New Jersey State Office (NJSO) of the Department of Housing and Urban Development (HUD), we performed a limited review at the Atlantic City Housing Authority (ACHA). The review was conducted to determine the validity of complaints made regarding the ACHA's personnel practices and procedures. Specifically, the complaints allege that: (1) the Executive Director improperly participated in a sick leave buyout plan for ACHA employees without appropriate disclosure to the Board of Commissioners; and, (2) the Executive Director and the Head Project Maintenance Superintendent improperly accrued compensatory time. The review covered the period from April 1, 1996 through March 31, 1998, and the onsite work was performed between March and December 1999.

To accomplish our objective, we reviewed and relied upon: ACHA's personnel files, accounting records, and administrative policies and records; interviews with ACHA officials and staff; documentation provided by the HUD NJSO; and Federal, State and local government regulations, statutes and policies. In addition, we reviewed the actions taken by the ACHA Board of Commissioners as part of their ultimate responsibility for ACHA operations. We reviewed documentation from periods prior and subsequent to our review period, as deemed necessary.

### SUMMARY

We performed a limited review of the ACHA's operations to determine the validity of complaints made regarding the ACHA's personnel practices and procedures. Specifically, the complaints allege that: (1) the Executive Director improperly participated in a sick leave buyout plan for ACHA employees without appropriate disclosure to the Board of Commissioners; and, (2) the Executive Director and the Head Project Maintenance Superintendent improperly accrued compensatory time.

The results of our review disclosed that the first complaint does not have merit because the ACHA Board of Commissioners (Board) were made aware of the proposed one time sick leave

buyout plan as well as the individuals who were to participate in the buyout plan (including the Executive Director) on several occasions. However, although appropriate disclosures were made to the ACHA Board, we concluded that the buyout of accrued sick leave was unnecessary and unreasonable since it is not comparable to the practices of other public entities in the local labor market, as required by Attachment B, Section 11(b) of OMB Circular A-87 (See Finding 1). Therefore, we consider the total cost of the sick leave buyout, which amounted to \$532,964.42, to be ineligible. Accordingly, we recommend that the ACHA be required to repay these funds to the Low Rent Housing (LRH) program from non-Federal funds.

In conjunction with the above, we also concluded that the Board exercised poor judgment when it amended the personnel policy of the ACHA to allow for: (a) the trading of sick leave for annual leave; and (b) the payment of one third of an employee's sick leave balance upon resignation in good standing or deferred retirement. Based on inquiries at other local public entities, we determined that such benefits are not offered to other employees performing similar work in the local public labor market. Thus, they should not be incorporated in the ACHA's personnel policy, inasmuch as, benefits provided in its policy are to be comparable to those in policies of other public entities in the local labor market. In this regard, we recommend that such benefits be removed from ACHA's personnel policy and that procedures be developed to prevent amendments pertaining to compensation for accrued sick leave from occurring in the future without prior approval from HUD. We further recommend that the HUD NJSO consider sanctioning the Board for approving the sick leave buyout plan and amendments to the ACHA's personnel policy that allow employees to receive questionable compensation for accrued sick leave.

The second complaint has merit because, contrary to Section 404 of the ACHA's personnel policy and Federal regulations regarding reasonableness (OMB Circular A-87, Attachment B Section 11(b)), the ACHA Executive Director had 951 hours of compensatory time, which related to prior years, recorded in his payroll records. In addition, both the Executive Director and the Head Project Maintenance Superintendent were allowed to accrue compensatory time beyond the ACHA's requirement that the time be used within 60 days (See Finding 2). Consequently, upon their retirement the ACHA will incur unnecessary costs. As a result, we recommend that the ACHA be required to evaluate the terms of its compensatory time policy to ensure that it is reasonable and similar to those of other public entities in the local labor market. Additionally, the Executive Director and the Head Project Maintenance Superintendent should not be allowed to use or be paid for their accrued compensatory time until it is evaluated and found to have been accrued in accordance with ACHA requirements. Procedures should also be developed to ensure that established personnel policies are followed when accruing compensatory time.

Furthermore, our review disclosed that the ACHA's personnel policy is not in accordance with New Jersey State Civil Service Statutes (N.J.S.A. 11A: 6-3(e)) regarding accumulating annual leave. Under the HUD Consolidated Annual Contributions Contract (ACC), Part A, Section 14(A), the ACHA is required to comply with all tribal, State and Federal laws applicable to employee benefit plans and other conditions of employment. Our review disclosed that the ACHA's personnel policy does not properly impose the two-year limitation on accumulating annual leave as required by the State of New Jersey Civil Service Statutes. As a result, both the Executive Director and the Head Project Maintenance Superintendent accumulated vacation

balances (annual leave) above and beyond statutory requirements. Accordingly, we believe that the ACHA should amend its personnel policy regarding vacation leave so that it is in compliance with State Civil Service Statutes. A system should also be implemented by ACHA whereby mandatory vacations are scheduled more effectively.

**BACKGROUND**

The Atlantic City Housing Authority (ACHA) was created through a resolution of the City of Atlantic City, New Jersey. It was organized as a public housing authority as defined by State Statute N.J.S.A.40A: 12A-1, et seq. (the Housing Authority Act), to provide housing for eligible low and moderate-income families. The ACHA functions under the supervision of HUD and the N. J. Department of Community Affairs (DCA). It is governed by a Board of Commissioners consisting of seven members; five are appointed by the City Council, one member is appointed by the Mayor and one member is appointed by the Governor. The Board of Commissioners are ultimately responsible for ensuring that the ACHA complies with Federal, State and Local regulations and policies. The Executive Director is responsible for carrying out the day to day activities and the general administration and management of the ACHA.

With a staff of about 150 employees, the ACHA administers 2,413 units as follows:

<u>Program</u>	<u>Contract No.</u>	<u>Units Authorized</u>
Low-Income Housing	NY- 401	1,624 units
Section 8 Certificates and Vouchers	NY-1266	636 units
Section 8 - Housing Assistance Payment (HAP) Administrator	NY 79-518	153 units

The Annual Contributions Contract (ACC) Part A Section 14(A) requires the ACHA to comply with all tribal, State and Federal laws applicable to employee benefit plans and other conditions of employment.

Title 24 of the Code of Federal Regulations (CFR), Part 85 Section 85.22(b) requires Public Housing Authorities to follow Office of Management and Budget (OMB) Circular A-87, Cost Principles for State, Local and Indian Tribal Governments. Attachment A, Paragraph C.1.(a) of OMB Circular A-87 provides that costs must be necessary and reasonable in order to be charged to a program. Additionally, Attachment B, Section 11(b) of OMB Circular A-87 provides that compensation for personnel services should be “reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved.” Section 11(a) of OMB Circular A-87, Attachment A provides that compensation for personnel services includes all remuneration, paid or accrued, for services rendered during the period of performance under Federal awards, including but not necessarily limited to wages, salaries, and fringe benefits.

Within 60 days, please furnish this office, for each recommendation cited in this memorandum a status report on: (1) the corrective action taken; (2) the proposed corrective action and the date to be completed; or (3) why action is not considered necessary. Also, please furnish us copies of any correspondence or directives issued related to this audit.

If you have any questions, please contact Edgar Moore, Assistant District Inspector General for Audit at (212) 264-8000, extension 3976.

#### Attachments

- A - Auditee Comments
- B - Distribution

## **RESULTS OF REVIEW**

### **COMPLAINT 1**

**The ACHA Executive Director Improperly Participated In A Sick Leave Buyout Plan For ACHA Employees Without Appropriate Disclosure To The Board of Commissioners.**

### **EVALUATION OF COMPLAINT 1**

Our review revealed that this complaint does not have merit because the ACHA's Board of Commissioners (Board) were made aware of the proposed one time sick leave buyout plan as well as the individuals who were to participate (including the Executive Director) on several occasions. Although the appropriate disclosures were made to the ACHA Board, we believe that the buyout of accrued sick leave was not a prudent management decision (See Finding 1 below).

#### **Finding 1**

### **The ACHA Instituted A Sick Leave Buyout Plan Which Was Not Comparable To Plans of Other Public Entities In The Local Labor Market**

The review revealed that disclosures were made to the Board of Commissioners, and that with the approval of the Board, ACHA officials instituted a sick leave buyout plan that was not comparable to those of other public entities in the local labor market, as required by OMB Circular A-87, Attachment B Section 11(b). Therefore, we consider the total cost of the sick leave buyout, which amounted to \$532,964.42, to be ineligible. Accordingly, this amount should be reimbursed to the Low Rent Housing (LRH) program from non-Federal funds. In addition, we concluded that the Board exercised poor judgment when it amended the personnel policy of the ACHA to allow for: (a) the trading of sick leave for annual leave; and (b) the payment of one third of an employee's sick leave balance upon resignation in good standing or deferred retirement. In this regard, ACHA officials were unable to provide us with adequate evidence showing that they compared the ACHA's sick leave buyout plan and other policies pertaining to compensation for accrued sick leave to policies of other public entities in the local labor market. Moreover, our inquiries at other local public entities did not disclose similar personnel policies and/or a sick leave buyout plan. Consequently, we believe that the ACHA's personnel policy should be amended to the extent that it is comparable to those of other public entities in the local labor market. Also, procedures should be developed to prevent amendments pertaining to compensation for accrued sick leave from occurring in the future without obtaining HUD's approval. Furthermore, we recommend that the HUD NJSO consider sanctioning the Board for approving the sick leave buyout plan and other questionable personnel policy changes discussed below.

## **Policy Changes Disclosed To Board**

We noted that as far back as November 1991, recommendations were made by ACHA officials to change ACHA's personnel policy in order to benefit employees with 500 hours or more of accumulated sick leave. Their thinking was that conscientious employees should be rewarded for not using all of their leave time. At the time, if employees, who did not use their sick leave, were terminated or resigned from employment before their normal retirement age, they would not receive any compensation for accumulated sick leave. In this regard, the following events occurred:

- In May 1992 a recommendation was made whereby employees would be allowed to trade 2 sick leave hours for 1 annual leave hour after reaching 500 hours
- On August 29, 1996 a memorandum was issued to the Board recommending more changes to the personnel policy. According to this memorandum, the following three recommendations were suggested:
  1. Upon normal retirement, the maximum amount payable in compensation be increased to \$20,000;
  2. Upon resignation in good standing or deferred retirement, compensation be made for one third of accumulated sick leave; and
  3. Any employee with at least 200 hours of accumulated sick leave be permitted, once a year, to trade two hours sick leave for one hour of annual leave for all hours in excess of 200 hours.
- On February 6, 1997, a memorandum was sent to the ACHA's Personnel Committee, which is comprised of the Board Chairman and five ACHA staff members, suggesting that the three changes be made along with an attachment detailing the total value of the proposed sick leave buyout plan. The Personnel Committee accepted the proposed changes by way of vote on April 14, 1997.
- On August 28, 1997, the Board passed a resolution amending the personnel policy and initiated the one-time buyout of accumulated sick leave in excess of 200 hours for all employees as of August 31, 1997. Again, attached to the resolution was a listing of buyout participants. The resolution was moved by the Board Chairman and was unanimously approved by the Board.
- On October 30, 1997, the Board passed a resolution approving Operating Budget Revision No. 1. The budget revision, which contained the funds for the sick leave buyout plan, reflected the buyout costs, including the names of participants and their applicable amounts. The Board unanimously approved the resolution.
- On November 5, 1997, Revision No. 1 to ACHA's Operating Budget for Fiscal Year Ending March 31, 1998, along with a revised operating subsidy calculation was sent to the HUD NJSO for review and approval. Fully aware that HUD is not required to approve budgets, the

ACHA Executive Director requested a review and an approval by HUD of the buyout plan and the changes in wages and compensation as reflected in the budget.

- On December 1, 1997, HUD responded to ACHA by advising that the request was not reviewed and that compliance with applicable New Jersey Civil Service law should be ensured by way of legal opinion.

ACHA officials then obtained two separate legal opinions which revealed that there is no statute under New Jersey State law which prohibits the buying back of unused sick leave. Additionally, one legal opinion duly noted that nothing under New Jersey State law requires employees to be paid for excess sick days. Soon after, on February 26, 1998, the sick leave buyout was implemented and a total of \$532,964.42 was paid to 47 ACHA employees.

The complainant alleged that although the Executive Director submitted the proposed changes and the list of participants to the Board; the Board was not fully alerted that the Executive Director was going to significantly benefit from the policy changes. The Executive Director received over \$107,000 as a result of these personnel policy changes. Our analysis of the document showing the names of the 47 participants revealed that the Executive Director's name was included on the list. We believe that the members of the Board have the ultimate responsibility to adequately review and approve policy changes, therefore, they should have thoroughly reviewed the policy changes and the list of participants. Consequently, it is our opinion that the claim that the Executive Director improperly participated in the sick leave buyout without appropriate disclosures being made to the Board is without merit.

### **The Sick Leave Buyout Plan And Personnel Policy Changes Are Unreasonable**

The ACHA did not provide adequate documentation to show that the sick leave buyout plan, and personnel policy changes were comparable to the practices of other public entities in the local labor market. Accordingly, we concluded that the sick leave buyout plan and the personnel policy changes were unreasonable and unnecessary. Additionally, the sick leave buyout plan circumvents established ACHA personnel procedures which caused excessive charges, totaling \$532,964.42, to be made to the LRH program.

The Code of Federal Regulations (CFR) Part 85, Section 85.22(b) of Title 24, requires Public Housing Authorities to follow Office of Management and Budget (OMB) Circular A-87. OMB Circular A-87, Attachment B Section 11(b) provides that compensation for personnel services will be considered reasonable "...to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved." During our review, we were not provided with any evidence that ACHA officials compared the sick leave buyout and the personnel policy changes to policies of other public entities in the local labor market. Additionally, our inquiries at other local public entities did not reveal similar personnel policies and/or sick leave buyout plans. We found that the only time other public entities paid for sick leave was upon retirement.

Furthermore, we found that not only is the sick leave buyout plan not comparable to the practices of other public entities in the local labor market, the plan also circumvented established ACHA personnel policies. We were advised by an ACHA official that the one time buyout helped

employees who did not necessarily retire but left for other employment. Section 504 of the ACHA personnel policy provides that upon retirement, an employee can receive up to a maximum of \$20,000 for accumulated unused sick leave. However, it should be noted that as of July 1999, only 2 out of the 47 participants in the sick leave buyout had retired and none of the remaining 45 participants have resigned or been fired. Furthermore, we do not believe that it is a prudent business practice to reward employees who terminate employment with the agency prior to their retirement.

Section 503 of the ACHA's personnel policy defines sick leave as "an absence of an employee because of illness, exposure to contagious disease, attendance to a member of his/her immediate family who is seriously ill and requires the care of the employee." We believe that sick leave is not earned leave, it is a benefit and a condition of employment. It is not based on actual additional hours worked as is compensatory time or overtime. As such, we believe that employees who save their sick leave should only receive compensation upon retirement in a manner similar to that of State Civil Service law (NJSA 11A: 6-19), which limits compensation to \$15,000 maximum.

Accordingly, we believe that the buyout of accumulated sick leave was an uneconomical use of housing authority funds, and has resulted in unnecessary and unreasonable charges to ACHA's LRH Program. In addition, we believe that the Board of Commissioners exercised poor judgment when it amended the ACHA's personnel policy to allow for: (a) the trading of sick leave for annual leave; and (b) the payment of one third of an employee's sick leave balance upon resignation in good standing or deferred retirement. Therefore, we recommend that the NJSO require the ACHA to repay the \$532,964.42 cost of the sick leave buyout plan to the LRH program from Non-Federal funds. The ACHA should also be instructed to amend its personnel policy to the extent that it is similar to those of other public entities in the local labor market and with State Civil Service laws. In addition, the HUD NJSO should consider sanctioning the ACHA Board for approving the sick leave buyout plan and the other questionable personnel policy changes discussed in this finding.

### **AUDITEE COMMENTS**

The auditee provided detailed comments regarding the findings, which are included in its entirety as Appendix A to this report. Generally the auditee disagreed with the finding, and objects to including the sick leave buyout issue as a finding since Complaint 1 was found to be without merit. According to the Auditee Comments, the draft finding fails to provide particular regulations, policies or laws allegedly violated by ACHA. The comments contend that the draft finding merely makes reference to general provisions of the regulations, New Jersey State Statutes, and a HUD-OIG Bulletin. The Auditee Comments state that the ACHA was not provided with a fair opportunity to influence the presentation of the issues. The comments further provide that both the ACHA's general counsel and its labor counsel found that there were no statutes or court opinions that prohibited the payment of sick leave under New Jersey Law. Also, the comments provide that the statute used in the finding, N.J.S.A. 11A: 6-19, does not apply to the present plan; and that the State statutes cited relate to payments upon retirement and apply solely to State employees, of which ACHA employees are not.



Additionally, the Auditee Comments provide that IG staff totally discounted and improperly ignored the documentation submitted by ACHA; and that the ACHA's sick leave buyout plan is consistent with similar employee benefit plans maintained elsewhere. In this regard, the comments state "For example the City of Atlantic City recently approved payments to 34 employees in amounts exceeding \$20,000 and averaging \$73,903.00". According to the Auditee Comments, the draft finding cites no examples contradicting the documentation submitted by the ACHA, and misrepresents and misquotes OMB Circular A-87 and ACHA's personnel policies. Additionally, the comments state that the sick leave buyout should be comparable to local public practice and it misquotes ACHA's definition of sick leave.

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

OIG's position is unchanged. Our review was conducted in accordance with Generally Accepted Governmental Auditing Standards (GAGAS) which require us to use due professional care in the performance of reviews. GAGAS requires us to provide reasonable assurance that material instances of possible noncompliance are reported. As a result, we developed Finding 1. The ACHA was provided with every opportunity to influence the presentation of the issues during the review and at the exit conference. On November 15, 1999 the auditee was provided with the draft findings. Although the drafts did not include the detailed finding criteria, the specifics were provided to the Board Counsel in its entirety during the exit conference. Furthermore, the findings have now been revised and contain the specific criteria and regulations violated. The auditee was also given an additional 3 weeks to submit their written response.

We were unable to find any New Jersey statutes that prohibit the payment of accumulated sick leave prior to retirement; however, we also did not find a State law which require employees to be paid for such accumulated leave. ACHA's labor counsel stated that the statute (NJSA 11A:6-19) is not applicable because it relates to payments upon retirement. However, the labor counsel also advised that this statute should be used as guidance, limiting the amounts paid. ACHA's desire to cut down on the use of sick leave by employees is understandable; nevertheless, we believe that making it another form of compensation prior to retirement is not a proper nor prudent method to follow. The above statute refers to supplemental compensation upon retirement and applies to both State and political subdivision employees. All ACHA employees are appointed under Civil Service classifications, with the exception of the unclassified positions (e.g. Executive Director, Assistant Executive Director, and Directors of Staff Operations, Administration, and Redevelopment & Urban Initiatives). Therefore, according to State statute descriptions, ACHA's employees in unclassified positions would be considered political subdivision employees. As such, we believe the New Jersey statutes quoted are applicable. Thus, the ACHA can not circumvent the legislative limit on supplemental compensation unless approved by HUD. Accordingly, we reiterate that ACHA employees should only receive compensation for accumulated sick leave upon retirement, in accordance with New Jersey State law, which limits compensation to \$15,000 maximum.

OIG staff did not discount or ignore any ACHA documentation. The ACHA did not present any documentation supporting that the sick leave buyout and other personnel policy changes were comparable to the practices offered by other public entities in the local labor market. Additionally, the ACHA did not provide sufficient evidence to justify the reasonableness of the

cost of the sick leave buyout. We noted that other public entities only bought back accumulated sick leave at the time of an employee's retirement. Also, the examples mentioned in the Auditee Comments could not be evaluated because the ACHA did not provide the employee positions or titles and whether payment was made upon retirement or not. The fact that the City paid some employees in excess of the \$15,000 state limit upon retirement cannot clearly be considered since there is no evidence as to whether these employees were Police or Fire personnel. Vacation and sick leave for City Police and Fire personnel are established by local ordinance. Nonetheless, ACHA does not have any positions similar to the City Police or Fire departments uniform personnel, as a result, the above examples cited by the auditee are not comparable.

In addition, we did not misrepresent or misquote OMB Circular A-87 and ACHA's personnel policies. As stated above, we have revised the finding and included the specific wording of OMB Circular A-87. Also, we used quotation marks when citing various ACHA personnel policies. The phrase "local public practice", which was objected to, has been replaced with the phrase "local labor market". Since ACHA is a public entity receiving Federal funding, we believe that it is reasonable to compare their policies to the policies of other public entities in the local labor market. Accordingly, OIGs position regarding the comparability and reasonableness of the sick leave buyout plan and other personnel policies pertaining to compensation for sick leave is still the same.

## **RECOMMENDATIONS**

We recommend that the HUD NJSO:

- 1A. Require the ACHA to repay, from non-Federal funds, the \$532,964.42 cost of the sick leave buyout plan, which was charged to the LRH Program.
- 1B. Instruct the ACHA to amend its personnel policy to be similar to the practices of other public entities in the local labor market and/or with New Jersey State Civil Service Laws. Specifically, they should eliminate the provisions which allow for: (a) the trading of sick leave for annual leave; and (b) the payment of one third of an employee's sick leave balance upon resignation, or deferred retirement; unless HUD gives approval for such changes. Also procedures should be developed to prevent future buyouts of unused sick leave without HUD approval.
- 1C. Review the ACHA policy changes, as recommended above, to ensure that they comply with all local, State and Federal requirements and regulations.
- 1D. Consider whether or not to take action against the Board of Commissioners for authorizing the sick leave buyout plan and other personnel policy changes pertaining to compensation for accrued sick leave.

## **COMPLAINT 2**

### **The ACHA Executive Director and the Head Project Maintenance Superintendent Improperly Accrued Compensatory Time.**

## **EVALUATION OF COMPLAINT 2**

Our review revealed that this complaint has merit because the ACHA Executive Director had 951 hours of compensatory time, which related to prior years, recorded on his payroll records. Additionally, both the Executive Director and the Head Project Maintenance Superintendent were allowed to accrue compensatory time contrary to established ACHA procedures, and Federal regulations regarding reasonableness (See Finding 2 Below).

### **Finding 2**

### **Contrary To ACHA Personnel Policies The Executive Director And The Head Project Maintenance Superintendent Improperly Accrued Compensatory Time.**

The review revealed that the Executive Director and the Head Project Maintenance Superintendent accrued compensatory time contrary to Section 404 of the ACHA personnel policy and Federal regulations regarding reasonableness (OMB Circular A 87, Attachment B Section 11(b)). Specifically, the Executive Director had 951 hours of compensatory time, which related to prior years, recorded on his payroll records. In addition, the Executive Director and the Head Project Maintenance Superintendent were allowed to accrue compensatory time beyond the ACHA's requirement that the time be used within 60 days. As a result, upon retirement of these employees, the ACHA stands to incur unnecessary costs. We attribute these improper accruals to the ACHA's failure to follow Federal regulations and ACHA requirements and procedures. Specifically, Federal regulations require compensation for personnel services to be comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Moreover, ACHA requirements require that compensatory time should be used within 60 days. Therefore, we recommend that the ACHA be required to evaluate the terms of their personnel policy, relating to compensatory time, to ensure that it is similar to the practices of other public entities in the local labor market and used within the timeframe specified in its policy. Additionally, the Executive Director and the Head Project Maintenance Superintendent should not be allowed to use or be paid for their accrued compensatory time until it is evaluated and found to have been accrued in accordance with ACHA requirements. Also, procedures should be developed to ensure that established policies are followed when accruing compensatory time.

The Code of Federal Regulations (CFR) Part 85, Section 85. 22(b) of Title 24, requires Public Housing Authorities to follow Office of Management and Budget (OMB) Circular A-87. Paragraph C.1.(a) of Attachment A of OMB Circular A-87 provides that costs must be necessary and reasonable in order to be allowable charges to a program. Attachment B, Section 11(b) of OMB Circular A-87 provides that compensation for personnel services should be reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Accordingly, since the

ACHA is a public entity we believe its policies should be compared with the practices of other public entities in the local labor market.

### **Policy Not Comparable To The Local Labor Market**

Our review revealed that the contract executed between ACHA and the Executive Director provides that the Executive Director "...shall enjoy any and all benefits and privileges that shall be established by the Authority..." . Also the Executive Director "...shall be entitled, additionally, to receive all benefits that may be prescribed by the Authority for its employees generally as the same presently exists in the personnel policy, including vacation and sick time, and as same may be amended and modified from time to time." The Executive Director believes that this provision also pertains to accruing compensatory time.

The ACHA personnel policy Section 404 provides that administrative, management, supervisory and clerical personnel shall be entitled to overtime and/or compensatory time which must be used within 60 days, however, it does not limit overtime or compensatory time to certain salary grade levels. Nor does it limit the amount of compensatory hours that can be accrued by an employee. It appears that all directors within the ACHA can accrue compensatory time regardless of their salary level. As mentioned in the studies below, other public entities limit the amount of compensatory time that can be accrued by an employee; thus, the ACHA's policies regarding compensatory time is not comparable to the practices of other public entities in the local labor market, as required by OMB Circular A-87 (Attachment B Section 11(b)).

In March 1998, as part of their comparability analysis, the ACHA contracted with Roy Rogers Management Consultants, Inc. (RRMC), to conduct a Compensation Program Study. The study compared existing and proposed administrative and maintenance positions within the ACHA to comparable positions within the local public entity, the City of Atlantic City. This study found that the City of Atlantic City's position of Business Administrator is comparable to the ACHA's position of Executive Director. However, in comparison of the benefits allowed, our analysis revealed that the City's Business Administrator is not entitled to earn compensatory time. The City of Atlantic City categorizes the position of Business Administrator as unclassified and as such there is no accrual of time.

The ACHA also conducted their own comparability study selecting specific positions within several local public entities. This study found that the Executive Director of the Atlantic County Improvement Authority (ACIA) was comparable to the Executive Director of the ACHA. Our review of this study revealed that although the Executive Director of the ACIA is entitled to earn compensatory time, it is limited to 45 hours and must be used within one year of being earned. In addition, upon termination, the ACIA's Executive Director is not entitled to any payments for unused compensatory time.

A further evaluation of the above two comparability studies revealed the following about the ACHA's position of Head Project Maintenance Superintendent. The RRMC study found that the City of Atlantic City's position of Beach Maintenance Superintendent is comparable to the ACHA's Head Project Maintenance Superintendent position. However, although the City's Beach Maintenance Superintendent is entitled to earn compensatory time, no more than 100 hours can be accrued. Additionally, the ACHA's own study revealed that their position of Head

Project Maintenance Superintendent is comparable to the City's position of Business Administrator. However, as previously mentioned, the City's Business Administrator is not entitled to earn any compensatory time.

In summary, the compensatory time benefits provided to the ACHA Executive Director and the Head Project Maintenance Superintendent are not comparable to the practices of other public entities in the local labor market, and therefore not reasonable. Both comparability studies revealed that the ACHA allows for earning compensatory time in a more liberal manner. Accordingly, we recommend that the ACHA's personnel policy be evaluated and amended to reflect similar practices of other public entities in the local labor market.

### **Executive Directors Compensatory Time**

Our review revealed that in July 1997, the Executive Director instructed the Comptroller to add 951 hours of previously earned compensatory time to his payroll records. We believe that this is a violation of the ACHA's personnel procedures (Section 404). As a result, approximately \$68,396 in costs will be unnecessarily incurred by the ACHA upon the retirement of the Executive Director. We believe that these hours should not have been officially recorded. In this regard, we noted that the NJSO became aware of this matter and informed ACHA officials not to permit payment of compensatory time to any retiring employee pending the results of our review.

Regarding the compensatory time, the Executive Director told us that the 951 hours represented the compensatory time he earned between the period of February 27, 1993, and March 12, 1997. He explained that the time was previously documented on biweekly time sheets and in his notes; however, it had not been officially recorded on ACHA's payroll records. He further stated that the 951 hours were added as a result of the change to Section 404 of the ACHA's personnel policy.

The change allowed administrative, management, supervisory and clerical personnel of all grades to be entitled to overtime/compensatory time off, hour for hour, for those approved hours worked in excess of 32 ½ hours, but not more than 40 hours per work week. For approved time worked in excess of 40 hours per week, compensatory time can be earned at a rate of 1½ times such hours worked over 40 hours. Furthermore, the policy provides that cash overtime will be paid at 1 ½ times the base rate for hours worked in excess of 40 hours if 240 hours have been accrued. Compensatory time forms are to be submitted no later than two working days after earning compensatory time. Compensatory time is to be used within 60 days, however, the Executive Director can grant a waiver for time to be used after the 60 days. According to the Executive Director, the change in policy provides overtime for all employees including himself. Additionally, the Executive Director informed us that accrued but unused compensatory time is paid upon retirement.

As stated above, we believe that adding the 951 hours to the Executive Directors payroll records was improper and a violation of the ACHA's procedures. Specifically, the ACHA was unable to provide evidence showing that approval was obtained prior to the compensatory time being earned. Nor were we provided any evidence that compensatory forms were submitted for approval two days after the time was work as required. Additionally, the compensatory time earned should have been used within 60 days of earning it, especially since there was no waiver

to allow this earned time to be used after 60 days. We believe that the Executive Director should have obtained approval from the Board of Commissioners to carry his unused compensatory time beyond the requirement to use it within 60 days. Furthermore, since this time was supposedly earned as far back as 1993, we do not believe it was reasonable to record it. Our review of the Executive Director's records (logbook/personal date book), that reflected the 951 hours of compensatory time, revealed that some of the hours were earned on holidays, weekends, and while on travel status (attending conferences). Compensatory time was also earned while making daily telephone calls to the ACHA, which we believe is unreasonable. Additionally, part of the 951 hours are considered unsupported because records did not indicate how or when the compensatory time was earned. As a result, there is a question as to whether or not this time is legitimate.

The Executive Director stated that originally he did not have the time officially recorded on his payroll records because he did not think he was entitled to it. However, based on a comment made by a Board member that all employees that work overtime should be compensated for their time, the Executive Director believed he was entitled to the time. We disagree with the Executive Director's reasoning. Accordingly, we recommend that the ACHA's Board make a determination on whether the Executive Director should be allowed to use or be paid for the 951 hours of compensatory time. Also, an evaluation should be made of any other compensatory time that the Executive Director has on the books to ensure that it was accrued in compliance with ACHA personnel procedures.

### **Head Project Maintenance Superintendent's Compensatory Time**

Our review also revealed that the ACHA's Head Project Maintenance Superintendent has been allowed to accrue compensatory time beyond the ACHA's requirement that it be used within 60 days. Accordingly, as of the pay period ending December 19, 1998, the Head Project Maintenance Superintendent had a compensatory time balance of 3,214 hours; this equates to \$168,221. We do not believe that it is prudent business practice to allow an employee to accrue such a large balance of earned compensatory time. As a result, the ACHA will now be faced with an unreasonable expense when this employee retires.

The Executive Director stated that the Head Project Maintenance Superintendent earned the compensatory time while handling emergency calls and by working from 7:30 AM to after 5:00 PM daily; even though the ACHA's normal working hours are from 9:00 AM to 4:00 PM. The Executive Director further contends that since contractors working at the ACHA consistently work from 7:30 AM until 5:00 PM, it is necessary for the Head Project Maintenance Superintendent to also work the same hours for monitoring purposes. However, we do not believe that the Head Project Maintenance Superintendent should be required to work extra time each day. Procedures should allow for employees to work in shifts when monitoring contractors, thus avoiding having to over burden one employee.

As stated above, the ACHA's personnel policy, Section 404, requires compensatory time to be used within 60 days of being earned. We found that although the Executive Director provided the Head Project Maintenance Superintendent with a waiver to use the compensatory time after 60 days, the waiver was not given until April 24, 1998. This was subsequent to when the majority of the time was earned by the Head Project Maintenance Superintendent. Furthermore, the

waiver was for all compensatory time earned before and after April 1998. However, we view this particular waiver as unreasonable and unacceptable as it allowed a substantial amount of previously and subsequently earned compensatory time to accrue for an indefinite period of time.

Furthermore, we question whether the Head Project Maintenance Superintendent should be allowed to use all of the recorded time. The Head Project Maintenance Superintendent should have been aware of the ACHA's requirement that compensatory time be used within 60 days. As such, any time earned 60 days prior to the waiver should be removed from his payroll records. Accordingly, we recommend that the ACHA be required to develop procedures which ensure that the requirement to use compensatory time within 60 days is adhered to. Also, procedures should be developed to ensure that perpetual waivers are not issued for subsequent and future earned compensatory time. The waivers should only extend the time period a reasonable length of time such as an additional 60 days.

### **AUDITEE COMMENTS**

According to Auditee's Comments, the draft audit finding inaccurately and incorrectly cite the ACHA personnel policy, the relevant HUD regulations regarding comparability, and the compensation program study. The draft finding incorrectly cites the compensation study in that it states that the Executive Director and the Head Project Maintenance Superintendent positions are 100% comparable to the City of Atlantic City positions of Business Administrator and Beach Maintenance Superintendent, respectively. The Auditee Comments provide that the ACHA positions of Executive Director and Head Project Maintenance Superintendent are 130% and 120% comparable to the above City of Atlantic City positions; and that the draft finding cites no specific regulations violated. The Auditee Comments further provide that the Executive Director of the ACHA has the authority to provide a waiver of the requirement to use compensatory time within 60 days, and did so with regard to both his own and the Head Project Maintenance Superintendent's accrued compensatory time. Also, the Executive Director definitely entered his compensatory time on weekly time sheets submitted in the ordinary course of business.

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

As stated in our evaluation of Auditee Comments for Finding 1, the specific HUD criteria has been added to the findings and quotation marks were used where necessary in citing ACHA policies. Accordingly, the specific regulations violated have been provided. As for the Compensation Study, the documentation provided to us revealed that the ACHA's Executive Director and the Head Project Maintenance Superintendent positions were 100% compatible with the City of Atlantic City's positions of Business Administrator and Beach Maintenance Superintendent, respectively. Accordingly, we reiterate that the benefits that the ACHA provides to its employees are not comparable to benefits provided by other public entities in the local labor market.

The Executive Director may have written his compensatory time on the bottom of his time sheet, however, it was not officially recorded on the payroll records until July 1997. As a result, we do not believe that it was reasonable for the Executive Director to have officially recorded time supposedly earned almost five years prior to the time it was recorded (from 2/93 to 3/97). Moreover, the required supporting documentation (compensatory time approval forms) for the time was never provided. Additionally, the ACHA did not provide any evidence that the Executive Director granted himself a waiver of the requirement to use compensatory time within 60 days. The HUD-OIG Integrity Bulletin furnished to the auditee, provides that the Executive Director is hired by the Board of Commissioners (Board), and that the Board is responsible for the actions of the Executive Director. Therefore, the Executive Director should have obtained approval to earn compensatory time and a waiver to use the compensatory time beyond 60 days from the Board. Furthermore, we believe that the waiver provided to the Head Project Maintenance Superintendent by the Executive Director was unreasonable. It was not prudent for the Executive Director to provide a waiver for compensatory time earned, but not used in accordance with ACHA's personnel policy (Section 404). In our opinion, the waiver erroneously allowed previously earned compensatory time (over 3000 hours) and subsequent earned compensatory time to accrue for an indefinite period of time. Accordingly, we believe that the accrued compensatory time of the Head Project Maintenance Superintendent is excessive and should not be allowed.

## **RECOMMENDATIONS**

We recommend that HUD NJSO instruct the ACHA to:

- 2A. Amend its overtime/compensatory time personnel policy (Section 404) so that it is similar to that of other public entities in the local labor market as required by OMB Circular A-87, Attachment B Section 11(b). The ACHA should also consider placing limits on the amount of overtime/compensatory time that can be earned and carried forward by certain salary grade level employees.
- 2B. Determine whether the Executive Director should be allowed to use or be paid for the 951 hours of compensatory time, since the time was earned prior to the personnel policy changes discussed in the finding. Also, consider evaluating the Executive Director's remaining compensatory time and the Head Project Maintenance Superintendent's compensatory time to ensure that the time was accrued in compliance with ACHA's procedures. All compensatory time not accrued or used in accordance with ACHA's procedures should be removed from the payroll records.
- 2C. Develop procedures to ensure that compensatory time is used within 60 days of being earned, as required by the ACHA's personnel policy. Also, procedures are to be developed to ensure that waivers of this requirement are not made on a perpetual basis. Waivers should only extend the 60 days a reasonable length of time, such as an additional 60 days.



## **ISSUE NEEDING FURTHER CONSIDERATION**

During the review we noted another personnel practice that requires corrective action in order to bring ACHA into full compliance with Civil Service requirements and to promote economy and efficiency in its operations.

### **The ACHA's Personnel Policy Is Not In Accordance With State Civil Service Statutes Regarding Accumulating Annual Leave.**

The ACHA Personnel Policy regarding accumulating annual leave does not properly impose the two year limitation as dictated by State of New Jersey Civil Service Statutes. Accordingly, the ACHA's policy is not in accordance with the Annual Contributions Contract (ACC), Part A Section 14(a). As a result, both the Executive Director and the Head Project Maintenance Superintendent have accumulated vacation balances above and beyond statutory requirements. We are of the opinion that ACHA will be faced with unnecessary and unreasonable retirement costs when the Executive Director and the Head Project Maintenance Superintendent retire from ACHA.

New Jersey Statutes Annotated (N.J.S.A.) 11A: 6-3 entitled, "Vacation Leave; Full -Time Political Subdivision Employees", provides that vacation leave shall accumulate and be granted during the next succeeding year only. We believe that this means vacation leave time can only be accrued for up to two years. However, our review disclosed that ACHA's policy does not adhere to the next succeeding year only provision provided under State law. Although Section 501 of ACHA Personnel Policy provides that employees may not accumulate more than two years worth of vacation time, it further provides that employees shall not be penalized by losing vacation time because of necessary work schedules. The policy also provides that no one in a supervisory capacity shall require any employee under his/her jurisdiction to work where it will result in a loss of accrued vacation time. However, this policy has not been adhered to since employees have been allowed to accrue more time than the two year limits set by New Jersey State statutes.

Our review revealed that pursuant to State Civil Service requirements, 60 days would be the maximum amount that can be accumulated by the Executive Director within a two year period (30 days a year). However, the Executive Director's vacation leave balance as of 12/19/98 totaled approximately 160 days, which is 100 days over the two year limitation; this equates to \$46,712.04 payable to the Executive Director upon retirement. We also noticed that 42 days is the maximum two-year allowable accumulated vacation balance for the ACHA's Head Project Maintenance Superintendent (21 days a year). However, as of 12/19/98, the Head Project Maintenance Superintendent's accumulated vacation leave totaled 47 days, which is 5 days over the two year limitation; this equates to \$1,825.62, payable upon retirement. We believe that the ACHA's vacation policy should clearly state that payments for vacation leave is limited to the State's maximums upon retirement, and that any leave carried over beyond these maximums will not be paid. Time accrued over the two year maximum must be used by the end of each year or the employee should lose it. Only the two year maximum should be allowed to be carried forward. If not, the ACHA will be faced with unnecessary and unreasonable retirement costs

when the Executive Director and the Head Project Maintenance Superintendent retire. Accordingly, we believe that the ACHA should amend their personnel policy regarding vacation leave so that it is in compliance with New Jersey Civil Service Statutes. Furthermore, we believe that the ACHA should conduct a study to determine how many other employees are over the two year limitation and implement a system whereby mandatory vacation time is taken and scheduled more effectively.

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**AUDITEE COMMENTS**

**HOUSING AUTHORITY &**  
**URBAN REDEVELOPMENT AGENCY**

THE CITY OF ATLANTIC CITY NEW JERSEY

P O Box 1258

227 Vermont North

Atlantic City -NJ 08404

609-344-1107

January 17, 2000

Alexander C. Malloy, District  
Inspector General for Audit  
New York/New Jersey  
U.S. Department of Housing'  
and Urban Development  
Office of Inspector General  
26 Federal Plaza, Room 3430  
New York, New York 10278

Dear Mr. Malloy:

On November 16, 1999, I received a copy of your letter enclosing the Draft Audit Findings issued by your office concerning two specific complaints which were referred to your office for review. Subsequently, on December 22, 1999, an Exit Conference was held with representatives of your office, a representative of HUD Newark and representatives of Housing Authority and Urban Redevelopment Agency of the City of Atlantic City (hereinafter "ACHA"), including myself and our General Counsel, Allen S. Zeller, with whom I consulted.

Pursuant to our discussions, please accept this as the response of ACHA to the Draft Audit Findings. I would request that these written comments be accepted as a basis to revise and change the Draft Audit Findings and to be included in their entirety in the Final Audit Findings issued by your office with regard to this matter. I believe that these verbatim comments will give balance to the Findings since ACHA believes strongly that the Draft Findings are flawed and without merit. As well, since the Draft specifically stated that the Complaint No. 1 was found to be without merit, it should be excluded from the Draft. It has no place whatsoever in the final report.

As your office has been advised, ACHA and I remain deeply concerned with regard to the process utilized in the issuance of the Draft Audit Findings of November 15, 1999. The Draft Audit Findings make recommendations and conclusions critical of ACHA, yet the Draft fails to specify or provide any details of the particular regulations, policies or laws allegedly violated by ACHA. In fact, the author misquotes and

misrepresents the sparse controlling authority cited in the Draft.

The Draft makes reference merely to the general provisions of "OMB Circular A-87," a document comprising of more than 60 pages; 24 CFR Part 85, a document in excess of 26 pages; a non-defined HUD bulletin allegedly issued in November 1990 and New Jersey Civil Service Statutes which comprise in excess of 200 pages in Title 11A of New Jersey Statutes Annotated. The only explicit statute referenced in the Draft is N.J.S.A. 11A:6-3 which solely relates to accumulation of vacation leave and which has nothing whatsoever to do with the two complaints under consideration in this matter.

With all due respect, this lack of specificity makes it virtually impossible for ACHA to fully and adequately defend itself against the findings and recommendations stated in the Draft. It, quite frankly, constitutes a denial of due process of law.

As you are aware, in advance of the Exit Conference, our Board Counsel requested in writing that ACHA be provided with the specific statutes, regulations or other authorities relied upon in the Draft Audit Findings to support the conclusions and recommendations contained in that Draft. He cited eight references which identified the page and paragraph of the Draft to which ACHA sought specific notification of the statutes, laws or regulations which were being relied upon.

At the Exit Conference the representatives of your office cited Section 11(d) of OMB A-87, 24 CFR Section 85.22, N.J.S.A. 11A:6-19, N.J.S.A. 11A:6-3 as well as a HUD Bulletin and a HUD Inspector General Integrity Program Bulletin of November 1990. We were assured that we would be provided with copies of the two referenced HUD documents no later than December 28, 1999. On January 12, 2000, counsel received the HUD OIG Bulletin, however, the other document still has not been supplied.

As a result, ACHA was not provided with a fair opportunity to influence the presentation of the issues or to have the multitude of errors contained in the Draft Audit Findings corrected prior to the issuance of the Final Audit Report. Clearly, by HUD's own regulations, ACHA is entitled to such an opportunity.

In addition to the foregoing procedural deficiencies, the Draft Audit Report contains numerous inaccurate and erroneous conclusions and recommendations. This reply will address these issues as well.

The Draft Audit Findings cite two specific complaints which were investigated by the Inspector General's office:

Complaint No. 1: "The ACHA Executive Director improperly participated in a sick leave buy-out plan for ACHA employees without appropriate disclosure to the Board of Commissioners."

Complaint No. 2: "The ACHA Executive Director and the Head Project Maintenance Superintendent improperly accrued compensatory time."

#### COMPLAINT NO. 1

With regard to Complaint No. 1, the Draft Audit Findings state:

"Our review revealed that this complaint has no merit because the ACHA Board of Commissioners (Board) were made aware of the proposed one time sick leave buyout as well as the individuals who participated in the buyout (including the Executive Director) on several occasions." Emphasis added.

Based upon this determination by the Inspector General's office, properly there should be no further discussion presented concerning this Complaint. Nevertheless, the author of the Draft improperly concluded that:

"...we believe that the buy-out of accrued sick leave was an unnecessary, unreasonable and ineffective management decision" and that "...ACHA officials instituted a sick leave buyout plan which is not comparable to local public practices as required by OMB Circular A-87."

Once again, at the Exit Conference the only specific reference to OMB Circular A-87 related to Section 11(d), entitled "Fringe Benefits." A proper reading of this section, however, clearly discloses that it expressly permits ACHA to adopt a sick leave buy-out plan as well as any other "fringe benefits" as long as these benefits are "reasonable and are required by law, governmental unit-employee agreement, or an established policy of the governmental unit." Emphasis added.

In the instant case, as acknowledged by the Draft Audit Findings, ACHA formally and properly revised its personnel policy to permit the sick leave buy-out plan under

consideration herein. In fact, as recognized in the Draft Audit Findings, changes in the ACHA personnel policy pertaining to accumulated sick leave were under consideration as far back as November 1991, well before the Resolution implementing the one-time sick leave buy-out program was passed by the Board in August 1997.

This personnel policy change initially came under active consideration when certain inequities were perceived in the way the former policy impacted on long-time ACHA employees who retired without being paid fair consideration for the value of their accumulated sick time. It was apparent that this former "use it or lose it" policy resulted in some employees taking numerous days off and charging them against accumulated sick leave, thereby creating operational problems for ACHA. It was intended that the change in the policy would advance the legitimate objectives of eliminating these issues attributable to unscheduled employee absenteeism while, at the same time, treating employees who accumulated unused sick time in a fair and equitable manner.

Thus, under the revised personnel policy, on a one-time basis, those employees with accumulated sick leave of over 200 hours would receive a cash payment at the rate of one day's pay for each day of accumulated sick leave. In adopting this policy, ACHA sought to encourage employees to accumulate at least 200 hours of sick leave to guard against major illnesses and long-term absences. At the same time, ACHA sought to provide some reward for those conscientious employees who accumulated their sick leave as opposed to those who used all of their sick leave time as fast as it was earned. A stated purpose of this policy change resulted in an incentive for the proper use of sick leave and also enabled ACHA to better schedule absences and prevent an abuse of the use of sick leave which significantly and adversely impacted on the daily ongoing operation of ACHA. Unequivocally, the sick leave buy-out plan was a reasonable, necessary and an effective management decision which, in the long run, saved ACHA a significant amount of money and also insured that its operations would continue without adverse impact of absences.

ACHA submitted full financial particulars of the proposed sick leave buy-out plan to the Regional HUD Office in Newark, New Jersey, advising HUD of the change in their personnel policy concerning the sick leave buy-out proposal and provided HUD with all of the information as to its effect on the operating budget. In part, because of HUD's requirement that any changes in wages and compensation must be submitted to HUD for review and approval, ACHA requested that HUD grant its approval to this plan. By letter dated December 1, 1997, Carmen Valenti, Director of the Office of Public Housing, advised ACHA that his office was not required to

review and approve the operating budget or changes in salary and compensation. He recommended, however, that ACHA obtain an opinion of its counsel to insure that the sick leave buy-out plan complied with applicable state law. (Attached hereto are copies of both letters marked as Exhibits 1 and 2.) Accordingly, ACHA inquired of both its general counsel and special labor counsel as to whether the sick leave buy-out plan was permitted under New Jersey law. Both counsel responded that there were no statutes or court opinions that prohibit the payment of such sick leave. In fact, special labor counsel specifically referred to the statute relied upon in the Draft Audit Findings, N.J.S.A. 11A:6-19, and rendered an opinion that "This statute does not apply to the present situation." (Attached hereto Exhibits 3 and 4 are copies of both opinion letters.) Thus, without question, ACHA acted properly and prudently in adopting the sick leave buy-out plan and had every reason to believe that it was acceptable to HUD.

The Draft Audit Finding stating that the sick leave buy-out plan was not comparable to "local public practices" is totally without foundation or merit. In fact, this sick leave buy-out plan is consistent with similar employee benefit plans maintained by the City of Atlantic City and elsewhere. Indeed, as set forth below, both the City of Atlantic City and private employees in Atlantic City maintain employee benefit plans which are far more generous than that of ACHA.

In both the Draft Audit Findings and at the Exit Conference the staff of the Inspector General's Office totally discounted and improperly ignored the documentation submitted by ACHA which supported its position that the sick leave buy-out plan was comparable to and consistent with local public practices existing in the labor market in which ACHA competes. This includes the City of Atlantic City and 11 hotels and casinos located in Atlantic City. In fact, the City's compensation and benefit package contain numerous fringe benefits which are not provided by ACHA. These benefits include up to 10% of each year's pay as longevity pay, it permits employees who are retiring to remain on the payroll without appearing for work for up to 18 months while they use up their accumulated sick leave, it provides for payment for attending college courses as well as the payment for accumulated sick leave.

For example, at its Council meeting on December 29, 1999, Atlantic City Council approved the payment of accumulated sick time to six employees in the following amounts: \$18,766.18, \$10,068.94, \$89,899.98, \$25,883.75, \$38,625.60, \$46,235.89. In addition, a review of the City Council agendas for 1999 disclosed that at least 34 employees were paid for their accumulated sick time in amounts in excess of \$20,000.00. One employee received a total of \$141,496.00

for his accumulated sick time. The average payment amounted to \$73,903.00 and the total for all 34 employees amounted to \$2,512,702.00 in 1999 alone.

Furthermore, as stated, the fringe benefit package for the City of Atlantic City includes longevity pay for its employees which is not provided by ACHA. If ACHA were to provide longevity pay to its employees consistent with the City, it would cost ACHA in excess of \$195,000.00 per year.

Thus, it is submitted that the findings, conclusions and recommendations of the Draft Audit Findings that the sick leave buyout plan is "unreasonable and unnecessary since it does not adhere to local comparable public practices" is patently flawed and invalid.

Furthermore, the Draft Audit Findings misrepresents and misquotes OMB Circular A-87, New Jersey law and the ACHA personnel policy regarding sick leave.

Specifically, the Draft Audit Findings improperly states that OMB Circular A-87 requires that the "sick leave buy-out" be "comparable to local public practice." In fact, this constitutes a material misstatement and misrepresentation.

OMB Circular A-87, Section 11(b) provides that "...compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved." Section 11(a) defines compensation for personnel services as "all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal awards, including but not necessarily limited to wages, salaries and fringe benefits."

The ACHA has adopted a compensation package which included a one-time buy-out of accumulated sick leave. This benefit is comparable to that paid for similar work in the City of Atlantic City as set forth above. The Draft Audit Findings cites no examples whatsoever which would contradict the documentation submitted by ACHA in this regard and merely states the personal opinion of the author which, frankly, is irrelevant.

At the Exit Conference, the Inspector General's staff cited 24 CFR Section 85.22 and New Jersey statute N.J.S.A. 11A:6-19 in support of its position that New Jersey law limits compensation for sick leave upon retirement to \$15,000.00. Section 85.22 does nothing more than make reference to OMB Circular A-87. Although the New Jersey statute is not specifically referenced in the Draft, reliance upon this statute is misplaced for numerous reasons:



First, this statute specifically applies solely to State employees. ACHA employees are, of course, not State employees.

Second, the statute refers to the payment of sick leave upon retirement. The ACHA sick leave buy-out plan was not related to retirement.

Third, the opinion received from special labor counsel to ACHA specifically stated that this statute does not apply to the present situation involving the sick leave buy-out plan.

Fourth, the City of Atlantic City acknowledges that this statute does not apply to its employees since it routinely pays its employees for accumulated sick leave upon retirement in excess of the \$15,000.00 statute limitation.

The Draft Audit Findings misrepresents and misquotes the ACHA personnel policy. The Draft states "The ACHA's personnel policy defines sick leave as the absence of an employee because of illness, exposure to contagious disease, and/or care of a seriously ill family member...sick leave is not earned leave, it is a benefit and condition of employment." As a result, the Draft concludes that "As such, we believe that employees who save their sick leave should only receive compensation upon retirement in accordance with State law, which limits compensation to \$15,000.00 maximum." Again, this statute is not applicable to ACHA or its plan.

In fact, the ACHA personnel policy states that "Sick leave is earned after the 15th day of each month."

The ACHA sick leave policy provided for a one-time buy-out for the reasons set forth previously. State law does not prohibit the adoption of this policy nor does Federal law or any applicable regulation. The opinion set forth in the Draft Audit Findings that "We believe that employees who save their sick leave should only receive compensation upon retirement in accordance with State law which limits compensation to \$15,000.00 maximum" is purely irrelevant and gratuitous since ACHA has complied with all relevant laws, regulations and policies.

On January 31, 1997, HUD issued a Transmittal relating to Guide Book 7401.7 involving Employee Benefit Plans. This Transmittal is the controlling document for public housing authorities relating to the adoption and implementation of employee benefit plan. This Transmittal abolished the former HUD Personnel Policies Handbook which dealt with "the provision, implementation and administration of general

personnel practices such as comparability, salary setting, leave and travel for public housing agencies." HUD set forth the stated purpose of the Transmittal as follows:

"The elimination of HUD requirements is in keeping with the Department's movement toward deregulating and decontrolling HAS. The removal of most employee benefit plan requirements will maximize flexibility in the hands of HAS. As decision makers, HAS will be responsible for ensuring that their employee benefit programs are both viable and affordable."

Thus, with regard to the sick leave buy-out plan, ACHA specifically designed a plan which was both viable and affordable as required by HUD regulations. In an effort to implement the sick leave buy-out plan, ACHA forwarded all of the information to HUD and requested HUD's review and approval. HUD's only response to ACHA was to remind ACHA that it had to comply with applicable State law and recommended that ACHA obtain an opinion of counsel regarding the requirements of relevant State law. ACHA obtained two opinions from two separate law firms before proceeding with implementing the sick leave buy-out plan. Both firms opined that State law permitted the sick leave buy-out.

In conclusion, based upon the foregoing, it is submitted that the findings, comments and recommendations set forth in the Draft Audit Findings are without basis and cannot be supported by any applicable laws, regulations or policies. The only Finding that can properly be issued is that Complaint No. 1 has not merit.

#### COMPLAINT NO. 2

Complaint No. 2 states that the ACHA Executive Director and the Head Project Maintenance Superintendent improperly accrued compensatory time contrary to established ACHA procedures which were not in compliance with HUD regulations. In this regard, the Draft Audit Findings inaccurately and incorrectly cite the ACHA personnel policy, the relevant HUD regulations regarding comparability and the compensation program study.

Section 404 of ACHA's personnel policy manual states that "Administrative, management, supervisory and clerical personnel shall be entitled to overtime compensation." Thus, both the Executive Director and the Head Project Maintenance Superintendent are entitled to accrue compensatory time. The policy further provides that "Compensatory time off may be taken only at the convenience of the Authority and only when the employee's absence will not hinder the functions and

operations of the Authority." Finally, the policy provides that "Compensatory time must be taken by employees within a 60 day period of it being earned. A waiver may be granted by the Executive Director for compensatory time to be taken after the 60 day period."

Thus, it is clear that Section 404 of ACHA's personnel policy permits the Executive Director and the Head Project Maintenance Superintendent to claim compensatory time. It is uncontraverted that the Executive Director had the authority to provide a waiver of the 60 day period and did so with regard to both his own accrued comp time and that of the Head Project Maintenance Superintendent. Additionally, the Draft Report is incorrect since the Executive Director definitely entered his compensatory time on weekly time sheets submitted in the ordinary course of business. It is also uncontraverted that the Executive Director provided the appropriate waivers for the Head Project Maintenance Superintendent as well as other employees including himself. The personnel policy does not prohibit him from doing so, rather, it authorizes such a waiver.

Furthermore, the Draft cites a compensation program study to the effect that "This study found that the City of Atlantic City's position of Business Administrator is comparable to the ACHA's position of Executive Director." This is untrue. In fact, the study found that the position of the Executive Director is equal to 130% of the City Business Administrator's responsibility. Similarly, the Draft makes the same error with regard to the Head Project Maintenance Superintendent in its comparison to the City Beach Maintenance Superintendent. In actuality, the two positions are not similar and the study indicates that the ACHA Superintendent is equal to 1200 of the Beach Superintendent. The effort in the Report to associate any of these positions is simply fallacious and disingenuous.

The Draft cites no specific regulation, law or policy that was violated or abrogated by ACHA. Indeed, OMB Circular A-87 provides a more comprehensive definition of compensation for personnel services than that stated in the Draft. ACHA considered and weighed all of the compensation packages of the respective competitors, both public and private. The specifics of these comparisons are set forth in the response to Complaint No. 1. Clearly, ACHA complied with the requirements of all regulations and laws. As a result, any adverse findings or recommendations made in the Draft are without merit and represent purely a personal belief of the author.

The Draft inaccurately takes facts and makes findings out of context of the entire circumstances and endeavors to

direct ACHA as to how to run the Authority. This effort is improper and goes well beyond the mandate of the obligations and responsibility of such an audit.

For the foregoing reasons, the Draft Audit Findings must be revised to reflect the true and accurate circumstances as set forth in this letter.

Once again, I would request that this entire response be included in the Final Report. If this response is in any way to be edited, I would request that I be so advised in advance and, further, that I be afforded the opportunity to approve any such changes or edits to this response.

Very truly yours,

John J . McAvaddy, Jr., Executive  
Director

JJM:lmd

cc: Mr. John Glowacki  
Mr. Tony James  
Mr. Chris Costello  
Allen S. Zeller, Esquire

bcc: J. Glowacki  
H. Egbert  
chrono/file

**HOUSING AUTHORITY &  
URBAN REDEVELOPMENT  
AGENCY**

OF THE CITY OF ATLANTIC CITY NEW JERSEY  
P O. Box 1258 227 Vermont North Atlantic City. NJ 08404 609-344-1107 FAX 609-344-1015  
November 5, 1997

Mr. Carmen Valenti, Director  
Department of Housing & Urban Development  
One Newark Center  
Newark, New Jersey 07102-5260

Dear Mr. Valenti:

With this letter you will find revision #1 to our Operating Budget for fiscal year ending March 31, 1998, and a revised operating subsidy calculation. The budget is enclosed for information purposes only, but the revised subsidy calculation will require your approval.

Our Board of Commissioners have approved a one-time buyout of unused accumulated sick leave hours in excess of 200 hours, for all employees. This is in addition to their regular compensation package. we have attached a schedule of maximum amounts payable (calculated as of July 22, 1997). The estimated maximum chargeable to this budget is \$589,000.

The total allocated cost of \$589,000 will be offset by one-time savings and adjustments as follows:

1. Increased operating subsidy eligibility	\$245,921
2. Prior year adjustment	83,120
3. Savings in insurance	100,000
4. Savings in contract costs	150,000
5. Decrease in reserve	9,959
Total	<u>\$589,000</u>

We are aware that you are not required to approve our budget; however, based on previous conversations between you and I about the one-time buyout of excess sick leave, we believe that changes in wages and compensation must be brought to your attention for review and approval and reflected in the budget. If further changes take place between now and fiscal year end, they will be included in another revision.

Your approval is requested before December 20, 1997, if possible, so that we could make payments to employees before calendar year end. Thank you for your attention to our request.

Sincerely,

JOHN J. MCAVADDY, JR.  
Executive Director

JJM: \_JFG/pb  
attachments

**EXHIBIT "I"**

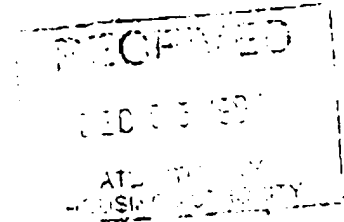


U.S. Department of Housing and Urban Development  
Office of Public Housing  
One Newark Center

Newark, New Jersey 7102

*cc. J. G. ...  
CH*

DEC 01 1997



Mr. John J. McAvaddy, Jr.  
Executive Director  
Atlantic City Housing Authority  
P.O. Box 1258  
227 Vermont North  
Atlantic City, New Jersey 08404

Dear Mr. McAvaddy:

We have received your letter dated November 5, 1997 requesting our review and approval of your proposed one-time payout for accumulated sick leave to your employees.

Since this office is not required to review and approve your Operating Budget or changes in salaries and compensation, we have not reviewed your request. Current policy requires Housing Authorities who are not subject to these reviews to maintain appropriate documentation substantiating their fiscal activities on site, to be made available at the time a management review is conducted.

We must caution you, however, that New Jersey Civil service statutes also address the issue of sick leave and remind you to ensure your compliance with applicable state law. We recommend that you obtain an opinion of counsel regarding the requirements under state law.

The financial/operating subsidy issue raised in your letter will be handled separately by our Finance & Budget division.

If you have any questions in this matter, please contact John Niesz of my staff at 201-622-7900, ext. 3609 \_

Sincerely,

Carmen Valenti  
Director  
Office of Public Housing

EXHIBIT "2"

December 12, 1997

John F . Glowacki, Director  
of Administrative Services  
Atlantic City Housing Authority  
P.O. Box 1258  
Atlantic City, New Jersey 08404

RE: Employee Unused Sick Leave  
Our File No: 5338-1-97

Dear Mr. Glowacki:

This letter is in response to your request for advice regarding the Housing Authority's proposal to buy back sick leave from employees in excess of 200 hours.

Pursuant to N.J.S.A. 11A:6-20, an employee may make application for supplemental compensation in the form of accumulated sick days. In addition, there appears to be no prohibition against the employer buying back unused sick leave at its discretion.

The New Jersey Courts have taken the position that supplemental compensation paid to public employees is not a gift of public money in violation of N.J. Const., Art. VIII, Section III, Par. 2, so long as it is included within the conditions of employment. Maywood Ed. Assn., Inc., v. Maywood Bd. of Ed., 131 N.J. Super. 551 (Ch. Div. 1979).

Although there appears to be no prohibition against the Housing Authority buying back unused sick leave from employees, pursuant to N.J.S.A. 11A:6-5 and N.J.A.C. 4A:6-1.3(f), unused sick leave shall accumulate from year to year without limit. Therefore, any buy back proposal should be done with the employee's written consent. This consent will serve as the employee's waiver of the right to have his/her sick leave accumulate without limit for purposes of this one-time buyout.

In addition, if there is a collective bargaining agreement between the employees and the Housing

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John F. Glowacki, Director  
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Authority, please forward me a copy of same so that I may review it with respect to this issue regarding unused sick leave.

If I can be of any further assistance, please feel free to contact me.

Very truly yours,

ZELLER AND BRYANT

By: \_\_\_\_\_  
LESLIE M. GORE, Esquire

LMG:pk

cc: John McAvaddy, Executive  
Director



MONTGOMERY, MCCrackEN, WALKER S. RhODAS, LLP

LIBERTYVIEW  
457 HADCNFIELD ROAD  
CHERRY HILL, NJ 08002  
MICHAEL O MATTEO SENIOR  
NEW • JERSEY Responsible c Attorney  
609-488-7700  
FAX 609 498-7720

DIRECT DIAL  
2157727291

215-772.1500  
FAX 275-772.7620

December 15, 1997

John F Glowacki  
Director Of Administration  
Atlantic City Housing Authority  
227 Vermont North, 17th Floor  
P.O.Box 1258  
Atlantic City, NJ 08404

RE: Accumulated Paid Sick Leave  
Buyout for Current Employees

Dear John:

You have asked our opinion concerning whether the Authority can make a one-time buyout of paid sick leave to current employees (as opposed to retiring employees). You have asked us to research this question under New Jersey state law because you have already received an opinion from HUD that it does not violate federal law. Therefore, our opinion is limited to the legality of such an action under New Jersey state law.

Brief Facts

It is our understanding that the Authority is planning to implement a new sick leave policy that will limit accrual of sick leave to 200 days. Several employees have accumulated more than 200 days and the authority wishes to pay them some amount of compensation to "cash in" these days.

Legal Discussion

Nothing under state law requires that these employees be paid for the excess days. Conversely, there do not appear to be any court opinions or statutes that prohibit the payment of such sickleave. Under New Jersey's state civil service code, there is a provision that deals with the payment of accumulated sick leave to retiring employees. Under this statute, employers are permitted to pay employees up to \$15,000 for accumulated sick leave. N.J.S.A. § 11A:6-19. The civil service formula provides

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that employees be paid at one-half their daily rate of pay (during their final year of employment) for each accumulated sick day. I am enclosing a copy of the statute for your convenience.

This statute does not apply to the present situation. The Authority may use this statute for guidance and may limit the amount it pays any current employee similarly -- but it is not required to do so under state law.

We trust the foregoing is helpful. If you have any questions or need any further information, please do not hesitate to contact me.

Very truly yours,

Charles A. Ercole

CAE:w.

CC: Kenneth M. Jarin, Esq.

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Chief of Staff, S, Room 10000  
Special Assistant to the Deputy Secretary for Project Management, SD,  
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Chief Information Officer, Q, Room 3152  
Director, Office of Departmental Operations and Coordination, I, Room 2124  
Chief Financial Officer, F, Room 2202  
Director, Enforcement Center, V, 200 Portals Building, 1250 Maryland Avenue,  
SW, Washington, DC 20024  
Director, X, Real Estate Assessment Center, X, 1280 Maryland Avenue, SW,  
Suite 800, Washington, DC 20024

Director, Office of Multifamily Assistance Restructuring, Y, 4000 Portals Bldg.,  
1280 Maryland Avenue SW, Washington, DC 20024

(Acting ) Secretary's Representative, New York/New Jersey, 2AS (2)  
Senior Community-Builder Coordinator, 2FS (2)  
Director, Office of Public and Indian Housing, 2FPH (2)  
Assistant General Counsel, New York/New Jersey, 2AC  
Assistant Deputy Secretary for Field Policy and Management, SDF, Room 7108  
Deputy Chief Financial Officer for Finance, FF (Room 2202)  
Director, Office of Budget, FO (Room 3270)  
CFO, Mid-Atlantic Field Office, 3AFI (2)  
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Deputy Staff Director  
Counsel Subcommittee on Criminal Justice  
Drug Policy & Human Resources  
B373 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Fred Thompson  
Chairman  
Committee on Governmental Affairs  
340 Dirksen Senate Office Building  
United States Senate  
Washington, DC 20510

The Honorable Joseph Lieberman  
Ranking Member  
Committee on Governmental Affairs  
706 Hart Senate Office Building  
United States Senate  
Washington, DC 20510

The Honorable Dan Burton  
Chairman  
Committee on Governmental Reform  
2185 Rayburn Building  
House of Representatives  
Washington, DC 20515

Henry A. Waxman  
Ranking Member  
Committee on Governmental Reform  
2204 Rayburn Building  
House of Representatives  
Washington, DC 20515

Subcommittee on General Oversight & Investigations  
O'Neill House Office Building - Room 212  
Washington, DC 20515  
(Attention: Cindy Fogleman)

Director, Housing & Community Development Issue Area  
US GAO, 441 G Street, NW, Room 2474  
Washington, DC 20548  
(Attention: Judy England-Joseph)

Steve Redburn, Chief  
Office of Management and Budget  
725 17<sup>th</sup> Street, NW Room 9226  
New Executive Office Building  
Washington, DC 20503