AUDIT REPORT

SEATTLE HOUSING AUTHORITY
MOVING TO WORK DEMONSTRATION PROGRAM
SEATTLE, WASHINGTON

2004-SE-1004

MAY 21, 2004

OFFICE OF AUDIT, REGION 10
SEATTLE, WASHINGTON

audit report

Issue Date
May 21, 2004
Audit Case Number
2004-SE-1004

TO: Milan Ozdinec, Deputy Assistant Secretary, Office for Public Housing Investments, PI

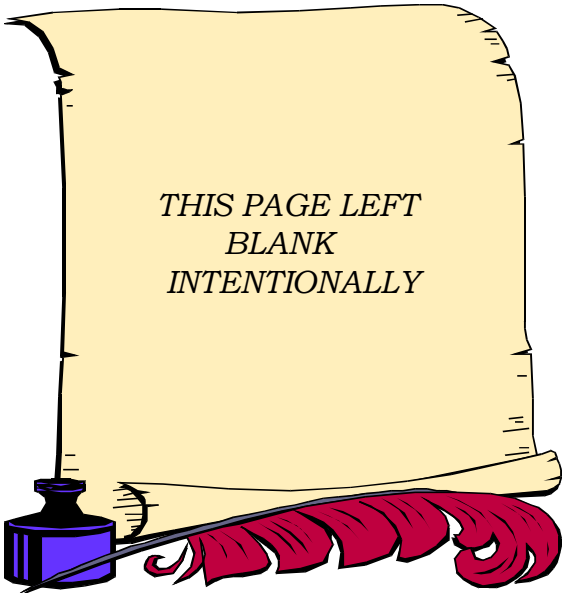
FROM: Frank E. Baca, Regional Inspector General for Audit, 0AGA

SUBJECT: Seattle Housing Authority
Moving To Work Demonstration Program
Seattle, Washington

We completed an audit of the Seattle Housing Authority's Moving To Work Demonstration Program activities. We performed the audit as part of a national audit of the Department's Moving To Work Demonstration Program. This report contains two findings with recommendations requiring action by your office.

In accordance with HUD Handbook 2000.06 REV-3, within 60 days please provide us, for each recommendation without management decisions, a status report on: (1) the corrective action taken; (2) the proposed corrective action and the date to be completed; or (3) why action is considered unnecessary. Additional status reports are required at 90 days and 120 days after report issuance for any recommendation without a management decision. Also, please furnish us copies of any correspondence or directives issued because of the audit.

Should you or your staff have any questions, please contact me at (206) 220-5360.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Executive Summary

We completed an audit of the Seattle Housing Authority's (Authority) Moving To Work Demonstration Program (MTW Program). The audit objectives were to determine if the Authority's MTW Program activities furthered the purpose of the Program and were carried out in compliance with Program agreements. The Authority's Program included 17 activities, 8 of which the Authority actually implemented.

HUD did not require the Authority to collect information to show the purpose of the Program was furthered

Under the MTW Program the Authority designed activities to accomplish the Program's purpose of reducing cost and achieving greater cost effectiveness, providing work incentives to promote resident self-sufficiency, and increasing housing choices for low-income families. However, HUD did not require the Authority to evaluate Program accomplishments or keep specific records to facilitate such an evaluation. Accordingly, the Authority did not have readily available information to determine if the activities furthered the purpose of the Program. We will address this issue during our national audit of the MTW Program.

Two of eight Authority MTW activities did not fully comply with several Program requirements

Our review of the eight activities implemented showed the Authority was carrying out six of the activities in compliance with the MTW Agreement. However, the Authority did not carry out the two remaining activities in full compliance with Program requirements:

- For the "Simplification of the Process to Project-Base Section 8 Assistance" activity, our sample of 11 (of 60) housing projects showed the Authority exceeded the authority granted under the MTW Demonstration Agreement for simplifying the process to project-base Section 8 Certificates and Vouchers. As a result, the Authority cannot provide HUD with assurance that: (1) impacts on environmental quality were properly considered; (2) prevailing wages were paid; (3) relocation and real property acquisition requirements were met; and (4) assistance was the minimum needed to provide affordable housing. Authority officials told us the design of their MTW Program made it unnecessary to address environmental, prevailing wage, relocation and acquisition requirements, and the MTW Demonstration Agreement did not require them to perform subsidy-layering reviews.

- For the "Site-Based Waiting List" activity, the Authority did not implement its site-based waiting list program in accordance with HUD requirements. Specifically, the Authority did not collect required information on tenant and applicant nationality and language. As a result, the Authority did not carry out agreed to affirmative marketing, and racial concentrations as reported in its Annual Report were as high as 86 percent. Authority officials told us they perceived tenants as having diverse national and language backgrounds and concluded there was no racial concentration.

The Authority Disagreed with the Draft Report

We provided Authority Board and management officials with a discussion draft report on March 19, 2004, and discussed our findings with them at the exit conference on April 1, 2004. On April 19, 2004, we provided the Authority a formal draft report and the Executive Director responded with written comments on May 3, 2004. The Executive Director generally disagreed with our findings and noted there were differences in the interpretation of the Moving To Work requirements. The findings section of this report summarizes and evaluates the Authority's comments. A copy of the Authority's full response is included in Appendix B.

Recommendations

For the Simplification of the Process to Project-Base Section 8 Assistance activity we recommend that HUD make a determination regarding the issues raised. If appropriate, HUD should require the Authority to bring the sampled projects into compliance with MTW Program requirements or repay housing assistance payments, review the projects that were not in the audit sample to determine if Program requirements were met and take appropriate action as needed, and ensure that any future project-based Section 8 assistance complies with the MTW Demonstration Agreement. Regarding the Site-Based Waiting List activity, we recommend that HUD require the Authority to take necessary measures to properly implement its affirmative fair housing marketing activity.

Table of Contents

Abbreviations

Authority	Seattle Housing Authority
FHEO	Fair Housing & Equal Opportunity
HAP	Housing Assistance Payments
HUD	U.S. Department of Housing and Urban Development
MTW Program	Moving To Work Demonstration Program
OIG	Office of Inspector General
URA	Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended

Introduction

The Moving To Work Demonstration Program was established by Public Law 104-134 Section 204 (April 26, 1996). The MTW Program tasked HUD with identifying replicable models for reducing cost and achieving greater cost effectiveness; providing work incentives to promote resident self-sufficiency; and increasing housing choices for low-income families. To accomplish this task, HUD offered up to 30 Public Housing Authorities the unprecedented authority to design and test, with HUD approval, housing and self-sufficiency strategies that had not been possible under the existing programs.

The Seattle Housing Authority submitted a proposal to participate in the MTW Program in response to HUD's December 18, 1996 MTW Program notice in the Federal Register. HUD accepted the Authority's proposal, and an MTW Demonstration Agreement was executed in December 1998 with a 5-year term. In January of 2001 the Authority and HUD agreed to extend the term of the MTW Demonstration Agreement through September 2006.

The MTW Demonstration Agreement established the requirements applicable to the Authority's Program. Further, the Agreement included the Statement of Authorizations that specifically described the activities that could be carried out under the MTW Demonstration Agreement. The Authority's MTW Program Agreement authorized 17 activities. Of the 17 activities, the Authority decided to implement eight:

- Site-Based Waiting List
- Changes to Section 8 Tenant-Based Assistance Program
- Simplification of the Process to Project-Base Section 8 Assistance
- Simplification of Housing Management Practices
- Targeting Assistance
- Establish Reasonable Rent and Subsidy Levels
- Single Fund Budget with Full Flexibility
- Investment Policy

Audit Objectives

Our audit objectives were to determine if the Authority's Moving To Work Demonstration Program activities furthered the purpose of the Program and were carried out in compliance with Program agreements.

Audit Scope and Methodology

To achieve our objectives, we performed audit procedures that included:

Obtaining and reviewing:

- The MTW Demonstration Agreement between HUD and the Authority to determine the activities approved.

- HUD files and records to obtain information relevant to the Authority's MTW Program.

- The Authority's annual MTW Program plans and reports.

- Available Authority records showing how activities further the purpose of the MTW Program.

- Available Authority records showing how activities meet the requirements established in the MTW Demonstration Agreement.

Interviewing:

- HUD program staff to confirm our understanding of the MTW Program requirements the Authority must follow.

- The Authority's current staff members involved in implementation of the MTW Program to obtain information regarding Program purpose, activities, and records.

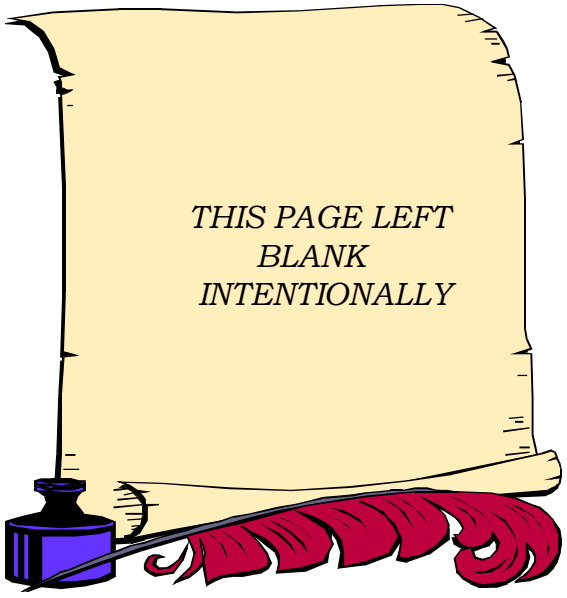
In addition, to evaluate the Authority's compliance with Program requirements for project-based Section 8 assistance, we selected a non-statistical sample of 11 projects drawn from the 60 projects in the Program. Accordingly, our test results apply to the 11 projects tested and cannot be projected to the remaining 49 projects (see Appendix C for sampling methodology).

Finally, we used Fair Housing & Equal Opportunity (FHEO) guidance to analyze the Authority's information on resident racial composition for buildings with site-based waiting lists. We used the FHEO guidance because the Authority did not have standards for determining if buildings were racially identifiable.

We performed audit work from August 2003 through November 2003. The audit covered the period May 1997 through March 31, 2003. We extended the review, where

appropriate, to include other periods. We performed the Audit in accordance with generally accepted government auditing standards.

We provided a copy of this report to the Deputy Assistant Secretary of the Office for Public Housing Investments.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The Authority Did Not Comply With Environmental, Labor, and Other Moving To Work Program Requirements When Awarding Project-Based Assistance

In implementing its *Simplification of the Process to Project-Base Section 8 Assistance* activity, the Seattle Housing Authority exceeded the authority granted under the Moving To Work Demonstration Agreement when it disregarded select MTW Program requirements applicable to project-based Section 8 assistance. As a result, project-based Section 8 assistance totaling $1.5 million has been provided with no assurance that: (1) impacts on environmental quality were properly considered; (2) prevailing wages were paid; (3) relocation and real property acquisition requirements were met; and (4) the assistance was the minimum needed to provide affordable housing. Authority officials told us the design of their Program made it unnecessary to address environmental, prevailing wage, relocation and acquisition requirements, and the MTW Demonstration Agreement did not require them to perform subsidy-layering reviews.

The following table summarizes the results for the 11 (of 60) projects reviewed in our sample, and shows Housing Assistance Payments (HAP) received, estimated annual HAPs, and MTW Program requirements that the Authority did not adhere to.

			Moving To Work Demonstration Program Requirements not met			
Project Name	Total HAP made at 11/2003	Estimated Annual HAP	Environmental	Prevailing Wage	Relocation Assistance and Real Property Acquisition	Subsidy-layering
Eastlake Supportive Housing		$111,000	☒	☒	☒	☒
YWCA Opportunity Place		$748,200	☒	☒		☒
St. Charles Apartments		$279,000	☒	☒		☒
Colwell Building	$422,556	$117,923	☒			☒
Legacy Hotel	$148,816	$99,211	☒			☒
Meadowbrook View	$223,198	$223,198	☒			☒
Lam Bow	$241,682	$241,682	☒		☒	☒

Apartments						
Plymouth Place	$257,917	$309,500	☒	☒	☒	☒
Traugott Terrace	$66,141	$132,282	☒	☒		☒
Kingway Apartments	$17,199	$34,398	☒			☒
Morrison Hotel	$138,955	$555,820	☒		☒	☒
Total HAP	$1,516,464	$2,852,214				

Each requirement not followed is separately discussed below.

The Moving To Work Demonstration Agreement specifically requires environmental reviews and payment of prevailing wages

The MTW Agreement (Article I.J.) specifically requires the Authority to obtain HUD environmental approval under 24 CFR Part 50 before committing HUD or local funds to Program activities involving eligible property. Further, the MTW Agreement (Article I.A.3.) states that Section 12 of the 1937 Housing Act[1] governing wage rates shall apply to housing assisted under the MTW Program, unless tenant based assistance is the only assistance received by participating families and the housing in which they reside receives no other assistance. Accordingly, the section of the 1937 Housing Act regarding wage rates applies to project-based Section 8 assistance.

Environmental reviews were not performed

The MTW Demonstration Agreement states that, if applicable to activities under the Agreement's Statement of Authorizations, the Authority agreed to provide HUD with any documentation needed to carry out its review under the National Environmental Policy Act (NEPA) and other related authorities, and otherwise assist HUD in complying with 24 CFR Part 50 environmental review procedures. The Authority further agreed (a) to carry out mitigating measures required by HUD or select an alternate eligible property, if permitted by HUD, and (b) not to acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds to Program activities involving eligible property without HUD's approval under 24 CFR Part 50.

The Authority did not receive HUD environmental approval under 24 CFR Part 50 for projects receiving project-based Section 8 assistance. Authority officials told us they did not request or receive environmental reviews

[1] Section 12 of the United States Housing Act of 1937 (42 U.S.C. 1437J).

from HUD for any of the projects provided project-based Section 8 assistance under the MTW Program. Our review of documentation for the 11 projects also found no Authority requests for environmental reviews or evidence of HUD approvals.

Non-compliance with prevailing wage requirements

The MTW Demonstration Agreement (Article I.A.3.) specifically states that the prevailing wage requirements in Section 12 of the United States Housing Act of 1937 continue to apply to the Authority. Section 12 states:

"Any contract for loans, contributions, sale, or lease pursuant to this chapter shall contain a provision requiring that not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation, of the low-income housing project involved; and shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act [40 U.S.C. 276a et seq.], shall be paid to all laborers and mechanics employed in the development of the project involved (including a project with nine or more units assisted under section 8 of this Act…), and the Secretary shall require certification as to compliance with the provisions of this section prior to making any payment under such contract."

The Authority did not include provisions for compliance with prevailing wage requirements in the agreements entered for project-based Section 8 assistance. Our review showed prevailing wage requirements were applicable to five of the 11 projects in our audit sample. The agreements with the owners of these five projects did not require prevailing wages.

The Authority entered into agreements with the owners of the five projects to provide project-based Section 8 assistance before construction or rehabilitation was started. Those agreements were in the form of letters from the Authority committing project-based Section 8 assistance to the owners of the proposed projects. The following table shows the date of commitment letter and the start of construction or rehabilitation for the five projects.

Project	Date of commitment to provide project-based Section 8 assistance	Date Construction or Rehabilitation started
Eastlake Supportive Housing	July 11, 2001	Anticipated start in early 2004
Traugott Terrace	July 11, 2001	July 2002
Plymouth Place/ aka First & Denny	July 11, 2001	December 19, 2001
YWCA-Opportunity Place	July 11, 2001	October 1, 2002
St. Charles Apartments	March 18, 2002	March 24, 2003

The five projects included two that were in operation at the time of our audit, and had received HAPs totaling about $324,000. For the remaining three projects that were not yet in operation, the Authority commitment letters included monthly HAPs that would amount to $1.1 million annually.

The Authority was not exempt from adhering to Uniform Relocation Assistance, Real Property Acquisition, and Subsidy-layering requirements

The MTW Demonstration Agreement did not explicitly state that the Authority had to follow federal relocation assistance, real property acquisition, or subsidy-layering requirements. However, the Agreement did state that the Authority was subject to all requirements of the Annual Contributions Contracts, United States Housing Act of 1937, and other HUD requirements except as necessary to implement the activities in the Statement of Authorizations. These requirements include federal provisions regarding relocation assistance, real property acquisition, and subsidy-layering. The activities the Authority was authorized to implement involved simplifying the process to project-base Section 8 Certificates and Vouchers, selecting projects to receive assistance, and suspending HUD reviews and approvals. In implementing these activities, the Authority did not need to do away with Uniform Relocation Assistance, Real Property Acquisition, and subsidy-layering requirements; therefore, the Authority had to follow these requirements. Further, the Authority's Fiscal Year 2001 annual plan included a certification that the Authority will comply with acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and implementing regulations as applicable.

The Authority did not require or monitor compliance with Uniform Relocation Assistance and Real Property Acquisition Policies Act requirements

Federal regulations at 24 CFR Part 983 require that project-based Section 8 assistance be provided in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act.

Relocation Assistance requirements not followed

The regulations at 24 CFR 983.10 state that a displaced person must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201– 4655) and implementing regulations at 49 CFR part 24. The relocation requirements at 49 CFR part 24 include provisions that at least one comparable replacement dwelling is made available to the person to be displaced, relocation assistance advisory services be provided, reasonable documentation supporting relocation expenses be kept, and displaced persons receive payment for moving and related expenses.

The Authority's agreements for project-based Section 8 assistance did not include provisions for compliance with relocation requirements. Our sample review of 11 projects identified two projects that involved potential displacement:

- Plymouth Place. The proposal for project-based Section 8 assistance at the Plymouth Place project stated the site was presently occupied by an Ivar's Fish & Chips restaurant; however, the proposal did not indicate whether the restaurant was in operation or closed. We contacted the Plymouth Place owner and Ivar's, who informed us that on May 23, 2001 the owner notified Ivar's that its lease would be terminated on September 1, 2001. An Ivar's official told us that they closed operations, moved all company owned equipment and fixtures, and turned the property over to Plymouth Housing on September 1.

  The owner's May 23, 2001 notice to Ivar's that their lease would be terminated came 12 days

after the Authority issued the request for proposals for project-based Section 8 assistance, and nine days before the application for assistance was prepared. Accordingly, relocation benefits may have been applicable.

- Morrison Hotel. The development budget narrative in exhibit C of the Morrison Hotel HAP states the building will operate during construction (rehabilitation) and includes a $257,000 relocation entry that notes a breakdown was previously provided. We contacted the Morrison Hotel owner, who said that residents were relocated during construction, and that relocation requirements were also contractually required by other funding sources. However, the Authority has no assurance that relocation requirements were met.

For these two projects, the Authority did not fulfill its responsibility to require and monitor compliance with relocation requirements.

Real property acquisition requirements not adhered to

Federal regulations at 24 CFR 983.10 also state that the acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B. The real property acquisition requirements at 49 CFR part 24 include provisions that must be met for real property acquisition for a Federal program or project, and to programs and projects where there is Federal financial assistance in any part of project costs.

The regulations at 49 CFR 24.2 define program or project as any activity or series of activities undertaken by a Federal agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding agency guidelines. Further, 49 CFR 24.101 states that with limited exceptions, the requirements for real property acquisition apply to any acquisition of real property for a Federal program or project, and to programs and projects where there is Federal financial assistance in any part of project costs.

For two of the 11 sampled projects, Section 8 assistance was clearly anticipated prior to the expected real property

acquisition; however the Authority did not include provisions for compliance with real property acquisition requirements in the agreements.

- Eastlake Supportive Housing. In a July 11, 2001 commitment letter, the Authority committed to provide project-based Section 8 assistance for this project, and the application showed the real property acquisition was to be completed September 29, 2001.

- Lam Bow Apartments. The Authority anticipated project-based Section 8 assistance for the Lam Bow Apartments prior to acquisition on December 2, 2002. A September 15, 2003 Board Resolution adjusting the rent structure of the apartments stated that "…the financing for the acquisition of the Lam Bow apartments was based on Section 8 voucher payment standards and market rents for the area at the time of acquisition."

Subsidy-layering reviews not performed

The Department of Housing and Urban Development Reform Act of 1989 limits the amount of assistance that can be provided to a project. The Act requires HUD or a housing credit agency to certify that the combination of HUD and other government assistance provided in connection with a property shall not be any greater than is necessary to provide affordable housing. The regulations at 24 CFR Part 983 implement this requirement and require housing authorities to obtain subsidy-layering contract rent reviews from HUD or a Housing Credit Agency before entering into an agreement for assistance. The rent reviews are to determine if rents charged are the minimum rents needed to cover project costs. Rents above the minimum needed to cover costs would result in HUD paying excessive Section 8 rental subsidies.

Authority officials told us they did not request subsidy-layering reviews for any of the projects that were provided project-based Section 8 assistance under the MTW Program. Also, our sample review of 11 projects identified no requests for subsidy-layering review, and showed that all 11 projects received or anticipated receiving other governmental assistance. The initial rents for these projects were not supported by a comparability analysis

prepared by a qualified State-certified appraiser as required by 24 CFR 983.256. Instead, the Authority determined that initial rents were reasonable based on its standard rent reasonableness process.

Overall Auditee Comments

The Authority concluded that it complied with all requirements of the MTW Program and its MTW Agreement. The Authority characterized each of the issues discussed in the finding as arising from serious differences of opinion over the interpretation of the program requirements. Further, the Authority believed these differences in interpretation of the requirements were certain to arise in future audits of other housing authorities. For this reason the Authority recommended the finding be withdrawn and the differences of interpretation reported in a national audit report addressing the MTW Program as a whole.

OIG Evaluation of Overall Auditee Comments

We maintain the finding accurately reflects HUD requirements. Nevertheless, to address Authority concerns regarding differences in interpretation and to ensure that program requirements are clearly communicated, we are recommending that HUD make its own determinations regarding the issues raised.

Auditee Comments on Environmental Reviews

The Authority stated that HUD reviews were not applicable activities under the MTW Statement of Authorizations and, therefore, the environmental review and documentation requirements contained in the MTW Agreement did not apply. Additionally, the Authority stated that to comply with the National Environmental Policy Act (NEPA), it had sent required documentation for a Part 58 review to the City of Seattle, which conducted a review and determined that project basing is an exempt activity under NEPA.

OIG Evaluation of Auditee Comments

We do not agree the Statement of Authorizations exempted the Authority from its responsibility under the MTW Agreement. The General Conditions of the Statement of Authorizations provide that:

> "This Statement of Authorizations describes the activities that the Seattle Housing Authority (SHA) may carry out under the Moving to Work Demonstration program (MTW), subject to the terms and conditions of

> the Moving to Work Demonstration Agreement (MTW Agreement) between the SHA and the U.S. Department of Housing and Urban Development (HUD)."

Accordingly, the provisions of the MTW Agreement apply, and take precedence over the Statement of Authorizations.

Further, the Part 58 reviews by the City of Seattle cannot be properly assessed until HUD has determined if the Authority's award letter constitutes an agreement for project basing assistance. The HUD determination is needed to properly classify the transaction for environmental purposes as new construction, rehabilitation, or acquisition. Such classification is critical to determining the appropriate environmental requirements.

Auditee Comments on Prevailing Wage Requirements

The Authority stated that prevailing wage requirements did not apply to projects awarded project based assistance because construction or rehabilitation was started before an agreement for the assistance was executed. The Authority stated the award letters issued to owners selected from those responding to a request for proposals were merely a statement of a willingness to provide assistance. They were neither a contract nor a formal agreement. Also, the Authority stated that prevailing wage requirements do not describe the nature or the formality of the agreement required to invoke prevailing wage requirements.

OIG Evaluation of Auditee Comments

As stated in the finding, we believe the letter is a clear acceptance of the owner proposal meeting the requirements for application of prevailing wage requirements. In addition, we believe that to conclude otherwise could lead to a perception that prevailing wage requirements are being circumvented or abused.[2]

[2] Abuse is distinct from fraud, illegal acts, and violations of provisions of contracts or grant agreements. When abuse occurs, no law, regulation, or provision of a contract or grant agreement is violated. Rather, the conduct of a program or entity falls far short of behavior that is expected to be reasonable and necessary business practices by a prudent person.

Auditee Comments on Relocation and Real Property Acquisition Requirements

The Authority stated that the findings on relocation and real property acquisition are incorrect in concluding that the Authority failed to comply with the requirements. The Authority stated that assistance was provided after any real property was acquired and after rehabilitation and demolition. The Authority's position is that assistance was not provided until the Housing Assistance Payment Contract was executed and stated award letters issued to owners were not considered a formal document.

The Authority concluded that under the circumstances, the event creating any displaced persons and requiring relocation assistance would be the initiation of negotiations between Seattle Housing Authority and the owners. In support of this conclusion, the Authority cited HUD handbook 1378, Section 1-15c:

> Whenever displacement occurs as a direct result of privately undertaken acquisition, rehabilitation or demolition, the initiation of negotiations is the execution of the loan or grant agreement between the grantee and the person owning or controlling the property.

The Authority also concluded real property acquisition requirements did not apply because the owners that undertook the projects did not have authority to use eminent domain authority.

OIG Evaluation of Auditee Comments

Regarding relocation, we believe the Authority's award letter is the appropriate measure for the start of HUD assistance used in determining if persons are displaced. We selected this date since the Authority program did not require an agreement to enter a housing assistance payment contract similar to the standard Section 8 project based program.

As regards real property acquisition, the Authority's comments did not address its acquisition of a project or include the requirements that apply even when eminent domain authority does not exist. Although the regulations at 49 CFR 24.101 exempt qualifying real property acquisition from the requirements, specified conditions must be met for the acquisition to be considered exempt. Those conditions include provisions that the purchaser (the

Authority or program participants lacking eminent domain authority) advise the owner:

- The property will not be acquired unless negotiations result in an amicable agreement, and
- Of what it believes to be the fair market value of the property.

The Authority did not ensure these conditions were met or retain documents needed to show they were met.

Auditee Comments on Subsidy Layering

The Authority stated that provisions in the MTW Agreement clearly indicate that HUD and the Authority intended to suspend HUD's subsidy layering review. In support of this position the Authority cites:

- Section VII E4 of the Statement of Authorizations that suspends HUD reviews and approvals related to the project basing of Section 8 Certificates and Vouchers,
- Section VI.A of the Statement of Authorizations that permits the Authority to determine reasonable rents, the content of housing assistance payments contracts to owners, and the content of contract rental agreements, and
- Section 3 of the Calculation of Subsidies provision in Attachment A to the MTW Agreement that does not require the Authority to provide only the minimum assistance necessary to provide affordable housing.

OIG Evaluation of Auditee Comments

We do not agree that HUD and the Authority intended to suspend HUD's subsidy layering reviews. The Statement of Authorizations was silent on HUD subsidy layering reviews because Section VII E4 of the Statement of Authorizations applies only to projects that are "otherwise non-subsidized." In the absence of other governmental subsidies a HUD subsidy layering review is not required. However, as noted in the finding, all 11 projects included in our review received other governmental assistance, making all HUD Section 8 Project Based Assistance rules

applicable, including the Subsidy Layering Review requirements.

Recommendations

We recommend that you take action in accordance with the Moving To Work Demonstration Agreement and:

1A. Determine if the Seattle Housing Authority complied with statutory and regulatory requirements for environmental reviews, prevailing wages, relocation assistance, real property acquisition, and subsidy-layering reviews for the 11 projects discussed in Finding 1.

If you determine that the Authority did not comply with any or all of the applicable requirements per Recommendation 1A, we further recommend you:

1B. Direct the Authority to bring the projects into compliance or repay to HUD any of the $1,516,464 in Housing Assistance Payments that it received for these projects that are ineligible.

1C. Review the award of project-based Section 8 assistance to each project in the Seattle Housing Authority Program for similar non-compliance, and take appropriate corrective action.

1D. Take the appropriate corrective or remedial actions under the Moving To Work Demonstration Agreement to ensure future project-based Section 8 assistance complies with statutory and regulatory requirements for environmental reviews, prevailing wages, relocation assistance, real property acquisition, and subsidy-layering reviews.

The Seattle Housing Authority Needs to Properly Address Racial Concentrations in Assisted Buildings

The Seattle Housing Authority did not include agreed to affirmative marketing provisions in its public housing site-based waiting list procedures. As a result, the Authority did not have a basis for determining when affirmative marketing was required and had not addressed apparent minority racial concentrations even though its reports showed concentrations as high as 86 percent in its buildings. This occurred because the Authority did not believe it had to affirmatively market its buildings if those buildings maintained the same racial composition as at Program inception.

The Moving To Work Agreement allows the Authority to use site-based waiting lists, subject to HUD approval of an implementation plan. HUD required that the implementation plan address how the Authority will conduct affirmative fair housing marketing[3] and maintain records for auditing purposes. The Authority's Board of Commissioners detailed the implementation plan for site-based waiting lists in its Applicant Choice Policy (Policy) Resolution in June 2000, and HUD approved it the following October. The Resolution requires the Authority to conduct affirmative fair housing marketing when a building becomes "racially identifiable," and allows the Authority to determine racial identifiability using resident race, nationality, and language.[4] The Authority's affirmative fair housing marketing program was intended to promote diversity in racially identifiable buildings by marketing those buildings to underrepresented groups through appropriate community or other newspapers. The Resolution directed Authority staff to develop the

[3] The purpose of affirmative fair housing marketing is to promote a condition where people of similar incomes in the same housing market area have a like range of housing choices by ensuring that positive outreach and informational efforts are made to those least likely to know about and apply for the housing being marketed. (HUD Handbook 8025.1 para 1-3)

[4] If the vast majority of residents in a building are Asian Americans, for example, but they represent a mix of Laotian, Thai, or Korean, etc., the Authority will not consider a building racially identifiable merely because a majority of the residents are Asian Americans.

necessary procedures and implement the policy by January 2001.

Our review found that, while the Policy meets applicable fair housing requirements, the Authority did not fully implement the Policy. The Authority did not attempt to reach underrepresented groups through community or other newspapers. Also, although the Resolution called for using nationality and language in addition to race as a basis for determining racial identifiability, the Authority's procedures did not define "racial identifiability," or provide for collecting nationality and language information. Therefore the Authority does not have the criteria or the information needed to determine if a building is racially identifiable under its Policy, and lacks an objective basis for deciding whether to conduct affirmative fair housing marketing to promote diversity in its buildings.

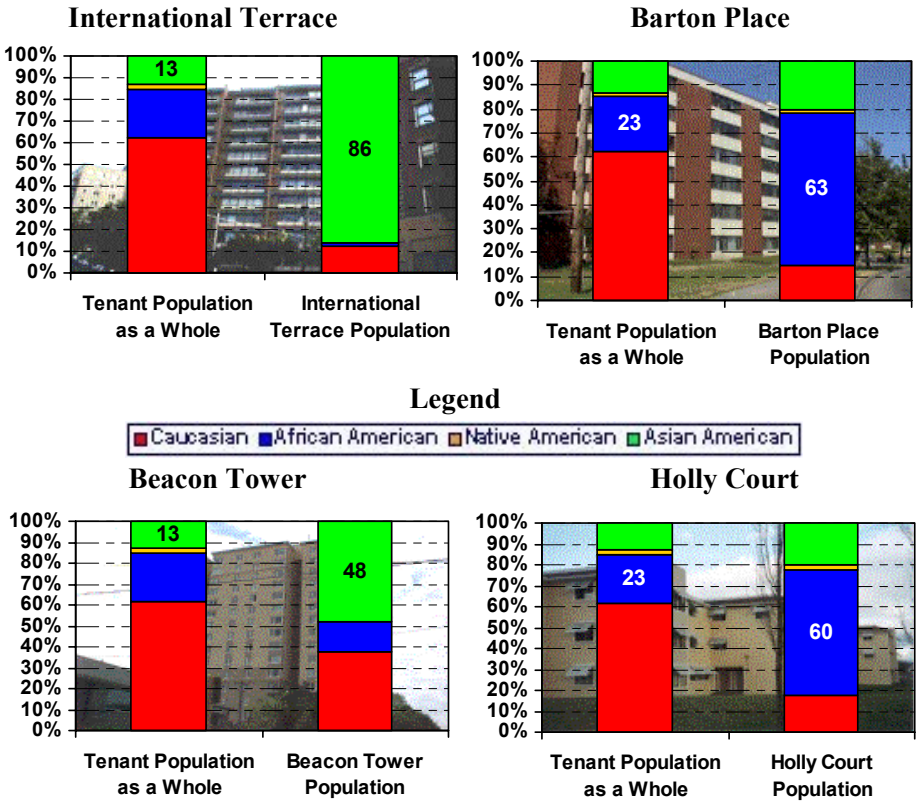
The Authority anticipated that people of particular races would apply for certain buildings and mitigated this tendency toward racial identifiability by having every other placement come from the urgent needs waiting list.[5] Monitoring communities for racial identifiability was expected to take into account the different nationalities in racial groups and would show that a community was not racially identifiable even though it had a preponderance of one race. However, the Authority's FY 2002 Applicant Choice Policy Evaluation found that the Authority only haphazardly records the information needed for this monitoring and recommended the Authority "decide whether to invest time and resources in better tracking of ethnic heritage and language, or accept a certain amount of apparent racial concentration."

The Authority's Fiscal Year 2002 Annual Report included information on the resident racial composition for buildings with site-based waiting lists. This information showed significant differences in the resident racial distributions. Because the Authority had not established standards for determining if buildings were racially identifiable, we used Fair Housing & Equal Opportunity (FHEO) guidance to put the reported distributions into context and determine if they could be classified as concentrations. The comparison of building racial composition using FHEO guidance showed

[5] Applicants on the urgent needs waiting list consider their housing need to be too urgent to wait for a development of their own choosing.

four buildings could be classified as racially identifiable. For these four buildings the percentage of residents of a particular racial group was at least 20 percent higher than the average percentage for all high-rise buildings or more than 50 percent for minority groups.

The below charts show the reported racial distribution for these four buildings is clearly out of proportion to the Applicant Choice program population as a whole. Also, for International Terrace, the reported percentage of Asian American residents in that building rose from 84 percent to 86 percent in fiscal year 2002 while the percentage of Asian American applicants for that building rose from 82 percent to 90 percent over the same period. However, the Authority has not collected nationality and language information for this (or any) of its buildings, defined "racial identifiability," nor advertised site based waiting lists in community or other newspapers. As a result, the Authority had not addressed these apparent racial concentrations reported in its Fiscal Year 2002 Annual Report.



Authority officials said they did not believe the Authority had to conduct affirmative marketing as long as the racial

composition of its buildings had not significantly changed since the inception of the Applicant Choice Policy.

Auditee Comments

The Authority states that it Applicant Choice Policy (Policy) involves a new approach of providing services and conducting business in keeping with the purpose of the MTW Demonstration and that they identified the shortcomings in the finding before our audit and are making progress toward full implementation of the Policy and the HUD-approved implementation plan.

The Authority noted that the implementation of the Policy was harder than they anticipated and shared their ongoing concern about its implementation. When there are long wait lists to get into particular buildings, affirmative fair housing marketing may be a disservice to those who respond to such marketing with the expectation of renting there in the near future. It makes little sense to advertise the long site-specific wait lists for buildings such as International Terrace and Beacon Tower because anyone responding to the ad will wait months for a unit when they could be housed much more quickly at another building. In these cases, only those who are more interested in living at International Terrace or Beacon Towers are served by the fair marketing advertising. SHA believes it is making substantial progress toward meeting fair housing requirements.

The Authority says the four buildings identified in the findings as racially identifiable were already racially identifiable before the Policy was adopted. The Authority had always interpreted the policy as requiring affirmative fair housing marketing when there is a significant change in the racial, ethnic, or national population in any building, and that change evidences an unacceptable concentration of any racial group or nationality. Since the policy was adopted, there has not been a significant change in the racial composition of any Authority building.

OIG Evaluation of Auditee Comments

We do not agree that implementation concerns identified by the Authority are difficult to overcome and should delay implementation. A simple disclosure of the estimated time applicants can expect to wait for a unit and use of the

Authority's existing waiting list designed for applicants wanting the first available housing should address the concerns listed. The estimated time that would be spent on the waiting list would ensure expectations were reasonable, the use of the urgent needs waiting list would help those wanting the first available unit, and those wanting to live at a specific property would be given a fair opportunity to do so.

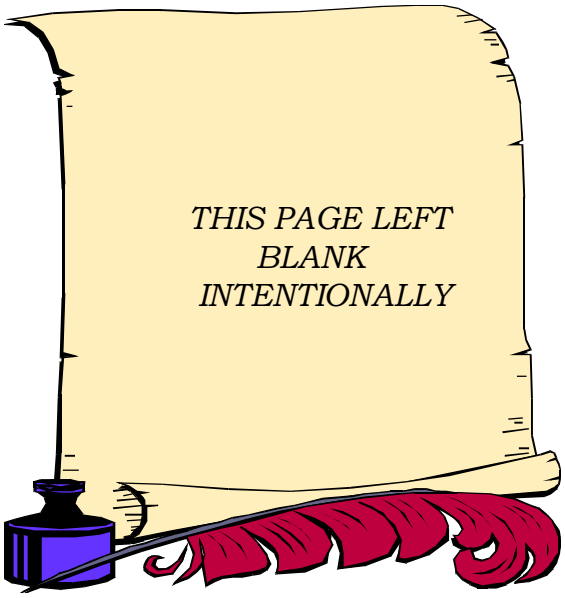
Further, we do not agree with the Authority position that only a significant change in the racial population of a building will require affirmative fair marketing. The Authority should take action under its affirmative fair marketing plan when a property is racially identifiable regardless of how long that condition has existed. Also, the Authority should continue to monitor changes and take action when a "significant change" is noted. Accordingly, we believe adding appropriate definitions of racial identifiability and significant changes requiring affirmative fair housing marketing would enhance the Authority's policy and plan.

Recommendations

We recommend that you take action in accordance with the Moving To Work Demonstration Agreement to require the Seattle Housing Authority to:

2A. Amend its Applicant Choice Policy procedures to include a definition of racial identifiability, and a method of collecting the nationalities and languages of its residents and applicants.

2B. Conduct affirmative fair housing marketing for its buildings that are racially identifiable based on race until the Authority has the nationality and language information it needs to carry out the Applicant Choice Policy.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Management Controls

In planning and performing our audit, we obtained an understanding of the management controls that were relevant to our audit. Management is responsible for establishing effective management controls. Management controls, in the broadest sense include the plan of organization, methods, and procedures adopted by management to meet its missions, goals, and objectives. Management controls include the processes for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance.

Relevant Management Controls

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

- Program Operations – Policies and procedures that management has implemented to reasonably ensure that Moving To Work Demonstration Program activities are carried out as authorized.
- Compliance with Laws and Regulations – Policies and procedures that management has implemented to reasonably ensure that resources used are consistent with laws and regulations.

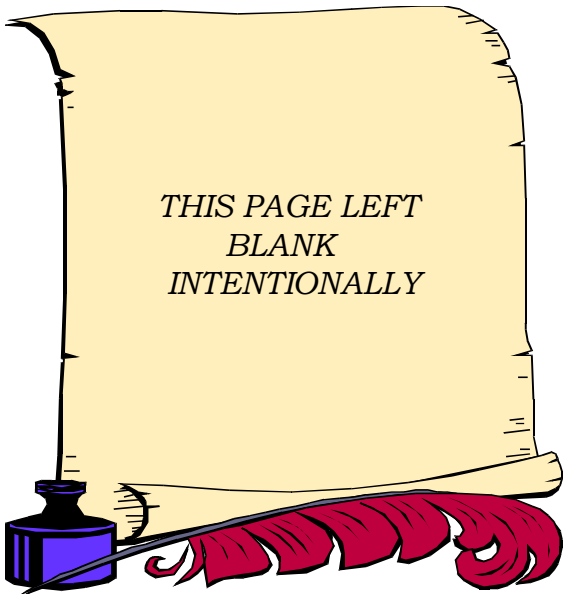
Scope of Work

We assessed the relevant controls identified above.

Significant Weaknesses

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

We identified significant weakness in the Authority's management controls over project-based Section 8 assistance and fair housing. These weaknesses are discussed in findings 1 and 2 respectively.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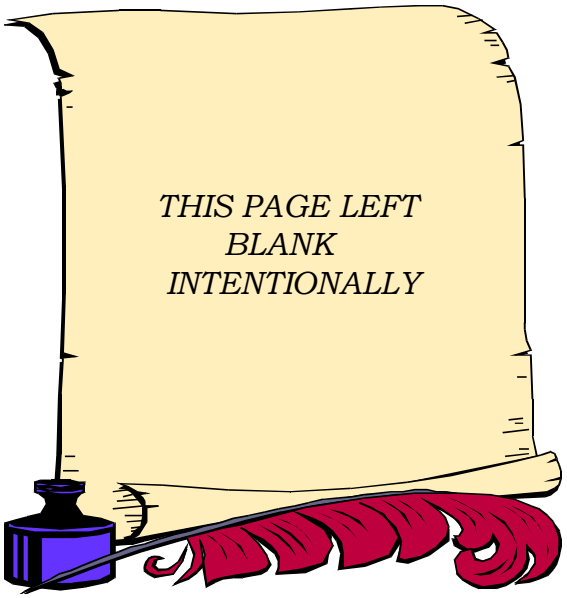
Follow Up On Prior Audits

This was the first Office of Inspector General audit of the Seattle Housing Authority's Moving To Work Demonstration Program. Two prior audits by the Office of Inspector General addressed parts of the Authority's MTW Program; report numbers IG301003 and IG401001. The recommendations in those reports were resolved or are pending a HUD management decision, respectively. The pending HUD management decision on recommendations in IG401001 will not impact the objectives of this audit.

We reviewed the independent auditor's reports for fiscal years 1997 through 2002. The reports did not contain any findings related to our audit objectives or the issues discussed in Findings 1 and 2.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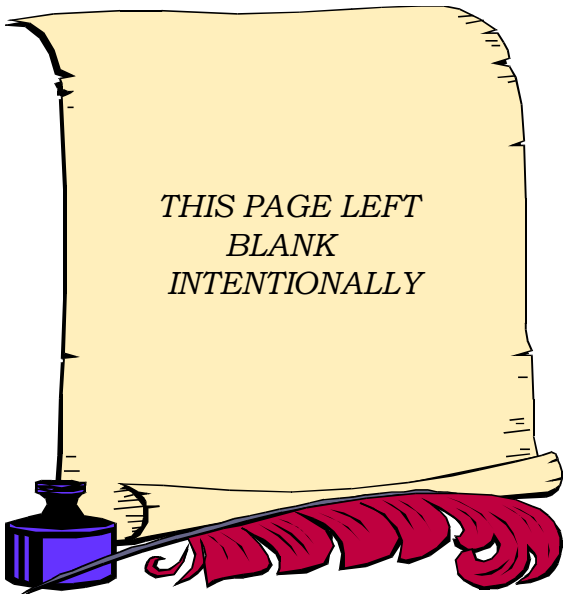
Schedule of Questioned Costs and Funds Put to Better Use

Recommendation Number	Type of Questioned Cost Unsupported 1/	Funds Put to Better Use 2/
1B	$1,516,464	$1,714,014 3/

1/ Unsupported costs are costs charged to a HUD-financed or HUD-Insured program or activity and eligibility cannot be determined at the time of audit. The costs are not supported by adequate documentation or there is a need for a legal or administrative determination on the eligibility of the costs. Unsupported costs require a future decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of Departmental policies and procedures.

2/ Funds Put to Better Use are costs that will not be improperly expended in the future if our recommendations are implemented.

3/ The $1,714,014 million in Funds Put to Better Use are based upon only those projects that had executed HAP contracts. The estimated annual HAP of $2,852,214 in Finding 1 for all 11 projects includes $1,138,200 for three projects that did not yet have a HAP contract.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Auditee Comments

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May 3, 2004

Frank E. Baca, Regional Inspector General for Audit
U. S. Department of Housing and Urban Development
Office of the Inspector General for Audit, Region X
909 First Avenue, Suite 126
Seattle, WA 98104-1000

Dear Mr. Baca:

Subject: Seattle Housing Authority's Response to Audit of Moving To Work Program

In December 1998, the Seattle Housing Authority (SHA) executed a five year Moving To Work Demonstration Agreement (the "Agreement") with the U.S. Department of Housing and Urban Development (HUD) to begin implementing its Moving To Work Demonstration Program pursuant to Section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "Act"). The Act provided HUD and local housing authorities the flexibility to design and implement innovative approaches for providing housing assistance and services to low income families in a more efficient and cost effective manner.

Since 1998, SHA and HUD have agreed to SHA's implementation of a variety of initiatives that increase flexibility and maximize the effectiveness of various HUD programs. In that time, HUD has never noted a default or indicated any concern about SHA's implementation of its Moving To Work programs. In fact, SHA was designated a "high performer" by HUD during those years, and earned a perfect score of 100 percent for the fiscal year ended September 30, 1999. SHA is the largest public housing authority in the nation ever to earn a perfect score. SHA also was awarded four "Best Practices" awards by HUD in 2000, the last year such awards were given

In 2002, HUD and SHA agreed to extend the Moving To Work Demonstration Agreement for another two years. In January 2001, the Agreement was extended to September 30, 2006.

In early 2003, SHA was advised that your office would be auditing SHA's implementation and administration of its Moving To Work Demonstration Program as part of a general nationwide audit of the effectiveness of the Moving To Work Demonstration Program. In your audit of SHA, you examined eight specific programs and had no concerns about SHA's implementation and administration of six. You found, however, that SHA did not fully comply with Moving To Work requirements for two programs.

In the first finding, you conclude that "In implementing its *Simplification of the Process to Project-Base Section 8 Assistance* activity, the Seattle Housing Authority exceeded the authority granted under the Moving To Work Demonstration Agreement when it disregarded MTW Program requirements applicable to project-based Section 8 assistance." Specifically,

you maintain that the Moving To Work Agreement requires SHA to: (1) "obtain HUD environmental approval under 24 CFR Part 50 before committing HUD or local funds to Program activities involving eligible property;" (2) pay prevailing wages and Davis-Bacon wages to all eligible workers involved in Section 8 funded projects; (3) comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act; and (4) "obtain subsidy-layering contract rent reviews from HUD or a Housing Credit Agency before entering into an agreement for assistance." In your review of 11 of 60 SHA Section 8 Project-Base Assistance agreements, you found that SHA did not comply with the above listed Moving To Work requirements.

In the second finding you conclude that SHA "did not include affirmative marketing provisions in its public housing site-based waiting list procedures." Our responses to each of these findings are set forth under separate headings.

I.

SHA did comply with environmental, labor, and other Moving To Work Program requirements when awarding project-based assistance.

1. Environmental Review

The draft findings contend that SHA failed to assist HUD in complying with environmental review procedures, or to get HUD's approval before committing HUD or local funds to project-based assistance projects, as required by the MTW Agreement.

Section IJ of the MTW Agreement states that, *"[i]f applicable to activities under the Statement of Authorizations,"* SHA is obligated to: (1) provide HUD with documentation needed to carry out its responsibilities under the National Environmental Policy Act (NEPA) and other related authorities; (2) carry out mitigation measures required by HUD, including selection of alternative eligible property; and (3) not commit HUD funds without HUD's approval under 24 CFR Part 50 (Emphasis added).

Section E of the Statement of Authorizations, entitled "Simplification of the Process to Project-Base Section 8 Certificates and Vouchers," authorizes SHA to develop and adopt reasonable policies and processes for project basing Section 8. Section E4 states, "HUD reviews and approval related to the project-basing of Section 8 Certificates and Vouchers are suspended during the MTW demonstration." We interpret this to mean that HUD reviews are not applicable activities under the Statement of Authorizations, and, therefore, the review and documentation requirements of Section IJ do not apply. To comply with NEPA, SHA has sent the required environmental documentation for the Part 58 review, for the project-based agreements, to the City of Seattle, which conducted a review and determined that project basing is an "exempt activity" under NEPA.

2. Davis-Bacon and Prevailing Wages

This draft finding maintains that SHA entered into agreements with the owners of five of the eleven projects examined, but failed to include prevailing wage requirements in those agreements as required by the MTW Agreement.

Although the MTW Agreement requires prevailing wage requirements in loan and contribution contracts, those requirements did not apply to the commitment letters that SHA sent to the project owners of the projects examined.

The prevailing wage requirements in Section 12 the U.S. Housing Act of 1937, as amended, (42 U.S.C. 1437j) states that Davis-Bacon wage requirements are applicable when nine or more units are project based and an agreement for project-based assistance "where the public housing agency or the Secretary and the builder or sponsor enter into agreement for such use *before* construction or rehabilitation is commenced..." (Emphasis added). In the projects reviewed, the contracts for use were not executed until *after* construction or rehabilitation commenced. The "agreement" cited in the draft findings is in fact only an award letter informing the project developer of SHA's willingness to provide assistance to the project in the future. The award letter contains almost none of the terms of the assistance contract and is not even countersigned by the owners. It is understood by SHA and the owner that the Section 8 assistance contract will be drafted and executed only after the units have been built or rehabilitated.

Nothing in the Act, any regulation, or any reported case describes the nature or the formality of the agreement required to invoke Davis-Bacon. In Washington State, preliminary commitments are not contracts unless by their terms they are sufficiently definite to be enforced by a court without supplying any of those terms. Setterland v. Firestone, 104 Wn.2d 24, 700 P.2d 745 (1985). Furthermore, when parties intend that the terms of a contract will be reduced to writing and executed, there is no contract until the written contract is completed and signed. Bharat Overseas Ltd. V. Dulien Steel Products, Inc, 51 Wn.2d 685, 321 P.2d 266 (1958).

We are convinced that the award letter, as merely a statement of a willingness to provide assistance, is neither a contract nor a formal agreement. Our opinion in this regard has been confirmed by HUD staff, who have advised us on more than one occasion that Davis-Bacon wages do not apply if the assistance agreement is executed after construction of the units has begun.

Finally, according to the HUD PIH website, one of the four most frequent Office of Inspector General (OIG) audit findings last year involved housing authorities that relied upon award letters to begin spending funds and implementing programs. In those cases the OIG has said that housing authorities should wait until there is an executed grant agreement, because an award letter is not a lawful agreement.

3. Relocation and Real Property Acquisition Act of 1970, as amended.

The draft findings correctly observe that the MTW Agreement subjects SHA "to all the requirements of the Annual Contributions Contracts (ACC), United Housing Act of 1937, and other HUD requirements except as necessary to implement the activities in the Statement of Authorizations." The draft findings also correctly note that the ACC, the Act, and these other HUD requirements obligate SHA to comply with the Uniform Relocation Assistance and Real Property Acquisition Act (URA) and with subsidy layering requirements. The draft findings are incorrect, however, in concluding that SHA failed to comply with the URA.

The acquisition of real property for projects that will be assisted with Section 8 project-based assistance is, according to HUD regulations (24 CFR 983.10), subject to the Uniform Relocation and Real Property Acquisition Act (42 U.S.C. 4601 et seq.) and the requirements of 49 CFR part 24, subpart B. For Section 8 project-based assistance projects, a displaced person under the URA is defined in 49 CFR 24 as any person required to move, or move his or her personal property as a direct result of: (1) a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project; or (2) rehabilitation or demolition for a project.

In the projects cited in the draft findings, SHA provided Section 8 project-based assistance *after* any real property needed for the projects was acquired and after rehabilitation and demolition for the project. Under these circumstances, the event creating any displaced persons would, according to the above definition, be the initiation of negotiations between SHA and the owners. Section 1-15c of HUD Handbook 1378, explains:

> Whenever displacement occurs as a direct result of privately undertaken acquisition, rehabilitation or demolition, the initiation of negotiations *is the execution of the loan or grant agreement between the grantee and the person owning or controlling the property* (Emphasis added).

As has been previously explained, the award letters announcing funding availability for the projects is not the date of execution of the loan or grant agreement. The loan agreements for the cited Section 8 project-based assistance projects were, or will be, executed after the projects are completed, so by definition there are no displaced persons to relocate and no relocation activities to monitor.

Although 24 CFR 983.10 makes acquisition of real property subject to the URA, 49 CFR 24.101(2) exempts from the URA's acquisition requirements "programs or projects undertaken by an Agency or person that receives Federal financial assistance but does not have authority to acquire property by eminent domain..." The owners that undertake the

projects that received or will receive project-based Section 8 assistance from SHA do not have authority to eminent domain authority and their acquisitions are therefore not subject to the URA.

4. Subsidy Layering

The draft findings assert that SHA did not comply with the subsidy layering as requirements of 24 CFR Part 983, particularly the 24 CFR 983.256 requirements to use, before entering into project-based assistance agreements, a state-qualified appraiser to determine initial rents and to certify to HUD that the initial rents are reasonable.

The Statement of Authorizations in the MTW Agreement authorizes SHA to create its own project-based Section 8 program and, in Section E4, categorically suspends all "HUD reviews and approvals related to the project-basing of Section 8 Certificates and Vouchers" during the Moving To Work demonstration period. Section VI.A of the Statement of Authorizations permits SHA to determine reasonable rents, the content of housing assistance payments contracts to owners, and the content of contract rental agreements. In addition, the Section 8 Tenant Based Assistance provision in Section 3 of Calculation of Subsidies provision in Attachment A to the MTW Agreement does not require SHA to provide only the minimum assistance necessary to provide affordable housing. These provisions clearly indicate that both HUD and SHA intended to suspend HUD's subsidy layering review in the MTW Agreement.

II.

SHA has made best efforts to address racial concentrations in assisted buildings.

The draft findings note that SHA's HUD approved Implementation Plan for its site-based waiting lists, and its Applicant Choice Policy (the "Policy"), allow SHA staff to determine when buildings are identifiable by race, nationality, and language, and to conduct fair marketing programs when such buildings are identified. Although the draft findings acknowledge that the Policy and the Implementation Plan meet fair housing requirements, the Authority is criticized for not fully implementing the Policy and Plan. Because the Policy and Plan were not properly implemented:

> "the Authority does not have the criteria or the information needed to determine if a building is racially identifiable under its Policy, and lacks an objective basis for deciding whether to conduct affirmative fair housing marketing to promote diversity in its buildings."

According to the findings, this has resulted in SHA not addressing problems raised by very high concentrations of a single nationality or language group in several SHA buildings.

The purpose of the MTW demonstration program is to allow housing authorities to test new ways of providing services and conducting business. SHA's Applicant Choice Policy and Plan involves a new approach, the phased implementation of which has affected all aspects of SHA's admissions process. The implementation shortcomings cited in the draft findings were first identified in SHA's FY 2002 MTW annual report, long before the Moving To Work audit.

Implementation of the Plan and Policy has proven more difficult than we initially imagined, and we continue to have concerns about its implementation. For example, when there are long wait lists to get into particular buildings, affirmative fair marketing may be a disservice to those who respond to such marketing with the expectation of renting there in the near future. It makes little sense to advertise the long site-specific wait lists for buildings such as International Terrace and Beacon Tower, because anyone responding to the ad will wait months for a unit when they could be housed much more quickly at another building. In these cases, only those who are more interested in living at International Terrace or Beacon Tower, rather than being housed as quickly as possible, are served by the fair marketing advertising. SHA is taking steps, however, to implement the Policy and Plan. We believe that we are making substantial progress toward meeting the fair housing requirements.

The four buildings identified in the findings as racially identifiable were already racially identifiable before the applicant choice policy was adopted. SHA has always interpreted the policy as requiring affirmative fair marketing when there is a *significant change* in the racial, ethnic or national population in any building, and that change evidences an unacceptable concentration of any racial group or nationality. Since the policy was adopted, there has not been a significant change in the racial composition of any SHA building. Although there are significant concentrations of Asian Americans in the four buildings identified, the *change* in the populations in those buildings has been relatively insignificant.

III.

Conclusions

For six years, SHA has been working diligently and in good faith to implement its Moving To Work Demonstration Program. In that time, the Authority has frequently been praised for its management, innovation, and accomplishments. It was selected to participate in the Moving To Work Program and in this national audit of the Moving To Work Program because it has been among the most active and well run housing authorities in the country.

The purpose of the Inspector General's national audit of the Moving To Work Program is to determine the strengths and weaknesses of the Program nationally. The purpose of this audit,

therefore, was to determine how effectively the SHA Moving To Work Program reduced costs, fostered innovation, increased self-sufficiency, and increased housing choices for low-income families. The SHA audit found no incidents of serious mismanagement, no intentional (or even negligent) violation of rules or regulations, and no misappropriation of funds or other issues related to management and administration of the Program. The audit has identified, however, a few instances in which the Inspector General believes that SHA has not complied with applicable statutes and regulations. It is evident from this response that SHA and the Inspector General have serious differences of opinion over the interpretation of these statutes and regulations, and to a lesser extent, over the intent and purposes of the Moving To Work Program.

With the exception of the implementation of its Applicant Choice Policy and affirmative fair housing marketing plan , SHA has complied, in all respects, with the requirements of the Moving To Work Program and with SHA's Moving To Work Agreement. We believe that the above responses to the draft findings clearly demonstrate this. As for the Applicant Choice Policy and affirmative fair housing marketing plan, our own staff recognized the deficiencies in our implementation long before the Moving To Work audit was undertaken, and have been making progress toward full implementation of the Policy and the Plan. For these reasons, we believe the first finding should be withdrawn on the merits and the second finding should be made a note or comment. It is fundamentally unfair to judge SHA against its own MTW goals while the demonstration project is still underway.

If the first finding is not withdrawn on the merits, it should be noted in the audit as an area of disagreement, not as an adverse audit finding. The differences between SHA and the Inspector General concerning interpretation of these specific statutes and regulations are certain to arise in future audits of other housing authorities. The "final" interpretation of these provisions will be decided by HUD and the Congress sometime in the future. In its final report on the Moving To Work Program, the Inspector General can discuss these disagreements in interpretation as areas of concern with the Moving to Work Program nationally. SHA, HUD and the other affected housing authorities can then address these issues after the disagreements over interpretation are finally resolved.

This would accomplish the objectives of the national audit, while avoiding the potentially negative consequences of an adverse findings for SHA, other housing authorities, HUD, and the Moving To Work Program, and the adverse consequences of addressing these interpretation issues on an individual, ad hoc basis.

We appreciate this opportunity to comment on your draft findings and look forward to working with you and HUD to improve the effectiveness of the Moving To Work Program generally, and SHA's Moving To Work Program specifically.

Sincerely,

Thomas M. Tierney

Thomas M. Tierney
Executive Director

TM:elc

cc: Milan Ozdinec, Deputy Assistant Secretary Office for Public Housing Investments
John Meyers, Regional Director, Northwest/Alaska Region
Harlan Stewart, Director, Seattle Office of Public Housing
James Heist, Assistant Inspector General for Audit
Michael Phelps, Deputy Assistant Inspector General for Audit
Jennifer Potter, Chair, SHA Board of Commissioners
Peter Moy, Vice Chair, SHA Board of Commissioners

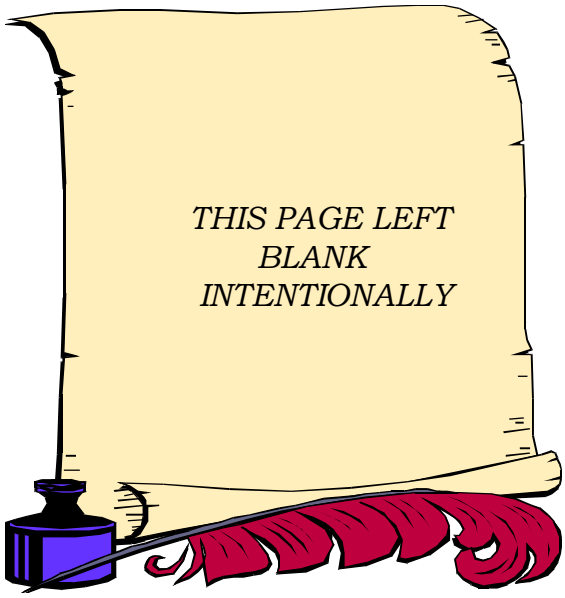
Sampling Methodology

To evaluate the Seattle Housing Authority's compliance with Moving To Work Demonstration Program requirements for project-based Section 8 assistance (see Finding 1), we selected a non-statistical sample of 11 projects, drawn from the 60 projects in the Program. We developed this sample by obtaining information on the number of projects receiving project-based Section 8 assistance under the Authority's MTW Program. The Authority lists its project-based Section 8 assistance under four categories:

1. Projects owned by the Authority.
2. Awards through Requests for Proposals for projects owned by profit or nonprofit entities.
3. The Sound Families program, a nonprofit entity.
4. Projects assisted by the City of Seattle.

The 11 projects sampled included: the largest project (category 1); four new construction projects under a 2001 Request for Proposal, and the two largest projects under a 2002 Request for Proposal (category 2); the two largest projects (category 3); and the largest project and the largest project with tax credits (category 4). The 11 projects in the sample account for 675 of 1281 project-based Section 8 assisted units in the 60 projects.

As noted, we did not statistically sample the project-based Section 8 assistance. Accordingly, our results will only apply to the 11 projects in our sample and cannot be projected to the remaining 49 projects.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