Issue Date December 2, 2004
Audit Report Number 2005-PH-1002

TO: William D. Tamburrino, Director, Baltimore Public Housing Program Hub, 3BPH

FROM: Daniel G. Temme, Regional Inspector General for Audit, Philadelphia Region, 3AGA

SUBJECT: The Huntington Housing Authority, Huntington, WV, Did Not Properly Allocate Salary Costs to Its Affiliated Nonfederal Entities

HIGHLIGHTS

What We Audited and Why

We performed an audit at the Huntington Housing Authority (Authority) in response to a complaint. The complainant alleged various irregularities at the Authority mostly related to its business dealings with its affiliated nonfederal entities. Our audit objective was to determine whether the Authority properly used HUD funds to develop and support its affiliated nonfederal entities.

What We Found

While the Authority was generally prudent and did not guarantee debt of its affiliated nonfederal entities, it sometimes improperly used HUD funds to develop and support its nonfederal entities. Specifically, it did not allocate all relevant salary costs to its affiliated Housing Development Corporation, contrary to its Annual Contributions Contract. As a result, from July 1999 to June 2003, the Authority improperly paid salaries estimated at $320,524 from federal funds for work its employees performed for this nonfederal entity. We also estimated that in the future, the Authority will be able to better use $46,371 annually by properly accounting for and allocating the work its employees perform for its nonfederal entities.

What We Recommend

We recommend HUD require the Authority to recover $320,524 from the Housing Development Corporation for employee salary expenses not properly allocated to the nonfederal entity or repay it from nonfederal funds. We also recommend the Authority develop a reasonable method for allocating its future cost to its nonfederal entities, thereby putting $46,371 to better use annually.

For each recommendation without a management decision, please respond and provide status reports in accordance with HUD Handbook 2000.06, REV-3. Please furnish us copies of any correspondence or directives issued because of the audit.

Auditee's Response

We discussed the report with the Authority during the audit and at an exit conference on October 26, 2004. We asked the Authority to provide a response to our draft report on November 3, 2004, and it provided a written response on November 19, 2004. In its response, the Authority agreed with our finding that it did not develop a formal cost allocation plan but disagreed with our estimated questioned costs.

The complete text of the Authority's response and our evaluation of that response, excluding the exhibits, can be found in Appendix B of this report.

TABLE OF CONTENTS

BACKGROUND AND OBJECTIVES

The Huntington Housing Authority is a public body created under the General Statutes of the State of West Virginia. The Authority was created to provide safe and sanitary housing for the low-income citizens of Huntington and Cabell County, West Virginia. The mayor of the city of Huntington appoints a five-member Board of Commissioners to govern the Authority. The current Board Chairman is J. Edgar Shaffer. The current Executive Director is William Dotson. The Authority is located at 300 Seventh Avenue in West Huntington, West Virginia.

The Huntington Housing Authority owns and manages 927 public housing units and provides rental subsidies for over 1,300 units under its Consolidated Annual Contributions Contract with HUD. The Consolidated Annual Contributions Contract defines the terms and conditions under which the Authority agrees to develop and operate all projects under the agreement. HUD authorized the Authority the following financial assistance from July 1999 to June 2003:

- $7.5 million Operating Subsidy to operate and maintain housing developments;
- $6 million Capital Fund Program;
- $18.7 million to provide housing assistance through Section 8 funding; and
- $229,722 Public Housing Drug Elimination Program.

West Virginia state law allows housing authorities to form and operate nonprofit corporations. However, the Authority's Consolidated Annual Contributions Contract with HUD requires it to maintain records identifying the source and allocation of its funds and it must only spend federal funds in accordance with the regulatory requirements of each specific federal program.

The Authority established a nonfederal entity known as the Housing Development Corporation in 1997 to promote and advance decent, safe, and sanitary housing for persons of low- and moderate-income, the elderly, disadvantaged or infirm in the Cabell-Wayne Counties and surrounding areas of West Virginia. The Housing Development Corporation acts in concert with the Authority and other organizations to provide services for the development and management of affordable housing projects and related undertakings. A nine-member Board of Directors subject to approval of the Authority runs the Housing Development Corporation with no less than three directors from the Authority's Board of Commissioners. The President of the nonfederal entity is the same as the Executive Director of the Authority, William Dotson.

The Housing Development Corporation had income of $7.3 million from July 1999 to June 2003. It derived its income primarily from construction and repair contracts, management of housing facilities, grants, and loans. Our audit objective was to determine whether the Authority properly used HUD funds to develop and support its affiliated nonfederal entities.

RESULTS OF AUDIT

Finding 1: The Authority Did Not Properly Allocate All Relevant Salary Costs to Its Affiliated Nonfederal Entity

The Authority did not properly allocate all applicable salary costs to its affiliated nonfederal entity, contrary to its Annual Contributions Contract. This occurred because Authority officials erroneously believed the management fees it earned from the nonfederal entity covered all expenses incurred. Our review showed the Authority improperly paid salaries totaling $320,524 from federal funds from July 1999 to June 2003 for work its employees performed for its nonfederal entity. We also estimate the Authority will annually put $46,371 to better use by properly accounting for and allocating work its employees perform in support of its nonfederal entity.

Authority Improperly Paid Salaries of Its Nonfederal Entity

The Authority used a number of employees to provide support to its affiliated Housing Development Corporation that it did not properly account for in its books. Specifically, our review showed that the Authority did not properly allocate salaries and fringe benefits of at least 17 employees that performed work for its affiliated Housing Development Corporation. The Housing Development Corporation awarded 12 of these 17 Housing Authority employees bonuses totaling $62,600 in August 2002 and December 2003 for their service to the nonfederal entity. While we did not identify anything improper related to the bonuses, the bonuses indicated that these employees provided a substantial level of support to the nonfederal entity.

Authority officials did not allocate the salaries of these employees to their nonfederal entity because they believed the management fee the Authority received from the entity was adequate to pay for the services it provided. This was not so. In this regard, the Authority provided us a list of payments it received from its Development Corporation that totaled approximately $56,000 from July 1999 to June 2003. However, officials could not adequately explain the methodology they used to compute the payments, or provide support for the payments. Further, the payments listed were often described as compensation for items such as tools, fuel or equipment and weren't intended to pay for salaries.

The Authority's Consolidated Annual Contributions Contract with HUD requires it to maintain records identifying the source and allocation of its funds. This key management control is critical to ensure the Authority spends federal funds, provided through its Annual Contributions Contract, only in accordance with the regulatory requirements of each specific federal program. Further, the contract specifies that the Authority can only withdraw federal funds for the payment of costs associated with the development and operation of projects under its Annual Contributions Contract or other projects specifically approved by HUD. Thus, when employees work on multiple programs, a distribution of their salaries should be supported by personnel reports or equivalent documentation.

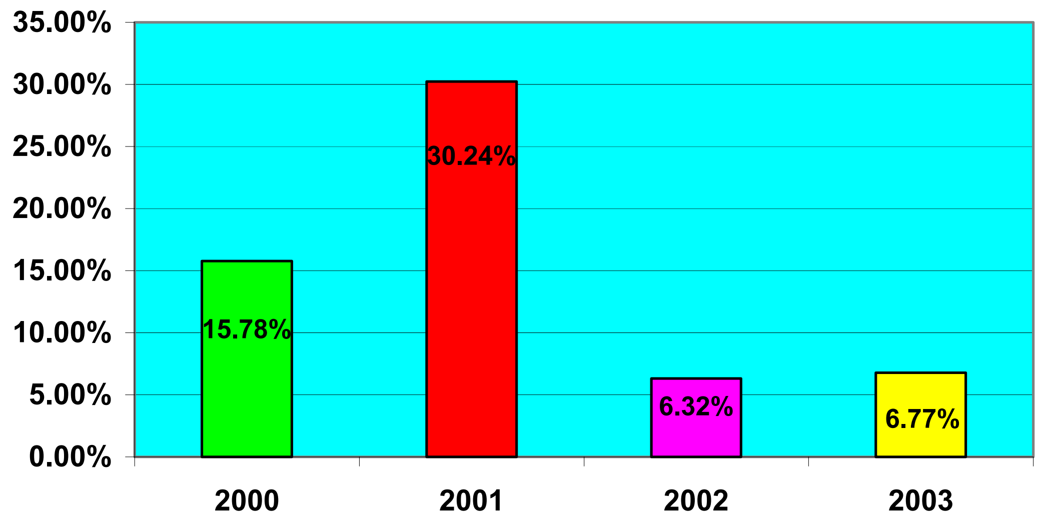
Office of Management and Budget Circular A-87 also requires the Authority to assign costs to benefited activities on a reasonable and consistent basis. Formal accounting and other records should support all costs and other data used to distribute the costs included in its cost allocation plan, including the support needed to establish the propriety of the costs assigned to the federal awards.

Since the Authority did not have an allocation plan to properly account for work its employees performed at both its federal and nonfederal entities, we estimated the total salary and fringe benefits that the Authority paid to support its nonfederal entities based on the cash flow of the two organizations. In developing our estimate, we first estimated the percent of income that was attributable to the nonfederal entities related to the combined income of both organizations. For example, in the Authority's Fiscal Year 2001 (July 1, 2000 to June 30, 2001) it received $9.4 million from HUD. During that same period, the Housing Development Corporation had income of about $4.1 million. Therefore, we calculated that during the period July 1, 2000 to June 30, 2001, about 30-percent[1] of the salaries and fringe benefits of the 17 employees performing work for the Housing Development Corporation should be paid by this nonfederal entity. The following graph illustrates the percent of cash flow attributable to the nonfederal entities for the four fiscal years[2] we reviewed during our audit.

[1] $4.1 million/$13.5 million

[2] The Authority's fiscal year was July 1 to June 30.

Percent of Cash Flow Related to Nonfederal Entities



As shown in the graph, the percent of cash flow attributable to the nonfederal entities was much higher in Fiscal Years 2000 and 2001. The larger cash flow in those first two years is attributable to the Huntington High Limited Partnership. The Huntington Development Corporation established this limited partnership in March 2000 to acquire, rehabilitate, construct, own, finance, lease, operate, and otherwise deal with a 42-unit senior low-income tax credit housing project located in Huntington, West Virginia. As such, Authority employees needed to spend a larger percentage of their time providing support to this project until it was completed in April 2001.

Using the aforementioned percentages, we estimated the Authority paid $320,524 from July 1999 to June 2003 from federal funds for salaries and benefits to support its nonfederal entities. Also, using the Fiscal Year 2003 percentage of 6.77 percent we conservatively estimated that in the future the Authority will be able to better use $46,371 annually by properly allocating salaries to its nonfederal entities.

Recommendations

We recommend HUD:

1A. Require the Authority to recover $320,524 from its nonfederal entity for employee expenses not properly allocated to its nonfederal entity or repay it from nonfederal funds.

1B. Require the Authority to develop a reasonable method for allocating its future costs for services performed by its employees in support of its nonfederal entities, thereby putting $46,371 to better use.

SCOPE AND METHODOLOGY

We performed the audit at the Huntington Housing Authority located in Huntington, West Virginia from March 2004 through August 2004 in accordance with generally accepted government auditing standards and included tests of management controls that we considered necessary under the circumstances.

The audit covered transactions representative of operations current at the time of the audit and included the period December 1997 when the Authority executed a contract with its related nonfederal entity, Housing Development Corporation, to April 2004. We expanded the scope of the audit as necessary. We reviewed applicable guidance and discussed operations with management and staff personnel at the Huntington Housing Authority and key officials from HUD.

To determine if the Authority properly used HUD funds to develop and support its affiliated non-federally funded entities, we reviewed:

- Financial data from the Authority and its nonfederal entity using audit software.
- Employee time cards, Wage and Tax Statements, and employee listings.
- Independent Auditor's Reports for Fiscal Years 2002 and 2003 for the Authority and its affiliated nonfederal entity.
- Minutes of meetings of the Board of Commissioners for the Authority and its affiliated nonfederal entity.
- Promissory notes and other applicable documents to determine if the Authority improperly pledged or provided guarantees of its assets.
- HUD monitoring reviews related to the Authority's compliance with its Annual Contributions Contracts.
- Articles of Incorporation and other related agreements between the Authority and its nonfederal entity.

INTERNAL CONTROLS

Internal Control is an integral component of an organization's management that provides reasonable assurance that the following objectives are being achieved:

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls relate to management's plans, methods, and procedures used to meet its mission, goals and objectives. Internal controls include the processes and procedures for planning, organizing, directing and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

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

- Safeguarding assets by not encumbering or pledging assets funded under the Authority's Annual Contributions Contracts with HUD; and

- Properly allocating all applicable costs to its affiliated nonfederal entity.

We assessed the relevant controls identified above.

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

Significant Weaknesses

Based on our review, we believe the following item is a significant weakness:

- The Authority did not properly allocate and account for services performed by its staff for its nonfederal entity.

APPENDICES

Appendix A

SCHEDULE OF QUESTIONED COSTS AND FUNDS PUT TO BETTER USE

Recommendation Number	Ineligible 1/	Funds to Be Put to Better Use 2/
1A	$320,524	
1B		$46,371

1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or federal, state or local polices or regulations.

2/ Funds to Be Put to Better Use are quantifiable savings that are anticipated to occur if an Office of Inspector General (OIG) recommendation is implemented, resulting in reduced expenditures at a later time for the activities in question. This includes costs not incurred, deobligation of funds, withdrawal of interest, reductions in outlays, avoidance of unnecessary expenditures, loans and guarantees not made, and other savings.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation **Auditee Comments**

THE HUNTINGTON WEST VIRGINIA HOUSING AUTHORITY
ADMINISTRATIVE OFFICES - JOHNSTON CENTRE

300 SEVENTH AVENUE WEST
HUNTINGTON, WEST VIRGINIA 25701
P.O. BOX 2183 TELEPHONE 304-526-4400
HUNTINGTON, WEST VIRGINIA 25722
FAX - 304-526-4427 TDD - 304-526-0022

November 17, 2004

Mr. Daniel G. Temme
Regional Inspector General for Audit
U.S. Department of Housing and Urban Development
Wanamaker Building, Suite 1005
100 Penn Square East
Philadelphia, PA 19107-3380

Attention: John Buck, Assistant Regional Inspector General

Re: HHA's Response to the Drafted IG Audit,
Report #2005-PH-XXXX (Period of 7/1999 to 6/2003)

Dear Sirs:

With respect to the revised drafted audit report that was forwarded to me by Mr. Buck on November 3, 2004, the Inspector General's Office (IG) has concluded that *The Huntington WV Housing Authority* (Housing Authority) did not sufficiently allocate relevant salary costs to the *Housing Development Corporation* (HDC) during the fiscal period of 1999 to 2003. We respectfully must disagree with the IG's subsequent determination that the HDC should reimburse the Housing Authority in the amount of $320,524.

Comment 1

In 1998, Congress passed the Quality Housing and Work Responsibility Act which permitted housing authorities to form non-profit organizations and enter into joint ventures or contracts with the organizations or entities. The Housing Authority acted to lead in forming a non-profit (the HDC) for the purposes of furthering affordable housing ventures, especially for elderly and disabled persons (Section 202 and 811 Projects) in our communities. This collaboration was established to also further the Housing Authority's mission and meet the local need of those populations not being adequately served. This is a key concept we feel the IG has ignored. Collaborations do not just happen. This housing authority's number one priority goal is to expand the supply of affordable housing. "HUD/PHA" has no development programs except "HOPE VI", which is practically impossible to attain, especially for LHA's that have well-maintained properties.

As a local housing authority, we had to develop alternative means to achieve our goals. We chose to look at other development programs that PHA's cannot access (i.e., Sec. 202, 811, and 515 projects, along with tax credit projects that do not want to partner with LHA's.) Our time was spent on developing additional affordable housing, our top priority

EQUAL HOUSING OPPORTUNITY

www.huntingtonhousing.com

item. The I.G. team has assumed that our time spent on attaining this goal was not Housing Authority connected and not "ACC" connected. This is very wrong. We respectfully disagree with their interpretation. We chose to pursue our priority goal (and incidentally, it is listed as HUD's first goal that they would like to see LHA's pursue.)

Over the years, we have not only collaborated with the HDC to attain this goal, we also work with the local Homeless Coalition, local community-based development organizations, multi-caps, mental health centers, and our local governments. We believe the IG team has assumed a very narrow view for spending Housing Authority resources and has completely ignored our larger mission within this community. We believe we should be allowed to continue pursuing collaborations and sharing our resources in a responsible manner.

The Housing Authority staff provided the IG audit team with a copy of an executed *memorandum of agreement* between the Housing Authority and the HDC (signed in 1998) wherein the Housing Authority agreed to provide technical assistance services to the HDC (private, non-profit partner). Once the HDC began to generate income, the Housing Authority executive staff discussed with its fee accountant a method for determining fees that would be due the Housing Authority from the HDC. The method and amount of fees to collect was documented and followed throughout the past seven years of operation. It is important to note that the Housing Authority and the HDC developed the terms and conditions of the agreement without an intent to mislead or misrepresent the services rendered and subsequent fees earned. It simply agreed to base fees collected on a percentage of income earned. The Housing Authority *very innocently* did not develop a formal cost allocation plan. It felt that the MOA was adequate.

I respectfully ask that you consider the following information, along with the enclosed exhibits, that offers a much different rendering of the manner for determining costs and fees. After reviewing the drafted Audit Report, I offer the following suggestions as adjustments to the report before it is officially filed by the IG Office.

Comment 2

1. ***Highlights:*** I disagree that the Housing Authority improperly used its HUD funds totaling $320,524 to develop and assist with activities and transactions associated with the HDC, a nonfederal entity. This statement is supported by information presented item #3 and in the attached material, identified as Exhibits A and B. Using the same methodology as outlined in the IG's draft report and by removing the Huntington High Limited Partnership construction/loan cost, the documentation submitted and as attached clearly demonstrates that the estimated questioned cost over the four-year period would only be $56,646. Regarding this

Office of Inspector General
Response to IG Audit
November 17, 2004
Page three

amount, our fee accountant has mentioned that using this calculation over a four-year period does not appear material, and perhaps should be addressed as an internal control comment and not a questioned cost. She disagrees with the verbiage "ineligible use of HUD funds." Also, please review the attached letter from our legal counsel on this issue.

As discussed with the IG auditors during their Huntington review, the cost of constructing the Huntington High Renaissance facility was to be included as income for the HDC. This matter could have been resolved with discussion with our fee accountant and the CPA firm that completed the cost certification for this tax-credit project.

Comment 3

2. ***Background and Objectives***: The report suggests that "a nine-member Board of Directors, subject to the approval of the Housing Authority, runs the HDC with no less than three members of the Housing Authority."

   The HDC is not run, nor is it subject to approval by the Housing Authority Board with respect to any transactions or decisions made by the HDC Board of Directors. The majority (at least six members) of the HDC's board membership have no Housing Authority affiliation and are professional representatives from various organizations from throughout the community. Regarding the Housing Authority, the HDC is an affiliated, but non-controlled, non-profit organization. Its Articles and By-Laws reflect this independence.

Comment 4

3. ***Results of Audit:*** The percentage of earned revenue attributed to the Housing Authority and the HDC during fiscal year 2001 is inaccurate. The HDC did not receive earned income of $4.1 million during the period; therefore, the assumption of a salary cost base at 33% is grossly inappropriate. *The Huntington High Limited Partnership* is a separate legal entity from both the Housing Authority and the HDC. It was formed in support of the development of Huntington High Renaissance (42 affordable apartments that were built for eligible elderly residents). Page 8, Item 1B.

   The Housing Authority does agree to develop a more formal written method for allocating its future costs for services performed by its employees in support of the HDC or any other non-profit or for-profit organization that pursues affordable housing goals. The Housing Authority agrees to submit an "allocation plan" to William Tamburrino of the Baltimore Regional HUD Office for review and approval prior to implementing the aforementioned plan. We are taking immediate steps to issue an RFP to assist us with the development of an allocation plan.

Office of Inspector General
Response to IG Audit
November 17, 2004
Page four

In summary, we continue to be a high-performer via HUD assessments (past two years scoring: *PHAS at "94" and "91"* and *SEMAP at "100"*). We have not injured our housing authority by depriving it of vital resources (the I.G.'s report "implies" that our organization has been deprived via the large dollar amount stated). We have embarked on learning and applying asset-management principles. We are achieving our goal of expanding affordable housing (129 new units developed to date). We are achieving our goal of pursuing partnerships and collaborations.

We respectfully request that the above concerns be corrected before the final report submission is completed by the IG Office. Should you have questions, please contact me at (304) 526-4439 or email your response(s) to my attention at bdotsonhha@wvdsl.net. Thank you for your cooperation and attention to this matter.

Sincerely,

William Dotson
Executive Director

Attachment: Exhibit Material

xc: William Tamburrino, Baltimore HUD Office
Housing Authority and HDC Board Members
Attorney Charles Peoples, Jr., Legal Counsel

LETTER FROM COUNSEL

Comment 5

CHARLES W. PEOPLES, JR.
ATTORNEY AT LAW

MAILING ADDRESS:
POST OFFICE BOX 2854
HUNTINGTON, WV 25728
TELEPHONE (304) 525-3753
FACSIMILE (304) 525-3754
E-MAIL: cpeopleslaw@aol.com

OFFICE ADDRESS:
MEZZANINE SUITE 203
THE FREDERICK BUILDING
940 FOURTH AVENUE
HUNTINGTON, WV 25701

ADMITTED TO THE BAR
AND LICENSED TO PRACTICE:
WEST VIRGINIA
SOUTH CAROLINA

November 17, 2004

WILLIAM E. DOTSON,
Executive Director
Huntington West Virginia Housing Authority
P.O. Box 2183
Huntington, WV 25722

Re: IG Draft Audit - Audit Report No. 2005-PH-XXXX
Huntington WV Housing Authority
04-517

Dear Mr. Dotson:

You have requested my opinion as General Counsel for the Huntington West Virginia Housing Authority (the "Authority") regarding certain aspects of the Inspector General's Draft Audit Report (the "Report") captioned above.

I have reviewed the Report in its entirety. In addition, I was present during the recent "Exit Conference" with representatives of the Regional IG's Office.

Specifically, I address and question the determination by the auditors to include as income attributed to the Developer of the Huntington High Renaissance Project, The Housing Development Corporation ("HDC"), the sum of $4,835,364.00. I believe from a legal standpoint attribution of that amount is clearly in error. This amount represents costs which were paid out by the owner of the property, Huntington High Limited Partnership ("HHLP"), to the general contractor, sub-contractors, and various other providers in order to complete the Project over an approximate period of two years. Included in that sum was a developer's fee paid to HDC in the amount of $600,000.00, as a legitimate "cost" of the Project. I am advised by your accounting staff that HDC properly reflected that developer's fee as income in the appropriate year of its payment. Thus it would appear such developer's fee has been included twice and attributed to HDC as income, since the full amount of costs ($4,835,364.00), including the developer's fee, was attributed to HDC and HDC listed the developer's fee as income during the appropriate tax year.

Aside from the apparent duplication of the developer's fee as income to HDC, as stated, I have a difficult time resolving the IG's attribution of the amount of the costs paid out by HHLP of $4,385,364.00, to HDC as "income", since HHLP and HDC are separate legal entities, both of which have undergone independent audits for the periods utilized by the IG for its audit. Neither

William E. Dotson
November 17, 2004
Page Two

independent auditor saw fit to "co-mingle" the financial aspects of these entities or, attribute income between them. While both HDC and HHLP participated in the Huntington High Renaissance Project, each was, during the accounting periods in question, a separate legal entity, HHLP being the owner of the Project and a for- profit organization and, HDC a non-profit which acted as the developer. Confirmation of the separate legal status of these two organizations is readily available through the West Virginia Secretary of State's Office.

Accordingly, it is my opinion based upon the foregoing factors, that the attribution of the costs paid out by HHLP during the course of the completion of the Huntington High Renaissance Project as income to HDC and as reflected in the Report, is legally improper.

This opinion is limited to the legal aspects of the findings expressed by the IG in the Report, and makes no consideration as to generally accepted accounting principals or the governmental counterpart thereof.

Respectfully,

Charles W. Peoples, Jr.

CWPjr./jw

OIG Evaluation of Auditee Comments

Comment 1 The report properly acknowledged that the Authority established a nonfederal entity known as the Housing Development Corporation in 1997 to promote and advance decent, safe, and sanitary housing for persons of low- and moderate-income, the elderly, disadvantaged or infirm in the Cabell-Wayne Counties and surrounding areas of West Virginia.

Comment 2 The Authority recognized that it did not develop a formal cost allocation plan as required by Office of Management and Budget Circular A-87. However, in response to our audit report the Authority calculated a lower estimated questioned cost of $56,646. Our audit determined the Authority's lower estimate did not properly allocate to the Housing Development Corporation costs to acquire, construct, own, finance, lease and operate the Huntington High Renaissance Redevelopment Project. The Development Corporation was the General Partner of the Huntington High Limited Partnership that owned the Huntington High Renaissance Redevelopment Project. Our audit determined that at least 17 Authority employees performed work for the Housing Development Corporation related to the Huntington High Renaissance Redevelopment Project such as keeping proper books of account.

Comment 3 Based on Section VII of the Housing Development Corporation's Articles of Incorporation these background statements in the report are correct. The Articles of Incorporation state that the Corporation shall have a Board of Directors consisting of not less than three Directors who also serve on the Authority's Board of Commissioners. The Articles of Incorporation also state that all power of the corporation shall be vested in the Housing Development Corporation's Board. The Articles further require the Authority's Board of Commissioners to approve the election of any Housing Development Corporation Board member.

Comment 4 The cash flow percentage we estimated for Fiscal Year 2001 included the Huntington High Renaissance Redevelopment Project. We addressed this issue in our evaluation of comment 2.

Comment 5 The fact that these activities are separate legal entities does not negate the Authority's requirement to properly allocate costs to its nonfederal entities. Also, the Authority did not provide documentation needed to support its contention that we double counted a developer's fee in our cash flow estimate. We addressed other relevant issues in the Authority's letter from counsel in our evaluation of comment 2.