



U.S. Department of Housing and Urban Development
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District Inspector General for Audit

May 3, 2000

**Audit Related Memorandum
No. 00-PH-119-0801**

MEMORANDUM FOR: Encarnacion Loukatos, Director Philadelphia Multifamily Housing,
3AHMLA

FROM: Daniel G. Temme, District Inspector General for Audit, Mid-
Atlantic, 3AGA

SUBJECT: Presbyterian Association on Aging
Plumwood Apartments, Parker Heights, and Sprucewood
Commons - Section 811 and 202 PRAC Projects
Oakmont, Pennsylvania

Our office has completed a review of the granting of income and age waivers for the Plumwood Apartments, Parker Heights and Sprucewood Commons projects. Our review was performed as a result of a confidential complaint concerning the Pittsburgh Multifamily Housing Division's granting of age and income waivers for projects owned by the Presbyterian Association on Aging (Owner). Specifically, the complainant alleged multifamily staff improperly granted income and age waivers for Plumwood Apartments, a Section 811 project; and Parker Heights and Sprucewood Commons which are two Section 202/PRAC facilities.

Based on the review, we believe the Pittsburgh Multifamily Housing Division improperly granted income and age waivers for the above projects and therefore, jeopardized the integrity of HUD programs designed for very low-income families.

OBJECTIVE, SCOPE AND METHODOLOGY

Our primary objectives were to determine if income and age waivers were granted and, if so, were they properly awarded. Additional objectives were to determine whether the projects were administered according to HUD requirements.

To meet our objectives, we reviewed files of the projects identified above to determine if income waivers had been granted. We also researched the requirements applicable to granting income waivers in the Section 811 and 202/PRAC programs to determine if any waivers granted were processed as required. We interviewed Pittsburgh Multifamily Housing staff to obtain

clarification on items disclosed during the file review and gain an understanding as to why issues were resolved as they were.

BACKGROUND

The Section 811 program provides grants to nonprofit organizations to develop and construct or rehabilitate rental housing with supportive services *for very low-income* persons with disabilities.

The Section 811 program houses *very low-income persons* between the ages of 18 and 62 who have disabilities, including persons with physical or developmental disabilities or chronic mental illness and disabled families. The term "disabled family" may include two or more persons with disabilities living together, and one or more persons with disabilities living with one or more live-in aides. A disabled family may also include an elderly person with a disability.

Section 202 provides capital advances to finance the construction and rehabilitation of structures that will serve as supportive housing for *very low-income* elderly persons and provides rent subsidies for the projects to help make them affordable.

This program helps expand the supply of affordable housing with supportive services for the elderly. It provides low-income elderly with options that allow them to live independently but in an environment that provides support activities such as cleaning, cooking, transportation, etc.

Plumwood Apartments, Parker Heights and Sprucewood Commons are owned by The Presbyterian Association on Aging (Owner) and managed by SeniorCare Management, Inc., located in Oakmont, Pennsylvania.

Plumwood Apartments was a newly constructed 10 unit Section 811 property for persons who are chronically mentally ill with a subcategory of memory impairment and dementia. The property was first available for occupancy on March 16, 1997.

Parker Heights was a newly constructed 26 unit Section 202/PRAC apartment complex in Parker, PA specially designed for older adults. The project became available for occupancy in March, 1995.

Sprucewood Commons was a newly constructed 40 unit Section 202/PRAC apartment complex in Slippery Rock, PA specially designed for older adults. The effective date of the rental assistance contract was November 1, 1997.

CRITERIA

HUD management guides for the Sections 202/811 program and Section 202/PRAC program state age/income waivers (202/PRAC program) and income waivers (811 program) are required to be approved at Headquarters. This results from the issues being actual regulations as set forth in 24 CFR 891. Additionally, Federal requirements mandate HUD publish all approval actions taken on waivers of regulations quarterly in the Federal Register and state regulatory waivers can only be delegated to a level no lower than Assistant Secretary or equivalent .

RESULTS OF REVIEW

Based on our review of the program files for the Plumwood Apartments, Parker Heights and Sprucewood Commons projects, which are owned by the Presbyterian Association on Aging, we identified 10 instances where the Pittsburgh Multifamily Division granted income and age waivers to projects contrary to HUD regulations and guidelines. Under current HUD regulations, the Pittsburgh staff does not have the authority to grant such waivers. Furthermore, and more troubling was the fact file correspondence indicated staff were aware they did not have the authority to grant waivers but did so anyway. In addition, we noted that staff gave conflicting information to project management, and granted waivers without first making a determination as to whether they were justified. For example, waivers were sometimes granted before initial occupancy or prior to any determination that the owner could not rent to the target population. Following is a table that summarizes the income and age waivers that were approved by the Pittsburgh Multifamily Division.

<i>Income and Age Waivers</i>				
<i>Date</i>	<i>Project</i>	<i>Waiver Type Requested</i>	<i>Period of Waiver</i>	<i>Grantor</i>
6/24/98	Plumwood	Income	3 months	Director
1/29/99	Plumwood	Income	6 months	Director
8/18/99	Plumwood	Income	8 months	Director
1/30/95	Parker Heights	Income	2 years	Chief
6/14/96	Parker Heights	Age	1 year	Chief
7/21/97	Parker Heights	Income (Individual)	until vacated	Chief
8/6/98	Parker Heights	Income	5 months	Director
1/22/99	Parker Heights	Income	8 months	Director
9/15/99	Parker Heights	Income	9 months	Director
8/6/98	Sprucewood Commons	Income	5 months	Director

As the table above shows, prior to 1997 the Chief of the Multifamily Asset Management Branch (Chief) granted two waivers for Parker Heights contrary to HUD regulations. The first waiver was granted on January 30, 1995 for income. Considering this property was not available for occupancy until March 1995 it is unclear how HUD and the Owner entities determined the project could not reach occupancy with the targeted population. The second waiver was granted on June 14, 1996 for a one year age waiver.

On April 11, 1997 in a written response to a request for an age waiver for an applicant, the Pittsburgh Multifamily Chief acknowledged that waivers are limited to issues not required by statute or regulation and individual waivers were inappropriate because they would give the appearance of favoritism. However on July 21, 1997, the Chief disregarded her own instructions

and waived the income limit on an applicant whose income exceeded the low income limit due to concerns for the continuing vacancies. On December 5, 1997 the Chief again denied an age waiver request because “Waivers to statutory regulations are not within the agency’s realm of authority to grant.”

The Chief believed the authority to grant waivers came from HUD Handbook 4350.3 and was not aware a distinction was made between the 202 and 202/PRAC programs. This distinction was made clear in a Management Guide to Section 202/811 which states at 3A. “Income limits for PRACs are NOT waivable by the Field Office.” Therefore, she did not receive anyone’s approval to grant waivers. Even though the Chief had previously provided guidance to project management evidencing she was aware of regulatory requirements for waiver approval she stated that she was not aware that age and income waivers were to be granted only by the Secretary or Assistant Secretary level and that regulatory income and age waivers are to be published quarterly in the Federal Register.

On June 26, 1998, the Director of Pittsburgh Multifamily Housing (Director) received an E-mail correspondence from Headquarters that reinforced select Section 811 and 202/PRAC procedures. Specifically, the E-mail clearly stated Section 811 projects are limited by statute to very low income individuals or families, and HUB/PC staff do not have delegated authority to waive age or income limits (emphasis added). However, as is noted in the table above, the Director continued to grant waivers (6) after receiving Headquarter’s instructions.

The Director now acknowledges he did not have the authority to grant waivers. The Director stated waivers were granted without proper authority because of specific problematic rent-up concerns of occupancy and vacancy claims. The Director believed prior conversations with Headquarter’s staff were sufficient for letting them know what was happening with the facilities, and he did not communicate to either the Philadelphia HUB or Headquarters that waivers were granted.

Other Issues

During our review of the project records for Plumwood Apartments, we also identified a number of concerns regarding the management and administration of the project that the Pittsburgh Multifamily staff should address. These concerns are detailed in Appendix A of this report.

* * * * *

In summary, the Pittsburgh Multifamily Division needs to immediately stop granting income and age waivers and administer programs according to HUD guidelines.

Philadelphia Multifamily HUB Response

The Director of the Philadelphia Multifamily HUB agreed with the results of our review and has initiated action to address the recommendations. Specifically, the written response (Appendix B) stated regulatory waivers will now be reviewed by the Philadelphia HUB and forwarded to

Headquarters according to regulations. Additionally, the Pittsburgh Program Center has initiated and scheduled comprehensive management reviews at projects in the Owner's portfolio.

The Philadelphia Multifamily HUB stated that although the waivers were not processed according to requirements, they were granted after considering the existing market conditions and the project's financial condition. Further, Philadelphia Multifamily HUB stated that in discussions with Headquarter's staff, they agreed these conditions merited a waiver and all temporary waivers mandated the project to continue to advertise and give preference to very low income families.

Evaluation of Philadelphia Multifamily HUB Response

We commend the corrective actions initiated by the HUB to ensure regulatory waivers are processed according to requirements and to initiate management reviews of the additional projects. However, we want to reiterate that our review of the Plumwood files indicated the project has not conducted any advertising since January 1998, as directed by the waiver approvals. Therefore, while the projects may not have denied any very low income families a unit, it does not appear they aggressively marketed the units to very low income applicants as mandated by the waiver approvals. Further, the results of our review (Appendix A) should be considered when conducting management reviews of the remaining projects and follow up at Plumwood.

We recommend your office:

- 1A. Take necessary and appropriate steps to ensure program staff comply with program requirements and forward requests for regulatory waivers to Headquarters.
- 1B. Have the Pittsburgh Multifamily Division perform a comprehensive management review of projects owned and operated by Presbyterian Association on Aging to:
 - follow up and take corrective action for issues raised during our review (Appendix A); and
 - determine if similar problems exist at our properties in their portfolio.

The results of our review were discussed with the Pittsburgh Multifamily Division staff.

If you have any questions, please call Allen Leftwich, Assistant District Inspector General for Audit at (215) 656-3401.

The following operational concerns were raised as the result of our review of project files for Plumwood Apartments. The concerns are as follows:

- Owner equity amount uncertain as well as project location;
- Lack of advertising by the project;
- Unclear adjudication of spouse/live in aide issue;
- processing of tenants for admission;
- incomplete vacancy claim submission;

Owner Equity

There is some confusion over the amount of equity actually contributed by the Owners. According to HUD form 92330 - Mortgagor's Certificate of Actual Costs showed expenses of \$1,113,371. HUD costs according to a Multifamily Construction Analyst totaled \$993,082. This would make the total contribution from other sources to be \$120,289. However, the independent auditor report completed by KPMG reflects a contribution of \$4,575 and additional grants of \$279,800. There does not appear to be evidence that the Owners contributed several hundred thousand dollars as was stated in the paperwork reviewed and in conversation with Multifamily staff.

Advertising

Plumwood Apartments has not advertised since January, 1998. Even though the Pittsburgh Multifamily Division did not have the authority to grant income waivers they were granted based on a condition that the project continue to advertise and give preference to very-low income families. This impacts the number of applications received, the need for waiver requests and the validity of vacancy claims paid. Also, because Plumwood continues to accept applications, there is some question as to the appearance of favoritism in the selecting of tenants.

Spouse/Live-In Aide

A review of project files and correspondence for Plumwood indicated spouses were sometimes considered live-in aides and therefore, their income was not considered for eligibility or calculation of the tenants portion of rent. Legal interpretations from Pittsburgh Legal Counsel stated that Pennsylvania law requires spousal support and therefore, a spouse can not be considered a live-in aide. Pittsburgh Legal Counsel suggested to Multifamily that if the project wanted to count spouses as live-in aides they should discuss this situation with Headquarters and seek a waiver of the regulation. No documentation was found to indicate a waiver was requested.

Processing of applicants and tenants

We reviewed tenant files for residents of Plumwood and noted the following concerns:

- The files had missing and incomplete documentation. Inconsistencies arose in tracing the dates of the original applications and 811 PRAC leases.
- The policy manual was not followed. Applications were only to be accepted by mail. Some of the applications were hand delivered. This could possibly show favoritism granted for some applicants.
- There were at least four instances where the project knew, or should have known that more individuals were living in the unit than was stated on the 50059. At a minimum, the number of residents on the 50059 was not sufficient for the bedroom size assigned.
- After the qualifying tenant vacated a unit, remaining family members were permitted to remain in the unit. This has resulted in at least two units being occupied by individuals who do not qualify for the Section 811 program.
- The project was counting the spouse as a live in aide, in some instances, when the family moved in (and thereby not counting the income). After the eligible family member vacated the unit the live-in aide was considered a spouse so they could remain in the unit.
- There are indications that tenants are not being treated equally when dealing with the management agent.
- Social security information is being accepted from tenants without being independently verified.

Vacancy Claims

Vacancy claims totaling \$5,410 were paid to the owners of Plumwood. As noted above the project has not adequately advertised and therefore, the need for vacancy payments is questionable.



Appendix B

U.S. Department of Housing and Urban Development

Pennsylvania State Office
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4/24/00

To: Daniel G. Tenme, District Inspector General for Audit, Mid-Atlantic, 3 AGA
From: ~~Epanacion Loukatos~~, Director Philadelphia Multifamily Hub, 3AMMLA
Subject: Draft Audit Related Memorandum No. 00-PH-119-0801

This is in response to the subject Draft Audit Related Memorandum, concerning Presbyterian Association for Aging, and their management operations at Plumwood Apartments, Parker Heights and Sprucewood Commons

GENERAL COMMENTS

Plumwood is a Section 811 project for persons with chronic mental illness related to dementia. Parker Heights and Sprucewood Commons are Section 202 projects for elderly. Parker Heights is located in Armstrong County, a non-metropolitan area, and Sprucewood Commons is located in Slippery Rock, a smaller community in a metropolitan area.

The Draft Memorandum concludes that the Pittsburgh Program Center granted income and age waivers for these three projects without complying with the Department's waiver procedures. In order to correct this, it recommends that the Pittsburgh staff 1) perform a comprehensive management review of Section 202 and Section 811 projects owned and operated by Presbyterian Association for Aging, and 2) forward regulatory requests for waivers to Headquarters for approval. We agree.

Prior to receiving the Draft Memorandum, the Pittsburgh Program Center initiated measures consistent with the proposed corrective plan. Last month Presbyterian Association for Aging inquired about the continuation of an income waiver for Plumwood. They were advised to prepare and submit appropriate documentation to justify the need for a waiver. The Program Center will review the documentation, and submit it to the Philadelphia Hub Office where it will be reviewed before being transmitted to Headquarters for appropriate action.

COMPREHENSIVE MANAGEMENT REVIEWS

Presbyterian Association for Aging manages 16 Section 202 and Section 811 properties. Within the past several months, the Pittsburgh Program Center has completed reviews of Page Place and Towne Place, two Section 811 properties, and Sweetbriar, a Section 202 project. Those reviews have not revealed any

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of the irregularities as described in the Draft Memorandum. Seven other Section 202 or Section 811 projects have been identified for review during the next 60 days. Reviews of the remaining projects will be scheduled based on the information obtained from the reviews at these initial 10 projects.

INCOME AND AGE WAIVERS

Income and age waivers were granted by the Pittsburgh Program Center as a result of a misunderstanding from several conversations and e-mail messages between Edward Palombizio, Director Project Management, Pittsburgh Program Center, and Headquarters staff in early 1998. Prior to that time, it had been his understanding that the statute creating the Section 202 and Section 811 programs required all eligible occupants to be very low income, and, therefore, income waivers were not possible at either the Headquarters or the Field Office level. During his 1998 conversations with Headquarters staff he was advised of an Office of General Counsel opinion permitting temporary income waivers during the initial rent up, or other times, if necessary to prevent the project from going into a financial default.

He discussed the Plumwood situation with Headquarters staff member who agreed that this situation would merit a waiver. Subsequently, he received an e-mail message confirming this conversation and indicating that waivers had been provided in cases where there was good cause for a waiver and the need for a waiver had been discussed with Headquarters. The e-mail did not indicate that this waiver request had to be formally submitted to Headquarters for approval by the Assistant Secretary.

Since this field office made a finding of good cause for a temporary income waiver, the matter had been discussed with Headquarters with no objections, and waivers had been granted involving projects in other field offices, it was his understanding, based on the e-mail, that as Director, he had the authority to grant the waiver for Plumwood.

The Pittsburgh Program Center issued a temporary waiver permitting the owner of Plumwood to rent units to otherwise eligible low income applicants if there were no eligible low income applicants on the waiting list. However, the waiver required the owner to continue to look for additional ways to attract very low income applicants, and to aggressively market the units to very low income applicants. Furthermore, if as a result of the waiver, there would be low income applicants on the waiting list, and subsequently a very low income applicant submits an application, the very low income applicant would move to the top of the waiting list ahead of all low income applicants already on the waiting list.

Thus the waiver did not permit the owner to disregard its obligation to rent the units to very low income applicants. The purpose of the waiver was temporary, and it was intended to prevent default during initial rent up if there were no very low income applicants. Furthermore, before the temporary waiver was granted, the owner was required to submit substantial documentation to evidence its marketing effort to attract very low income applicants. It was only after the Pittsburgh Program Center reviewed this documentation and after the owner was no longer eligible for vacancy payments from HUD, that a temporary waiver was deemed appropriate. Furthermore, it was the Program Center's understanding

that there had not been any occasions where a very low income applicant had been denied a unit because it was occupied by a low income applicant or resident.

Subsequently, similar waivers were granted for Sprucewood Commons and Parker Heights. In Sprucewood Commons, a temporary waiver was necessary because the project was encountering difficulty during the initial rent up. The Pittsburgh Program Center reviewed documentation evidencing their outreach effort to attract very low income applicants. The documentation included letters from the owner to churches, senior citizen organizations, local officials, supportive service organizations, newspapers, radio stations and other media. Its staff also met with the owner to discuss and suggest other marketing techniques used by other owners to attract very low income applicants. We looked at occupancy levels and trends at other assisted projects in the area. Based on this information, it was determined that a temporary income waiver was necessary. As in the case of Plumwood, it was the Program Center's understanding that there had not been any occasions where a very low income applicant had been denied a unit at Sprucewood Commons because the unit was occupied by a low income applicant or resident.

At Parker Heights, the 1998 and 1999 waivers were necessary because the project continued to experience vacancies that were going unfilled because of insufficient interest by very low income residents in the area. Since the project opened in 1995, it has encountered rent up problems, and has never achieved sustaining occupancy for an extended period of time. The project is located in an area removed from major retail, medical facilities and public transportation. At the time that the Section 202 project was approved for funding, the demographics suggested an adequate market for the project, but this has not been the experience. Many of the local elderly residents have incomes slightly exceeding the very low income threshold. Furthermore, the location of the site and the lack of public transportation and local retail have prevented the project from successfully attracting applicants from outside the local area.

When asked by the OIG Investigator for the source of his authority to grant these waivers, the Director Project Management referenced the e-mail that he received from Headquarters. Unfortunately, the e-mail had been deleted. He telephoned the person in Headquarters who had sent me the e-mail, and asked him to confirm his understanding of the e-mail. The Headquarters' staff person indicated that he had misunderstood the e-mail, and that income waivers had to be sent to Headquarters for approval. The e-mail was to explain the income waiver policy, not to delegate the authority to grant the waiver. However, he also indicated that based on the facts presented, the Pittsburgh Program Center's granting of the temporary waivers would be affirmed by Headquarters. As indicated above, since this telephone conversation, the Program Center has not approved any income or age waiver requests for Section 202 or Section 811 properties.

Regarding the 1996, 1997 and 1998 waivers for Parker Heights, they were granted in order to bring financial stability to the project. At that time Multifamily Housing was in the middle of a significant reorganization involving several shifts of authority between Headquarters, the Pittsburgh Program Center, and the Philadelphia Multifamily Hub Office. This contributed to confusion regarding waiver procedures, and the Pittsburgh Program Center has been unable to find anything in the file to evidence the extent of Headquarters involvement with these waivers. However, based on the Program Center's review of the file, it has been able to determine that, although these waivers were granted, at no time were any very low income applicants excluded from residency because vacant units were occupied by low income

applicants. Furthermore, at no time were there any applicants 62 years of age or older excluded from occupancy because underage applicants were housed.

We agree with the OIG Report that the appropriate way to deal with waivers is to obtain an income or an age waiver from the Assistant Secretary, and we shall comply with that procedure in the future. However, consistent with the Program Center's responsibility to preserve affordable housing, the cited actions were not inconsistent with the authority delegated to Directors of Project Management, who are required to exercise prudent judgment and to follow customary business practices in order to avoid a financial default situation. Properties were encountering temporary marketing problems. The Pittsburgh Program Center had the owners expand their marketing activities. When that did not yield satisfactory results, it permitted a temporary expansion of the market to include low income persons, who also needed affordable housing, but did not have sufficient income to pay market rents. In addition, during the temporary market expansion, the Program Center required that priority be given to very low income applicants at all times.

If there are any questions concerning this matter please contact Thomas Langston, Director of Operations, at the following telephone number: (215)656-0609, Ext. 3530.

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