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| Issue Date<br>September 30, 2002  |
| Audit Case Number<br>2002-PH-1002 |

TO: Charles H. Williams, Director, HUD's Office of Multifamily Housing Assistance Restructuring, HY

*Daniel G. Temme*

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

SUBJECT: AUDIT MEMORANDUM –Congressional Requested Audit of the Outreach and Training Assistance Grant Awarded to the Virginia Poverty Law Center  
Grant Number FFOT98029VA  
Richmond, Virginia

### INTRODUCTION

We completed an audit of the Virginia Poverty Law Center's \$75,000 Outreach and Training Assistance Grant (OTAG). The objectives of the review were to determine if the Virginia Poverty Law Center used Section 514 grant funds for only eligible activities as identified in Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), their agreements, and/or other requirements to further the Mark-to-Market Program. Also, we wanted to determine if the Virginia Poverty Law Center expended Section 514 funds for any lobbying activities. MAHRA specifically identified lobbying as an ineligible activity.

The audit identified that the grantee could not provide adequate support for \$63,050 in disbursements it made for salaries and fringe benefits and \$11,950 in indirect costs. In addition, contrary to the enabling legislation and the Office of Management and Budget's (OMB) Circular A-122, Cost Principles for Non-Profit Organizations, the grantee used grant funds to participate in a conference and a number of teleconferences that included various ineligible lobbying activities. Our report contains two recommendations to address the issues identified in this report.

Section 1303 of the 2002 Defense Appropriation Act (Public Law 107-117) requires the HUD Office of Inspector General to audit all activities funded by Section 514 of the MAHRA. The directive would include the Outreach and Training Assistance Grants (OTAG) and Intermediary Technical Assistance Grants (ITAG) administered by the Office of Multifamily Housing

Assistance Restructuring (OMHAR). Consistent with the Congressional directive, we reviewed the eligibility of costs with particular emphasis on identifying ineligible lobbying activities.

In conducting the audit, we reviewed the grantee's accounting records and interviewed responsible staff. We also reviewed the requirements in MAHRA, the OTAG Notice of Fund Availability, the OTAG grant agreement, HUD's requirements for grant agreements for nonprofit entities, and Office of Management and Budget's guidance on the allowability of cost for nonprofit grantees.

The audit covered the period September 1998 through May 31, 2002. We performed the fieldwork at the Virginia Poverty Law Center located at 201 West Broad Street, Suite 302, Richmond, VA 23220, during June through July 2002. We conducted the audit in accordance with Generally Accepted Government Auditing Standards. We held an exit conference with the Executive Director of the Virginia Poverty Law Center on August 27, 2002 and a follow up meeting on September 5, 2002.

We appreciate the courtesies and assistance extended by the personnel of the Virginia Poverty Law Center during our review.

In accordance with HUD Handbook 2000.06 REV-3, within 60 days please provide us, for each recommendation without a management decision, 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 Christine Begola at (410) 962-2520.

### **SUMMARY**

We found the Virginia Poverty Law Center (Law Center) did not maintain personnel activity reports in accordance with OMB Circular A-122 Attachment B, paragraph 7(m) to support \$63,050 in personal salaries and fringe benefits charged to the grant. In addition, the grantee could not support \$11,950 in indirect costs because it did not prepare a cost allocation plan per the guidance in OMB Circular A-122, Attachment A. According to the grantee's cost allocation procedures, all expenses are allocated based on time spent on each activity; however, since the grantee does not maintain detailed time reports to support its allocation rates, we could not determine whether the grantee's allocation plan was reasonable. Also, according to the grantee's reports to OMHAR, grantee staff attended a training conference and a number of teleconferences that included lobbying activities. However, due to the lack of adequate time records, we could not determine the total time and associated costs expended for these ineligible activities or verify the grantee's claim that its employees did not participate in the ineligible activities.

## **BACKGROUND**

The Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) established the Office of Multifamily Housing Assistance Restructuring (OMHAR) within HUD. Utilizing the authority and guidelines under MAHRA, OMHAR's responsibility included the administration of the Mark-to-Market Program, which included the awarding, and oversight of the Section 514 Outreach and Training Assistance and Intermediary Technical Assistance Grants. The objective of the Mark-to-Market Program was to reduce rents to market levels and restructure existing debt to levels supportable by these reduced rents for thousands of privately owned multifamily properties with Federally insured mortgages and rent subsidies. OMHAR worked with property owners, Participating Administrative Entities, tenants, lenders, and others to further the objectives of MAHRA.

Congress recognized, in Section 514 of MAHRA, that tenants of the project, residents of the neighborhood, the local government, and other parties would be affected by the Mark-to-Market Program. Accordingly, Section 514 of MAHRA authorized the Secretary to provide up to \$10 million annually (\$40 million total) for resident participation, for the period 1998 through 2001. The Secretary authorized \$40 million and HUD staff awarded about \$26.6 million to 40 grantees (a total for 83 grants awarded). Section 514 of MAHRA required that the Secretary establish procedures to provide an opportunity for tenants of the project and other affected parties to participate effectively and on a timely basis in the restructuring process established by MAHRA. Section 514 required the procedures to take into account the need to provide tenants of the project and other affected parties timely notice of proposed restructuring actions and appropriate access to relevant information about restructuring activities. Eligible projects are generally defined as HUD insured or held multifamily projects receiving project based rental assistance. Congress specifically prohibited using Section 514 grant funds for lobbying members of Congress.

HUD issued a Notice of Fund Availability in fiscal year 1998 and a second in fiscal year 2000 to provide opportunities for nonprofit organizations to participate in the Section 514 programs. HUD provided two types of grants, the Intermediary Technical Assistance Grant (ITAG) and the Outreach and Training Assistance Grants (OTAG). The Notice of Fund Availability for the ITAG states that the program provides technical assistance grants through Intermediaries to sub-recipients consisting of: (1) resident groups or tenant affiliated community-based nonprofit organizations in properties that are eligible under the Mark-to-Market Program to help tenants participate meaningfully in the Mark-to-Market process, and have input into and set priorities for project repairs; or (2) public entities to carry out Mark-to-Market related activities for Mark-to-Market eligible projects throughout its jurisdiction. The OTAG Notices of Fund Availability state that the purpose of the OTAG program is to provide technical assistance to tenants of eligible Mark-to-Market properties so that the tenants can (1) participate meaningfully in the Mark-to-Market Program, and (2) affect decisions about the future of their housing.

OMHAR also issued a December 3, 1999 memorandum authorizing the use of OTAG and ITAG funds to assist at-risk projects. OMHAR identified these as non-Mark-to-Market projects where the owners were opting out of the HUD assistance or prepaying the mortgages.

Title 24 Code of Federal Regulation (CFR) Part 84 contain the uniform administrative requirements for grants between HUD and nonprofit organizations. The regulations (24 CFR Part 84.27) require that nonprofit grantees utilize the OMB Circular A-122, Cost Principles for Non-Profit Organization, in determining the allowability of costs incurred to the grant. OMB Circular A-122, Attachment B, outlines specific guidelines for allowability of charging salaries and related benefits to the grants and the records needed to support those salaries. For indirect costs charged to the grant, Attachment A of the Circular establishes restrictions for indirect costs, and specific methods and record keeping to support the allocation of costs.

The Circular also establishes unallowed costs associated with Federal and State lobbying activities. Simply stated, the use of Federal funds for any lobby activity is unallowable. OMB Circular A-122, Attachment B, identifies some examples of unallowable activities of lobbying. These include any attempt to influence an elected official or any Government official or employee (Direct Lobbying) or any attempt to influence the introduction, enactment or modification of any pending legislation by propaganda, demonstrations, fundraising drives, letter writing, or urging members of the general public either for or against the legislation (Grassroots Lobbying).

The Law Center applied for an OTAG grant under the 1998 Notice of Fund Availability for \$245,900, but was awarded \$75,000 in fiscal year 1999. As of March 2002, the entire grant was expended. The Law Center received annual financial audits of their activities for the periods ending June 30, 1999, 2000 and 2001. The auditor provided an unqualified opinion for each of the three years.

In addition to the OTAG grant, the Law Center received grants from other Federal and non-Federal sources. For example, the majority of the Law Center's operations are funded through grants from the Legal Services Corporation of Virginia (IOLTA). During the fiscal years 1999 – 2001 IOLTA provided the Law Center \$1,501,174 in funding. During that same time period, the Department of Justice provided funding, totaling \$386,364. The Law Center's total funding from all sources for the fiscal years 1999-2001 was \$2,334,118.

**FINDING: The Grantee Did Not Comply With HUD and OMB Requirements**

The Law Center did not maintain adequate accountability over its OTAG grant funds in accordance with HUD requirements and OMB Circular A-122. Specifically, the Law Center did not maintain adequate time records to adequately support personnel related costs and could not support the cost allocation method it used to charge indirect costs to the grant. In addition, the grantee used OTAG funds to attend a training conference and a number of teleconferences that included ineligible lobbying activities. However, although the grantee claimed its employees did not participate in those ineligible activities, we could not verify their claim because the grantee did not maintain adequate time records. As a result, the Law Center charged \$63,050 in salaries

and benefits and \$11,950 in indirect costs to the grant that were not adequately supported. The grantee stated they did not maintain detailed time records in compliance with the OMB Circular A-122 requirements, HUD had advised them they did not need to keep such records. However, the grantee did not have any written documentation to support this statement.

### Compensation for Personal Services

OMB Circular A-122, Attachment B, Paragraph 7, Compensation for Personal Services, states that reasonable compensation and fringe benefits to employees are grant fundable costs. The Circular also places specific salary record keeping requirements on the grantee. The grantee must maintain reports that account for the total activity for which an employee is compensated for in fulfillment of their obligations to the organization. The reports must reflect an after the fact determination of actual activity for each employee. Budget estimates do not qualify as support for charges to the grant. Grantees must also maintain reports reflecting the distribution of activity of each employee (professionals and nonprofessionals) whose compensation is charged, in whole or in part, directly to awards. OMB also requires that the employee or a responsible supervisor sign the report. In addition, in order to support the allocation of indirect costs, such reports must also be maintained for other employees whose work involves two or more functions or activities if a distribution of their compensation between such functions or activities is needed in the determination of the organization's indirect cost rate.

The Law Center did not maintain proper employment records per OMB guidance to support \$63,050 in salaries and benefits charged to the grant. Instead, all salary charged to the grant was based on estimated staff time spent on grant activities. To support this estimate, the grantee selected a one-month period, in this case October 2000, and asked staff to maintain a record showing the hours spent per week working on various grants. These hours were used to calculate a percentage of time spent on each grant by each employee for that month. These percentages were then projected for the entire year and used to determine an annual cost. However, when we tried to verify the allocation, we were told by the grantee's accountant that the base hours used for the allocation was an estimate of employee time for October 2000 and not the actual hours. Since the grantee used hourly estimates to determine the salary costs to the grant and did not maintain detailed time reports, we could not determine the type of activities the employee performed or the number of hours associated with those activities for this grant.

Although we found evidence that the Law Center performed activities to further the Mark-to-Market Program, we could not determine the amount of time spent on the activities reported due to the lack of adequate time records. When we asked the grantee for the support for the grant allocation, the grantee claimed HUD advised them that they did not have to keep detailed time records, however they could provide nothing in writing to support this claim.

### Allocating Indirect Costs to the Grant

The grantee allocated at least \$11,950 in indirect costs to the grant that were not fully supported. These indirect costs included travel, training, telephone, space cost and consumable supplies. OMB Circular A-122, Attachment A, provides guidance on the basic considerations for grant

fundable costs and allocation of indirect costs. The guidance provides that the grantee shall support a cost allocation taking into account all activities of the organization. Unless different arrangements are agreed to by the agencies concerned, the Federal agency with the largest dollar value of awards with an organization will be designated as the cognizant agency for the negotiation and approval of the indirect cost rates. A non-profit organization that does not have an approved cost allocation plan, shall submit an initial cost allocation plan within three months of receiving the award.

In the Law Center's case, the cognizant agency is the Department of Justice (DOJ). When we requested a copy of the plan the grantee's accountant provided us several conflicting schedules. However, we could not determine, and the grantee could not explain, how any of the funding from the grant was tied to the supporting documentation or the allocation rate used. Thus, it appears the grantee neither prepared nor submitted to DOJ or HUD a cost allocation plan after receiving their grants. Instead, the grantee used unsupported percentages based on estimates of employee's time for the allocation of cost. Furthermore, since the grantee drew down and accounted for OTAG funds from one general fund, that also included funds from non-HUD sources, an accurate allocation plan is essential to ensure funds are spent only for eligible activities. The grantee's allocation method does not provide this assurance.

### **Lobbying**

MAHRA specifically prohibits using Section 514 funds to lobby members of Congress or their staff. OMB Circular A-122, Attachment B, Paragraph 25, Lobbying places additional limitations on the grantee's use of Federal funds for lobbying. However, as we identified in the background section, the grantee also received non-Federal funds. The allowability and use of these funds for lobbying activities would not be restricted by the guidance in OMB Circular A-122.

We reviewed the grantee's monthly activity reports and, travel vouchers to identify meetings with legislative members or their staff. We also reviewed these reports for activities that did not meet the requirements of MAHRA and which are considered Grassroots lobbying.

Although we noted most of the grantee's employees are registered lobbyists with the Commonwealth of Virginia, we did not identify any meetings where the grantee met with legislative members or their staff. However, we did note, the grantee participated in a conference and a number of teleconferences sponsored by the National Alliance of HUD Tenants (NAHT) which included ineligible lobbying activities. For example, part of the Alliance's conference in June 1999 contained one training session entitled "How Congress Affects Us, and How We Can Affect Congress," and included a "How to Lobby Role-play." Another session included learning about the Alliance's 1999 lobbying campaign to win support for the Vento-Ramstad bill (H.R. 425) and Marking up to Market bill (H.R. 1336). The last session of the conference was entitled "Meetings with Congress people from Your State/District". Although the grantee claimed its employees did not attend these lobbying sessions, we could not verify this because the grantee did not maintain detailed employee time records.

The grantee provided nine different teleconference agendas they had participated in. On average the meetings were scheduled to last one hour and thirty minutes. Based upon our review of the agendas we estimate that approximately 30 minutes per meeting was spent discussing some form of lobbying issue and approximately 10 minutes were spent discussing the Mark-to-Market Program. Based upon OMB's guidance, only the portion of the activity related to the purpose of the grant can be charged to the grant. However, since the Law Center does not maintain adequate travel and time records, we could not determine the amount of unallowable lobbying activities and the actual costs that were charged to the grant.

### **AUDITEE COMMENTS**

We provided our draft report to the grantee for their comments on September 6, 2002. The grantee provided their comments on September 19, 2002. We included the grantee's comments in Appendix B of the report.

With the exception of the use of OTAG funds for lobbying activities the Law Center agreed with our findings. The Law Center stated their employees attended conferences and teleconferences sponsored by the NAHT solely to receive training and information in connection with the Mark-to-Market Program. They also stated the employees elected not to take part in any lobbying activities associated with the NAHT conferences, in an effort to avoid any appearance that OTAG funds were used for lobbying activities. The Law Center also believes HUD provided its approval for using OTAG funds for these conferences in a December 3, 1999 letter from OMHAR.

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

At no time during our review did we state the Law Center employees could not attend the NAHT conferences or teleconferences. However, we did state that since a significant portion of agenda for these conferences and teleconferences relate to lobbying activities, these items could not be funded solely by the HUD grant. This conclusion is in line with the December 3, 1999 letter from OMHAR. Also, since the Law Center does not maintain adequate travel and time records, we were not able to determine the actual costs associated with the lobbying portion of the expenditures associated with the conferences and teleconferences.

### **RECOMMENDATIONS**

We recommended that the Director of OMHAR require the Law Center to:

- 1A. Provide the proper support for all unsupported salary and benefit costs totaling \$63,050, and repay to HUD from non-Federal funds amounts it cannot adequately support.
- 1B. Prepare and submit an acceptable cost allocation plan that fairly allocates indirect costs among funding sources, and based on the plan make appropriate adjustments to the \$11,950 in indirect costs and repay to HUD from non-Federal funds any overcharges.

## **MANAGEMENT CONTROLS**

In planning and performing our audit, we considered the management controls relevant to the Virginia Poverty Law Center's Section 514 program to determine our audit procedures, not to provide assurance on the controls. Management controls include the plan of organization, methods, and procedures adopted by management to ensure that its goals are met. Management controls include the processes for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance.

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

- Identification of projects and activities eligible for assistance,
- Controls and documents to support costs of assistance provided, and
- Controls and procedures over the reporting of activities and cost.

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.

Based on our review, we believe the following items are significant weaknesses:

- Lack of policies and procedures to ensure that salaries and time records met the standards of OMB Circular A-122,
- Lack of an adequate cost allocation plan to charge shared costs, and
- Lack of policies and procedures to ensure that lobbying activities are not directly or indirectly funded by Federal sources.

## **FOLLOW-UP ON PRIOR AUDITS**

This was the first audit the Office of Inspector General completed on the Virginia Poverty Law Center.



**SCHEDULE OF QUESTIONED COSTS**

| Recommendation<br>Number | Type of Questioned Costs |                |
|--------------------------|--------------------------|----------------|
|                          | Ineligible 1/            | Unsupported 2/ |
| 1A                       |                          | \$63,050       |
| 1B                       |                          | \$11,950       |

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 policies or regulations.

2/ 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.

**AUDITEE COMMENTS**

**THE VIRGINIA POVERTY LAW CENTER**  
201 WEST BROAD STREET, SUITE 302 • RICHMOND, VA 23220  
(804) 782-9430 • FAX (804) 649-3746

Steven L. Myers  
Executive Director  
*steve@vplc.org*

September 19, 2002

VIA FEDERAL EXPRESS

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

Re: Audit Memorandum – Virginia Poverty Law Center, Inc., OTAG No. FFOT98029VA

Dear Mr. Temme:

This will acknowledge receipt of your letter dated September 6, 2002, and enclosed draft audit memorandum. Thank you for the opportunity to submit the following comments.

The Virginia Poverty Law Center, Inc. (VPLC), did not use Outreach and Training Assistance Grant (OTAG) funds for any lobbying activities. VPLC employees attended conferences and teleconferences sponsored by the National Alliance of HUD Tenants (NAHT) solely to receive training and information that were essential in order for VPLC to provide technical assistance to tenants in connection with the Mark-to-Market program, as required by the grant. As the draft audit memorandum points out, VPLC also receives non-federal funds that can be used for lobbying. However, in an effort to avoid any appearance that OTAG funds were used for lobbying, VPLC elected not to take part in any lobbying activities whatsoever during or in connection with the NAHT conferences.

At NAHT's request, Ira G. Peppercorn, who was then Director of HUD's Office of Multifamily Housing Assistance Restructuring (OMHAR), confirmed in a December 3, 1999 open letter that OMHAR would allow OTAGs to use grant funds to cover the cost of attending conferences and workshops concerning the Mark-to-Market and other HUD programs. Mr. Peppercorn fully understood that NAHT intended to use his letter as written guidance from HUD to OTAGs that they could attend and participate in the NAHT conferences referred to in the draft audit memorandum. Accordingly, there can be no question that, as HUD's August 21, 2002 audit memorandum regarding the Texas Tenant's Union Incorporated (another OTAG grantee) found, HUD allowed grant recipients to use grant funds to attend NAHT conferences. And although the August 21, 2002 audit memorandum acknowledges that there were optional lobbying activities at such conferences, it does not criticize Texas Tenant's Union for using

Daniel G. Temme  
September 19, 2002  
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OTAG funds to attend. Likewise, we believe that VPLC's audit memorandum should acknowledge that based on OMHAR's guidance, it was also permissible for VPLC to use OTAG funds to attend the NAHT conferences.

Pursuant to recommendations 1A and 1B of the draft audit memorandum, VPLC will provide additional support to OMHAR for costs charged to the grant. As your field auditor acknowledged on several occasions, there is no question that VPLC fully performed the OTAG activities it reported to OMHAR, and accordingly, we will be happy to submit appropriate support with respect to the applicable grant funds.

Thank you again for this opportunity to comment on the draft audit memorandum and for the many courtesies extended to VPLC by your staff during the field audit.

Very truly yours,

A handwritten signature in cursive script that reads "Steve Myers". The signature is written in black ink and is positioned above the printed name.

Steven L. Myers

**DISTRIBUTION OUTSIDE OF HUD**

Sharon Pinkerton, Senior Advisor, Subcommittee on Criminal Justice, Drug Policy & Human Resources, B373 Rayburn House Office Bldg., Washington, DC 20515

Stanley Czerwinski, Director, Housing and Telecommunications Issues, U.S. General Accounting Office, 441 G Street, NW, Room 2T23, Washington, DC 20548

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

The Honorable Joseph Lieberman, Chairman, Committee on Government Affairs, 706 Hart Senate Office Bldg., United States Senate, Washington, DC 20510

The Honorable Fred Thompson, Ranking Member, Committee on Governmental Affairs, 340 Dirksen Senate Office Bldg., United States Senate, Washington, DC 20510

The Honorable Dan Burton, Chairman, Committee on Government Reform, 2185 Rayburn Bldg., House of Representatives, Washington, DC 20515

The Honorable Henry A. Waxman, Ranking Member, Committee on Government Reform, 2204 Rayburn Bldg., House of Representatives, Washington, DC 20515

Andy Cochran, House Committee on Financial Services, 2129 Rayburn H.O.B., Washington, DC 20515

Clinton C. Jones, Senior Counsel, Committee on Financial Services, U.S. House of Representatives, B303 Rayburn H.O.B., Washington, DC 20515