



Issue Date: September 30, 2002
Audit Case Number: 2002-FW-1003

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

/SIGNED/

FROM: D. Michael Beard
Regional Inspector General for Audit, 6AGA

SUBJECT: New Mexico Public Interest Education Fund
Outreach and Training Assistance Grants and Public Entity Grant
Albuquerque, New Mexico

INTRODUCTION

We completed an audit of the New Mexico Public Interest Education Fund (Education Fund) Outreach and Training Assistance Grant (OTAG) and three Public Entity Grants.¹ The audit determined that the Education Fund engaged in lobbying activities. Also, the Education Fund expended over \$14,400 on ineligible activities and did not have sufficient documentation to support over \$5,000 in grant expenditures. Our report contains eight recommendations to address the issues identified in the 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 Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA). The directive includes 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 Education Fund'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

¹ OTAG Number FFOT00028NM; ITAG Number 00-003-06-01; ITAG Number 00-004-06-01; ITAG Number 00-021-06-01.

nonprofit entities, and Office of Management and Budget guidance on the allowability of costs for nonprofit grantees.

The audit covered the period January 2001 through April 2002 for the OTAG grant and the period May 2000 through April 2001 for the Public Entity Grants² awarded to the Education Fund. We performed the fieldwork at the Education Fund located at 134 Harvard Street, Albuquerque, New Mexico, during May and June 2002. We conducted the audit in accordance with Generally Accepted Government Auditing Standards.

We provided our draft report to the Education Fund on August 23, 2002. We asked for a written response by September 4, 2002. At their request, we extended the deadline to September 16, 2002. After providing partial and draft responses, the Education Fund provided a complete response on September 22, 2002. The Education Fund provided support for \$5,800 identified in the draft report as either ineligible or unsupported. We adjusted the report accordingly. The Education Fund's comments are included in this report as Appendix B (without attachments).

We appreciate the courtesies and assistance extended by the personnel of the Education Fund 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 you staff have any questions, please contact me at (817) 978-9309.

SUMMARY

Contrary to requirements, the Education Fund engaged in lobbying activities. Because the Education Fund recorded its time by grant, it did not document the time expended for specific activities performed under the grant. Thus, the cost for lobbying activities could not be determined. In addition, the Education Fund overcharged the grant \$13,269 for salaries and could not support another \$2,204 in salary costs. Further, the Education Fund incorrectly claimed \$1,214 for costs that it did not incur and \$2,808 in unsupported costs. Our report contains six recommendations requiring the Education Fund to improve its controls and to repay or support claimed ineligible and unsupported costs. We also recommend HUD consider suspending the Education Fund's funding until it implements the controls and consider sanctions against the Education Fund because of its lobbying activities.³

² A Section 514 grant received from an Intermediary Technical Assistance Grant grantee.

³ Section 514(f)(3)(C), Public Law 105-65, "Multifamily Assisted Housing Reform and Affordability Act of 1997"

BACKGROUND

The Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) established the Office of Multifamily Housing Assistance Restructuring (OMHAR) within HUD. Using the authority and guidelines under MAHRA, OMHAR's responsibility included administering the Mark-to-Market Program, which included awarding and oversight of the Section 514 Outreach and Training Assistance (OTAG) and Intermediary Technical Assistance Grants (ITAG). 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 in 81 grants to 38 grantees. 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 provided opportunities for nonprofit organizations to participate in the Section 514 programs. HUD provided two types of grants. The Intermediary Technical Assistance Grant and the Outreach and Training Assistance Grants. The Notice of Fund Availability for the ITAG states that the program provides technical assistance grants through intermediaries to subrecipients 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 states 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 HUD assistance or prepaying the mortgages.

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

OMB Circular A-122 also establishes the unallowability of costs associated with federal and state lobbying activities. Simply stated, the use of federal funds for any lobbying activity is unallowable. OMB Circular A-122 identifies some examples of unallowable lobbying activities. These include any attempt to influence an elected official or any Government official or employee (Direct Lobbying) or any attempt to influence the enactment or modification of any actual or 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 Education Fund.

The Education Fund has operated since 1986 as a nonprofit corporation.⁴ Its mission is to preserve New Mexico's stock of decent and affordable housing. In 1997, the Education Fund founded the Tenant Advocacy Project to further meet its mission. Its goal is to provide technical and organizational assistance to tenants and tenant associations to prevent the deterioration of affordable housing stock through direct self-advocacy. The Education Fund received a \$5,000 grant from another nonprofit for start-up funds.

The Education Fund received an OTAG award⁵ in the amount of \$50,000 on December 29, 2000. As of March 18, 2002, HUD had increased the grant to \$115,000. The Education Fund expended \$66,211 under this grant as of May 22, 2002. The purpose of the grant is to provide technical assistance for tenants or other tenant groups in properties with project-based rental assistance contracts that are nearing expiration and properties whose tenants have received notice that the owner intends to prepay its HUD-insured mortgage.

In addition to the OTAG funds, the Education Fund received three Public Entity Grants (PEG)⁶ totaling \$51,270 from the Low Income Housing Fund.⁷ The grants were made under the authority of the Intermediary Technical Assistance Grant Agreement⁸ (ITAG) between Low Income Housing Fund and HUD pursuant to MAHRA.⁹

⁴ As defined by the Internal Revenue Service under Section 501(c)3.

⁵ FFOT00028NM.

⁶ ITAG number 00-003-06-01 was for \$11,270. ITAG number 00-004-06-01 was for \$20,000; ITAG number 00-021-06-01 was for \$20,000.

⁷ The Low Income Housing Fund is a nonprofit entity that HUD selected to receive ITAG funding.

⁸ FFIT98003LFM.

⁹ The ITAG provides technical assistance grants through intermediaries to subrecipients consisting of public entities to carry out Mark-to-Market activities.

The first PEG, received in May 2000, was to fund tenant travel to the National Alliance of HUD Tenants (NAHT) annual conference in June 2000. The second PEG, received in May 2000, was to conduct outreach and provide training and education to tenants residing in HUD-assisted projects in Albuquerque, New Mexico. The third PEG, received in December 2000, was to pay for architectural/engineering services and general operating expenses for the Rio Vista Tenant Association.

The accounting firm of Hoffman & Associates audited the Education Fund for the year ending December 31, 2000. Hoffman & Associates made several recommendations to improve the poor condition of the Education Fund's financial records. The audit for the period ending June 30, 2001, was in progress at the time of our audit.¹⁰

In addition to the OTAG and Public Entity Grants, the Education Fund received a \$45,000 Community Development Block Grant from the City of Albuquerque, New Mexico, and received approximately \$5,500 in program income in 2000.

FINDINGS

Education Fund Engaged in Lobbying Activities.

Contrary to the requirements, the Education Fund conducted lobbying activities. MAHRA specifically prohibited the Education Fund from using grant funds to directly or indirectly lobby members of Congress. Also, OMB Circular A-122 prohibited the Education Fund from using grant funds to lobby at the local, state, or federal level. Because of staff turnover and lack of documentation, the amount spent on lobbying could not be determined.

According to its staff meeting minutes, staff discussed lobbying strategies. For instance, on several occasions the Education Fund staff discussed building a legislature-lobbying network. In addition, according to the minutes, the Education Fund staff urged and aided tenant associations in conducting lobbying activities toward members of the United States Congress and the New Mexico State Legislature.

Some examples of lobbying activities were noted in the staff meetings' minutes. In the March 13, 2001 staff meeting the Educational Fund staff discussed that NAHT was "targeting" Senator Domenici and working to build a national coalition. The staff discussed how to build a similar coalition at the local level. On March 26, 2001, the Education Fund staff discussed calling Senator Domenici, sending him post cards, and urging people to call the Senator to cosponsor bill "48.25." Education Fund staff also developed a petition supporting tenants' rights and affordable housing for the New Mexico State Legislature. The petition requested the Legislature repeal rent control, require deposit interest, and allow a reduction to rent for repairs made by tenants. According to the Education Fund's documentation, it received 368 signatures on its petition.¹¹

¹⁰ The Education Fund changed its program fiscal year end from December 31 to June 30.

¹¹ The Education Fund did not allocate time to activities. It charged staff time to the grants without any details. Therefore, no cost could be assigned to these ineligible activities.

Because of staff turnover the Education Fund cannot explain the rationale for charging grant funds for lobbying. Further, the amount of time spent on lobbying activities could not be determined because the Education Fund did not maintain sufficient documentation.

The Education Fund needs to develop controls to allocate time to the grants for actual activities. Also, the Education Fund needs to establish controls to ensure that it does not charge lobbying expenses against the grant. Further, HUD should consider appropriate action against the Education Fund in accordance with MAHRA.

The Education Fund expended \$13,269 for ineligible salary costs.

The Education Fund overcharged HUD and the Low Income Housing Fund \$13,269 for ineligible salary costs. According to OMB Circular A-122, the Education Fund was prohibited from claiming more salary cost than it paid.

The Education Fund paid the former Executive Director \$12 per hour. However, he charged the PEGs \$40 per hour for his services. Similarly, the Education Fund charged the PEGs \$20 per hour for staff time when it paid the staff \$10 per hour. This resulted in excessive salary cost totaling \$12,149.¹²

The former Executive Director charged the grants \$1,120 for duplicate hours or hours not actually worked. Specifically, the former Executive Director charged both the OTAG and a PEG for the same 20 hours in the June 2001 OTAG and the July 2001 PEG draw requests and overcharged 18 hours to a PEG in February 2001.

The Education Fund expended \$2,204 for unsupported leave costs.

Contrary to requirements, the Education Fund charged its OTAG \$2,204 for leave. OMB Circular A-122 required the Education Fund to allocate fringe benefits to the various activities “in proportion to the relative amount of time or effort actually devoted to each.” The Education Fund could not provide documentation that it properly allocated leave to the various activities. During the audit period, it charged its grant 142 hours of leave for the former Executive Director and 50 hours of leave for other staff. The total cost to the grant was \$2,204.¹³ The Education Fund should either support the \$2,204 or reimburse its grant.

The Education Fund charged \$4,022 in ineligible and unsupported costs.

The Education Fund obtained reimbursement for \$1,214 in ineligible and \$2,808 in unsupported costs. Specifically:

- In May 2001, the Education Fund ineligibly charged its OTAG \$1,214 for a conference that was cancelled.

¹² Of the amount, \$9,184 was for the former Executive Director and \$2,965 was for employee staff time.

¹³ The Education Fund paid the Executive Director \$1,704 at \$12 per hour and staff \$500 at \$10 per hour.

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- In November 2000, the Education Fund charged but could not support \$350 of a \$2,250 charge to its PEG for airfare (it only had receipts for \$1,900). It also could not support \$242 charged for per diem (it had documentation for \$1,000 when the claim was \$1,242).
 - In its October 2001 draw request, the Education Fund lacked an invoice to support \$2,216 spent at Office Depot.

Education Fund expended funds to promote and support National Alliance of HUD Tenants.

The Education Fund used its grant funds to promote and support the National Alliance of HUD Tenants (NAHT), indirectly supporting its lobbying efforts. During a February 2000 NAHT conference call, NAHT informed participants that they could apply for funds to send HUD tenants to its national conference. Afterwards, the Education Fund applied for and received an ITAG, the specific purpose of which was to attend NAHT's national conference. Further, NAHT's conference call agenda stated the National Conference registration fee would increase \$100 for groups with access to grant funds or resident owned buildings.¹⁴

HUD allowed grant recipients to use grant funds to send people to the 3-day NAHT national conference. At the conference, NAHT did provide Mark-to-Market training. However, it also included a day on lobbying, which Congress specifically prohibited from these grants.¹⁵

AUDITEE COMMENTS AND OIG EVALUATION OF AUDITEE COMMENTS

The Education Fund current management's entire comments are in this report as Appendix B, but do not include the detailed records provided to support ineligible and unsupported costs.

In responding to the report, the Chairperson of the Education Fund Board of Directors and the Executive Director of the tenant advocacy project state that we audited the activities of the former Executive Director and his staff. Current Education Fund employees were not involved in the problems noted in this report. They further note that current leadership has made significant progress in addressing the root problems that led to the deficiencies discussed in this report. To support its statements, the Education Fund asserts it hired new accountants and developed management controls over staff functions, allocations of time, and planning and reporting of activities.

Lobbying Activities

To respond to the report, the Education Fund management contacted key former staff, VISTA workers, and Board members in search of explanations of the lobbying discussed in the draft report. According to the Education Fund, time was allotted during staff meetings for tenants to report on their activities with the New Mexico Tenants Organization (NMTO), which was

¹⁴ NAHT knew grant funds would be available for its conference because it asked and received a HUD legal opinion in June 1999 stating it would be acceptable to use grant funds to pay for its conference.

¹⁵ Attendees paying for the Conference with grant funds were asked to claim only 2/3 of the conference registration fee and not claim the third day of hotel and per diem costs.

developing statewide tenants organization in its early stages. This group was founded and led by the president of a local tenant association who had been trained both locally and nationally at housing conferences. This individual was also on the Education Fund Board of Directors, which apparently led to a high involvement with the two separate entities. All lobbying activities were planned, led, and carried out by volunteers of NMTO and were strictly done outside of OTAG/ITAG activities and work hours.

To attest to these facts, the Education Fund said they obtained a sworn affidavit from the former Executive Director. Current management believes the former Executive Director's statement clearly shows that neither his staff nor himself were directly involved in lobbying efforts while using grant funds. Current management added that in discussing this with OIG, the OIG said it would not accept the former Executive Director's statement as true or factual.

OIG Response

The response did not provide documentation to support either current management or former Executive Director's assertions. For example, the response states that tenants attended the staff meetings; however, the minutes did not reflect this. As a result, we drew our conclusions from the evidence supplied.

The response did not deny staff's participation in the NMTO and did confirm the Education Fund's role in creating this organization. Current management asserts that "all activities of this group were planned, led and carried out by volunteers of this group and were strictly done outside of TAP activities and work hours." However, the response did not include how current management determined and allocated staff time between the grant reimbursed and volunteer activities. Contradicting current management's response, the July 18, 2000 staff meeting minutes refer to a Saturday, July 22, 2000 NMTO function. Although the normal workweek is Monday through Friday, the former Executive Director charged 3 hours to the grant on July 22, 2000. Again, the Education Fund did supply the eligible activities performed by the former Executive Director on July 22, 2002, or the procedures used to differentiate activities and staff time between the two related organizations. Therefore, it is reasonable to conclude that the former Executive Director attended the NMTO function and charged the time to the grant.

Ineligible Salary Costs

Regarding ineligible salary costs, the Education Fund management contends that they should be allowed to charge \$40 per hour when the actual cost is \$12 per hour because the excess covers program overhead costs. To support this, the Education Fund management said the grant was modeled after another grant from Syracuse, New York. In addition, the PEG funds preceded any other HUD funds received. This means that the only source of program funds was the PEG. The former Executive Director used a cost allocation plan to allocate operating costs to the grant. The Education Fund staff provided data showing how the costs were allocated.

OIG Response

The \$40 per hour was claimed under PEG draws. The purpose of this PEG was to conduct research and provide training and education to tenants residing in HUD-assisted projects in Albuquerque, New Mexico. Nothing in the purpose indicates overhead costs were part of the grant. Additionally, the budget for this grant does not allocate funds for overhead costs. These grants are cost reimbursable and only costs incurred in achieving the purpose of the grant are allowable. Therefore, any cost claimed under a PEG that does not address the purpose of the grant is ineligible.

Unsupported Salary Costs

The Education Fund provided documentation showing that staff could earn leave. Further, the Education Fund provided statements that the leave was properly charged to the OTAG.

OIG Response

We did not question earning leave, nor did we dispute charging the grants for leave used as long as it is charged according to established policy. The Education Fund did not have policy and procedures for allocating leave use to its grants as required by OMB Circular A-122. Since no policy or procedures exist, any leave charged to the grant is not supported and should not be charged to the grants.

RECOMMENDATIONS

We recommended the Director of OMHAR require the Education Fund to:

- 1A. Estimate the amount it spent from the grants for lobbying activities and reimburse the grants.
- 1B. Establish procedures to ensure that it does not charge lobbying expenses against the grant.
- 1C. Reimburse its grants \$13,269 for ineligible salary costs.
- 1D. Support or reimburse its grants \$2,204 for unsupported salary costs.
- 1E. Reimburse its grants \$1,214 for ineligible expenditures.
- 1F. Support or reimburse its grants \$2,808 for unsupported costs.

Also, we recommend HUD:

- 1G. Consider suspending grant funding until the Education Fund develops and implements appropriate management controls including a cost allocation plan to ensure that it funds

only eligible activities and that documentation for expenditures complies with OMB Circular A-122.

- 1H. Consider taking sanctions against the Education Fund in accordance with Section 1303 of the Defense Appropriations Act (Public Law 107-117).

MANAGEMENT CONTROLS

In planning and performing our audit, we considered the management controls relevant to the New Mexico Public Interest Education Fund'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:

- ❑ Financial reporting;
- ❑ Identification of projects and activities eligible for assistance;
- ❑ Organization and staffing;
- ❑ 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:

- ❑ Cash management;
- ❑ Organization and staffing;
- ❑ Controls and documents supporting claims for cost reimbursement; and
- ❑ Controls insuring that lobbying activities are not directly or indirectly funded by federal funds.

FOLLOW-UP ON PRIOR AUDITS

The Office of Inspector General performed no previous audit of the Education Fund.

SCHEDULE OF QUESTIONED COSTS

Recommendation Number	Type of Questioned Costs	
	Ineligible ^{1/}	Unsupported ^{2/}
1C	\$13,269	
1D		\$2,204
1E	\$ 1,214	
1F		\$2,808
Totals	\$14,483	\$5,012

^{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

TENANT ADVOCACY PROJECT

134 Harvard Street
Albuquerque, NM 87112
(505) 256-4709 voice
(505) 268-2232 fax

September 22, 2002

U.S. Department of Housing and Urban Development
Region 6, Southwest, Office of Inspector General
819 Taylor Street, Room 13A09
Fort Worth, Texas 76102

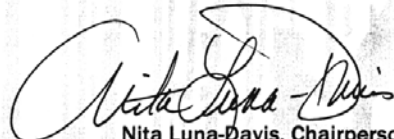
Dear Mr. Sammons,

Enclosed please find our Draft Response to your preliminary draft findings along with attachments. Enclosed please also find the hard copy of documents faxed to you on September 16, and September 20, 2002.

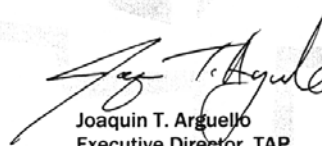
Thank you for allowing us an extension. Rest assured that you will be provided with additional documentation as we receive it.

Thank you for your consideration.

Sincerely,



Nita Luna-Davis, Chairperson
Board of Directors, NMPIEF



Joaquin T. Arguello
Executive Director, TAP

cc. NMPIEF Board of Directors

**New Mexico Public Interest Education Fund / Tenant Advocacy Project
OIG / HUD Draft Preliminary Findings Draft Response**

September 22nd, 2002

Lobbying Activities

In our exit conference we discussed the basis of your finding that TAP staff had urged and aided tenants associations in lobbying activities. The documents that were sited to be found in our files were some tenant petitions along with staff meeting minutes which you claimed shows efforts to form a legislature lobbying network.

Since the exit conference we have contacted key former staff, VISTA workers and board members in search of explanations of the "lobbying" that is addressed in your finding. The following is what we learned about the staffs association with such efforts.

It was reported that during staff meetings there was time allotted for tenants to report about their activities with the NMTO (New Mexico Tenant Organization) which was a developing state wide tenants organization in its early stages. This group was founded and led by the president of a local tenant association who had been trained both locally and nationally at housing conferences. This individual was also on the Board of Directors of NMPIEF, which apparently led to a high involvement level with the two separate entities. All activities of this group were planned, led and carried out by volunteers of this group and were strictly done outside of TAP activities and work hours.

To attest to these facts we were able to attain a sworn affidavit statement from the former TAP Director, Geoffery Barrett. We feel his statement should clearly show that neither his staff nor himself were directly involved in lobbying efforts while using NMPIEF funds. Mr. Barrett has expressed his willingness to meet with you or any of your office staff to answer any questions related to this issue or his statement. In my last conversations with you this past week, you informed me that you do not believe and will not accept Mr. Barrett's statement as true nor factual. In addition to his statement I offered to attain various sworn statement from former TAP staff, VISTAs, volunteer tenants and NMTO participants, which would explain both their participation in TAP as well as their association with NMTO activities. During our conversation you explained that this would not be sufficient responses to your accusations of lobbying. We then would like to support and encourage your recommendation to send a field investigator out to interview these individual under oath. If this is the only way that you will accept their statements explaining the difference between TAP and NMTO past activities, than it should be the logical next steps. In the mean time we will be working to attain the affidavits. As you well know, none of these individuals are currently affiliated with our program and it will take some time to collect and send you these documents. The purpose for their statements will be to have them provide their recollection of involvement in activities either directly with TAP or NMTO. In these statements I will also ask each person to express if they are willing to be interviewed under oath by one of your field investigate, per your request.

Ineligible Salary Costs \$13,485.00

In the exit conference you explained that it was not allowable that the E.D. (Executive Director) drew down for his hourly salary from PEG # 000-004-06-01 at \$40.00 per hour and for his staff at \$20.00 per hour. This was sited as unsupported since he was contracted to earn \$12.00 per hour and his staff was contracted at \$10.00. Furthermore, you stated that if Mr. Barrett had a cost allocation plan it would be ok to use the \$40.00 per hour to pay bills or overhead specific to delivery of service for that consultant site.

In researching this issue, talking with the former director and reviewing the documents we found out several important facts. First, is that our PEG application was modeled after another successfully awarded grant from Syracuse, New York. The plan to pay staff a set hourly rate to which would also include program overhead costs comes from this source. Second, is that the PEG funds preceded any other HUD funds received by our program. Our PEG was activated in August of 2000 and our OTAG was activated in January of 2001 but did not have its first request for reimbursement submitted until May 1, 2001. This means that the PEG was the only source of funds our program had to receive support for program overhead costs. Third, is that the director did have and use an overhead cost allocation plan to pay for a percentage of the NMPIEF utilities and bills. In our conversation and in his affidavit he states that TAP charged 35% of the overhead charges to the PEG funds. Fourth, is that the director did only pay himself and staff their regular hourly wages. The rest of the funds were used to pay for program costs. Fifth, is that NMPIEF had VISTA workers on site since 1999 without any HUD funds available to support their administrative expenditures. From the time of the PEG activation in August of 2000 until the OTAG activation in January 2001 all of the overhead expenditures for TAP could only be supported by the PEG funds. At the time of the PEG activation our program had 2 VISTA positions with only one of them filled due to an early exit of the other participant. In addition NMPIEF did have two VISTA as early as July of 1999. From August of 2000 to January 2001 NMPIEF had five staff members who worked at 58 % percentage of their time on PEG activities. From January 2001 to February 3rd, 2001 the time of their last PEG draw down TAP had 3 VISTA positions filled. During this time NMPIEF had 9 staff member who worked on TAP activities 62 % percent of their time. Their time was allocated at 44.2 % percent towards PEG and 17.8 % percent towards OTAG funds. Please see below chart for details.

NMPIEF had 5 staff from August 1st to December 25th, 2000 (dates of PEG DD# 1-4)

	<u>CDBG – L. T. Hotline</u>	<u>PEG – TAP</u>	<u>OTAG – TAP</u>
Geoffery Barrett	80.3 %	20.8 %	0
Cecilia Chavez	24.6 %	75.4 %	0
Diana V. Lazarus	5.3 %	94.7 %	0
Jill McWhite	100 %	0	0
Chrisitna DeLarbre	0	100 % (VISTA)	0
Total	42 %	58 %	0 %

NMPIEF had 9 staff from December 26th, 2000 to February 3rd, 2001 (dates of PEG DD# 5)

	<u>CDBG – L. T. Hotline</u>	<u>PEG – TAP</u>	<u>OTAG – TAP</u>
Geoffery Barrett	50 %	39.7 %	10.2 %
Cecilia Chavez	42.6 %	57.4 %	0
Ramon Nunez	50 %	0	50 %
Diana V. Lazarus	0	0	100 %
Sara Grimes	100 %	0	0
Jill McWhite	100 %	0	0
(VISTA)			
Chrisitna DeLarbre	0	100 %	0
Sasha Sampaon	0	100 %	0
name	0	100 %	0
Total	38 %	44.2 %	17.8 %

Duplicate Salary Charges & Unsupported Salary Costs \$2,036.00

I was able to sit down with the former Executive Director and work on these findings. Please see attached memo from Geoffrey Barrett dated September 15th, 2002 for more details about our explanation of your findings. The time sheet that he states was accidentally omitted from the initial OTAG draw down was found in the PEG # 000-004-06-01 draw down number 5 submitted on February 6, 2001. Please see attached time sheet for details.

It should be noted that we provided a copy of the contracts and time sheets for the staff in question after our exit conference on September 5th, 2002. We also submitted a copy of the corrections made to the NMPIEF Policy and Procedure Manual on September 20, 2002. These along with the affidavit and memorandum (dated 9/15/02) provided by Mr. Barrett should clear up any last questions in regards to the allow ability of charging leave time to either the PEG or OTAG accounts.

Ineligible and Unsupported Costs \$9,770.00

- 1- Our staff is awaiting a response from the Plaza Inn Albuquerque for a copy of an invoice, contract or receipt of payment for the amount of \$1,213.50 that was drawn down for a locally planned state-wide tenants conference that was ultimately canceled. We have not been able to find any canceled check of bank statements that show a payment made to the hotel by TAP. We will continue to search our financial archives and work with the hotel until we find out exactly what happened. Please see the affidavit that was provided by the former director for supportive details.
- 2- You agreed to remove the finding of \$369.00 after we provided evidence that there was no double charge for the same plane ticket.
- 3- The finding of Mr. Hoffman's work was addressed in the exit conference. After our meeting I provided you with a copy of his finished work along with copies of the canceled checks paid to Mr. Hoffman. It should be noted that although he was an accountant he was hired to do a "financial analysis" of the Rio Vista Apartment Complex. Although we have only been able to find one invoice, the former executive director states in his affidavit that there were two invoices submitted by Mr. Hoffman for \$1,250.00. We will continue to search our files to locate the other invoice.

In our first draft response dated September 16th, 2002, we addressed and provided supportive documentation for the A. Hoffman finding. Attached you will also find the front and back of the canceled checks as well as the bank statements which showed the funds cleared the account. The only document we could not produce was a copy of the bank statement, which showed check number 2426 for \$500.00 had cleared. If a copy of this is necessary for your report please inform us as soon as possible as to allow us time to petition the bank. Please keep in mind that the original bank for which the account was held has closed and we are now dealing with a new bank whose process to retrieve such documents is much longer.

This past week I asked Mrs. Betty Chalmers, who was the president of the Rio Vista Tenant Association during Mr. Hoffman's work, if she would write a letter explaining work produced from the financial analysis of her apartment complex. She declined and asked us to use past letters where she described the work Mr. Hoffman presented. Attached you will find three letters from the Rio Vista Tenant Association dated March 15th, 2002, July 15th, 2001 and June 22, 2001. With these documents you should be able to determine that the document submitted to you during your second

field visit and on the day of the exit interview is in fact the finished product of Mr. Hoffman's financial analysis of the Rio Vista Apartment Complex.

If necessary we encourage your office to contact the local MFA and HUD to request copies of the finding report that Mr. Hoffman presented last spring 2001. At your request we can petition copies of these documents from that meeting and will make them available to your office.

- 4- a) Our staff is currently researching the travel itineraries in question. It should be noted that the travel agency that set up the trip is no longer in business and we are working with the previous companies accountants to investigate this finding. In our file search we have found a flight voucher coupon that may have been used as part of the discount you questioned. Once we receive more information from the travel agency or the airline company we will pass that along to your office.
 - b) The NAHT Conference registration should be clarified by the documentation we have attached. These documents support our original request for \$733.64. Our program actually paid \$1,650.00 in registration fees for this conference, which leaves a balance of \$916.36 that could be an under draw by our staff.
 - c) The per diem documents that you questioned has been researched per your request. Please see attached canceled checks and bank statements for supportive proof that all the tenants from that trip were properly reimbursed. Mr. Barrett's affidavit also states that they only gave a few tenants up front cash and then paid the remaining tenants what was owed after the PEG draw down came through.
- 5 - Our staff is currently awaiting copies of itemized invoices from the Office Depot corporate office, that should clear up your questions regarding the past due bill that was paid out in September 2001. The documents we await should prove that the \$1,213.00 payment was not a duplicate charge. Once we receive these documents, our staff will make them available to your office.
- 6 - At the NAHT 2001 Conference trip our program incurred expenses totaling \$1,599.00 (\$799.00 + \$800.00) for hotel costs. In our request for reimbursement the former staff only provided a copied check for \$211.00. Please see attached papers for copies of checks # 2588 for \$966.59 and #2607 for \$2,066.40. During our research we found that our total hotel costs for that trip totaled \$3,244.67 but we were only reimbursed \$1,599.00. This is a difference of \$1,645.67, which might have been an under-draw by our former staff.

New Findings to be worked on

The conversation we had early this week was crucial to our understanding of some of your findings. Without your explanations of the work papers we requested we have not been able to research a few of your findings. Since our conversation we have been researching your findings of \$400.00 being overcharged to PEG # 00-0021-06-01 and the \$720.00 overcharge for PEG #000- 004-06-01. The water bill in OTAG draw down # 3 might have been submitted more than once due to the shared allocation costs plan which allowed for various funding sources to pay for a set percentage of the total bill. This finding is also being researched and we will provide our findings to your office as soon as they become available.

Promote and Support of NAHT

It is the strong recommendation of TAP and the NMPIEF Board of Directors that ***this section should be omitted*** from our audit findings. In our exit conference you and your colleague explained that this finding had nothing to do directly with our organization. You stated that this had to do with your offices view of NAHT's attempts to use programs such as ours to support their financial needs. During our conversation you also offered to take this section out or allow us to write our own explanation of our relationship with NAHT.

In regards to the relationship our program has with NAHT, we will make this brief statement. NAHT and its staff has been one of the rare sources of technical support, training and support for both our staff and tenants over the past few years. It should be noted that the former and present administration received no formal training from HUD to carry out their PEG or OTAG activities and therefore the staff has had to and continues to turn to NAHT for assistance.

Due to the fact that neither NAHT nor the adjoining Boston Tenant Organization had any findings from their audit, ***we feel it is unsupported for our program to have any findings regarding our relationship with NAHT.*** We encourage your office to contact NAHT to discuss this situation that if continually avoided only leaves programs such as ours to answer to findings that seem to come from motives other than our program or field activities.

New Program Accounting and Reporting Procedures

It was requested during the exit conference that your office change the language in this section to show that your evaluation was of the former director and his staff's previous work. As per your request, we are providing you with clear explanations of how we have changed the oversight provided both by the NMPIEF Board of Directors as well as by the Director of TAP for the programs staff.

It should be noted that our program has made great efforts to overcome past administration financial and reporting deficiencies. We often receive help from HAHT, network affiliates, OMHAR staff for technical support and from our two new accountants. Please view the attached documents as proof of the new oversight and reporting procedures of TAP staff.

Most recently we have been working with two new accountants to finish a city mandated audit as well as to create new accounting and reporting procedures. Mr. Waters and Mrs. Borrego have both spent many hours advising our creation of new reporting and tracking forms as well as the formation of new accompanying procedures. Some of the areas we have changed are: request for reimbursement, draw down, accounting, check request, and oversight for field reporting procedures.

Project and field activity oversight has been changed for all employees of TAP. In order to better understand the control mechanisms we have built to ensure that staff activities are in line with grant guidelines I will explain the reporting procedures required by them. On Mondays the staff meets to plan their coming weeks projects. At this time staff must provide written and verbal explanations of how they will allocate their time and program resources both in the field and in the office. During this meeting the entire staff plans small meetings, training sessions and technical support times to ensure quality of project completion. During the week staff are expected to hand in Daily Assignment Planners which show the activities or projects they worked on, contacts made, its relation to programs goals and the time allocated to each project. On Fridays the staff are to turn in: time sheets for that week, all daily assignment planners, a weekly report of projects completed, the next weeks planned projects and individual tracking sheets which break down each days hours worked into each program objective and specific activities that were approved by OMHAR. All of

these are reviewed by the director and discussed during a staff meeting where each staff must verbally report their week's accomplishments and analysis of their affects on long term program goals. Please see attached copies of staff reporting forms currently being used.

As the time sheets and supportive papers are approved the Director submits payroll registry to our accountant. The only continued problem we have experience is an occasional delay in the review of our OTAG M2M request for reimbursements. However, we have got an approval from them for our newest program shared cost allocation plan for overhead direct and indirect expenditures.

After the requested funds are transferred to our local account we have the bank fax us a copy of the electronic deposit confirmation, which is then logged in the program accounting book. We have developed a check request form that must be filled out using the summary sheets from the OTAG request for reimbursement packets in order to write checks. The checks are written out in the same order as requested. Upon the availability of the NMPIEF Board of Directors, they review and sign off on the check request forms as well as sign checks for payroll and program costs. After the checks are signed they are copied and filled along with copies of all the bills to be paid for that particular draw down. Also included in each draw down file are also receipts of payments that are made available.

In addition to the above the NMPIEF Board of Directors will also start having regular quarterly meetings in place of the current monthly meetings. The focus of these meetings will be to provide oversight to both project activities as well as to review the financial files of TAP.

Request for Consideration

It should be noted that neither our board chair nor myself clearly understood all of your findings until our exit conference on September 5th, 2002. Furthermore, we have only received copies and explanations for four of you findings and your supporting work papers late this week. These facts should make it clear that our ability to research and respond to the findings have been as prompt as we could make them. As the current director of TAP, I am obligated to be intricately involved in the process of training and supervising three new staff members

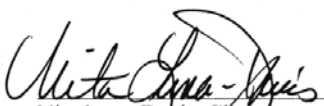
We hope you would considering a few crucial factors such as the amount of documents requested, the limited staff to address the request, the time needed to receive documents form other agencies, the time needed to secure support from former TAP participants and the limited time allowed for our program to respond to your draft findings after the exit conference. We should also note that we have been working hard in past few weeks to provide you with the documents your findings questioned. Examples of our efforts can be seen in the reports we have been providing via fax machine. In the past few weeks we have provided a request for your work papers along with a three-page work plan on September 12th, 2002. This was meant to confirm the agreed upon items from the exit conference as well as to show you how we would address your findings. We also provided you with a six-page draft response letter that was supported by thirty -seven pages of documents on September 16th, 2002. Lastly, we provided a three -page letter with thirty- four pages of supporting documents on September 20th, 2002. All of the above letters and documents were sent as part of our preliminary draft response via fax machine. We do plan on sending you all the original documents from these reports attached with this report.

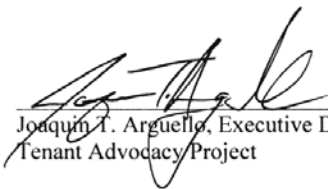
At this juncture, the NMPIEF Board of Directors and myself respectfully request more time to complete our research, document petitions and information consolidation. We hope you will accept this draft response to your draft preliminary findings as a gesture of good faith. We will provide all final documents and explanations to your findings with our final response to the final findings you will be releasing.

Conclusion

We hope the above information provide you with the information that was requested in your draft preliminary findings. Please keep in mind that we are still working to get some documents that were petitioned from outside entities in order to provide more clear and concrete responses to your findings. As we have stated through out this response, we will make these documents available as we receive them here in our office.

We would also like to take this time to formally request another meeting with yourself, any other representatives from your office, the chairperson of the NMPIEF Board of Directors, a few of the former staff, VISTA participants, volunteer tenants, the former Director of TAP and myself. We feel that this meeting would be beneficial to both parties being that all parties previously and currently involved are now participating in this audit at some level. At this meeting we could have these individuals available to answer any further questions you might have about the program, its former staff and their activities, which are the basis of your findings. It appears that this would be an opportune setting for a field investigator to interview any persons providing us with affidavits or statements for this audit. We sincerely encourage your office to continue to work out such opportunities for our program to clear up any lingering discrepancies you might have from the audit. Lastly, please let us know if there are any additional documents or explanations that would support our responses to your findings.

 9/22/02 Date
Nita Luna-Davis, Chairperson
Board of Directors NMPIEF

 9/22/02 Date
Joaquin T. Arguello, Executive Director
Tenant Advocacy Project

EXTERNAL REPORT DISTRIBUTION

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