



Issue Date March 10, 2011
Audit Report Number 2011-PH-1007

TO: Dennis G. Bellintier, Director, Office of Public Housing, Pennsylvania State Office, 3APH

//signed//

FROM: John P. Buck, Regional Inspector General for Audit, Philadelphia Region, 3AGA

SUBJECT: The Philadelphia, PA, Housing Authority Did Not Comply With Several Significant HUD Requirements and Failed To Support Payments for Outside Legal Services

HIGHLIGHTS

What We Audited and Why

We audited the Philadelphia Housing Authority's (Authority) payments for outside legal services based on a citizen's complaint alleging misuse of these funds, our observations and concerns regarding the Authority's use of outside attorneys on prior audits, and concerns over the large sums the Authority paid for outside legal services reported in the media. The Authority paid \$30.5 million for outside legal services provided by 15 law firms during the period April 2007 through August 2010 (see appendix C). The audit objective was to determine whether the Authority's payments to outside legal firms could be supported and complied with U.S. Department of Housing and Urban Development (HUD) regulations and other applicable requirements.

What We Found

The Authority's payments to outside attorneys did not comply with HUD regulations and other applicable requirements. Specifically, the Authority did not adequately support \$4.5 million that it paid to outside attorneys during the period April 2007 to August 2010, virtually the entire amount we reviewed, raising

questions about the propriety of the remaining \$26 million in payments that we did not review. The Authority made unreasonable and unnecessary payments of \$1.1 million to outside attorneys to obstruct the progress of HUD Office of Inspector General (OIG) audits. The Authority also did not obtain required HUD written concurrence before accepting all settlement offers arising out of its litigations and allowed an apparent conflict of interest situation to exist. Further, although a previous HUD OIG audit¹ found some similar problems with the Authority's payments to outside attorneys, the Authority failed to implement the recommendations made in the previous audit.

What We Recommend

We recommend that HUD require the Authority to provide adequate documentation to support \$4.5 million in unsupported costs identified by the audit or reimburse the applicable programs from non-Federal funds for any costs that it cannot support. We recommend it provide documentation to support the remaining \$26 million in payments to law firms, if the Authority cannot support the \$4.5 million or reimburse the applicable programs from non-Federal funds for any costs that it cannot support. We also recommend that HUD require the Authority to implement adequate procedures and controls to ensure that its payments for outside legal services comply with relevant laws and regulations, develop and implement controls to ensure that invoices for legal services are adequately verified and payments are made in accordance with the terms of the related contracts, and implement appropriate measures to prevent and resolve conflict of interest situations.

We recommend that the Authority implement controls to ensure that HUD is notified of pending litigation and that HUD's written concurrence is obtained before accepting a settlement offer arising out of litigation and that it implement controls to ensure that the use of attorneys is restricted on HUD OIG audits and other HUD oversight activities. We also recommend it revise its contract provisions for future legal service contracts to reinstate sections that it removed, which required prior authorization for specific legal services, specifying work functions of various legal staff, and identifying activity descriptors needing additional explanation to be acceptable for payment. We further recommend that the Authority develop and implement a written policy and controls to ensure that contract requirements in its legal services contracts are enforced and have its OIG periodically audit a sample of current and future legal contracts and payments to ensure that the responsible personnel enforce the requirements and only reimburse law firms for allowable expenses.

For each recommendation without a management decision, please respond and provide status reports in accordance with HUD Handbook 2000.06, REV-3.

¹ HUD OIG audit report #2003-PH-1002, Philadelphia Housing Authority Contracting and Purchasing Activity, Philadelphia, Pennsylvania, dated January 27, 2003.

Please furnish us copies of any correspondence or directives issued because of the audit.

Auditee's Response

We provided a discussion draft audit report to the Authority on February 1, 2011, and discussed it with the Authority at an exit conference on February 14, 2011. The Authority provided written comments to the draft audit report on February 16, 2011. It disagreed with the conclusions and recommendations in the report. The complete text of the Authority's response, along with our evaluation of that response, can be found in appendix B of this report.

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BACKGROUND AND OBJECTIVE

The U.S. Housing Act of 1937 initiated the Nation's public housing program. That same year, the City of Philadelphia established the Philadelphia Housing Authority (Authority) under the laws of the Commonwealth of Pennsylvania to address housing issues affecting low-income persons. Normally, a five-member board of commissioners governs the Authority. However, on March 4, 2011, the Authority's board of commissioners, including its chairman, announced their resignations and the U.S. Department of Housing and Urban Development (HUD) took control of the Authority. HUD Secretary Shaun Donovan appointed HUD's Chief Operating Officer, Estelle Richman, to serve as the sole member of the Authority's board. Interim executive director Michael P. Kelly, who will be appointed administrative receiver, continues to manage the day-to-day operations of the Authority. The cooperative endeavor agreement formalizing HUD's takeover of the Authority expires on March 4, 2012, and is renewable in 1-year increments thereafter, or until such time as mutually determined by the Deputy Secretary of HUD and the mayor of Philadelphia that the Authority has built sufficient capacity to be self supportive.

John F. Street served as the mayor of Philadelphia from January 3, 2000, to January 7, 2008. He was first appointed to the Authority's board on September 1, 1993, and he resigned March 18, 1999. He became board chairman on April 22, 2004. He reappointed himself to the board late into his second term as mayor and remained board chairman until his resignation. The Authority's executive director at the beginning of our audit was Carl R. Greene. The Authority terminated his employment effective September 23, 2010. It hired Mr. Kelly to serve as interim executive director effective December 6, 2010. Between the termination of Mr. Greene and the hiring of Mr. Kelly, three assistant executive directors managed the day-to-day operations of the Authority. The Authority's main administrative office is located at 12 South 23rd Street, Philadelphia, PA.

The Authority is the Nation's fourth largest public housing authority and owns and operates more than 14,000 affordable housing units, serving about 81,000 people in Philadelphia. The Authority employs 1,200 people and has an annual budget of approximately \$345 million. It receives most of its funding from HUD.

In 1996, Congress authorized the Moving to Work Demonstration program (Moving to Work) as a HUD demonstration program. This program allowed certain housing authorities to design and test ways to promote self-sufficiency among assisted households, achieve programmatic efficiency, reduce costs, and increase housing choice for low-income households. Congress exempted participating housing authorities from much of the Housing Act of 1937 and associated regulations as outlined in the Moving to Work agreements. Participating housing authorities have considerable flexibility in determining how to use Federal funds. In December 2000, the Authority submitted an application to HUD to enter the program, and in February 2002, HUD signed a 7-year agreement with the Authority that was retroactive to April 2001. From April to October 2008, the Authority continued to operate under a HUD-developed plan to transition back to traditional HUD program regulations because the term of its Moving to Work agreement had expired. In October 2008, HUD entered into a new 10-year Moving to Work

agreement with the Authority. The expiration date of the Authority's new agreement is March 2018.

The Authority's use of outside legal services has garnered the attention of Congress as well as the local and national media. On January 11, 2011, Senator Charles E. Grassley sent a letter to 20 law firms in Philadelphia for information about their billing of the Authority as part of a larger review to determine whether the Authority had potentially misused Federal tax dollars. Senator Grassley stated that he was going directly to the firms for information about the amount billed and the kind of work performed because HUD did not maintain those records and in the case of the Authority, news organizations had reported how it structured settlements in at least four sexual harassment cases and one case in which the failure to inspect a building before demolition resulted in the death of a resident. The Senator also commented that the Authority reportedly had a record of trying to cover its tracks when it spent tax dollars either inappropriately or in a way that would embarrass its leadership, and that the situation was an affront to taxpayers.

The audit objective was to determine whether the Authority's payments to outside legal firms could be supported and complied with HUD regulations and other applicable requirements.

RESULTS OF AUDIT

Finding: The Authority Did Not Adequately Support \$4.5 Million That It Paid to Outside Attorneys

The Authority's established practice was to not maintain or provide adequate support for any of its outside legal services. The Authority failed to provide adequate documentation supporting the validity, accuracy, necessity, and reasonableness of \$4.5 million in payments that it made for outside legal services during our audit period. Because all but a minor amount of the payments we reviewed were unsupported, this raises questions about the propriety of the remaining \$26 million that the Authority paid for legal services during our audit period. The Authority paid \$1.1 million in unreasonable and unnecessary outside legal expenses to obstruct the progress of HUD OIG audits. It used the \$1.1 million for outside counsel who denied auditors' access to records, delayed providing information and records to the auditors, and imposed unreasonable constraints on the auditors' access to Authority personnel. The Authority further allowed an apparent conflict of interest situation to exist when it entered into a contract with the law firm that employed an immediate family member of the chairman of its board of commissioners. Further, it failed to provide required HUD approval for most of its legal settlements. These conditions occurred because the Authority's leadership and executive management chose to operate the Authority in this manner. The Authority needs to implement adequate procedures and controls to ensure that its payments for outside legal services meet HUD regulations and other laws and regulations. Otherwise it will continue to pay enormous sums for outside legal services that are unsupported, unreasonable, and unnecessary.

The Authority Did Not Provide Adequate Support for Payments for Outside Legal Services

Regulations at 2 CFR (Code of Federal Regulations) Part 225 Appendix A(C)(1)(j), provide that to be allowable under Federal awards, costs must be adequately documented. The Authority failed to provide adequate support for its expenditures for outside legal services with accounting records detailing the expenditures and supporting documents such as invoices, receipts, canceled checks, or electronic transfers.

The Authority paid \$30.5 million for outside legal services provided by 15 law firms during the period April 2007 through August 2010 (see appendix C). We reviewed 472 invoices totaling \$4.5 million in payments made by the Authority for legal services during the period, of which all but \$11,800 was unsupported because the Authority did not provide adequate documentation to evidence that

the services invoiced and payments made were in accordance with the contract terms and HUD requirements. Appendix D shows the overall results of our review. The Authority's outside attorneys asserted that the documents provided were responsive to our request, but also withheld some information, citing attorney-client privilege.

The Authority's in-house counsel responsible for approving a great majority of the invoices acknowledged that the copies of the invoices that we were given were incomplete. Consequently, in most cases, we were unable to determine whether the payments were accurate, reasonable, and necessary because of the lack of documentation needed to evidence the vendors' compliance with various contract provisions (see appendixes F and G). The documentation provided by the Authority and relating to the invoices that we reviewed lacked one or more of the following elements as required by the respective contracts:

- General description of service or goods provided;
- Detailed description of service or goods provided;
- Detailed date(s) of performance;
- Name and title of person performing the work;
- Prior approval of personnel performing the work;
- Time charged by date, by personnel;
- Prior approval of the use of consultants;
- Prior approval for legal research hours and cost;
- Prior approval of more than one legal professional representing the Authority at meetings;
- Charges for time used in making telephone calls and correspondence to copy services providers; and
- Charges for time used in making travel arrangements.

The Authority's special contract requirements,² which are part of each individual contract for legal services, also included a provision that the "contractor will be asked to provide the Authority with a written, step-by-step consultation and litigation plan, with estimated costs, before beginning each case assignment." We found no evidence of such plans and cost estimates in any of 15 contract files reviewed. Authority in-house counsel and the Authority's outside counsel both acknowledged that this contract provision was not enforced. They both acknowledged that estimates were not submitted by outside law firms before work commenced on an assignment for the Authority.

² The Authority's Legal Department Guidelines for Outside Counsel is included as part V of each contract for legal services that it issues. It provides the guidelines under which the Authority will agree to be billed. The guidelines are designed to ensure that firms are only paid for allowable and reasonable expenses and prohibit payments for certain normal overhead expenses such as facsimile charges, local travel, and local phone calls. In addition, the guidelines state that the Authority will not pay for fees or expenses that are contained within a block billing description. That is, each line of a bill for legal services must contain the description of one task per time entry.

The Authority Paid for Legal Services Based on Prohibited Block Billing

Contrary to its special contract requirements, the Authority made payments to law firms based on invoices in prohibited block billing format despite this issue's having been addressed in our previous audit¹ and the Authority's assurance that it would update its procedures to ensure that contract requirements would be enforced. Law firms submitted invoices for prohibited block billing in 142 of 472 invoices (30 percent) reviewed (see appendix D). The block billing on the 142 invoices totaled \$2.4 million. Block billing is the act of billing more than one activity in a single line item while billing only one aggregate amount for multiple activities. Examples of block billing are invoices that include only a general description of services (i.e., provide legal advice with no detailed description of services performed) or include only a summary of time charged for each attorney (i.e., only attorney name, rate, and total hours and amount billed). Block billing does not identify the nature of the work performed. Because block billing provides little or no description of the work performed, it is impossible to tell how much time was spent on an activity and determine the reasonableness, necessity, and accuracy of the work performed. An example of prohibited block billing can be found in appendix E. In this example, the firm of Schnader Harrison Segal & Lewis LLP, was paid \$67,856 based on an invoice that simply stated "For Professional Services Rendered through September 30, 2008."

The Authority Made Unreasonable and Unnecessary Payments for Outside Attorneys

We estimated that at least \$1.1 million in costs were not reasonable and necessary. These fees were for routine matters dealing with our audits that are typically performed by lower level staff at other housing authorities that we've audited. Documents that were routinely provided on similar audits often were requested by the auditors and then not provided by the attorneys. When the documents were provided, it often took an inordinate amount of time to coordinate the delivery and acceptance of the documents from the outside attorneys. Such interference obstructed the efficient conduct of our audits without benefiting the Authority's housing programs. Further, in many cases, work was duplicated by more than one law firm, an excessive number of personnel from a single law firm performed the same tasks, and work performed by attorneys was clerical in nature. The "assistance" rendered by the outside attorneys included such tasks as (1) monitoring and forwarding to Authority staff all HUD OIG requests for information and data, (2) monitoring and scheduling all HUD OIG

interviews with Authority staff, (3) monitoring and attending all HUD OIG interviews of Authority staff, (4) requiring multiple attorneys and consultants to accompany HUD OIG and Authority inspectors on all housing quality standards inspections, (5) contracting of duplicative consulting services, and (6) monitoring and attending all meetings between HUD OIG and Authority officials.

The duplicative and unnecessary nature of these legal fees was vividly illustrated during our recent audit of the Authority's Housing Choice Voucher program.³ During this audit, we inspected 67 rental units to determine whether the Authority's program units met housing quality standards. We inspected the selected units between November 30 and December 11, 2009. The Authority had one employee, one outside public housing consultant, and up to three outside attorneys accompany our auditor and appraiser on every inspection. The outside attorneys were typically paid on average \$330 per hour to observe the auditor and our certified HUD inspector as they performed every inspection for up to 8 hours a day for about 2 weeks. The amount the Authority paid for only 1 hour for one outside attorney could have been used to help house a low-income family for a month. At the audit entrance conference for another recent audit,⁴ the Authority had one program employee present, accompanied by its chief of staff and four outside attorneys.⁵ We saw no need for any of the outside attorneys to be present.

Regulations at 2 CFR Part 225 Appendix A(C)(1) state that to be allowable under Federal awards, a cost must be necessary and reasonable for proper and efficient performance and administration of Federal awards. While we do not question whether the Authority is entitled to procure outside legal and consulting services when it is justified, in the cases cited, the Authority failed to follow these requirements and incurred \$1.1 million in legal fees in connection with HUD OIG audits that were unnecessary and were counterproductive to helping the Authority achieve its overall mission to provide decent, safe, and sanitary housing to low-income persons.

The Authority Did Not Provide Evidence of HUD Concurrence With Settlement Agreements

In accordance with paragraph 5-3c of HUD Handbook 1530.01, REV-5, Litigation Handbook, a public housing authority is required to notify HUD of pending litigation and obtain written concurrence before accepting a settlement

³ HUD OIG audit report #2010-PH-1011, The Philadelphia Housing Authority, Philadelphia, PA, Did Not Ensure That Its Section 8 Housing Choice Voucher Program Units Met Housing Quality Standards, dated July 8, 2010.

⁴ HUD OIG audit report #2010-PH-1002, The Philadelphia Housing Authority, Philadelphia, Pennsylvania, Needs to Improve Its Controls over Housing Assistance Payments, dated October 6, 2009.

⁵ The Authority's former executive director did not participate in this meeting although our audit notification letter was sent to him. It was standard practice for the former executive director to not attend any audit-related meetings until the audit exit conference.

offer arising out of litigation. The handbook states that no settlement arising out of litigation shall be accepted by a housing authority without the prior written concurrence of HUD. The terms of any such offer shall be communicated in writing to the HUD Regional Counsel, together with the recommendations of the Authority for disposition and the arguments in support of those recommendations. We asked the Authority to provide us a current listing of any settlements or lawsuits filed against it. Through one of its outside attorneys, the Authority told us to look for this information on its Web site because it was posted there in August 2010. We expressed concern that the list on the Authority's Web site might not be complete and accurate and requested this information independent of the Web site. While the Authority had not provided us with a current list independent of its Web site, we noted that the Web site showed that the Authority had settled 33 cases. Our review of the Web site indicated that it referenced a HUD approval letter on only 13 of the settlements (39 percent). On December 10, 2010, we served the Authority with a subpoena for these and other records and in response to the subpoena, the Authority provided us with a list of 234 claims settled since March 1998. These 234 claims are in addition to the 33 cases shown on its Web site. After the exit conference, the Authority provided evidence of HUD approval of 4 of the 33 settlements listed on its Web site. In addition, after the exit conference, HUD Regional Counsel provided copies of approval letters for 22 (which includes the 4 letters that the Authority provided after the exit conference) of the 33 cases. HUD Regional Counsel did not have any record of approving any of the other 234 cases. The Authority did not provide documentation to demonstrate that HUD concurred with settlements in 245 cases (11 from the Web site plus 234) or that the costs of litigation, settlement and judgment were entirely covered by an insurance policy.

**The Authority Allowed an
Apparent Conflict of Interest
To Exist With an Outside Law
Firm**

The Authority allowed an apparent conflict of interest situation to exist when it entered into a contract with a law firm that employed a member of the immediate family of its board chairman. The Authority paid the firm approximately \$7 million during the 41-month period from April 2007 through August 2010. John F. Street was first appointed to the Authority's board on September 1, 1993, and he resigned March 18, 1999. He was later appointed to the board as chairman on April 22, 2004. He reappointed himself to the board late into his second term as mayor and has remained board chairman since that time. His appointment expires September 20, 2011. The Authority's consolidated annual contributions contract prohibits it from entering into any contract or arrangement in connection with any project under the contract in which several classes of people have an interest, direct and indirect, during their tenure or for 1 year thereafter. These classes would include any member of a governing board member's immediate family.

Sharif Street, the son of the chairman of the board of the Authority, was an associate in the affordable housing group of Wolf Block Schorr & Solis-Cohen, LLP (Wolf Block), until March 2008. We reviewed 185 invoices/payments for Wolf Block from 5 contracts totaling approximately \$923,000. Sharif Street's name was included in each of the five contracts. We could not determine the full extent of his billings to the Authority because of the Authority's overall failure to provide support for its payments to its outside law firms. However, the audit identified one invoice that included hours charged directly by Mr. Street. The charge was for 37.6 hours at \$250 per hour for a total of \$9,400 (see appendix H). It should be noted that 45 of the firm's 185 invoices contained prohibited block billing and, therefore, did not include the names, hours, or amount attributed to specific individuals charging time to the case(s). Additionally, the payment documentation provided by the Authority to support the payments to this firm did not include 108 invoices. This omission precluded us from determining whether Sharif Street charged additional time to cases.

The Authority's Outside Counsel Obstructed the Audit Process

The Authority failed to provide the auditors with data, information, and documents requested as far back as August 2010. The requested records were needed to assess the completeness, reliability, and accuracy of other data that the Authority selectively provided. The Authority's outside counsel repeatedly questioned the auditors' purpose and necessity for certain records and responded that the Authority would provide what it thought was sufficient without regard to the auditors' request. In other cases, the Authority's outside counsel provided little or no meaningful response to the auditors' repeated requests for records. After many weeks and repeated requests, the Authority provided a listing of legal contracts in effect during the audit period and represented that the listing was complete in that it included all contracts for legal services related to specific Authority payments in our sample. However, as a result of our review and analysis of the selected payments, we discovered that the list was incomplete. Hence, we question the completeness and reliability of all data and information that the Authority provided that were not original documents.

The Authority's outside counsel finally responded to our repeated requests for a download of the Authority's accounts payable ledger by stating that the limited payments listing that the Authority provided to the auditors would suffice and that, since such was adequate for the purposes of the Authority's independent auditors, it should suffice for our audit. The requested ledger was not provided. Requests for other documents went unanswered. The Authority responded to our request for a listing of settlements of claims and lawsuits against it only after we served it a subpoena for the information on December 10, 2010. The information, however, was incomplete.

The Authority's outside counsel continued to assert that the Authority's payments for legal services were eligible and supported but refused to provide the majority of the supporting documentation that we requested, citing attorney-client privilege. The Authority, however, gave no reason why it had not responded to the auditors' repeated requests for other data and information, some of which dated back to August 2010. These records were included in our subpoena for records. The Authority provided limited additional information in response to the subpoena, but continued to assert that it had provided all information and data access that we had requested.

The Authority required that the scheduling of all interviews between the auditors and Authority staff be done by the Authority's outside counsel. In this regard, the Authority's outside counsel demanded that any communication by the auditors with the interviewee or requests for information from Authority employees be processed through them. The Authority's outside counsel attended all interviews of Authority personnel. Consequently, not only did the interviewee have to be available, but the attorney also had to be available on a mutually agreeable date. In some cases, interview scheduling took up to 3 weeks to accomplish. Such needlessly imposed conditions caused delays in the progression of the audit.

The Authority's actions were contrary to the Inspector General Act of 1978 (Act), HUD regulations at 24 CFR 982.158(c), the Authority's consolidated annual contributions contract, and the Authority's Moving to Work agreement. The Act authorizes the Inspector General access to all records, documents, papers, or other materials available to the applicable establishment which relate to programs and operations with respect to that which the Inspector General has responsibilities under the Act.

HUD regulations at 24 CFR 982.158(c) state, in part, that HUD shall have full and free access to all public housing authority offices and facilities and to all accounts and other records of the public housing authority that are pertinent to administration of the program, including the right to examine or audit the records, and to make copies. The public housing authority must grant such access to computerized or other electronic records and to any computers, equipment, or facilities containing such records and shall provide any information or assistance needed to access the records.

Section VII.C of the Authority's Moving to Work agreement requires the Authority to give access to all requested sources of information including access to files, access to units, and an opportunity to interview agency staff and assisted residents.

Section 15(C) of the Authority's low-rent consolidated annual contributions contract requires the Authority to provide full and free access to all its books, documents, and records relevant to the administration of the projects under the contract.

Likewise, section 14.c of the Authority's housing choice voucher consolidated annual contributions contract requires the Authority to provide full and free access to all books, documents, and records of the Authority relevant to administration of the program, including the right to audit.

The Authority's unwarranted denial of the auditors' access to records and other conditions imposed by the Authority caused needless delays in the audits and obstructed our ability to effectively carry out our statutory responsibilities.

The Authority Did Not Have Controls to Adequately Verify Receipt of Outside Legal Services

During our interviews with the Authority's in-house legal staff, we were told that, with specific limited exceptions, only one Authority senior counsel person was responsible for review and approval of invoices submitted by legal service providers. This individual stated that the Authority did not have a desk procedure or other operating guide for invoice approval but that she used her interpretation of the respective legal services contracts as the basis of her decisions to approve invoiced fees and costs. She stated that she determined whether the invoiced hours and costs were reasonable based on her experience. While she stated that she contacted the department receiving the benefit of the legal service if she had questions regarding an invoice, we found no evidence of such communications regarding the invoices reviewed. When questioned as to the control benefits of verifying charges through users who were directly involved in the work that was invoiced, she stated that the managing partner of the billing law firm attested to the accuracy of the invoice and that practice provided adequate control.

The individual stated that at one time, invoices for legal services related to human resources and labor relations were referred to the Authority's general counsel for labor relations but they currently came to her for approval. She believed that they should go to general counsel for labor relations. Another Authority senior counsel stated that she was concerned that she was not asked by anyone to verify work performed by outside counsel related to her areas of responsibility. She stated that before about a year ago, she routinely received such invoices but she once questioned an invoice from Ballard Spahr Andrews & Ingersoll, LLP, because she thought it was a duplicate billing. She further stated that it was the last legal services invoice she received. Others on the Authority's in-house legal staff stated that they were not asked to verify legal services received.

The Authority needs to establish controls that ensure the adequate verification and approval of invoices. The verification and approval process should be structured, defined, and documented to ensure that payments are not only in accordance with

terms of the contract and the Authority's policies, but are also made only for those services and goods, the receipt of which is verified by person(s) having adequate knowledge of such. Lack of verification and approval procedures and related reimbursement rate schedules can result in the Authority's payment for services that have not been received or are not reasonable and necessary.

**The Authority Did Not Correct
Deficiencies Identified in a
Previous HUD OIG Audit for
Legal Service Contracts**

In a previous audit,¹ we determined that the Authority did not always pay for legal services in accordance with its special contract requirements and made payments for costs that were specifically prohibited by the requirements. In response to the recommendations, the Authority agreed to hire an outside law firm to assist in the process of updating its contract requirements for legal service contracts. Additionally, the Authority stated that it would update its procedures to ensure that the new requirements were enforced. It also agreed to have its Office of General Counsel periodically audit a sample of current legal contracts and payments to ensure that the responsible personnel enforced its contract requirements. However, although the Authority had updated its contract requirements, it had also weakened them; it could not demonstrate that it had implemented a written policy to ensure the enforcement of the contract requirements; and it could not demonstrate that its Office of General Counsel periodically audited a sample of contracts and payments on an ongoing basis. As a result, the Authority made \$2.4 million in payments to law firms based on invoices that included prohibited block billing and for costs that were specifically prohibited by the contract requirements. The following paragraphs provide additional details.

The Authority Weakened Its Contract Requirements for Legal Service Contracts

We compared the contract requirements that the Authority revised in response to our previous audit to the contract requirements it had in force during that audit. Notable changes included the omission of several sections which required prior authorization for specific legal services, sections specifying work functions of various legal staff, and a section identifying activity descriptors needing additional explanation to be acceptable for payment. These changes weakened the internal controls that were otherwise contained in the earlier version of the requirements.

The Authority Continued To Pay for Legal Services That Were Block Billed

During our review, we found that law firms submitted invoices that included prohibited block billing in 142 of 472 invoices (30 percent) reviewed. The block billing on the 142 invoices totaled \$2.4 million.

The Authority Reimbursed Law Firms for Prohibited Expenses

The Authority could not demonstrate that it had implemented a written policy to ensure that it was enforcing its contract requirements. As a result, although the majority of the supporting documentation the Authority provided for the invoices that we reviewed was missing, incomplete, and insufficient, we noted that the Authority continued to pay for costs that were specifically prohibited by the contract requirements.

The Authority Could Not Demonstrate That Legal Service Contracts and Payments Were Periodically Reviewed

The Authority agreed to have its Office of General Counsel periodically review a sample of current legal contracts and payments to ensure that the responsible personnel enforced its contract requirements. However, during the current audit, the Authority provided no documentation to demonstrate that this quality control task was completed during our audit period. After the exit conference, the Authority provided a copy of a May 24, 2005, memorandum audit report from its OIG addressing compliance of contract billings for legal services with its legal department's contract requirements. This internal audit identified no material problems. Nonetheless, the Authority could not demonstrate that it periodically conducted reviews to ensure continued compliance of contract billings for legal services with contract requirements.

Conclusion

The Authority failed to provide adequate documentation supporting the validity, accuracy, necessity, and reasonableness of \$4.5 million in payments that it made for outside legal services during our audit period. The Authority also allowed an apparent conflict of interest situation to exist when it entered into a contract with the law firm that employed an immediate family member of the chairman of its board of commissioners and it did not obtain required HUD approval for all of its legal settlements. Further, the Authority did not implement corrective action that it had agreed to take in response to recommendations made in a previous HUD OIG audit report. These conditions occurred because the Authority's leadership, board of commissioners and executive management chose to operate the Authority in this manner. In particular, the Authority's board of commissioners failed to meet its fiduciary responsibility to ensure that the Authority complied with all Federal laws and regulations as well as fully cooperate with HUD OIG. The Authority

needs to implement adequate procedures and controls to ensure that its payments for outside legal services meet applicable laws and regulations and that HUD approves its legal settlements. The Authority also needs to implement appropriate measures to prevent and resolve conflict of interest situations, revise its contract requirements, and develop and implement controls to ensure that the contract requirements are enforced, including a quality control function. Without these improvements, it will continue to pay enormous sums for outside legal services that are unsupported, unreasonable, and unnecessary.

Recommendations

We recommend that the Director of HUD's Pennsylvania State Office of Public Housing direct the Authority to

- 1A. Implement adequate procedures and controls to ensure that its payments for outside legal services comply with applicable laws and regulations.
- 1B. Immediately provide documentation to support the \$4,496,120 in unsupported costs identified by the audit or reimburse the applicable programs from non-Federal funds for any costs that it cannot support.
- 1C. Immediately provide documentation to support the remaining \$25,981,001 in payments to law firms during the audit period of April 2007 to August 2010, if the Authority cannot support the costs referenced in recommendation 1B or reimburse the applicable programs from non-Federal funds for any costs that it cannot support.
- 1D. Develop and implement controls to ensure that invoices for legal services are adequately verified and payments are made in accordance with the terms of the related contracts.
- 1E. Require its board of commissioners to implement appropriate measures to prevent and resolve conflict of interest situations.
- 1F. Implement controls to ensure that HUD is notified of pending litigation and that HUD's written concurrence is obtained before accepting a settlement offer arising out of litigation.
- 1G. Revise its contract provisions for future legal service contracts to reinstate sections that it removed, which required prior authorization for specific legal services, specifying work functions of various legal staff, and identifying activity descriptors needing additional explanation to be acceptable for payment.

- 1H. Develop and implement a written policy and controls to ensure that its legal services contract provisions are enforced.
- 1I. Task its Office of Inspector General to periodically audit a sample of current and future legal contracts and payments to ensure that the responsible personnel are enforcing contract requirements and only reimbursing law firms for allowable expenses.
- 1J. Restrict the use of outside attorneys when dealing with HUD OIG and HUD program officials who are conducting oversight activities.

SCOPE AND METHODOLOGY

To accomplish our objective, we reviewed

- Applicable laws; regulations; the Authority's administrative plan; HUD's program requirements at 2 CFR Part 225, and 24 CFR Parts 85 and 135; HUD Handbook 7460.8, REV-2; HUD Handbook 2210.18; and HUD Litigation Handbook 1530.01, REV-5.
- The Authority's contract files and related payment records, computerized database information including disbursement data and contract data, organizational chart, board meeting minutes, policies and procedures, Moving to Work agreement and amendments, and consolidated annual contributions contract.

We also interviewed the Authority's employees and HUD staff.

To achieve our audit objective, we relied, in part, on computer-processed data in the Authority's databases. The Authority, however, denied our requests for read-only access to its computerized data and contract and invoice files. It provided us with only selected portions of original contract and invoice files that we requested. Because of these limitations imposed by the Authority, we were prevented from assessing the reliability and completeness of the data to which the Authority allowed us access. Consequently, for our purposes, we used the data and files that the Authority provided without a complete data reliability assessment.

We used an automated data file of disbursements that the Authority provided and determined that the Authority paid 15 law firms \$30.5 million during the period April 1, 2007, to August 31, 2010. We selected a nonstatistical sample of 48 payments for a detailed review. The 48 payments were associated with 433 invoices. We selected the sample to include disbursements to vendors that had high dollar payments over the audit period. Additionally, we included in our sample all invoices which represented legal services related to the Authority's monitoring of OIG audits during the audit period, in response to which the Authority provided 39 invoices associated with 34 contracts. In total, we reviewed 472 invoices associated with 15 contracts and representing \$4.5 million in payments for legal services during the period. The payments and invoices were selected to determine whether the Authority's payments to outside legal firms could be supported and complied with HUD regulations and other applicable requirements.

We performed our onsite audit work from September through December 2010 at the Authority's office located at 12 South 23rd Street, Philadelphia, PA. The audit covered the period April 2007 to August 2010 but was expanded when necessary to include other periods.

Except for those instances in which the Authority imposed limitations, we conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our

audit objective. The audit included tests of internal controls that we considered necessary under the circumstances.

INTERNAL CONTROLS

Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

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

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

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

- Policies and procedures that the Authority has implemented to reasonably ensure that resource use is consistent with applicable laws and regulations.
- Policies and procedures that the Authority has implemented to reasonably ensure that resources are safeguarded against waste, loss, and misuse.

Except for those instances in which the Authority imposed limitations, we assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

Significant Deficiencies

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

- The Authority did not ensure compliance with applicable laws and regulations concerning record-keeping requirements and documentation to support payments for legal services.
- The Authority violated its Moving to Work agreement, its consolidated annual contributions contracts, and HUD regulations when it denied and obstructed the HUD OIG auditors access to its records and documentation.
- The Authority lacked sufficient procedures and controls to ensure that services invoiced by law firms were adequately verified before payment.
- The Authority allowed an apparent conflict of interest situation to exist.
- The Authority did not implement corrective action that it agreed to take in response to recommendations made in a previous HUD OIG audit report.

FOLLOW-UP ON PRIOR AUDITS

**Philadelphia Housing Authority
Contracting and Purchasing
Activity, Philadelphia,
Pennsylvania, 2003-PH-1002,
dated January 27, 2003**

In this audit, we found that the Authority made payments to law firms based on invoices in block format, which was contrary to contract requirements. The Authority also paid the firms for other prohibited charges without questioning them. We recommended that HUD require the Authority to update its contract requirements for legal services contracts to reflect more current conditions and draft and implement a written policy to ensure that the new requirements would be enforced and have the Authority's OIG periodically audit a sample of current legal services contracts and payments to ensure that the responsible personnel enforced the contract requirements and only reimbursed law firms for allowable expenses. The finding starting on page 15 provides details of our follow-up on these issues.

During this previous audit we also found that the Authority issued 18 modifications over a 10-year period to 3 legal service contracts. Although the modifications to these three legal services contracts increased the original contract values by \$3.2 million, the Authority did not compete any of the additional work as required by Federal regulations. Due to time constraints and the failure of the Authority's outside attorneys to cooperate on this current audit, we did not follow up on these issues. The following information pertains to the three legal contracts reviewed on the prior audit.

Contract Number	Date of Award	Original Amount	Amount of Modifications	Adjusted Value	Percent Increase	Number of Modifications
353	11/21/90	\$150,000	\$2,228,762	\$2,378,762	1486%	11
378	5/23/91	\$100,000	\$175,000	\$275,000	175%	2
464	7/14/92	\$125,000	\$830,550	\$955,550	664%	5

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS

Recommendation number	Unsupported 1/
1B	\$ 4,496,120

- 1/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a 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.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION



Philadelphia Housing Authority
Building Beyond Expectations

Michael P. Kelly, *Interim Executive Director*

BOARD OF COMMISSIONERS

John F. Street, *Chairman*
Nellie W. Reynolds
Jannie L. Blackwell
Debra L. Brady
Patrick J. Eiding

February 16, 2011

John Buck
Regional Inspector General for Audit
Philadelphia Region, 3GA
Wanamaker Building
100 Penn Square East, Suite 1005
Philadelphia, PA 19107-3380

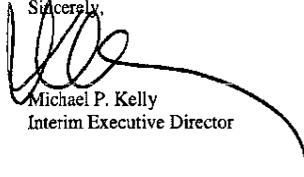
RE: Audit of the Philadelphia Housing Authority's Payments for Outside Legal Services

Dear Mr. Buck:

Enclosed please find the response of the Philadelphia Housing Authority ("PHA") to the above draft audit issued by your office on February 1, 2011.

Should you have any questions regarding this matter please do not hesitate to contact me or Janea Jordan, Acting Director of Audit and Compliance at (215) 684-4283.

Sincerely,



Michael P. Kelly
Interim Executive Director

12 SOUTH 23rd STREET, PHILADELPHIA, PA 19103 P215.684.4174 F215.684.4183 MICHAEL.KELLY@PHA.PHILA.GOV WWW.PHA.PHILA.GOV

Philadelphia Housing Authority Response to HUD Office of Inspector
General Audit of Professional Services Contracts
Draft Dated February 1, 2011

Comment 1

In recent months the Philadelphia Housing Authority (“PHA”) has been thrust into the media spotlight amid allegations surrounding its former Executive Director. Despite years of undisputed success at revitalizing Philadelphia’s public housing and improving conditions for residents, government officials and the public raised questions about PHA’s operations. Amid these allegations, in early September 2010, the U.S. Department of Housing and Urban Development’s (“HUD”) Office of Inspector General (“HUD OIG”) began its audit of PHA’s management of its professional services contracts. HUD OIG provided PHA with a draft audit report dated February 1, 2011 (“Draft Audit”).¹

PHA appreciates HUD OIG’s mission, which is to provide “independent and objective reporting to the [HUD] Secretary and Congress for the purpose of bringing about positive change in the integrity, efficiency, and effectiveness of HUD operations.” To ensure HUD OIG audit work has integrity, is credible, and is reliable in the eyes of the public, HUD OIG is required by law to adhere to the Government Accountability Office’s Generally Accepted Government Auditing Standards (“GAGAS”). HUD OIG also has its own Audit Operations Manual that sets forth its internal audit procedures.

Comment 2

¹ At the exit conference for this audit, held on February 14, 2011, PHA asked that HUD OIG correct clear errors in the Draft Audit and issue PHA a corrected copy prior to PHA preparing a response. HUD OIG indicated it may make changes to its Draft Audit based on PHA’s response, but was not inclined to allow PHA to comment on the corrected draft. As a result, this response is based solely on the Draft Audit PHA received on February 1, 2011. It does not contain PHA’s responses to any changes or additional comments that HUD OIG may have included in the final audit report, but which were not shared with PHA in advance. We note that, in accordance with HUD OIG’s required procedures, HUD OIG has committed to include PHA’s response in its entirety in this final audit report.

Comment 3

Comment 4

In this audit, HUD OIG has violated its own statute by conducting an audit that is not consistent with GAGAS standards and readily admits that it is not following its own Audit Operations Manual, which is designed to ensure that the audit is accurate and complete. In producing the Draft Audit without following required protocols, the HUD OIG has failed the taxpayers who deserve reliable and credible audit work to help answer questions about PHA's compliance with Federal requirements and to help PHA move forward. HUD OIG's failure to conduct an independent and objective audit has rendered the Draft Audit so fundamentally flawed that it is completely unreliable.

Comment 5

It is common knowledge that the HUD OIG had a contentious relationship with the former Executive Director going back almost a decade. There were a number of disputes between the two sides over the years – PHA expressed concerns about HUD OIG not following its own procedures designed to ensure that audits were fair, and HUD OIG expressed its displeasure with PHA's use of outside legal counsel to coordinate PHA's document production and responses to HUD OIG audits. The Draft Audit is based on this past relationship and is simply inaccurate. While PHA wants to put the old disputes behind it and has already taken significant steps toward forging a new relationship with its regulators and the public, it is clear from the Draft Audit that HUD OIG seeks to punish PHA's Board, its staff and outside counsel for PHA exercising its right to use counsel in connection with OIG audits, and for seeking to ensure that HUD OIG applied appropriate standards and followed GAGAS.

**Comments 6
and 7**

The serious problems with the Draft Audit fall into two categories:

Comment 7

1. The Draft Audit repeatedly makes inflammatory statements against PHA's Board, its staff and its counsel, which are simply factually inaccurate; and

Comment 7

2. HUD OIG failed to be objective and follow GAGAS and its own protocol and procedures in drafting this audit, which has led to serious misrepresentations.

Comment 2

At the exit conference held on February 14, 2011, PHA reiterated its ongoing efforts to work with HUD OIG to provide additional documentation to correct the record and support payments. PHA further requested that HUD OIG withhold the Draft Audit until it received and reviewed the additional documentation, corrected the report based on the additional documents, then provided a redrafted copy for PHA to comment on prior to publishing its final report. PHA is providing with this response to the Draft Audit much of that documentation, will provide additional documentation by the end of this week, and will use its best efforts to provide the balance no later than Friday, February 25, 2011.

Comment 8

As described in more detail below, PHA has already begun the process of improving its internal operations and oversight. This process will continue as the PHA Board of Commissioners and Interim Executive Director implement even more structural changes at PHA.

PHA's Transition Plan

Comment 8

In early December 2010, PHA's Interim Executive Director began his tenure. The Interim Executive Director created a transition plan highlighting three specific areas of focus:

- (1) Creating a culture of respect
- (2) Back to Basics
- (3) Transparency and Accountability

This plan is being implemented and is already changing the culture and structure of the agency in a positive direction, and we look forward to continuing to implement it.

Comment 8

In January 2011, the PHA Board of Commissioners authorized the Interim Executive Director to reconstitute certain departments of the housing authority, including the Office of General Counsel and the Office of Internal Audit and Compliance, and it further created policies to enhance those departments, including an agency-wide Ethics Policy. (The resolutions authorizing those actions are attached). The above actions of the housing authority demonstrate that PHA understands the public's concern, and we are listening and moving to reestablish public trust.

Comments 7 and 8

While a properly conducted audit could have assisted PHA in bringing about positive change to the agency, this audit is so unreliable and inflammatory that simply contributes to the agencies challenges. As set forth below, a number of the findings are erroneous and without support. Several of the findings in the Draft Audit echo findings from prior audits, which have already been corrected by PHA as part of the prior audit close out process. Despite the multiple inaccuracies and the inflammatory rhetoric, PHA, for its part, is anxious to work with HUD OIG and HUD to close out any findings in this audit expeditiously so it can concentrate on working with its stakeholders to reestablish the public trust in PHA.

Comment 7

When PHA sought to discuss concerns about the HUD OIG's failure to follow its protocols, it appears that HUD OIG hastily prepared the Draft Audit regarding PHA's management of outside law firms which is incomplete and inaccurate. While a typical HUD OIG audit takes 9 months or more, this one was completed in less than 5 months. It is clear that this audit is designed to attack PHA's and it's counsel who have questioned the accuracy of HUD OIG's prior audit findings, rather than address legitimate areas of weakness in PHA's oversight of its contractors.

Comment 9

- I. Response to Finding 1: PHA's Payments For Legal Services Are, In Fact, Reasonable and Properly Documented

Comment 9

This finding is meritless and the direct result of (A) PHA's assertion of the attorney-client privilege as it relates to the disclosure of legal invoices and (B) HUD OIG's failure to follow GAGAS and HUD OIG's Audit Operations Manual in the conduct of this audit.

A. PHA Appropriately Provided Information To Support Legal Costs Absent Attorney-Client Privileged Information

Comments 9 and 10

The only issue raised by the HUD OIG auditor about legal costs relates to PHA's decision to assert the attorney-client privilege regarding communications with its counsel described in legal bills. PHA determined that protecting the privilege is essential to protecting Federal dollars, particularly in litigation situations, and waivers of this privilege should not be sought by the HUD OIG. The auditor was aware through countless interviews with PHA staff that PHA staff reviews detailed descriptions of services before approving bills. HUD OIG's assertion that payments for legal invoices are not properly supported is designed to punish PHA for electing not to waive the attorney-client privilege.

Comment 10

The American Bar Association ("ABA") and its members have opposed any attempts by HUD to cause housing authorities to waive attorney-client privilege. By letters to the HUD Secretary dated December 8, 2006, and again February 8, 2011, the ABA indicated its opposition to any HUD policies that would seek such waivers. The Housing Development Law Institute, which represents in-house and outside legal counsel connected with affordable housing, has taken a similar position.

The ABA and HDLI letters are below.



Stephen N. Zack
President

AMERICAN BAR ASSOCIATION

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February 8, 2011

The Honorable Shaun Donovan
Secretary
U.S. Department of Housing and Urban Development
451 7th Street SW, Suite 10000
Washington, DC 20410

The Honorable Michael P. Stephens
Acting Inspector General
Office of Inspector General
U.S. Department of Housing and Urban Development
451 7th Street, SW, Suite 8256
Washington, DC 20410

Re: Concerns Regarding HUD's Attorney-Client Privilege Waiver Policies and Practices

Dear Secretary Donovan and Acting Inspector General Stephens:

On behalf of the American Bar Association, which has nearly 400,000 members, I write to enlist your help and support in preserving the fundamental attorney-client privilege and work product protections of U.S. Department of Housing and Urban Development (HUD) grantees, particularly public housing agencies (PHAs). Towards that end, we urge you to rescind HUD guidance¹ that pressures PHAs to execute an upfront waiver of these important protections. Consistent with the concerns expressed by congressional leaders and the recent actions of numerous other federal agencies, we also urge you to implement a clear policy preventing HUD and HUD Office of Inspector General (OIG) employees from requesting or requiring that PHAs or other HUD grantees waive their attorney-client privilege or work product protections or penalizing these grantees who decline to waive these rights.

The attorney-client privilege enables both individual and organizational clients to communicate with their lawyers in confidence, and it encourages clients to seek out and obtain guidance in how to conform their conduct to law. The privilege also facilitates self-investigation by HUD grantees into past conduct to identify shortcomings and remedy problems, which protects federal dollars and thus benefits HUD grantees, and U.S. taxpayers. The work product doctrine underpins our adversarial justice system and allows attorneys to prepare for litigation without fear that their work product, including litigation strategies and mental impressions, will be revealed to adversaries.

¹The HUD guidance discussed in this letter originated as an addendum to Notice PIH 2003-24 entitled "Procurement of Legal Services by Public Housing Agencies," which was extended as Notice PIH 2005-09. Although both notices have expired, they were permanently incorporated into HUD guidance as Appendix 6 to HUD Handbook 1330.1 R2-V-5, "Litigation" (dated May 2004) and Section 7.401 of HUD Handbook 7450.8 R2V-2, "Procurement, Handbook for Public Housing Agencies" (dated March 2007).

Comment 10

February 8, 2011
Page 2

The ABA strongly supports the preservation of the attorney-client privilege and work product doctrine and opposes governmental policies, practices and procedures that have the effect of eroding the privilege or doctrine. Unfortunately, it is our understanding that HUD and the HUD OIG continue to follow certain policies and engage in certain practices that place both of these important rights in serious jeopardy.

Current HUD guidance “urges” all PHAs to attach an Addendum to all contracts with outside counsel for professional legal services. The Addendum contains language that would restrict the ability of the PHA’s lawyers to assert the attorney-client privilege, the work product doctrine, or any other discovery privileges on behalf of their PHA clients in connection with HUD and OIG information requests, reviews, investigations and enforcement proceedings. We previously expressed our serious concerns to HUD in December 2006 regarding the Addendum, noting that it “is an indirect effort to get unwary and unsophisticated housing authorities to waive their privilege.”²

Although use of the Addendum by grantees has not been required by HUD, the HUD guidance lacks any clear statements to this effect; in fact, the guidance suggests the Addendum must be used. As a result, some PHAs may have already unwittingly waived these important protections. Rescinding all guidance to PHAs that encourages use of the Addendum—and hence waiver of attorney-client privilege and work product protections—is particularly important at this time, as it appears that some OIG and HUD staff may erroneously believe that its use is required. Therefore, we request that you issue a clear statement to PHAs and to your employees rescinding both the Addendum and those elements of the guidance that may cause PHAs or your employees to believe that use of the Addendum and waiver of privilege and work product are required.

It is also our understanding that HUD and OIG staff continue to issue direct requests for PHAs and other grantees to waive their attorney-client privilege and work product protections. Although we recognize that HUD and the OIG may seek access to a wide range of information pertaining to compliance with HUD grants and funding, this information can almost always be obtained in ways that do not require waiver of these protections. For instance, documentation of legal professional services can be made available in a manner that does not waive the attorney-client privilege. We have also become aware that HUD has recently been suspending its approval of contracts with legal counsel, including litigation contracts, when PHAs decline to waive the privilege.

In light of such actions by HUD and OIG employees, we believe a clear directive to both entities’ staff prohibiting them from requesting waivers of attorney-client privilege and work product protections is essential. This directive should also instruct the staff that PHAs and other grantees should not be penalized in any way if they decline to waive these rights.

The ABA’s requests with respect to the HUD Addendum, guidance and waiver demands are consistent with actions already taken by Congress and a number of other federal agencies.³ In

² See the ABA’s December 8, 2006 letter to then-HUD Secretary Alphonso Jackson, at footnote 2. The ABA’s letter is available at http://www.abanet.org/policy/letters/attvclem2006dec08_hudarytee_1.pdf

³ Copies of the Attorney-Client Privilege Protection Act, the previous and current privilege waiver policies of DOJ, the CFIC, the Sentencing Commission, the SFC and other federal agencies, and other relevant materials are available on the ABA’s website at <http://www.abanet.org/policy/priorities/privilege/waiver/cnric/leg.html>

Comment 10

February 8, 2011
Page 3

November 2007, the House of Representatives overwhelmingly approved the "Attorney-Client Privilege Protection Act" (H.R. 3013), which would prohibit all federal agencies from seeking waivers of the attorney-client privilege or work product protections. While the legislation has not yet been enacted into law, the House action in 2007 and the reintroduction of an identical bill in December 2009 by the current House Judiciary Committee Chairman Lamar Smith (R-TX) and Ranking Member John Conyers (D-MI) as H.R. 4326—demonstrates the strong and ongoing bipartisan support in Congress for this prohibition.

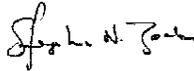
In another important related development, the Department of Justice replaced its previous privilege waiver policy in August 2008 with new corporate charging guidelines, known informally as the "Filip Memorandum," which direct prosecutors not to pressure companies and other organizations to waive their attorney-client privilege and work product protections during investigations. Instead, the revised DOJ policy states that in order to receive cooperation credit during investigations, entities need only produce the relevant factual information. In May 2009, Attorney General Holder strongly endorsed the new policy and noted that DOJ was "engaged in ongoing efforts outside the department to inform investigators and attorneys at other government agencies about the guidelines and are suggesting them as best practices..."

In addition to the Justice Department, several other key federal agencies have also reversed their privilege waiver policies in recent years. For example, the U.S. Sentencing Commission voted unanimously to remove the waiver language from Section 8C2.5 of the Federal Sentencing Guidelines in April 2006, and the Commodity Futures Trading Commission replaced its previous August 2004 waiver policy with a new Enforcement Advisory in March 2007 directing its staff to respect the privilege and work product protections during investigations. In addition, the Securities and Exchange Commission issued a new Enforcement Manual in January 2010 generally prohibiting its staff from seeking such waivers. Therefore, HUD's current policies and practices that pressure PHAs to waive their fundamental attorney-client privilege and work product protections are clearly out of step not only with the views of many congressional leaders, but also with the growing consensus among other leading federal law enforcement agencies on this issue.

For all these reasons, the ABA urges HUD to rescind all guidance to PHAs that seeks an upfront waiver of attorney-client privilege and work product protections. In addition, we urge you to instruct all HUD and OIG staff that such waivers should not be requested, directly or indirectly, nor should they be a factor in determining whether PHAs or other HUD grantees have cooperated with audits or investigations. Finally, we urge you to instruct staff that HUD should not penalize PHAs or other grantees that decline to waive their attorney-client privilege or work product protections.

Thank you considering the views of the American Bar Association on this subject, which is of such vital importance to our system of justice. If you have any questions regarding the ABA's concerns, please contact our Governmental Affairs Director, Thomas Susman, at (202) 662-1765.

Sincerely,



Stephen N. Zack

February 8, 2011
Page 4

cc: Helen R. Kanovsky, General Counsel, U.S. Department of Housing and Urban Development
Thomas M. Susman, Governmental Affairs Director, American Bar Association

Page 9 of 59

Comment 10



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Director of Administration
Tracy P. Boyle

February 14, 2011

Shaun Donovan
Secretary
U.S. Department of Housing and Urban Development
451 7th Street SW Suite 10000
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Michael P. Stephens
Acting Inspector General
Office of Inspector General
U.S. Department of Housing and Urban Development
451 7th Street, SW Suite 8256
Washington, DC 20410

Re: Preserving Legal Privileges for Public Housing Agencies

Dear Secretary Donovan and Acting Inspector General Stephens:

Since 1984, the Housing Development Law Institute ("HDLI") has served as a legal resource in the affordable housing industry. Our members consist of more than 200 public housing agencies and redevelopment agencies (collectively, "PHAs"), attorneys who represent those agencies, and other stakeholders in the public and affordable housing industry across the United States. HDLI enjoys a long-standing and productive relationship with the United States Department of Housing and Urban Development ("HUD"). On behalf of HDLI's members, HDLI writes to request your assistance in preserving legal privileges for HUD grantees. Notwithstanding their public status, PHAs and other governmental or quasi-governmental entities enjoy the same legal protections as do private parties, most especially the important protections of the attorney-client privilege.

HDLI is aware that, through HUD Notice PIH 2006-9, HUD continues to urge PHAs to attach an addendum to legal contracts with outside counsel that, *inter alia*, waives the attorney-client privilege with respect to HUD.¹ HDLI is concerned that waiver of PHA privileges as to HUD could be devastating to PHAs, particularly in states that do not provide for partial or selective waivers. Waiver of the attorney-client and other privileges could adversely impact the integrity of a PHA's litigation position, its procurement process, and the PHA's operations overall, thereby putting precious Federal dollars at significant risk.

Anything divulged to HUD potentially could find its way via a FOIA request into the hands of opposing counsel, competing bidders and other entities, to the detriment of the PHA. Once more, a waiver of the privilege for HUD could be construed as a waiver as to all other parties in litigation matters. Giving an undue advantage to other parties, this could result in the PHA losing, or having to settle, a case that it otherwise might have won without the release of the privileged and sensitive information.

Comment 10

For in-house or outside counsel and their clients, the attorney-client privilege is an integral part of the attorney-client relationship. It protects PHAs from the disclosure of confidential communications made to their attorneys for the purpose of obtaining legal advice. The privilege encourages frank discourse, with the objective of effectively addressing the needs of HUD grantees. Access to counsel, whether in-house or outside, is critical to ensuring accurate interpretations of HUD's regulations and the appropriate expenditure of Federal funds. Further, PHAs that are able to obtain legal advice are better able to competently and efficiently address their wide range of legal issues, protecting HUD grantees and Federal dollars from frivolous claims.

PHAs, working with effective legal advice, are able to achieve significant success. Across the country, in-house and outside counsel have been instrumental in leveraging hundreds of millions of dollars in non-Federal funds to build new public housing, revitalize communities, and improve the lives of public housing residents. The ability to access legal advice has protected PHAs from paying untold dollars in frivolous lawsuits, ensuring that Federal funds are instead spent on HUD programs. When PHAs decide to use the services of outside counsel, that counsel is selected under open, competitive bid processes, often at rates that reflect the public nature of the work and, where necessary, are approved by HUD.

A recent situation illustrates HDLI's concerns. It has come to HDLI's attention that HUD has requested that at least one PHA, Philadelphia Housing Authority², waive the attorney-client privilege as to HUD with regard to on-going legal services and with respect to the procurement of future legal services. Our understanding is that HUD has sought to deny counsel to this PHA by refusing to approve contracts for legal services because the PHA has sought to protect attorney-client communications that are apparent in their legal billing statements. This omnibus request arguably would include many communications protected by the attorney-client privilege, since the details in billing statements often contain information about topics discussed between attorneys and their clients, and legal strategy. HDLI understands that HUD has rejected the PHA's suggestion to provide redacted billing statements devoid of attorney-client privileged information. These restrictions on the PHA's retention of counsel and payment of legal fees significantly undermine the attorney-client relationship. PHAs must have the discretion to select counsel, whether in-house or outside, which is best equipped to address its wide-ranging needs. They must have the autonomy to have open, frank discussions with their counsel and devise litigation strategy, without fear of exposure of their sensitive information and strategies. That is what the tenets of the attorney-client privilege guarantee. In the case of the Philadelphia Housing Authority, a large housing authority involved in complex litigation, the privilege is critical to its success and viability.

¹ See addendum to Notice PIH 2003-24 "Procurement of Legal Services by Public Housing Agencies," extended as Notice PIH 2006-09. See also Appendix 6 of HUD Handbook 1530.1 REV-5 "Litigation" dated May 2004, which incorporates the former notices, and Section 7.4G of HUD Handbook 7460.8 REV-2 "Procurement Handbook for Public Housing Agencies" dated March 2007.

² Philadelphia Housing Authority is not an HDLI member.

Comment 10

HDLI respectfully suggests that, in the interest of expedience and fiscal responsibility, a compromise quickly could be reached that would protect both HUD and the Authority and obviate the need for more protracted discussions or proceedings. The Authority could produce redacted billing statements to HUD, and for those statements where HUD is not satisfied with the amount of detail, a neutral third party or judge could review them *in camera* and make a determination whether additional detail is necessary to provide an adequate explanation of the need for the particular services, which HDLI understands is the genesis for HUD's need for the information. This type of compromise is common with regard to discovery issues, and would save taxpayers significant expense.

There is a growing consensus among other leading Federal law enforcement agencies on this issue. For instance, the United States Department of Justice and several other key federal agencies have reversed their privilege waiver policies in recent years. The Department of Justice replaced its previous privilege waiver policy in August 2008 with new guidelines which ensure that prosecutors do not pressure companies and other organizations to waive their attorney-client privilege and work product protections during investigations. Moreover, the U.S. Sentencing Commission voted unanimously to remove the waiver language from Section 8C2.5 of the Federal Sentencing Guidelines in April 2006, and the Commodity Future: Trading Commission replaced its previous August 2004 waiver policy with a new Enforcement Advisory in March 2007 directing its staff to respect the privilege and work product protections during investigations. Recently, the Securities and Exchange Commission issued a new Enforcement Manual in January 2010 generally prohibiting its staff from seeking such waivers. HDLI respectfully urges HUD to join its sister agencies and conform its policies accordingly.

Finally, HDLI endorses the positions set forth in the February 8, 2011 letter written to you by President Zack of the American Bar Association with respect to HUD's attorney-client-privilege-related policies and practices.

For the reasons above, HDLI respectfully urges HUD to swiftly take the following actions:

- (1) Establish clear policy that prohibits HUD and HUD OIG employees from requesting waivers of legal privileges or penalizing grantees who choose to protect those privileges;
- (2) Rescind all HUD notices and guidance that recommend that PHAs waive the attorney-client and/or other privileges; and
- (3) Direct all HUD and OIG staff that PHA access to counsel, and HUD's approval of legal services contracts, should never be made contingent on a waiver of legal privileges.

If HDLI can be of any further assistance with this matter, please do not hesitate to contact me at (202) 289 3400 or lwalker@hdli.org.

Respectfully submitted,

Lisa L. Walker
Executive Director & General Counsel

Comment 10

Further, the Department of Justice (DOJ) and other Federal agencies have issued specific guidelines to their attorneys, instructing them that they are not to ask for waivers of attorney-client privilege, nor are they to view an agency as uncooperative simply because the entity chooses not to waive that privilege.² These DOJ guidelines represent an overall standard in government policy with respect to privilege waiver requests, and provide guidance for the other executive agencies as they proceed with reviews and investigations.

Comment 10

Contrary to the DOJ, HUD OIG is attempting to assert that PHA has been uncooperative with the audit because it has chosen to protect privileged materials. PHA's counsel, in communicating PHA's decision not to waive the privilege, suggested to the auditor that it might be helpful to discuss this issue further with HUD OIG's counsel present. There was no response to this offer.

Just in the last few weeks, HUD's Regional Counsel requested that PHA provide redacted legal invoices in a way that protects the attorney-client privilege. While this production will be costly and time consuming,

Comment 10

² See Department of Justice, Principles of Federal Prosecution of Business Organizations, § 9-28.710 (providing "... while a corporation remains free to convey non-factual or 'core' attorney-client communications or work product—if and only if the corporation voluntarily chooses to do so—prosecutors should not ask for such waivers and are directed not to do so.") and § 9-28.720 (providing "Eligibility for cooperation credit is not predicated upon the waiver of attorney-client privilege or work product protection.")

**Comments 9
and 10**

PHA is working cooperatively with HUD Regional Counsel to make the information available, although it may take several weeks or months to produce. PHA is disappointed by HUD OIG's refusal to discuss this issue previously, but HUD OIG is obviously welcome to the same information.

B. HUD OIG's Failed to Communicate Both the Objective and Findings of the Audit With PHA, Contrary To Its Own Statutory Requirements and HUD OIG's Protocols

HUD OIG is being completely disingenuous by falsely alleging PHA did not have proper support for invoices. The HUD OIG auditor requested that over 400 invoices be provided as quickly as possible. Upon the auditor's first request on September 24, 2010, for invoice and payment information, PHA's counsel asked the HUD OIG auditor to explain in more detail what documents were sought so PHA could provide responsive information. The auditor indicated he wanted information to document the costs of legal services as quickly as possible. PHA, through its counsel, explained that it could provide that information as quickly as possible, but it would not include attorney-client communication included in the descriptions of the services. PHA produced this information on a rolling basis beginning the week following the request. The initial production of numerous boxes of material was completed within 2 weeks of that September 24th request. A subsequent, similar request for invoices was also completed within 2 weeks using the same method of providing the overall cost information. The HUD OIG never identified additional, non-privileged information it sought in order to justify the invoices.

HUD OIG procedures provide that audit results should be communicated to the auditee as "a continuous process throughout the audit."³ This includes "provid[ing] auditees with draft finding details during the audit. Draft finding details should be provided to the auditee as the issues are

³ Audit Operations Manual, Section 3-18A.

developed on site.”⁴ Auditors should also communicate audit findings and conclusions timely to auditees.⁵

Comment 11

HUD OIG substantively modified the objective of the audit without ever notifying PHA.⁶ At the entrance conference, HUD OIG indicated that the objective was to "Evaluate the Authority's acquisition, selection, appropriateness, and payment of professional and consulting services, to include legal services, whether conducted in-house or by contract, and the use of these resources." Contrastingly, the Draft Audit states that the objective has become to "Determine whether the Authority's payments to outside legal firms could be supported and complied with HUD regulations and other applicable requirements." GAGAS requires that HUD OIG notify PHA that the entire audit objective had changed. Absent this and any other substantive communication about findings with the HUD OIG auditor, it was impossible for PHA to understand what additional documentation HUD OIG sought.

Comment 11

Had HUD OIG followed GAGAS and its own standards, HUD OIG would have met with PHA to discuss the type of information HUD OIG sought, any perceived deficiencies in documents provided by PHA, and other issues that would assist HUD OIG with its audit findings. HUD OIG would have notified PHA of its significant change in audit objective. Instead, HUD OIG was nonresponsive to PHA's repeated requests to meet to discuss any perceived deficiencies in PHA's document production. PHA produced thousands of pages of documents, and made staff available for hours of interviews, but HUD OIG failed to

Comment 11

⁴ Audit Operations Manual, Section 3-18A.

⁵ Audit Operations Manual, Section 3-18. This section of Audit Operations Manual further explains: "Timely communication provides the auditee an opportunity to give feedback to the auditors on their conclusions, helps ensure the completeness and accuracy of factual matters, and provides additional assurances of, HUD OIG's fairness and objectivity ... written communication [with the auditee] is preferred.

⁶ Section 7.46 of the Federally-required GAGAS requires auditors, including HUD OIG, to communicate to auditees "the objectives, scope, and methodology" with "written communication" as the preferred communication method.

Comment 11

provide *any* written or verbal findings. In sum, the finding that PHA's legal bills are unsupported is, in part, based on HUD OIG failure to follow its own requirements to clearly communicate its objectives and requests the with auditee.

Comment 11

C. PHA Followed Applicable Federal Requirements Regarding Documentation of Costs

The Draft Audit erroneously concludes that PHA violated 2 CFR Part 225A C(1)(j). 2 CFR Part 225A C(1) sets out the factors that costs must meet to be allowable under Federal awards. Factor (j) cited by HUD OIG provides that costs must be adequately documented. As discussed above, PHA's costs for legal services are properly documented. The only reason why the HUD OIG believes they are not properly documented is because the HUD OIG utterly failed to communicate with PHA and its counsel about the documentation that HUD OIG needed to complete its cost reasonableness assessment. In fact, at the exit conference for this audit, the HUD OIG stated that PHA and its counsel just "should have known" what HUD OIG sought. The HUD OIG's assertion is simply part of a "gotcha game" designed to provide unwarranted support HUD OIG's contention that PHA did not properly document costs and that its document production efforts were thwarted.

Comment 12

D. HUD OIG's Assertions Regarding Block Billing Are Unsupported

The Draft Audit contends that PHA paid legal invoices that contained "block billing" in violation of "Part V" of its legal contracts. Part V, entitled "Philadelphia Housing Authority Outside Counsel Guidelines," is made part of all of PHA's legal contracts. PHA is not aware of any federal or state law or regulation requiring PHA to use Part V or prohibiting block billing altogether. Moreover, as the title suggests, Part V contains guidelines, and it sets forth general standards and

expectations and does not anticipate every circumstance that might arise.⁷

Comment 12

Part V contains a section on billing practices, setting out PHA's internal guidelines for outside counsel. That section states: "Legal bills and invoices submitted by outside counsel to PHA must be free of "block billing" (i.e., billing entries in which a number of different tasks are grouped within one entry, making it impossible to determine the value and appropriateness of each entry)."⁸ This is PHA's internal process which is interpreted by PHA, thus there are no other applicable authorities. HUD OIG has provided no citation for the definition of block billing described in the Draft Audit or any indication that it is somehow applicable to PHA, thus its criticism is without support.

Comment 13

It appears that HUD OIG is at least in part relying upon summary cover pages from invoices to assert that there was block billing.⁹ Again, HUD OIG knows full well that the invoices reviewed by PHA staff include descriptions that are subject to the attorney-client privilege. Accordingly, HUD OIG has no basis for its conclusion that outside counsel block billed.

Comment 14

⁷ Part V, page 1.

⁸ Part V, page 9.

⁹ We note that HUD OIG's example of block billing at Appendix E seeks to publicly disclose the private, confidential banking account numbers and employer identification numbers ("EIN") of one of the law firms whose bills were reviewed by HUD OIG. This is either a blatant disregard for Federal law or an example of the slipshod manner in which HUD OIG wrote the Draft Audit. Information such as banking account numbers and EINs are provided to HUD OIG for audit purposes but are prohibited from disclosure by HUD OIG pursuant to the Privacy Act. 5 U.S.C. 552a(b) prohibits HUD OIG from disclosing any record, including banking account numbers and EIN, to any person or agency, except pursuant to a written request or consent of the individual to whom the record pertains. Generally accepted government auditing standards (GAGAS) recognize that certain information is prohibited from general disclosure by Federal, state, or local laws or regulations. See Government Auditing Standards, Section 8.39. HUD OIG's failure to exclude or appropriately limit private and confidential information from the Draft Audit is a clear violation of the Privacy Act and GAGAS.

Comment 10

E. PHA Has A Right to Use Counsel To Facilitate the HUD
OIG Audit and HUD OIG Is Attempting to Interfere with
PHA's Right to Counsel

Housing authorities, like other entities, have the right to use counsel, whether in-house or outside, in situations that it deems to be necessary and appropriate, including OIG audits. As the above letters from the ABA and the Housing Development Law Institute point out, access to counsel critical to ensuring accurate interpretations of HUD's regulations and the appropriate expenditure of Federal funds. Moreover, housing authorities that are able to obtain legal advice are better able to competently and efficiently address the wide range of legal issues they face, thus protecting Federal dollars. Despite HUD OIG's suggestion to the contrary, housing authorities across the country routinely use counsel to assist in HUD OIG reviews. Different housing authorities make different decisions on how to staff legal matters, and this staffing may vary from housing authority to housing authority and matter to matter. HUD OIG certainly has no right to penalize grantees who use counsel to assist with HUD or HUD OIG reviews, audits, or investigations, which is clearly the case in this audit.

Comment 10

It is also clear that one goal of the HUD OIG's criticism is an attempt to restrict PHA's use of counsel in HUD OIG audit matters. However, housing authorities must have the discretion to select counsel, whether in-house or outside, that is best equipped to address its wide-ranging needs. When housing authorities decide to use the services of outside counsel, that counsel is selected under open, competitive bid processes, often at rates that reflect the public nature of the work, as was the case with the attorneys involved in PHA's OIG's audit matters.

Comment 15

With respect to the two recent audits of PHA's Housing Choice Voucher ("HCV") program, the entire process took almost two years, involved thousands and thousands of pages of documents, countless interviews, and multiple complex legal issues related PHA's compliance with HCV program requirements. Some two and a half years after this process

**Comments 15
and 16**

begun, PHA is still working with the field office to close out the findings for the second audit. PHA counsel, who are experienced in OIG audit matters, coordinated document requests with PHA staff; facilitated interviews; attended inspections to provide necessary oversight and resolve questions regarding the applicable HUD requirements;¹⁰ and participated in numerous discussions with OIG auditors to resolve audit issues, which often involved interpretation and application of regulatory requirements. Counsel's involvement over such an extended time period enabled PHA staff to spend more of their time attending to the needs of the HCV program residents to ensure that that program continued to operate smoothly.

Comment 15

HUD OIG itself even highlighted the contributions of PHA counsel in participating in the audit process. In the "OIG Evaluation of Auditee Comments" at the end of the HCV file audit report,¹¹ HUD OIG states that the auditors met with PHA staff and numerous members of PHA's legal counsel more than 20 times between December 2008 and June 2009, and that during these discussions, there were disagreements over regulatory requirements, calculations, and sufficiency of explanations and supporting documentation. HUD OIG recognized that "[t]his process often involved a significant amount of time" and characterized the discussions as "professional exchanges," which, in many cases helped to clarify and resolve the issues. For HUD OIG to now insinuate that PHA attorneys added no value to this process is simply disingenuous.

Comment 17

PHA's expenditures for legal fees related to the HUD OIG HCV audits must be viewed in the context of PHA's potential liability on these matters. The total potential funds at risk of recapture during these two

Comment 16

¹⁰ The Draft Audit misleading states that "up to three outside attorneys" were present at each inspection, implying that having three attorneys present was the norm. There were only a few instances where three attorneys attended the same inspection.

¹¹ Audit Report No. 2010-PH-1002, page 35.

Comment 17

audits was approximately \$490 million. Of that amount, to date, PHA has repaid approximately \$9,000, with more than half of that being paid under protest. The fees spent over almost two years were 0.2% of the total potential liability and thus were not unreasonable under the circumstances.

Comment 18

Moreover, the time spent by counsel on this matter could have been reduced dramatically had the HUD OIG auditor understood HCV program requirements, promptly reviewed information, and accepted documented and reasonable explanations that were provided in response to his questions. Instead, PHA staff and counsel had to repeatedly explain even the most rudimentary program requirements, and the auditor would agree to resolve issues in one meeting only to change his mind and re-open them in the next. The auditor also asserted that particular documents were missing in an HCV tenant file, then changed his mind when PHA pointed out the “missing” document and asserted that it was actually another document that was required. Countless hours were spent by staff and counsel reviewing files and providing explanations to the auditors in these situations.

Comments 18 and 19

PHA’s use of counsel eight years ago was clearly needed, given HUD OIG’s egregious behavior described below, which included removing privileged documents without permission after the privilege had been asserted and rescinding prior agreements with PHA. PHA has continued to use counsel for audits to protect against this type of unprofessional behavior and to ensure audits are fair and objective.

Comments 18 and 19

F. HUD OIG Auditors Were Not Objective In Evaluating Legal Costs Incurred In Prior Audits, In Violation Of Applicable Legal Requirements and Standards

HUD OIG violated GAGAS¹² and its own requirements because its

¹² The Inspector General Act of 1978, as amended, requires all audits to follow GAGAS. Specifically, 5 USC App. 3, § 4(b)(1) provides as follows: “In carrying out the [auditing and other] responsibilities specified in subsection (a)(1), each Inspector General shall—
(continued...) ”

Comment 19

auditors and audit supervisors exhibited significant personal impairments based on past experiences with PHA. The Federally-required GAGAS and OIG's own standards require auditors to be free from personal impairments or "preconceived ideas toward individuals, groups, organizations or objectives of a particular program that could bias the audit."¹³ Rather than approach this audit with impartiality, the auditors were influenced by past experiences with PHA and its outside counsel. This is clearly evidenced by the fact that the audit itself focused mostly on information from past audits.

Comment 19

HUD OIG supervisors that oversaw this audit had worked on prior audits with PHA that were contentious, making it impossible for PHA to obtain an objective review. The HUD OIG Regional Inspector General ("RIGA") and Assistant Regional Inspector General for Audit ("ARIGA") were involved in prior audits in 2002 and 2003 that were particularly contentious and one of which was remarkably similar to this audit. During one of those audits, a HUD OIG auditor removed legal bills from PHA without authorization even after PHA asserted that they were subject to attorney-client privilege. HUD OIG's behavior during these audits was so egregious that PHA's counsel filed a complaint with the oversight entity responsible for ensuring that OIGs adhere to ethical

(...continued)

(A) comply with standards established by the Comptroller General of the United States for audits of Federal establishments, organizations, programs, activities, and functions..." The "standards" established by the Comptroller General are the GAGAS, which are published by the Government Accountability Office at GAO-07-731G, "Government Auditing Standards," (July 2007 Revision).

The Government Auditing Standards similarly provide: "The Inspector General Act of 1978, as amended, 5 U.S.C. App. requires that the statutorily appointed federal inspectors general comply with generally accepted government auditing standards (GAGAS) for audits of federal establishments, organizations, programs, activities, and functions. The act further states that the inspectors general shall take appropriate steps to assure that any work performed by nonfederal auditors complies with GAGAS." Appendix I, § A1.02(a).

¹³ Government Auditing Standards, Section 3.07e.

Comment 19

and other applicable standards. The then-RIGA left office shortly thereafter. It is clear that this audit was distorted by the current RIGA and ARIGA's preconceived notions about PHA and its counsel based on these past experiences.

Comment 18

In addition, the auditor in charge of this audit also led the two recent HCV audits of PHA. His inefficiency and lack of knowledge about the HCV program unnecessarily prolonged those audits. It is completely impossible for the same auditor to objectively and credibly evaluate the reasonableness or necessity for legal cost associated with an audit for which he was responsible. It is clear that the Draft Audit's conclusions regarding PHA's use of counsel are based the auditors' tainted subjective assessments. There are simply no objective facts supporting a conclusion that PHA's expenditure of funds on outside counsel in the HCV audits was unreasonable under Federal requirements.

Comment 20

G. PHA Did, In Fact, Obtain HUD Concurrence of Legal Settlements In Accordance with Applicable HUD Requirements

CLAIM	HUD Approved		BOARD APPROVAL
	HUD CONCURRENCE DATE	AMOUNT	
Buena Plumbing, Inc. v. PHA	May 9, 2008	(\$249,369.00)	2/2/07 #11227
James J. Sory Mechanical Contracting, Inc. v. PHA	June 18, 2008	(\$390,000.00)	10/19/06 - #11143
William Hurt v. PHA	August 21, 2008	(\$193,000.00)	08/21/08 - #11248
Carolyn Cannon, et al. v. PHA	September 26, 2008	(\$75,000.00)	N/A - Less Than \$100K
PHA v. GMAC Mortgage (Anastasia Bryant)	January 16, 2009		N/A - To Be Submitted Upon Conclusion
PHA v. St. Paul Travelers, et al	August 4, 2009	\$5,850,000.00	08/19/04 - #10683 Resolution Approved a portion of the settlement
PHA v. Sunoco, Inc.	April 7, 2010	\$6,250,000.00	11/18/2010 - #11413
STA Paint Painting, Inc. v. PHA	May 16, 2011		N/A - To Be Submitted Upon Conclusion

Comment 20

HUD OIG's assertion that PHA did not obtain proper concurrence from HUD for legal settlements is patently false. As identified above, PHA sought and received HUD concurrence in accordance with HUD

Comment 20

guidelines. (PHA has provided a full and complete set of the concurrence letters from HUD along with its response as Exhibit A). The remaining cases identified in the Draft Audit were insurance defense cases covered under PHA's insurance policy with its carrier, the Housing Authority Risk Retention Group ("HARRG"). Chapter 1, Section 1.1 (a) (5) of the HUD Litigation Manual specifically excludes cases covered by insurance from the HUD reporting process.¹⁴

Comment 20

Additionally, HUD's August 18, 2008 letter regarding PHA's Request for Concurrence of Regional Counsel with Contracts for General Legal Services under Solicitation No. P-003598 ratifies PHA's understanding that PHA is to report cases that (1) are not covered by insurance, and (2) may be otherwise reportable to your office pursuant to the HUD Litigation Handbook. A copy of HUD's letter is attached at Exhibit B.

Comments 20 and 21

The issue of obtaining HUD's concurrence was never raised with PHA during the course of the audit, in violation of HUD OIG's Audit Operations Manual. Had it been, PHA could have easily provided the back-up documentation and there would be no need to include this finding in the audit report. In fact, at the exit conference, when PHA asked if the finding be removed if PHA provided the supporting documents to HUD OIG, the RIGA said it would not be removed, but rather HUD OIG would "take the hit" and leave the finding in the final audit even though it was blatantly false. This is yet another further indication of the serious personal impairments to objectivity and impartiality exhibited by the auditor in charge and RIGA with respect to the findings in this audit.

Comment 22

H. There Was No Conflict of Interest with an Outside Law Firm.

¹⁴ It is worth noting that, per the above chart, PHA has recovered over \$11 million in legal settlements based on litigation led by outside counsel. This is just one example of the value that outside counsel has brought to PHA's legal team. At no point in approving these settlements, which gave PHA significant funds to assist its low-income clients, did HUD complain about the cost of outside legal services.

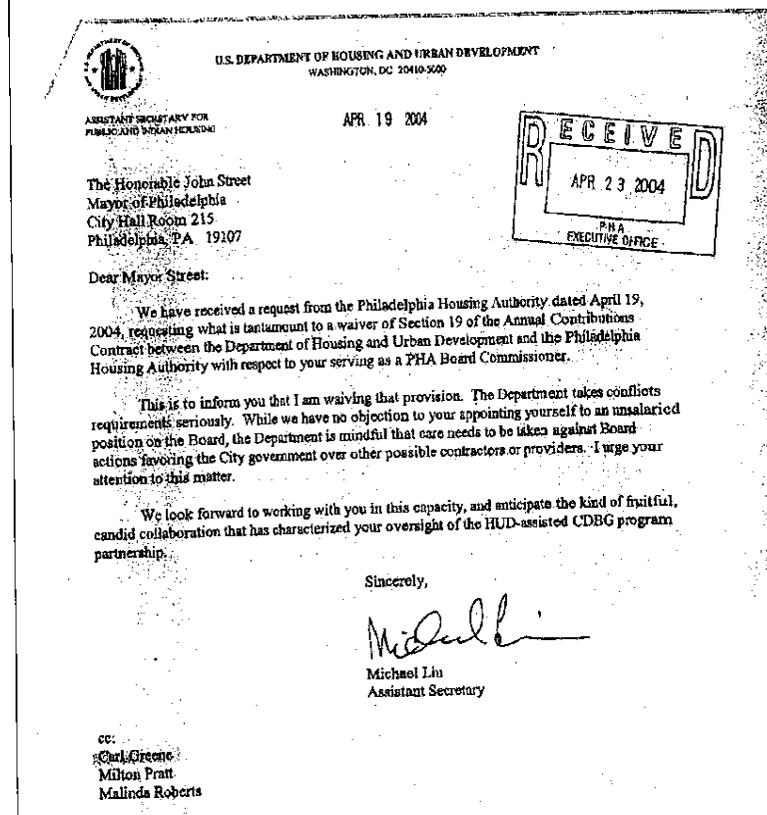
Comment 22

The Draft Audit erroneously asserts that PHA allowed a conflict of interest situation to exist in connection with a contract with a law firm that employed the son of PHA Board Chairman John Street. In 2004, when then Mayor Street sought to be appointed as Chairman of the PHA Board, PHA reviewed the HUD conflict of interest requirements of the Public Housing Annual Contributions Contract (“ACC”) §19 to determine if his appointment was consistent with those provisions. At the time, the Authority had several existing contracts with Wolf, Block, Schorr and Solis-Cohen, LLP (“Wolf Block”), where the Mayor Street’s son, Sharif Street, worked. PHA prudently analyzed the issue and requested that HUD waive the possible conflict, as well as other possible conflicts that could result from his role as Mayor of Philadelphia. The waiver request submitted to HUD specifically disclosed the contracts with Wolf Block.

Comment 22

On April 19, 2004, PHA received a waiver of ACC Section 19 in the form of a letter from Michael Liu, the Assistant Secretary for Public and Indian Housing. The letter explicitly states that Mr. Liu is waiving Section 19 of the ACC to allow Mayor Street to take on the unsalaried position on the PHA Board of Commissioners based on the analysis provided by PHA and the benefit of having the Mayor as the PHA Board Chairman. Mr. Liu’s letter did not provide any exceptions or caveats to such waiver.

Comment 22



Comment 22

When Mayor Street joined the PHA Board of Commissioners in 2004, contracts were already in place with Wolf Block, the law firm where Mayor Street's son was employed, and this was disclosed to HUD in the waiver request, which is below.


Philadelphia Housing Authority
Building Beyond Expectations

Carl R. Greene
Executive Director

April 19, 2004

Ms. Malinda Roberts, Director
Office of Public Housing
Department of Housing and Urban Development
The Wanamaker Building
160 Penn Square East
Philadelphia, PA 19107-3380

**RE: Request for a Public Housing ACC Waiver for a Conflict of Interest
Prohibition- Opinion as to State Law Compliance**

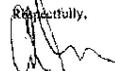
Dear Ms. Roberts:

On behalf of the Philadelphia Housing Authority ("PHA"), I am requesting approval from your office for Philadelphia Mayor John Street to join the PHA Board of Commissioners ("the Board"). Accordingly, I am submitting the attached "Public Housing ACC Waiver for a Conflict of Interest Prohibition" form together with an opinion as to state law compliance from PHA's General Counsel, Leigh A. Poltruck. Ms. Poltruck has reviewed the Commonwealth of Pennsylvania's Public Official and Employee Ethics Act and related statutes, and it is her legal opinion that Mayor John Street's participation on the Board will not violate the laws of the Commonwealth of Pennsylvania.

This would not be the first time that the Mayor of Philadelphia served on the Board. Most recently, current Pennsylvania Governor Edward Rendell served as the Chairman of the Board of Commissioners during his terms as Mayor of the City of Philadelphia. There is no better way to give the residents of public housing the benefit of unfettered access to city services and a voice in City Hall than to have the current Mayor on the Board.

I respectfully request that you approve this request as expeditiously as possible and issue a "Public Housing ACC Waiver for a Conflict of Interest Prohibition." As always, please call me if I can be of further assistance in this or any other matter.

Respectfully,


Carl Greene
Executive Director

12 South 23rd Street, Philadelphia, PA 19103
p. 215.684.4000 www.pha.phila.gov

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Comment 22

Comment 22



Philadelphia Housing Authority
Raising Beyond Expectations

Carl R. Greene
General Counsel

Ann E. Harrison, Esquire
Assistant General Counsel
Department of Housing and Urban Development
Office of Counsel
The Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107

April 19, 2004

**Re: Request for a Public Housing ACC Waiver for a Conflict of Interest
Prohibition – Opinion As To State Law Compliance**

Dear Ms. Harrison:

On behalf of the Philadelphia Housing Authority ("PHA"), I am submitting herewith the form to request a "Public Housing ACC Waiver for a Conflict of Interest Prohibition." The Mayor of the City of Philadelphia, John Street, would like to join the PHA Board of Commissioners ("the Board"), and PHA believes that it would be extremely beneficial for both PHA residents and the citizens of Philadelphia for him to have an opportunity to serve on the Board. Accordingly, PHA is requesting a waiver of the conflict of interest provisions of the Annual Contributions Contract between the United States Department of Housing and Urban Development ("HUD") and PHA as they relate to Mayor Street's ability to sit on the Board.

In my capacity as General Counsel for PHA, I have reviewed the Commonwealth of Pennsylvania's Public Official and Employee Ethics Act and related statutes, and it is my legal opinion that Mayor John Street's participation on the Board will not violate the laws of the Commonwealth of Pennsylvania.

Background

Pennsylvania's Housing Authorities Law (35 P.S. §1541 et seq.) declares that an Authority shall constitute a public body, corporate and politic and, in a city of the first class, the Mayor shall appoint two members of the Board and the City Controller shall appoint two members. The fifth and final member of the Board is then selected and appointed by the other four members. The statute is silent as to whether the Mayor may appoint himself to the Board.

12 South 23rd Street, Philadelphia, PA 19103
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April 16, 2004
Page 2

Analysis

The Commonwealth of Pennsylvania's Public Official and Employee Ethics Act regulates conflicts of interest. Specifically, 65 Pa.C.S.A. §1102 defines a "conflict of interest" as the use by a public official or employee of the authority of his office or confidential information received through his holding of public office for the pecuniary benefit of: (1) himself; or (2) a member of his immediate family; or (3) a business with which he or a member of his family is associated. The definition also provides that the term does not include any action having a *de minimus* economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated. There is no prohibition, specific or otherwise, which would define it to be a conflict of interest merely for the Mayor of the City of Philadelphia to sit on the Board of PHA.

Section 1103 of Title 65 lists ten specifically restricted activities, only two of which might possibly be applicable to the Mayor's activities on the Board. First, 65 Pa.C.S.A §1103(f) states in relevant part:

(f) Contract.- No public official or public employee or his spouse or child or any business in which the person or his spouse or child is associated shall enter into any contract valued at \$500 or more with the governmental body with which the public official or public employee is associated or any subcontract valued at \$500 or more with any person who has been awarded a contract with the governmental body with which the public official or public employee is associated, *unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded.* ...

65 Pa.C.S.A. §1103(f) (emphasis added). Presently, Mayor Street's son, Attorney Sharif Street, is employed as an Associate by the law firm of Wolf, Block, Schorr, and Solis-Cohen, LLP ("Wolf Block"). Wolf Block has several current and active contracts for the provision of legal services to PHA that were solicited through the public procurement process. If these or any other issues relating to Wolf Block's contracts were to come before the Board, §1103(f) does not prohibit the Mayor from engaging in related Board activities, it merely requires that he "shall not have any supervisory or overall responsibility for the implementation or administration of the contract." As a Board member, Mayor Street would not have any such responsibilities and no conflict of interest exists.

The other section of 65 Pa.C.S.A. §1103 that might be applicable addresses voting conflicts. In part, that section states:

(j) Voting conflict.- ... Any public official or public employee who in the discharge of his official duties would be required to vote on a matter that would

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Arn Harrison, Esquire
April 16, 2004
Page 3

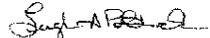
result in a conflict of interest shall abstain from voting and, prior to the vote being taken, publicly announce and disclose the nature of his interest as a public record in a written memorandum filed with the person responsible for recording the minutes of the meeting at which the vote is taken, provided that whenever a governing body would be unable to take any action on a matter before it because the numbers of members of the body required to abstain from voting under the provisions of this section makes the majority or other legally required vote of approval unattainable, then such members shall be permitted to vote if disclosures are made as otherwise provided herein. . . .

65 Pa.C.S.A. §1103(j). This section would prohibit the Mayor from voting on my issue relating to Wolf Block's contracts with PHA as well as any other matter where a conflict of interest, as defined by 65 Pa.C.S.A. §1103(f), might exist. Even if an apparent conflict did arise, however, the Mayor will be able to resolve the conflict through the disclosure process identified above and thus eliminate any adverse effect on the Board.

It should also be noted that PHA is not an agency, commission, board or department of the City of Philadelphia. Rather, PHA was created in 1937 by the Commonwealth General Assembly upon enactment of the Housing Authorities Law, 35 P.S. § 1544(a). Any bonds that PHA issues are, by law, not considered to be debt of the City of Philadelphia, nor is the City of Philadelphia liable for bonds PHA issues. See 35 P.S. § 1557. See also Attorney General Opinion No. 120, May 4, 1972 (holding that PHA is not an instrumentality of the City). Additionally, this would not be the first time that the Mayor of Philadelphia served on the PHA Board. Most recently, current Pennsylvania Governor Edward Rendell served as the Chairman of the Board of Commissioners during his terms as Mayor of the City of Philadelphia.

For these reasons, it is my opinion that Mayor John Street's participation on the Philadelphia Housing Authority's Board of Commissioners will not violate the laws of the Commonwealth of Pennsylvania. Accordingly, I respectfully request that you approve this request and issue a "Public Housing ACC Waiver for a Conflict of Interest Prohibition." As always, please do not hesitate to call upon me if I can be of further assistance in this or any other matter.

Very truly,


Leigh A. Poltrok
General Counsel

cc: Carl R. Greene

Comment 22

The Draft Audit erroneously states that Mayor Street's son was employed at Wolf Block until *September 2010*. Wolf Block did not even exist in September 2010 – it is public knowledge that *the firm dissolved in March/April 2009*. Moreover, Mayor Street's son left Wolf Block prior to that dissolution, in March 2008. The fact that the OIG

did not even check these basic facts further undermines the credibility of the entire audit report and demonstrates the ulterior motives behind it.

Comment 22

Between 2004 and 2008, when Mayor Street's son left Wolf Block, Mayor Street did not exercise responsibilities or functions with respect to the Wolf Block contracts, as would be prohibited by ACC Section 19. Law firms are selected by a selection committee, not the Board. The Board merely ratifies any decision made by the committee. Furthermore, HUD continued to consent to the waiver, as it continued to approve PHA legal contracts with Wolf Block, having been fully aware of the issue and the waiver.

Comment 22

This alleged conflict of interest issue was never even raised by HUD OIG during the audit nor did HUD OIG seek any documents related to the same. The first time that PHA learned of it was in the Draft Audit. Had the HUD OIG auditor identified this as a possible concern or sought documentation during the audit period, he would have learned that the issue had been cleared by HUD, and there would have been no justification for including it in the Draft Audit. HUD OIG's failure to even ask a question about this item again raises serious questions about HUD OIG's motives and credibility.

Comment 22

After PHA received the Draft Audit, PHA notified HUD OIG that PHA had, in fact, obtained a waiver of ACC Section 19 with respect to Chairman Street, and it provided a copy of the relevant documents, as it was clear HUD OIG had not seen them. Despite the broad scope of the original waiver, on the date of the exit conference, HUD sent a letter to PHA claiming that the 2004 waiver did not, in fact, cover the Wolf Block contracts, because HUD never received a waiver request for PHA to hire that law firm. The letter from HUD wholly ignores the fact that the original waiver request specifically disclosed the connection between Mayor Street and his son's employment, and that the waiver was predicated on the original request letter. The waiver letter was very clear, so there was no need for PHA to request any clarification and HUD was fully aware of the situation. As such, it appears that HUD

Comment 22

OIG pressured HUD to send the letter, as it was clearly timed to reach PHA on the same date as the exit conference for this audit. For HUD to now suggest that the waiver was never granted is wholly meritless. HUD's actions here undermine the ability of all housing authorities to rely on HUD waivers.

- I. The Record Clearly Shows that PHA, Through Its Counsel, Provided HUD OIG With Access To Information Requested During Its Audits Consistent With Federal Requirements, And Any Statements To The Contrary Are Erroneous

Comment 23

There is not a scintilla of evidence indicating that PHA, through its legal counsel, did not work cooperatively with the HUD OIG auditor to provide requested documentation. HUD OIG has not pointed to any instance where PHA, through its outside counsel, refused to provide requested information, except for assertion of the attorney client privilege. There is no other justification for this baseless and inflammatory accusation except HUD OIG's personal bias and preconceived notions about PHA and its outside counsel, thus this finding is wholly unreliable.

Comment 23

PHA complied promptly with each of HUD OIG's requests, except for privileged materials, even though PHA was simultaneously receiving multiple documents requests from HUD and other entities. (A complete set of correspondence from PHA's counsel to HUD OIG regarding the document production for this audit has been included as Exhibit C.) PHA, through its counsel, coordinated the production of thousands of pages of documents, provided access to requested computer files and promptly made PHA employees available for all requested interviews within a three month period. Additional follow up questions were also responded to promptly.

Comment 23

The record clearly reflects that PHA, through its counsel, at no time denied HUD OIG access to information. In fact, each and everyone of HUD OIG's document requests were responded to. The following chart

**Comments 15
and 23**

describes the dates of various document requests and the dates responsive information was provided:

REQUEST(S)	DATE OF PRODUCTION/RESPONSE
Entrance conference: September 8, 2010	
Current organizational chart and employee listing, including names, titles, and phone numbers of key personnel. Names, titles and dates of employment for all Authority employees employed since April 1, 2007.	9/10 - PHA Senior Staff Organization Chart, PHA Employee List (Current), PHA Employee List (Former)
Board-approved minutes from the meetings of the Board of Commissioners from April 2010 through August 2010, including resolutions.	9/10, 9/15
Board-approved policies and standard operating procedures related to the acquisition, selection, and payment for professional services; copy of the Authority's procurement policy.	9/10 - Procurement Policy 9/15 - PHA Procurement Letter / MTW October 2008, Original MTW Agreement Alternate Procurement System 9/20, 9/22 - Contracts Procedures
List of all banks used including account numbers, description, and current balances.	9/13
Listing of vendors providing professional and consulting services.	9/22 - List of legal contracts 10/5 - PHA Professional Services and Consulting Vendor List
List of all in-house professional services and the name and title of the employee providing the service.	9/15
Chart of accounts.	9/13

**Comments 15
and 23**

REQUEST(S)	DATE OF PRODUCTION/RESPONSE
Automated download of the Authority's a general ledger, contract register, accounts payable records, and cash disbursement records.	9/13 - PHA Adjusted Trial Balance FY2007, 2008, 2009, 2010 9/15 - PHA Utility Check Disbursements, Oper. ACH Disbursements, Section 8 ACH Disbursements, Section 8 Check Disbursements, April 2007- Aug 2010 11/22 - Contracts spreadsheet
Access to the Authority's computer system (read only); contract files; paid invoice files; and bank statements, canceled checks and bank reconciliations.	9/2010 – 12/2010 – Access to contract files OIG informed that other information to be made available upon request
Copies of any internal and external audit reports and the Authority's response.	9/13
Copy of the Authority inspector general's audit plans.	Provided in recent prior audit
Letter re audit responsibility and letter to Board suspending work of consultants and professionals	9/17
PHA outside counsel's contract for OIG work	9/23
Explanation of codes used in cash disbursement records	9/16, 9/20
Bank accounts key payment types	9/28
PHA Set Ids	9/28
List of PHA Finance Department personnel	9/28
AP Users	9/29
PHA PeopleSoft Implementation and Upgrades	9/29
Information regarding specific vendor payments	9/30 - Copies of contract files, invoices, chart 10/4, 10/5, 10/7 - Invoices
Original files for specified contracts	10/1

**Comments 15
and 23**

REQUEST(S)	DATE OF PRODUCTION/RESPONSE
All vendor invoices and documentation supporting payments for professional and consulting services related to the following HUD audits: HCV (both parts), Scattered Sites, Professional Services	10/18 – 10/26
New document request: listing of all settlements of litigation against PHA during audit period (April 1, 2007 - August 31, 2010)	12/22 - PHA settled claims, PHA Board resolutions
Explanation of changes to Attachment V (Outside Counsel Guidelines)	10/26, 12/9 (Interviews of PHA counsel)
Copy of all invoices submitted by legal firms to PHA in response to Chairman Street's cessation directive	11/11 – 11/17
Copy of HUD approvals of all legal contracts in effect during the audit period (April 1, 2007 through August 31, 2010)	11/4, 12/2010
Copy of recent legal contracts submitted by PHA to HUD for approval along with related requests and authority response(s) to any related HUD correspondence.	11/30
Copy of travel reimbursement policy and procedures during audit period as well as any changes that may have been made during this period	11/30
Explanation re why HUD Addendum is not included in legal service contracts	11/30
Explanation of the basis for invoices from [outside counsel] to the Housing Authority Risk Retention Group being included	12/9 (Interview of PHA counsel)
Information re audit of Contracting and Purchasing Activity at PHA, OIG Audit Report Number 2003-PH-1002, January 27, 2003, Recommendation 4D	1/21
Information re audit of Contracting and Purchasing Activity at PHA, OIG Audit Report Number 2003-PH-1002, January 27, 2003, Recommendation 4G	1/28

Comment 24

As the below letter of December 21, 2010, indicates, PHA, through its counsel, sought to work cooperatively with HUD OIG to fulfill its document requests. It asked that HUD OIG identify any areas where it believed its document production was deficient, so those issues could be addressed.

Comment 24

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

December 21, 2010

Via E-mail [REDACTED]

[REDACTED]
Counsel to the Inspector General
[REDACTED]
[REDACTED]
[REDACTED]

Re: HUD OIG Survey of Philadelphia Housing Authority's Professional Services Contracts

Dear [REDACTED]

Following up our telephone conversation last week, our client, Philadelphia Housing Authority (PHA), was surprised to receive the subpoena issued by your office dated December 10, 2010, relating to HUD OIG's survey audit of PHA's professional services contracts (the "Subpoena") in view of the substantial progress that the parties were making in this matter.

With the exception of one new request (Item no. 5 in the Subpoena), PHA has been working assiduously to provide all of the information now sought by the Subpoena, excepting only privileged communication between PHA and its counsel. To date, PHA's efforts have included the production of thousands of pages of documents as well as extensive computer files. We remain committed to cooperating with OIG in this context.

In view of the foregoing, we have addressed below the status of each item of information requested by the Subpoena in the hope that we can reach an amicable resolution without need for judicial involvement.

I. Invoices and documentation supporting the Authority's payments to the vendors in the amounts and on the dates listed in the Subpoena

PHA produced in October non-privileged documents responsive to this request, including access to original contract files and copies of redacted invoices, with the exception of one contract file (Fox 3003) that was inadvertently omitted because it was not on site at the time. We are in the process of producing that file now.

[REDACTED]

[REDACTED]

December 21, 2010
Page 2

As we have previously discussed, PHA is constrained from providing descriptions of work done by particular attorneys on specific days because that information is protected from disclosure by the attorney-client privilege. Please advise if there is any additional, non-privileged information that OIG is seeking with respect to this item of the subpoena.

2. *Automatic Download of the Authority's General Ledger, Contracts register, and Accounts payable records;*

PHA has produced all documents responsive to this request, including its general ledger and trial balances (produced on September 13), disbursements (produced September 15), contract information regarding legal services contracts (produced September 22), a vendor list with contract information for all other professional services contracts (produced October 5) and additional contract information in response to OIG's request for specific data (produced November 22).

With respect to the second item above, we have previously explained that PHA does not maintain a formal "contracts register." Rather, contract information is stored on and accessed through PHA's computer system. In response to OIG's provision of a list of computer fields that it wished to review, PHA previously produced a report containing all of the information sought by professional services contracts. To our knowledge, OIG has never suggested that this report was deficient in any way.

With respect to the third item above, PHA's accounts payable records were included in the disbursement file provided on September 15. As we clarified orally and via e-mail on December 2, PHA does not maintain a separate accounts payable file.

3. *Any charts showing the Authority's accounts*

We believed that we had already responded to this request. In particular, PHA produced a "List of PHA GL Accounts" in September, and we had two meetings with OIG and PHA staff to explain the various accounts and computer coding and to answer OIG's questions. OIG did not indicate that any additional information was sought before serving the subpoena.

4. *Documents listing any settlements of claims or lawsuits*

PHA does not maintain a report for settlements. As we informed OIG in October, a list of settlements of public claims was created in or around August of this year and posted on PHA's website. We have been attempting to confirm that the list was complete. We would be happy to provide a hard copy of the list from the website, with corrections as appropriate.

Additionally, contemporaneously with the list of settlements of public claims, a list of settlements paid by PHA's insurers was created. We are currently reviewing that list for privilege and will

December 21, 2010
Page 3

produce a copy that contains responsive information subject to redaction of any privileged information it may contain.

5. Documents describing settlements of claims or lawsuits against the Authority

The Subpoena is the first time that OIG has made this request. We are not clear from the wording precisely which documents or information OIG is seeking, and it appears that some or all of these materials may be subject to the attorney-client or other privilege. Under the circumstances, we would appreciate some clarification concerning what OIG wants so that we may respond in a cooperative fashion while preserving any applicable privilege.

6. Access to the Authority's computer system (GL, contracts register/databases, AP records, and disbursement registers)

PHA has previously produced all information responsive to this request in downloaded form on computer disk, which is consistent with our practice in prior audits.

7. Access to the Authority's contract files, paid invoice files, bank statements, canceled checks, and bank reconciliations

We have previously given OIG access to PHA's contract files, invoices, and certain bank information. As we explained in September, there are relatively few cancelled checks because the vast majority of PHA payments are made by electronic transfer.

OIG previously agreed that it would review the records provided and advise PHA if it required any additional information regarding particular accounts or payments. Since then, OIG has not sought access to canceled checks or additional banking records. To the extent that the Subpoena now seeks such access, please clarify what additional information is being requested and we can arrange to provide access.

Conclusion

We hope that the foregoing makes clear PHA's commitment to work cooperatively with OIG to provide all necessary, non-privileged information without the need for the Subpoena or other legal proceedings. I will be in the office through Thursday of this week to discuss this matter in more detail. Please advise when it would be convenient for you to speak.

Comment 24

[REDACTED]
December 21, 2010
Page 4

Thank you for your consideration, and we look forward to working with you to resolve this matter expeditiously and amicably.

Sincerely,
[REDACTED]

[REDACTED]
cc: [REDACTED]

Comment 24

----- Original Message -----

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]

Sent: Fri Jan 14 11:12:15 2011
Subject: Philadelphia Housing Authority (PHA) Audit of Professional Service Contracts/Follow Up on Response to Subpoena

Hi [REDACTED],
PHA responded to your office's subpoena in the above referenced matter on December 21, 2010. As the response states, PHA believes it has provided all documents responsive to your request. Although we have not heard from you that the response was deficient, we would like to meet to make sure that there is not additional information you are seeking or things you think may be missing so we can address them. To that end, please let me know if you are available to meet next week on Wed. Jan. 18th or another day that fits with your schedule.

Thanks and have a great weekend.

[REDACTED]
[REDACTED]
Direct Phone: [REDACTED]
Direct Fax: [REDACTED]
Main Phone: [REDACTED]

From: [REDACTED]
To: [REDACTED] <[REDACTED]@phila.gov>
Cc: [REDACTED] <[REDACTED]@phila.gov>, [REDACTED] <[REDACTED]@phila.gov>, [REDACTED] <[REDACTED]@phila.gov>
Date: 01/14/2011 05:13 PM
Subject: Re: Philadelphia Housing Authority (PHA) Audit of Professional Service Contracts/Follow Up on Response to Subpoena

Sorry - next Wed. is January 19th. Sorry for the confusion. [REDACTED]

[REDACTED]
[REDACTED]
Direct Phone: [REDACTED]
Direct Fax: [REDACTED]
Main Phone: [REDACTED]
email: [REDACTED]

Comment 24

From: [REDACTED]@hudcity.gov]
Sent: Wednesday, January 19, 2011 1:50 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Philadelphia Housing Authority (PHA) Audit of Professional Service Contracts/Follow Up on

Response to Subpoena

Good afternoon [REDACTED]

OIG is evaluating your letter and will contact the Authority when the evaluation is completed.

[REDACTED]
Auditor
Department of Housing and Urban Development
Office of Inspector General
[REDACTED]
[REDACTED]
Philadelphia, PA [REDACTED]
Office Phone: [REDACTED]
Cell Phone: [REDACTED]

From: [REDACTED]
Sent: Wednesday, January 19, 2011 2:15 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Philadelphia Housing Authority (PHA) Audit of Professional Service Contracts/Follow Up on Response to Subpoena

Thanks [REDACTED]

Just let us know when you are done with your review and we can schedule a time to meet to discuss any questions you have or anything you think may be missing so those issues can be addressed.

Comment 24

The several purported examples in the Draft Audit of PHA's alleged lack of cooperation with the audit process are unfounded. HUD OIG erroneously asserts that accounts payable information was not provided to HUD OIG. To the contrary, PHA informed HUD OIG that the information requested was in another document provided at the commencement of the audit. HUD OIG simply refused to believe that the information was not kept in a format anticipated by the OIG. There is no requirement that PHA create an accounts payable ledger if one does not exist.

Comment 24

Further, HUD OIG falsely claims that *HUD OIG* discovered that a list of legal contracts from PHA was incomplete, thereby calling into question

all other information provided. To the contrary *PHA and its outside counsel* discovered the error in the prior list and promptly notified HUD OIG.

Comment 24

PHA did, in fact, provide HUD OIG access to computerized records, contrary to assertions made in the Draft Audit. In this and in prior audits, PHA has provided access to computer data in one of two ways (1) HUD OIG would provide PHA with descriptions of the type of the fields of data sought from the computer system and PHA provided downloads of the information or (2) PHA would schedule a time with HUD OIG and an appropriate PHA staff person with knowledge of the particular system that HUD OIG wanted access to and would direct the staff person to perform the queries they required, so HUD OIG could observe the information being pulled from the system. HUD OIG has never objected to these processes.

Comment 24

As was discussed with the auditor in this audit as well as in prior audits, PHA has a very sophisticated computer system that allows the agency to manage its operations efficiently and cost effectively. It contains multiple pieces of software and not all PHA employees have access to all parts of the system. Employees receive extensive training on the software modules that they work in before getting into the system, so that its integrity is preserved.

Comment 24

In the instant case and as in prior audits, HUD OIG requested and PHA provided downloads of requested information. The auditor never sought to schedule a time with PHA to observe the system, nor did the auditor ever indicate that there was information from PHA's computer system that he needed downloaded or that was necessary for the audit that was not received.

Comment 24

Finally, HUD OIG claims that a subpoena was required to obtain information. This is patently false. HUD OIG took this highly unusual step of issuing a subpoena without any basis. All the information requested in the subpoena, with the exception of a list of insurance

Comment 24

settlements that PHA had indicated was in process, had already been provided prior to issuance of the subpoena. Throughout this audit, PHA, through its outside counsel, had repeatedly updated HUD OIG on the status of the document production, and sought to confirm that it was sufficient. The subpoena again was a further indication of HUD OIG's bias against PHA and its outside counsel, rather than PHA or its counsel's failure to respond to document requests.

Comment 25

The Draft Audit's conclusion that PHA's actions were in violation of 24 CFR § 982.158(c) is not correct. 24 CFR § 982.158 contains the requirements for maintaining accounts and records regarding the HCV program. Subsection (c) provides that HUD is to have access to such records and to housing authority computers containing the records. It appears that this regulation has no applicability to the current audit. HUD OIG never specifically sought access to HCV program information. This audit was not of the HCV program but rather of third party vendor contracts. In HUD OIG audit of PHA's HCV files, where HUD OIG reviewed 41 HCV tenant files, no issues were raised regarding access to HCV records, and the audit report contains absolutely no findings regarding access. Similarly, there were no issues raised regarding access to PHA records in the recent OIG audit reviewing whether PHA ensured that its HCV units met HQS.

J. The Authority Has Adequate Controls for Verifying Receipt of Outside Legal Services.

Comment 26

PHA does have controls to ensure that invoices for legal services are adequately verified and payments are made in accordance with the terms of the related contracts. PHA's legal invoice review process was described consistently by various PHA staff in interviews with the HUD OIG auditor. Invoices are reviewed initially by the contracts department for compliance with the contract terms, then an attorney to ensure they are reasonable. Several years ago, PHA consolidated the invoice review process through a single attorney instead of multiple attorneys to ensure better efficiency and quality control in the process. The single point of contact checks with the users of the services as needed to confirm the

Page 44 of 59

services were performed and obtain any additional information needed to approve the invoice.

Comment 26

After the attorney review, the approved invoices are again reviewed by contracts administration to ensure contract compliance, then sent to the finance department for confirmation that funds are available before a payment is made. Any identified irregularities in the invoices are communicated to the law firm. Law firms must make the corrections and re-issue the invoice which starts the review process anew.

Comment 26

The assertion in the Draft Audit that invoice review responsibilities were taken away from any attorney for questioning an invoice is patently false and without support. That attorney did not have responsibility for reviewing legal invoices. Rather, the attorney is periodically asked questions about services provided by persons reviewing PHA's legal invoices pertaining to that attorney's areas of responsibility. When asked to describe a situation in which she was asked a question about a bill, she cited a situation which involved a question about whether a bill had been double paid. She did not in anyway indicate in her response to the question she did not have responsibility for reviewing bills because of this question, as the statement in the Draft Audit suggests. HUD OIG's false characterization of this attorney's statements is yet an example of the personal impairments exhibited by the auditor throughout this audit and it is without any support.

K. PHA Implemented Recommendations From Prior Audits As The Audit Findings Were Closed Many Years Ago, With HUD and HUD OIG's Concurrence

Comment 27

HUD OIG erroneously suggests that PHA has not completed required actions stemming from a 2003 HUD OIG audit related to professional services contracts. This is another example of HUD OIG's failure to communicate in accordance with GAGAS and its own standards. Toward the end of this audit, HUD OIG asked two questions about the close-out of findings, which occurred several years prior to the period

Comment 27

covered by this audit. PHA, through its counsel, responded and indicated that HUD OIG appeared to be misinterpreting the management decision at issue and asked if HUD OIG had additional questions. Even though the prior audits were well outside the audit period, PHA reviewed its records and has continued to review them to assist the auditor in obtaining additional information. HUD OIG never responded.

Comment 27

As HUD OIG well knows, those audits have been closed out for years. Management decisions on necessary actions that an auditee must take are generally agreed upon within 180 days of audit issuance.¹⁵ HUD's goal is to complete final action on the management decisions one year from the management decision date.¹⁶ To close out audit findings, an auditee must complete all corrective actions required by HUD. HUD and HUD OIG must concur on management decisions that the findings have been satisfactorily resolved and that they may be closed out. If HUD OIG does not concur, the issue is escalated to a higher level.¹⁷ All management decisions were made years ago and all necessary concurrence was obtained by HUD to close out findings. PHA again asked at the exit conference that this unsupported finding be removed, but HUD OIG refused. Any suggestion that PHA did not do everything it was supposed to do following these prior audits is patently false.

Comment 7

L. HUD OIG's Statements Regarding the PHA Board's Role in Overseeing the HUD OIG Audits Are False

The PHA Board acted responsibly with regard to the HUD OIG audits. During this audit and in prior audits, the PHA Board was briefed on the status of the audits, audit findings when they were issued, and PHA's position regarding any findings. HUD OIG's assertions to the contrary are inflammatory and baseless. Board members asked questions of PHA

¹⁵ Handbook 2000.06 Rev-3, Audits Management System, Section 1-6(A).

¹⁶ Handbook 2000.06 Rev-3, Audits Management System, Section 1-6(A).

¹⁷ Handbook 2000.06 Rev-3, Audits Management System, Sections 1-6. 6-2 – 6-3.

Comment 7

staff as appropriate. The auditor never raised HUD OIG's claim that the PHA Board did not act responsibly in this regard, and this claim is completely without support. If HUD OIG believed that the audits were being obstructed by outside counsel, they would have certainly attempted to contact the senior staff person responsible for the audit and or the PHA Board itself. HUD OIG did so several years ago in a prior audit and, in fact, requested a meeting with the PHA Board which did take place. No request was ever made, thus any assertion that the Board did not perform its duties properly as they relate to this audit is bogus. At the exit conference, PHA asked HUD OIG to remove them from the audit report.

II. Any failure of HUD OIG to follow up on prior audits solely rests with HUD OIG.

Comment 28

HUD OIG indicates that it failed to follow up prior audit findings with respect to allegedly improper contract modifications from the early 1990s (over a decade prior to the audit period for the Draft Audit) due to "time constraints" and a failure to cooperate. In fact, PHA provided the auditor with all of the requested contract files in September, thus HUD OIG could easily have reviewed this issue. We also note that this audit was unusually short, and any time constraints were imposed by HUD OIG upon itself. However, as described above, PHA and its outside attorneys were fully cooperative.

Comment 28

HUD OIG was given full information regarding all modifications to legal contracts. Copies of all modifications were included in the contract files made available to HUD OIG, and a list of legal contracts provided to HUD OIG indicated any such modifications completed for all legal contracts during the audit period. There were few modifications made to contracts due to changes in PHA's contracting procedures following prior OIG audits, which would have made the auditing of the limited number of modifications even easier. Since HUD OIG must certainly have thoroughly reviewed the legal contract files to which it had access for months, it appears there were no findings of improper

contract modifications.

III. Response to Recommendations

PHA Response to OIG Recommendations 1A through 1J:

OIG Recommendation 1A-Implement adequate procedures and controls to ensure that its payments for outside legal services comply with applicable laws and regulations

PHA Response to 1A

PHA disagrees with HUD OIG finding that its current procedures and controls are inadequate and further, its payment process does comply with applicable laws and regulations. The Draft Audit does not include information to support the assertion that payments were made contrary to applicable requirements. The guideline that PHA uses to evaluate legal invoices, known as Part V, is an internal guideline, not a Federal requirement, thus the interpretation of it is within PHA's discretion. Part V was updated following the HUD OIG's last audit in 2002, based on HUD OIG's recommendations. As the findings for that audit were closed, HUD and HUD OIG agreed that the changes made were consistent with the recommendations.

Regardless, PHA has already begun the process of reinvigorating its Office of General Counsel. As part of the plan for reconstituting the role of in-house counsel, PHA is already in the process of developing a new organizational structure for the PHA General Counsel's office which will include the new processes for managing the PHA's relationship with outside counsel. Additional staff assigned to the expanded Office of General Counsel will provide more support for the invoice approval process. The newly created Office of Internal Audit and Compliance will create detailed policies and procedures for review of legal invoices in coordination with the General Counsel. Implementation of the new

**Comments 9,
26, 7 and 27**

Comment 8

Comment 8

review process for review of legal invoices is well underway and is expected to be completed within 90 days.

OIG Recommendation 1B-Immediately provide documentation to support the \$4,507,958 in unsupported costs identified by the audit or reimburse the applicable programs from non-Federal funds for any costs that it cannot support

PHA Response to 1B

Comments 9 and 7

PHA disagrees that HUD OIG was not provided documentation to support the \$4,507,958 in legal costs. In fact, PHA provided HUD OIG with non-privileged information responsive to this request which supports the legal costs.

Comments 9 and 26

As was explained to the HUD OIG auditor during several interviews with staff, the payments for legal services are supported by detailed legal bills that include attorney-client privileged information, as well as back up documentation for expenses. As HUD OIG knows, privileged information was removed from the copies of bills it received in order to protect Federal funds. Much of the information identified by HUD OIG in the Draft Audit as needed to support the payments is not required by any contract or legal requirement. PHA, through its counsel, offered repeatedly to discuss any questions or concerns HUD OIG had regarding the attorney-client privilege with HUD OIG's counsel, however, there was no response to that offer.

Comment 8

As noted above, recently, PHA has worked with cooperatively with HUD Regional Counsel to agree upon a process for providing legal invoices in a way that protects the attorney-client privilege. While this production will be costly and time consuming, PHA has made a commitment to provide it. Obviously, HUD OIG is welcome to this information as it is produced.

OIG Recommendation 1C - Immediately provide documentation to support the remaining \$25,977,398 in payments to law firms during the audit period of April 2007 to August 2010, if the Authority cannot support the costs reference in recommendation 1B or reimburse the applicable programs from non-Federal funds for any costs that it cannot support

PHA Response to 1C

**Comments 7,
9 and 26**

PHA can support the costs in recommendation 1B, therefore there will be no need to provide documentation supporting the remaining payments.

OIG Recommendation 1D - Develop and implement controls to ensure that invoices for legal services are adequately verified and payments are made in accordance with the terms of the related contracts

PHA Response to 1D

**Comments 7,
8, 9 and 26**

PHA disagrees with this finding. As discussed above, PHA does have controls to ensure that invoices for legal services are adequately verified and payments are made in accordance with the terms of the related contracts. Further, as stated previously PHA is in the process of reconstituting its Office of General Counsel. During this process we will be closely examining how legal invoices are processed. As the Office of General Counsel (OGC) is created PHA will add a level of review where the last reviewer will be the General Counsel, who will review in consultation with the staff attorney the work invoiced. PHA has already begun implementing this activity, and substantial completion is anticipated within 90 days.

OIG Recommendation 1 E - Require its Board of Commissioners to implement appropriate measures to prevent and resolve conflict of interest situations

**Comments 7,
8, 22 and 26**

PHA Response to 1E

PHA disagrees with this finding. As described above, PHA clearly identified the potential conflict well in advance, analyzed it, and resolved it by seeking a HUD waiver. No further action is needed.

OIG Recommendation 1F - Implement Controls to Ensure that HUD is notified of pending litigation and that HUD's written concurrence is obtained before accepting a settlement offer arising out of litigation

PHA Response to 1F

**Comments 7,
8, 20 and 26**

The finding is incorrect. All cases required to be reported to HUD's Regional Counsel were in fact reported, and PHA received the necessary concurrence. No further action is needed.

OIG Recommendation 1G - Revise its contract provisions for future legal service contracts to reinstate sections that it removed, which required prior authorization for specific legal services, specifying work functions of various legal staff, and identifying activity descriptors needing additional explanation to be acceptable for payment

PHA Response to 1G

**Comments 7,
8 and 26**

PHA disagrees. While PHA does not believe it is necessary to revise contract provisions in order to address recommendation 1G, it is in the process of developing new internal systems for authorizing and assigning legal work. These processes are more appropriately described in PHA's new internal procedures than in a contract document.

Comment 8

As discussed above, PHA is creating a new Office of General Counsel in an effort to strike the appropriate balance between the use of in-house and outside counsel. PHA will be incorporating a new system as to how legal work is assigned to outside. Again, we believe this is a process issue which will be corrected via the reconstitution of the Office of General Counsel. The new process is already underway and should be completed in 90 days.

OIG Recommendation 1H - Develop and implement a written policy and controls to ensure that its legal services contract provisions are enforced

PHA Response to 1H

**Comments 7,
26 and 27**

PHA disagrees with this recommendation, as it already has written standards for the review and approval of legal invoices set forth in Part V. The HUD OIG and HUD made recommendations to update Part V, which PHA implemented, and HUD and HUD OIG found satisfactory as part of the audit close-out process.

Comment 8

Regardless, PHA agrees that there is always room for enhancing its systems. As stated above, the reinvigorated PHA Office of General Counsel will have more staff to support the invoice review process. PHA has already begun making these changes. As part of the enhanced process, the PHA General Counsel will provide an additional final review of legal bills before payments are authorized, to ensure that legal services contract provisions are enforced. Implementation of the new procedure is well underway and is expected to be completed within 90 days.

OIG Recommendation 1I - Task its Office of Inspector General to periodically audit a sample of current and future legal contracts and payments to ensure that the responsible personnel are enforcing

contract requirements and only reimbursing law firms for allowable expenses

PHA Response to 1I

Comment 8

PHA's Inspector General was tasked to audit legal contracts and they did perform an audit in 2005. PHA has created a new department, the Office of Internal Audit and Compliance, which will be responsible for audit and reviews of existing programs. Review of legal contracts and invoices will be a part of the annual plan for this department and fully incorporated into the procedures for the new Office of General Counsel. Again, these new processes should be completed in the next 90 days.

OIG Recommendation 1J Restrict the use of outside attorneys when dealing with HUD OIG and HUD program officials who are conducting oversight activities

PHA Response to 1J

**Comments 7,
8 and 10**

As mentioned previously, PHA has been authorized by its Board of Commissioners to rebuild its in-house legal department. This will create additional internal support for PHA operations and create an in-house resource for addressing the legal issues that arise in the daily course of business. PHA has already reduced its reliance on outside counsel as a result of systems it has put in place over the last few months and it expects that trend to continue as PHA continues to build its Office of General Counsel.

**Comments 7
and 9**

We note, however, that HUD OIG can point to no Federal requirements that mandate this action, and PHA has violated no Federal requirements with respect to its decisions to use outside counsel to assist with certain legal issues, including those associated with OIG or HUD matters. Housing authorities, not HUD OIG, are in the best position to determine how to staff housing authority legal teams, which may include both in-

house and outside counsel, and this staffing may vary from housing authority to housing authority and matter to matter. No further action is needed.

IV. HUD OIG Has Not Provided Support for its Allegations of Significant Deficiencies

A. PHA Remains Compliant with Applicable Laws and Regulations Concerning Record-Keeping Requirements and Documentation to Support Payments for Legal Services

PHA remains compliant with all applicable laws and regulations regarding payments for legal services. As explained in detail above, HUD OIG's claims that PHA is lacking in this area are really an attempt to penalize PHA for declining to waive its attorney-client privilege. HUD OIG declined to identify additional non-privileged documentation is sought despite repeated invitations to do so. PHA therefore disagrees that there are any deficiencies in this area.

B. PHA's Actions At All Times Have Been Consistent with its MTW Agreement and ACCs.

PHA strongly disagrees with that it violated any agreements with HUD by obstructing the audit process. This statement is designed to be inflammatory and simply not supported by any evidence whatsoever. A review of the correspondence between HUD and outside counsel coordinating the audit response clearly shows PHA did not deny HUD OIG access to any information it requested, except privileged information. The Draft Audit does not identify a single request that was not fulfilled. Some information was provided in alternative formats from what HUD OIG contemplated because it was the most expeditious way for it to be produced. HUD OIG did not voice any objections in these circumstances.

PHA assigned counsel to assist with coordinating the audit documentation and response as the subject matter involved various

**Comments 7,
9, 26 and 27**

**Comments 7,
9, 15, 22 and
23**

**Comments 7,
9, 15, 22 and
23**

departments. The requests were voluminous and came at a time when PHA was responding simultaneously to other requests from various entities, including HUD, various governmental entities, the media, and others. In addition to responding to documents requests, PHA staff were working hard to maintain the daily operations of the agency and provide quality services to residents amidst the turmoil. At the entrance conference, PHA made HUD OIG aware that it was already buried in data requests, so the response time for some things might not be immediate, but would be prompt. A review of the record clearly shows that counsel made sure that OIG had prompt access to the requested information. Throughout the audit, PHA or its counsel updated HUD OIG on the status of document requests, and attempted to discuss with HUD OIG the best methods for providing information expeditiously.

Comment 23

For example, HUD OIG requested information supporting various payments to vendors, including contracts. PHA gathered the payment information, which took a few days, and PHA rapidly produced copies of all contracts involved. HUD OIG's response was to assert that it wanted original contract files, not copies, even though HUD OIG's initial request never include a request for originals. PHA promptly transferred the original contract files to HUD OIG.

**Comments 7,
20, 22 and 29**

Further, HUD OIG cites erroneous authorities to support its assertion that agreements were violated. The HUD OIG claims that PHA violated Section VII.C of its MTW agreement entitled "Annual MTW Monitoring Site Visit" and which pertains solely to HUD (not the HUD OIG) and HUD contractors who conduct an annual monitoring visit regarding PHA's MTW program. This audit in no way related to an annual MTW monitoring visit, nor did it concern an assessment of PHA's MTW program, thus there is no possible way that PHA could have violated this provision of the MTW Agreement in connection with this audit.

Comment 25

The Draft Audit also falsely claims that PHA violated provisions of the public housing and housing choice voucher ACCs. The sections of the

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**Comments 7,
22 and 23**

ACCs cited by HUD OIG pertain to providing the United States government with “full and free access... to books, documents, and records of the HA relevant to the administration of the projects” under the ACC. At no time did PHA or its counsel impede such access. As mentioned elsewhere in this response, PHA did decline to waive its attorney-client privilege, but provided all non-privileged documents requested to HUD OIG. As such, there has been no violation of PHA’s MTW Agreement or the ACCs. PHA has cooperated fully with this audit, and any assertion to the contrary is wholly without merit.

C. PHA’s Procedures Adequately Verify Services By Law Firms Before Payment.

Comment 26

As described above, PHA’s invoices are reviewed by a PHA attorney and by contracts administration. Payment is coordinated through PHA’s finance department. If questions arise regarding the services provided, the person reviewing the invoices asks questions and checks with relevant PHA staff. These multiple layers of review ensure that legal invoices are thoroughly reviewed prior to payments being made. We note also that HUD OIG has provided no evidence of any situation in which PHA paid for services that were not received. As such, HUD OIG is without support in its allegation that PHA has insufficient procedures and controls for verifying services by law firms.

D. PHA Did Not Violate HUD’s Conflict of Interest Provisions.

Comment 22

At no time did PHA violate HUD’s conflict of interest provisions with respect to its Board chairman and another law firm. HUD OIG’s findings in this area are riddled with factual errors, and the entire finding is contrary to available evidence.

E. PHA Implemented All Corrective Action That It Agreed To Take in Response To A Prior Audit of Professional Services Contracts.

Comment 27

HUD and HUD OIG would not have closed out prior audit findings had PHA not taken all agreed-upon actions following prior audits. As such,

there is no deficiency in this area.

V. Conclusion

**Comments 4
and 7**

The Draft Audit contains so many factual inaccuracies and mischaracterizations that it is simply not credible. Moreover, HUD OIG repeatedly violated GAGAS and its own requirements governing impartiality and procedures that are designed to ensure that audits are fair and accurate. It is clear that this Draft Audit is designed to attack the PHA Board, staff, and outside legal counsel who have questioned the accuracy of HUD OIG's prior audit findings, rather than identifying legitimate areas of weakness in PHA's oversight of its contractors. This does a disservice to American taxpayers, who deserve answers about the actual conditions at PHA

Comment 20

After a review of thousands of pages of legal contract files, HUD OIG did not make any accusations that contracts were not properly procured using competitive methods or that there was any undue influence in the contracting process. There is also no assertion that PHA outside counsel did not do the work they were paid to do.

Comment 30

PHA received significant value for the work performed by outside counsel. During the period audited by HUD OIG, PHA spent between 2-4% of its total operating budget on outside legal counsel. During the same period, PHA leveraged \$20-30 million annually in non-public housing funds to build tens of thousands of units of public housing. Outside legal counsel was integral to such development activities. Legal work performed by outside counsel has resulted in PHA recovering over \$11 million in lawsuit settlements in the last year alone, which has been used to further PHA's mission to support low income families. Outside counsel has protected PHA from paying untold millions of dollars annually on frivolous claims and ensured that those funds were instead spent on residents. Legal work performed by outside counsel was instrumental in PHA being able to provide supportive services for low-income seniors to enable them to live independently in PHA units that are paid for through the Commonwealth of Pennsylvania, helped

leverage funding for community centers, and overall worked on projects that helped revitalize distressed communities.

Comment 8

PHA emphasizes that its prior decisions regarding use of outside counsel were in all cases consistent with HUD requirements, and with respect to litigation matters, were even approved by HUD. Nonetheless, PHA is revisiting its legal staffing. PHA has also taken significant steps to rebuild its legal department and to assure HUD that it is developing internal controls to oversee and manage its litigation matters and appropriate processes as described in this audit. In early September 2010, PHA obtained a full inventory of matters assigned to outside counsel and, after careful review, discontinued or otherwise resolved engagements not deemed necessary or cost-effective to continue. PHA has already reduced its outside counsel legal expenses by approximately 15% from the same period last year as a result of this action.

Comments 5 and 10

Simply put, it is clear that this hastily prepared, unsupported audit was not designed to promote “positive change” at PHA as the HUD OIG’s mission contemplates, but rather it is part of a politically motivated attempt to undermine the public’s confidence in PHA’s Board, its staff and its outside counsel. This audit is similar to the recent television news story about public housing criticized by the HUD Secretary as “a hatchet job” because it portrayed the program in a poor light based on inaccurate and incomplete facts. HUD OIG’s refusal to correct clearly erroneous statements in the audit is further evidence of HUD OIG’s bias and lack of objectivity. This audit is nothing more than an attempt by the RIGA and his staff to criticize PHA and its outside counsel in response to their attempts over the years to ensure that HUD OIG audits were fair and accurate. Moreover, HUD OIG’s repeated failure to follow its statutory requirements and its own protocols in the preparation of this audit report render the report completely unreliable.

Comments 2, 18 and 19

Comment 8

PHA understands the challenges ahead. In recent months, it has already taken significant steps to enhance its operations and regain the public trust. This baseless audit impedes those efforts. Regardless, PHA has

Comment 8

and is continuing to cooperate fully with HUD OIG and other governmental bodies to provide needed information and documentation as quickly as possible. PHA looks forward to working aggressively to close out the audit findings, so that it may return all of its focus to its mission of serving low income Philadelphia residents and revitalizing Philadelphia neighborhoods.

OIG Evaluation of Auditee Comments

Comment 1 The Authority's contention that it has had "years of undisputed success at revitalizing Philadelphia's public housing and improving conditions for residents" was not the subject of this audit. However, its operations have in fact been questioned by HUD OIG in eight audits conducted over the last 9 years. Some examples follow:

In audit report 2010-PH-1011, HUD OIG reported that the Authority did not ensure that its Section 8 Housing Choice Voucher program units met HUD's housing quality standards. The audit found that 62 of the 67 units (93 percent) statistically selected for review did not meet HUD's minimum standards and 29 units (47 percent) were seriously noncompliant. The Authority's Moving to Work agreement (Section II.E.) and HUD regulations require the Authority to provide public housing that is safe, decent, sanitary, and in good repair.

In audit report 2002-PH-1803, HUD OIG reported that the former executive director failed to follow the Authority's personnel policies and promoted employees or raised their salaries without justification, hired staff without allowing for competition, and created a conflict of interest by hiring the daughter of a member of the board of commissioners, although she was unqualified, to fill a senior position. The Authority's Moving to Work agreement requires it to follow 24 CFR Part 85, which prohibits conflicts of interest and requires competition for obtaining services (Section I.C.).

Audit report 2003-PH-1002 disclosed that the Authority did not always comply with Federal procurement requirements or its own procurement policy when awarding service contracts, processing and approving contract modifications, approving contract payments, and determining which purchases should be under contract. In addition, the Authority split purchases to avoid competing contracts under the competitive award process, all in violation of 24 CFR Part 85.

In audit report 2003-PH-1803, an audit that straddled pre- and post- Moving to Work participation by the Authority, HUD OIG reported that the Authority failed to fully utilize its Section 8 funding although it had about 18,000 families on its waiting list, and otherwise poorly managed its Section 8 program. Since entering the Moving to Work program, the Authority was allowed to combine its Section 8 funds with operating and capital funds.

Lastly, in audit report 2010-PH-1002, HUD OIG reported that the Authority improperly overpaid Section 8 housing assistance and utility allowances.

Comment 2 In accordance with the HUD OIG Audit Operations Manual, in an exceptional case, such as if substantial revisions to the draft are required based on the exit conference, the Regional Inspector General for Audit (RIGA), at his discretion,

may provide a revised draft to the auditee for formal comment. However, only minor changes needed to be made to the draft audit report based on the exit conference.

With the exception of Board Chairman John Street's reading of a prepared statement at the beginning of the meeting, and asking some questions later in the meeting, the Authority's objections to the audit report were presented solely by its outside counsel. The outside attorney's comments at the exit conference are consistent with the Authority's written reply to the audit report. The Authority did provide some additional documentation on February 16, 2011, along with its written reply and on February 18, 2011. We reviewed this material and made only minor revisions to the report after considering the additional documentation. Since the changes did not affect our overall conclusions, there was no need to provide a revised draft report to the Authority for formal comment. The Authority provided additional invoices via e-mail on February 25, 2011, however, since the audit was completed, we provided the documentation to HUD officials for a final determination and their consideration in formulating a proposed management decision for recommendation 1B.

Comment 3 We included the Authority's reply in its entirety in this final report as appendix B.

Comment 4 The very broad and vague allegations in this paragraph are without merit. No credible example of the alleged violations is presented in the Authority's response. We conducted the audit in accordance with generally accepted government auditing standards.

Comment 5 The Authority states that it is common knowledge that HUD OIG has had a contentious relationship with the former executive director going back over a decade. We are unclear as to what support it has for this statement or what exactly this means. In reality, during all of our prior audits there was little or no interaction with the former executive director because he insisted that we interact instead with his outside attorneys. On several audits, the outside attorneys presented the Authority's official objections to our audit recommendations on their own letterhead, and signed the Authority's official written reply to the draft audit report as a substitute for the former executive director.

Comment 6 HUD OIG has performed numerous audits in accordance with generally accepted government auditing standards and made numerous recommendations for improvement to the Authority's operations. The Authority's vague claim of wanting to "put old disputes behind it" certainly does not relieve it of its responsibility to make the operational improvements recommended in this and other previous HUD OIG audits. These are problems which, unfortunately in many cases, continue to exist and put significant sums of taxpayer funds at risk.

Comment 7 We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to

obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. The audit included tests of internal controls that we considered necessary under the circumstances.

On January 14, 2010, Board Chairman John F. Street signed the annual Moving to Work Certification of Compliance on behalf of the Authority's Board of Commissioners. In signing the certification, Chairman Street certified that all the information stated therein, "is true and accurate."⁶ Among the certifications made by the chairman on behalf of the Authority in the document in question are the following:

- The Authority will keep records in accordance with 24 CFR 85.20 and facilitate an effective audit to determine compliance with program requirements.
- The Authority will comply with the policies, guidelines, and requirements of OMB Circular No. A-87 (Cost Principles for State, Local, and Indian Tribal Governments) and 24 CFR Part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments)...

Pennsylvania State law also provides elaboration on what is expected of the board of directors of a nonprofit corporation operating within the Commonwealth. For example, 15 Pa.C.S. §5712 "Standard of care and justifiable reliance" states in part that, (a) DIRECTORS.—A director of a nonprofit corporation shall stand in a *fiduciary relationship* to the corporation and shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, *in good faith, in a manner he reasonably believes to be in the best interests of the corporation and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances.* In performing his duties, a director shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data..."⁷ Therefore, under Pennsylvania State law the members of the Authority's board of commissioners owe a fiduciary duty to the Authority.⁸

⁶ The certification included the warning that "HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 USC 1001, 1010, 1012; 31 USC 3729, 3802)"

⁷ Italics are not original.

⁸ See also 15 Pa.C.S. §5715, "In discharging the duties of their respective positions, the board of directors, committees of the board and individual directors of a nonprofit corporation may, in considering the best interests of the corporation, consider to the extent they deem appropriate: (1) The effects of any action upon any or all groups affected by such action... (2) The short-term and long-term interests of the corporation... (4) All other pertinent factors."

Comment 8 The Authority ultimately came to a realization that it needed to hire a new executive director and then did so. In this regard, the new interim executive director has publicly stated that a number of steps are needed to correct many serious existing problems. We completely agree with him on this. The three areas the new interim executive director mentions are: (1) creating a culture of respect, (2) back to basics, and (3) transparency and accountability. These are indeed areas that are deficient and extremely serious problems that the Authority needs to immediately correct. HUD OIG audits have attempted to assist the Authority in acknowledging and accomplishing these very same goals over the years.

Comment 9 The Authority paid \$30.5 million for outside legal services provided by 15 law firms during the period April 2007 through August 2010 (see appendix C). We reviewed 472 invoices totaling \$4.5 million in payments made by the Authority for legal services during the period, of which all but \$11,800 was unsupported because the Authority did not provide adequate documentation to evidence that the services invoiced and payments made were in accordance with the contract terms and HUD requirements. Appendix D shows the overall results of our review. The Authority's outside attorneys asserted that the documents provided were responsive to our request, but also withheld some information, citing attorney-client privilege. The information provided was not sufficient to ascertain if the legal services were legitimate, necessary, reasonable expenses to be paid for with Federal funds. Critical information such as the attorney's name, the billing rate, the number of hours, and the date and time that the services were provided were missing. This information is not considered privileged information. We estimated that at least \$1.1 million in costs were not reasonable and necessary. These fees were for routine matters dealing with our audits that are typically performed by lower level staff at other housing authorities that we've audited. Documents that were routinely provided on similar audits often were requested for this audit by the auditors and then not provided by the attorneys. When the documents were provided, it often took an inordinate amount of time to coordinate the delivery and acceptance of the documents from the outside attorneys. Such interference obstructed the efficient conduct of our audits without benefiting the Authority's housing programs.

Comment 10 HUD OIG does not question the Authority's right to obtain outside legal services or to invoke attorney-client privilege when warranted. However, as a HUD spokesperson has also recently similarly articulated, these legal services must be reasonable, necessary and supported when taxpayer dollars are at stake. The Authority's claims of attorney-client privilege must be adequately justified and supported. Attorney billing statements and time records do not enjoy *carte blanche* protections of attorney-client or attorney-work product protections. An excellent article on the subject of attorney-client privilege appeared in the American Bar Association Law Practice Management Section's Law Practice TODAY in December 2006. The article, authored by Ballard Spahr Andrews & Ingersoll, LLP partner Carl Roberts, of the Philadelphia office, makes the point

that only communications pertaining to legal advice, not the underlying facts, are protected by the privilege. “Attorney billing statements and time records are protected by the attorney-client privilege only to the extent that they reveal litigation strategy of/or the nature of services performed” (citation omitted). We requested from the Authority the underlying facts related to its use of outside law firms, not anything even remotely protected by attorney-client privilege.

Also, regarding an assertion of privilege to attorney billing statements, the United States District Court for the Eastern District of Pennsylvania held:

For example, a typical time sheet may contain several different pieces of information, **such as the attorney’s name, the client’s name, the general matter being worked on if the attorney has represented the client on more than one matter, the date and time the services were provided** as well as a description of the actual legal services performed. In this example only the last item of information would generally be protected under the attorney-client privilege.

Leach v. Quality Health Svcs., et al, 162 F.R.D. 499, 501 (E.D. Pa. 1995)

The information bolded above is exactly the nature of the information required to ascertain if the legal services billed for were legitimate, necessary, and reasonable expenses to be paid for with Federal funds. What is privileged is information that divulges strategy, work product or other confidential information. It is for these reasons that the auditor did not respond to counsel’s suggestion. Counsel had made it clear that the Authority would not provide any additional documentation to support payments.

HUD OIG has reviewed all correspondence and other documentation the Authority provided both during the audit and after the audit exit conference, and has correctly categorized the \$4.5 million reviewed as unsupported costs in appendix A to this audit report. Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a 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. To the extent HUD officials believe that the correspondence and other statements included in the Authority’s official response to this audit report are relevant to HUD’s proposed management decision on the eligibility of the \$4.5 million in unsupported payments the audit identified, they will duly consider them. It is important for responsible HUD officials to also consider in their proposed management decision, that the Authority paid 142 of 472 invoices (30 percent) using block billing which is

prohibited by its contracts with the law firms, and paid 134 invoices, but did not provide the HUD OIG with even redacted or incomplete copies of the invoices to support its payments. As stated above, we reviewed 472 invoices totaling \$4.5 million in payments made by the Authority for legal services during the period, of which all but \$11,800 was unsupported because the Authority did not provide adequate documentation to evidence that the services invoiced and payments made were in accordance with the contract terms and HUD requirements. The Authority's outside attorneys asserted that the documents provided were responsive to our request, but also withheld some information, citing attorney-client privilege. Appendix D shows the overall results of our review of these payments.

Comment 11 The audit survey is the initial phase of an audit for quickly gathering information pertaining to an organization, program, activity, or function to satisfy the general audit objective without performing detailed audit verification. The survey is directed at identifying areas of materiality and sensitivity; identifying key aspects and features of the entity or program targeted for audit; and disclosing controls and areas that are susceptible to error, illegal acts, or abuse. The results of the survey work are used to refine the general audit objectives, establish the scope of the audit work to be performed, develop an audit program, and determine whether an audit is necessary or to suspend the assignment. As the Authority states, although the survey included payments for professional, consulting and legal services, we refined our objective to include only fees for outside legal services and did not pursue a detailed review of the fees for professional or consulting services in the audit. We did so because the survey disclosed controls and areas related to payments to outside attorneys that in the professional judgment of the OIG were immediately susceptible to error and/or abuse. This is standard practice and is consistent with generally accepted government auditing standards. HUD OIG reserves the right to audit the Authority's fees for other professional and consulting services in the future.

Due to the fact that the Authority continued to use outside attorneys to obstruct the progress of the audit, we were unable to communicate in a constructive and timely manner with responsible Authority officials. We requested complete documentation to support payments for legal services. Counsel asserted that the Authority's payments for outside legal services were eligible and supported, but refused to provide documentation to demonstrate that the legal services were legitimate, necessary, and reasonable, citing attorney-client privilege. Therefore, HUD OIG served the Authority with a subpoena on December 10, 2010, which clearly identified to the Authority and its outside attorneys the focus of the audit. The Authority's outside counsel unfortunately did not comply with the subpoena and continued to assert that the Authority's payments for outside legal services were eligible and supported, but refused to provide the majority of the supporting documentation that we requested, citing attorney-client privilege. The Authority, however, gave no reason why it had not responded to the auditors' repeated requests for other data and information, some of which dated back to August

2010. A demand for these records was included in our subpoena. The Authority's outside counsel provided only limited additional information in response to the subpoena, but continued to assert that it had provided all information and data access that we had requested.

Comment 12 The Authority contends that if it chooses not to enforce its own contract provisions contained in Part V that are designed to ensure that its payments for outside legal services are supported, reasonable and necessary, it does not have to do so. HUD OIG considers this apparent disregard for contractual requirements to be a material internal control weakness. Part V is included as part of each legal contract issued by the Authority. Title 24 CFR 85.36 (b)(2), requires that the Authority ensure each vendor perform in accordance with its contract requirements. Further, the Philadelphia Housing Authority Legal Department Guidelines for Outside Counsel (Contract Part V) provides guidelines under which the Authority will agree to be billed. The guidelines are designed to ensure that firms are only paid for allowable and reasonable expenses and prohibit payments for certain normal overhead expenses such as facsimile charges, local travel, and local phone calls. In addition, the guidelines state that the Authority will not pay for fees or expenses that are contained within a block billing description. That is, each line of a legal bill must contain the description of one task per time entry.

Comment 13 The Authority represented to the auditors that the block-billed invoices were complete support for the outside legal payments and did not inform the auditors that the invoices it provided were "summary pages" subject to attorney-client privilege. In either case however, subject to further support or justification, the outside legal payments shown on these invoices are considered unsupported at this point in time.

Comment 14 Although the Authority's normal practice was to heavily redact and remove all private and confidential information from documentation it provided to HUD OIG, it appears it may have inadvertently left sensitive information⁹ on one of the invoices that it provided. We have removed that information from the example of prohibited block billing that was in the draft audit report that was presented to the Authority strictly for discussion and comment only. We informed the Authority in the letter transmitting the draft report that we require officials who receive draft audit reports for review and comment to exercise due care to avoid premature or otherwise improper disclosure of the information contained in such reports. Draft reports may not be released without the express written approval of the Assistant

⁹ The Authority references the Privacy Act in its response. However, that statute does not apply in this instance. The Privacy Act defines an "individual" as a citizen of the United States or an alien lawfully admitted for permanent residence. The term "individual" is used in the Privacy Act instead of the term "person" in order to distinguish between rights which are given to citizens as individuals under the Act and rights of proprietorships, businesses and corporations which are not intended to be covered by the Act. *OKC Corp. v Williams* (1978, ND Tex) 461 F Supp 540, CCH Fed Secur L Rep P 96745.

Inspector General for Audit. We informed the Authority that reproduction of the report without our knowledge or consent was prohibited.

It is worth noting that on another recent audit, HUD OIG was compelled to enforce a subpoena in the United States District Court for the Eastern District of Pennsylvania to obtain Privacy Act information from the Authority, so it is quite surprising that it inadvertently left this type of information on an invoice that it provided to us. On this other audit, the Authority's outside attorney refused to provide 28 partial Social Security numbers requested by the auditor to perform public record searches to perform a common audit test. This common audit test is designed to detect apparent conflict of interest situations involving responsible Authority officials and contractors doing business with the Authority. We requested the information in our audit notification letter dated April 9, 2010, and reiterated the need for the information during a May 19, 2010, audit status meeting, and several additional communications with the outside attorney throughout the audit. Since the Authority's outside attorney continued to refuse to provide the information, on November 9, 2010, the United States Attorney's Office petitioned for summary enforcement of the subpoena on behalf of HUD OIG. After a court hearing, in a written opinion, the court ordered that the petition for summary enforcement of the subpoena be granted on February 4, 2011. The Authority's unwarranted denial of access to records and other conditions imposed by the Authority caused needless delays and required HUD OIG to enforce the subpoena in court to effectively carry out its statutory responsibilities.

Comment 15 The tasks and items that the Authority lists were commonly handled by in-house staff on other HUD OIG audits much more efficiently and effectively than we experienced with the Authority's outside attorneys. Additionally, based on our review of the invoices the Authority provided for the audit period of April 2007 through August 2010, we determined that the Authority paid the firm of Schnader Harrison Segal & Lewis LLP at least \$672,000 for services it performed on our two recent audits of the Authority's Housing Choice Voucher program. It also paid this same firm at least \$91,000 for work it did on our ongoing audit of Recovery Act capital funds used to rehabilitate its scattered site housing. Invoices from Ballard Spahr Andrews & Ingersoll, LLP showed that it was paid \$326,000 for work on HUD OIG audits during the audit period April 2007 until August 2010, but the invoices did not identify costs to the specific audit. In contrast, salary and benefit costs for the HUD OIG staff that worked on the audits of the Authority's Housing Choice Voucher program totaled about \$321,000. The Authority paid one of the law firms more than twice as much to assist it on the two audits as it cost HUD OIG to perform the audits. This excessive cost was certainly not reasonable or necessary for the taxpayer.

Comment 16 Our auditor and appraiser were sometimes accompanied by up to three outside attorneys on housing quality inspections. The Authority acknowledges that this occurred in "only a few instances" and implies that therefore it was not a problem.

During those inspections, the Authority also had its in-house housing experts, non-attorneys, accompany our staff and it was these individuals who made comments and answered questions from our staff. At \$330 per hour for each attorney, the cost for outside counsel to participate in the inspections was nearly \$8,000 for just one day. The attorneys had no expertise in housing inspections, asked no questions, and did nothing but occasionally take notes. Further, the sheer number of persons involved with the inspections, entering and walking through the homes, became difficult for tenants to tolerate. In the view of HUD OIG, a single occurrence was a problem and an unreasonable and unnecessary cost to the taxpayer. These taxpayer dollars could have been much better spent housing low-income families rather than spent on outside attorneys to simply tour the homes of low-income families.

Comment 17 The Authority states that the total potential funds at risk for recapture during these two audits were \$490 million and that it has repaid \$9,000. We do not know how the Authority arrived at these figures, and the Authority has not shared its methodology with us. We are confident however, that if the Authority reasonably complies with all applicable HUD regulations, it is not in danger of having HUD recapture its funds, and has absolutely no need to spend huge sums on expensive outside attorneys to assist it on HUD OIG audits.

Comment 18 The allegations in this paragraph are without merit. The HUD OIG senior auditor who was in charge of this audit has performed numerous audits of the Housing Choice Voucher program at this and other housing authorities in an objective, efficient, and effective manner. He has more than 15 years of auditing experience in the Federal government and more than 14 years of auditing experience in the private sector, and performed countless audits objectively, efficiently and effectively. He is a certified information systems auditor and a certified public accountant. The fact that the senior auditor led other recent audits at the Authority only served to sharpen his keen knowledge and insight into the Authority's operations and in no way impaired his objectivity.

Comment 19 The RIGA and the Assistant Regional Inspector General (ARIGA) have more than 50 combined years of auditing experience in the Federal government. They have accomplished and managed many successful and objective audits throughout their long Federal auditing careers. The allegation from 2002 that the HUD OIG auditor mishandled alleged privileged information is simply unfounded and blatantly false. The former RIGA appropriately responded to this allegation at the time by informing the outside counsel that there was no ethical or any other type of violation and that the records in question were not subject to privilege. No one at the Authority had even asserted a privilege with respect to any attorney invoices. The former RIGA reminded the outside attorney that the attorney-client privilege "belongs to the client, not the attorney." Moreover, in light of the Federal Government's right of access to the records, we questioned whether a privilege would be applicable if one even existed.

Additionally, even if a privilege had existed with respect to the invoices or billing records, such privilege was waived by the Authority's actions. The Authority's director of finance provided the auditors with full access to all accounts payable information in order to facilitate the disbursement review of the contracts. In fact, the finance director was fully aware that the auditors were copying attorney billings for one of the contracts being reviewed and at no time did the finance director raise any objections to our obtaining the records.

The additional implication that the former RIGA left office shortly thereafter because of this alleged improper incident is obviously patently false and again not relevant to this audit. Tactics of this type are illustrative of those employed over the years by the Authority's outside counsel and served only to obstruct our ability to carry out lawful audit activities and to cloud the serious issues at hand. Unfortunately, such tactics divert significant energy and scarce resources away from fixing the Authority's current serious problems. The Authority states that the RIGA and ARIGA have worked on audits with the Authority that were "contentious." There have been disagreements over the years between HUD OIG and the Authority on audit related matters as there are on many HUD OIG audits involving entities that receive HUD funds. The main difference between the Authority and the other entities we have audited is its excessive use of outside attorneys which have obstructed the progress of our audits. The fact that the RIGA and the ARIGA worked on prior audits at the Authority served to help them develop a very clear and objective insight into the Authority's operations.

Comment 20 The overall HUD OIG conclusion that the Authority failed to provide evidence that it obtained required HUD approval for most of its legal settlements did not change based on the additional documentation provided by the Authority after the exit conference. The Authority provided evidence of HUD approval of 6 settlements, however, only 4 of the 6 corresponded to settlements included in the list of the 33 settlements listed on its Web site. The other two settlements were not listed on the Authority's Web site. In addition, after the exit conference, HUD Regional Counsel provided copies of approval letters for 22 (which includes the 4 letters that the Authority provided after the exit conference) of the 33 cases. HUD Regional Counsel did not have any record of approving any of the 234 additional cases identified by the Authority during the audit. The Authority states that it does not need HUD approval for cases covered by its insurance carrier. This is correct. However, the Authority did not provide documentation to demonstrate that in 245 cases (11 from the Web site plus the other 234) the costs of litigation, settlement and judgment were entirely covered by an insurance policy.

Also, there is also some question as to whether or not the HUD Regional Counsel was even provided with any notice of these matters while they remained pending.¹⁰ We believe that the Authority violated the terms of its Moving to

¹⁰ The apparent failure of the Authority to inform the HUD Regional Counsel of the threat of litigation, of ongoing litigation, and of the settlement of such litigation also impacted the U.S. Department of Justice's (DOJ) and HUD

Work Agreement by failing to follow the guidelines established by HUD Handbook 1530.01, REV-5.¹¹

Comment 21 The Authority's outside counsel either misunderstood or perhaps did not hear the entire discussion. HUD OIG repeatedly informed her during the meeting that in accordance with the HUD OIG Audit Operations Manual (a document from which counsel often quotes), in an exceptional case, such as if substantial revisions to the draft are required based on the exit conference, the RIGA may provide a revised draft to the auditee for formal comment. HUD OIG informed her that based on what we had heard at the exit conference we did not believe that the finding would be removed from the report. We informed her that our normal procedure required that all supporting documentation provided by the Authority immediately after the exit conference would be reviewed by the auditors and considered in the final audit report. We did in fact consider the additional documentation provided immediately after the exit conference and made necessary revisions to the audit report. However, only minor revisions were needed. Since the revisions were minor, there was no need to provide a revised draft report to the Authority for formal comment. The allegation that HUD OIG made a statement that it would include blatantly false information in the report is not true. Again, the allegations of personal impairments are blatantly false.

Comment 22 Documentation provided by the Authority in its letter of April 19, 2004, showed that Mr. Street was granted a waiver of the conflict of interest provision of Section 19 A (iii) of the Public Housing annual contributions contract for him to serve as an Authority board commissioner. HUD never received a request for a conflict of interest waiver for the Authority to hire his son, Sharif Street, or any law firm with which he was associated. HUD did not issue a waiver to the Authority in connection with its engagement of legal services by Wolf Block while Sharif Street was employed by the firm.

Section 19 of the annual contributions contract that the Authority signed with HUD addresses conflicts of interest. It states in part at (A)(1) that,

In addition to any other applicable conflict of interest requirements, neither the housing agency nor any of its contractors or their subcontractors may enter into any contract, subcontract, or arrangement in connection with a project

Office of General Counsel's authorities. As an example, Handbook Section 2-4, which addresses defensive litigation, states at (h)(4) that "It is both HUD's and DOJ's policy to enter a settlement agreement or consent decree only where it is consistent with HUD's authority, and in the Government's interest to do so." Additionally, "All settlements of Federal Party Litigation must be approved by DOJ." Furthermore, at subparagraph (b) this section provides that "When other parties propose settlement, the Litigating Associate or Regional Counsel shall consult appropriate Program Officials and Program Counsel regarding their recommendations for the Department's position on the offer..." In short, it seems per the HUD Handbook that HUD has rights which may not have been protected in these matters.

¹¹ See Moving to Work Agreement VIII.B.4. It is also possible that the Authority also concurrently violated section VIII (B)(3) for using Federal funds subject to the Moving to Work Agreement for the unauthorized purpose of providing the monies for settlement.

under this annual contributions contract in which any of the following classes of people has an interest, direct or indirect, during his or her tenure or for one year thereafter.

Among the classes of people covered are “Any present or former member or officer of the governing body of the Authority, or any other member of the officer’s immediate family.”¹² Furthermore, the annual contributions contract provides that a member of the covered classes must disclose the member’s interest or prospective interest to the housing authority and HUD, and that the requirements of the section “may be waived by HUD for good cause, if permitted under State and local law.” Although, the annual contributions contract goes on to caution that, “*No person for whom a waiver is required may exercise responsibilities or functions with respect to the contract to which the waiver pertains.*”¹³

Departmental regulations also address conflicts of interest in procurement matters in strong terms at 24 CFR 85.36. That section at (b)(3) states in part that,

No employee, officer or agent of the grantee or subgrantee *shall participate in selection, or in the award* or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his immediate family,
- (iii) His or her partner, or
- (iv) An organization which employs, or is about to employ any of the above, has a financial or other interest in the firm selected for award...

Furthermore, HUD directs grantees and subgrantees to punish any violators of the above: “To the extent permitted by State and local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee’s and subgrantee’s officers, employees, or agents, or by contractors or their agents.”¹⁴

John F. Street was elected to be the 97th mayor of the City of Philadelphia and took office on January 3, 2000. Mayor Street was elected to a second term and

¹² The annual contributions contract defines “immediate family member” at 19(D) as “the spouse, mother, father, brother, sister, or child of a covered class member...”

¹³ Without any doubt, voting in favor of a contract with which an immediate family member has an interest would violate the quoted language.

¹⁴ 24 CFR 85.36(b)(3).

left office on January 7, 2008. During Mr. Street's time serving as mayor the former executive director of the Authority, Carl Greene, submitted a request to HUD to waive the annual contributions contract's prohibitions on conflicts of interest, in order for then-Mayor Street to join the Authority's board of commissioners. Mr. Greene submitted the request for waiver on April 19, 2004. Mayor Street's son, Sharif Street, was at that time employed as an associate attorney by the law firm of Wolf Block Schorr & Solis-Cohen (Wolf Block).¹⁵ Wolf Block had at the time of the request several current and active contracts for the provision of legal services to the Authority.

Appended to Mr. Greene's conflict of interest waiver request was a memorandum on the matter authored and signed by the Authority's General Counsel Leigh A. Poltrock and addressed to HUD. The memorandum sought to demonstrate, in part, that a waiver by HUD would be permitted under State and local law.¹⁶ The General Counsel noted that the Pennsylvania Public Official and Employee Ethics Act regulates conflicts of interest of this nature within the Commonwealth of Pennsylvania. Turning to that statute, 65 Pa. C.S.A. §1102 defines a "conflict of interest," in part, as the use by a public official of the authority of his office for the pecuniary benefit of: (1) himself; or (2) a member of his immediate family; or (3) *a business with which he or a member of his immediate family is associated.*¹⁷

The General Counsel's memorandum continued advising that Section 1103 of Title 65 lists 10 specifically restricted activities, 2 of which could be applicable to the (then) mayor's activities on the board of commissioners. First, 65 Pa. C.S.A. §1103(f) states in relevant part that:

(f) Contract.- No public official or public employee or his spouse or child or any business in which the person or his spouse or child is associated shall enter into any contract valued at \$500 or more with the governmental body with which the public official or public employee is associated or any subcontract valued at \$500 or more with any person who has been awarded a contract with the governmental body with which the public official or public employee is associated, *unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded...*¹⁸

The General Counsel noted that if any issues pertaining to the ongoing Wolf Block contracts were to come before the board of commissioners the above would not prohibit the mayor from engaging in related activities of the board, he would

¹⁵ It is the understanding of HUD OIG that on March 23, 2009, the firm's partners voted to dissolve the partnership.

¹⁶ HUD's waiver did not extend to provisions of State law. Obviously, HUD lacks the authority to waive State law. Rather, HUD's waiver was of Section 19 of the Authority's annual contributions contract and only addressed then Mayor Street's ability to serve on the board as mayor.

¹⁷ Italics not original.

¹⁸ Italics not original.

simply be prohibited from having any supervisory role or other responsibility for the implementation of such contracts. The other relevant section from 65 Pa. C.S.A. §1103 discussed by the Authority's General Counsel addressed voting conflicts. The relevant portion states that:

(j) Voting conflict.- ... Any public official or public employee who in the discharge of his official duties would be required to vote on a matter that would result in a conflict of interest *shall abstain from voting* and, prior to the vote being taken, publicly announce and disclose the nature of his interest as a public record in a written memorandum filed with the person responsible for recording the minutes of the meeting at which the vote is taken...¹⁹

As the Authority's general counsel noted in her memorandum, this section would prohibit Mr. Street from voting on any issue relating to Wolf Block's contracts with the Authority, as well as voting on any other matter where a conflict of interest might exist.²⁰ Mr. Street would be compelled to abstain on any such vote.

However, based on board minutes, on five occasions during our audit period, Mr. Street voted to approve Wolf Block's contracts with the Authority.²¹ These votes occurred between December 16, 2004, and January 31, 2007. At each and every board meeting wherein a contract for Wolf Block was part of the agenda, Authority Board Chairman Street voted "aye," or yes, on *all* five of these contracts.²² Furthermore, at each and every such vote Mr. Street was concurrently serving as the *chairman* of the board of commissioners.

¹⁹ Italics not original.

²⁰ Note that 24 CFR 85.36(b)(1) would apply 65 Pa. C.S.A. §1103 to Federal monies, and would similarly prevent Mr. Street from voting on the contracts in question. That section states that "(1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section."

²¹ HUD OIG understands that Chairman Street's son was an associate in the affordable housing group of Wolf Block until March 2008. In reviewing 185 invoices/payments for Wolf Block, from 5 contracts totaling approximately \$923,000, Chairman Street's son was included in each of the 5 contracts. Unfortunately, HUD OIG was unable to determine the full extent of the son's billings to the Authority because the Authority failed to provide support for its payments to its outside law firms. However, the HUD OIG audit did identify one invoice that included hours charged directly by the family member. The charge was for 37.6 hours at \$250 per hour, for a total of \$9,400. HUD OIG also notes that 45 of the firm's 185 invoices contained prohibited block billing, and therefore, did not include the names, hours, or amount attributed to the specific individuals charging time.

²² The relevant contracts Chairman Street voted on are:

- 1) PHA Contract 003281B, with a maximum contract amount of \$5,000,000, approved by board resolution 11017 on December 16, 2004;
- 2) PHA Contract 003459D, with a maximum contract amount of \$4,500,000, approved by board resolution 11060 on June 16, 2005;
- 3) PHA Contract 003486A, with a maximum contract amount of \$7,500,000, approved by board resolution 11073 on September 15, 2005;
- 4) PHA Contract 003486H, with a maximum contract amount of \$5,000,000, approved by board resolution 11084 on October 24, 2005; and,
- 5) PHA Contract 003598B, with a maximum contract amount of \$7,500,000, approved by board resolution 11154 on January 31, 2007.

Mr. Street's role as chairman of the board of commissioners for the Authority makes his actions more egregious. The five contracts Chairman Street voted in favor of had a combined total maximum contract amount of \$29.5 million. In voting on these contracts, and in particular by voting in favor of these contracts, Chairman Street and the Authority violated Section 19 of its annual contributions contract with HUD, as well as Pennsylvania State law.²³ Consequently, for all of the reasons above, Chairman Street and the Authority may have violated Article III of the Moving to Work agreement which became active on April 1, 2001.²⁴

HUD's Office of Regional Counsel reviews all litigation services contracts to assure that they contain adequate protection against fraud and abuse and all mandatory provisions required for personal services contracts for the program or activity giving rise to the litigation, and that the legal fees charged are reasonable for the services rendered.

On February 14, 2011, HUD's Assistant Secretary for Public and Indian Housing sent a letter to Chairman Street restating the Department's position that it granted a waiver of the conflict of interest provision of Section 19 A (iii) of the Public Housing Annual Contributions Contract for then-Mayor Street to serve as a member of the Authority's board of commissioners. HUD OIG exerted no pressure for the letter to be sent.

We initially did not have the correct date that Chairman Street's son ended his employment with the firm in the draft audit report. We have revised the date from the draft report that was initially presented to the Authority strictly for discussion and comment only. This change did not impact the conclusion on this matter in any way however because Chairman Street voted to award all five contracts during the period December 2004 to January 2007 while his son was employed by the firm.

Comment 23 The Authority states that "there is not a scintilla of evidence" that it did not work cooperatively with the auditor. HUD OIG disagrees. The Authority's lack of cooperation through its outside legal counsel came in many forms and was manifested in many ways. The outside counsel mainly obstructed the audit by refusing to provide HUD OIG auditors with "full and free" access to responsible employees and officials and the billing records that the outside law firms had submitted to the Authority, and then suggested that the auditors' interest in such records evidenced their alleged bad faith. The Authority's claim that all of the missing support for outside legal payments is somehow related to its yet

²³ Chairman Street's appointment to the board of commissioners will expire on September 20, 2011.

²⁴ The Authority's Moving to Work Agreement of April 1, 2001 (signed on February 28, 2002), Article III, Default" provides that default is defined as "Use of funds subject to this Agreement for a purpose other than as authorized by this Agreement; noncompliance with legislative, regulatory, or other requirements applicable to this Agreement; other material breach..." This language mirrors that found in the current Moving to Work Agreement at VIII(B)(3), (B)(4) and (B)(5).

unsupported claim of “attorney client privilege” is not supported by the audit evidence. In this regard, it is important to consider that the Authority paid 142 of 472 invoices (30 percent) using block billing which is prohibited by its contracts with the law firms, and paid at least 134 invoices, without providing HUD OIG even redacted or incomplete copies of the invoices to support the payments. It appears that counsel expects HUD OIG to accept its verbal assurance that millions of Federal tax dollars were paid to them with little or no documentation provided to support the payments.

For a specific example to disprove the Authority’s claim that there was not a “scintilla of evidence” that it did not work cooperatively with the auditor, we present an e-mail from the auditor to responsible Authority officials and their outside counsel on November 30, 2010, with which the Authority never fully complied. The e-mail states:

Previously, we requested PHA to provide various data, documentation, and scheduling of interviews with PHA personnel. (Additional detail is contained in my prior emails regarding the various data/information requests listed below). Our requests and repeated follow-ups, both verbal and by email, have been, in all cases, directed to you, in accordance with PHA imposed restrictions regarding such requests. However, regarding the items requested in the following list, PHA has provided little or no meaningful response.

Once again, please provide me with a date(s) as to when the OIG can meet with the individuals indicated and when the OIG can expect to receive the previously requested data/information or a detailed explanation as to why PHA will not provide the requested data/information.

November 17, 2010:

- *Meeting requested with Ms. Helen Ferris.*
- *Meeting with someone from finance who can discuss/explain certain of PHA’s general ledger descriptions taken from data download provided by PHA.*

November 12, 2010:

- *Explanation of the basis for invoices from Flaster Greenberg, PC, to the Housing Authority Risk Retention Group being included in the invoices that Flaster Greenberg sent to PHA in response to Ms. Shelly James’s request.*

November 9, 2010:

- *HUD Office of the Regional Counsel, in a letter dated December 05, 2005 regarding contracts 003459, and in a letter dated January 25, 2006 regarding contracts 003486 urged the inclusion of the Addendum to Engagement Agreement found in HUD Notice 2003-24 (HA). We requested an explanation as to why such addendum was not included as part of the contracts.*

November 8, 2010:

- *Copy of the PHA travel reimbursement policy and guidelines applicable to travel of persons providing contracted professional and consulting services during the period of April 1, 2007 through August 31, 2010 including all changes made to the policy and guidelines during that time period.*

October 29, 2010:

- *List of legal settlements during the audit period (April 1, 2007 through August 31, 2010) on behalf of PHA.*
- *Copy of recent legal contracts submitted by PHA to HUD for approval along with related requests and authority response(s) to any related HUD correspondence.*

August 27, 2010:

- *Download of PHA accounts payable records.*

The Authority claims that responsive information was always provided to HUD OIG. However, this was not always the case. We requested complete documentation to support payments for legal services. The Authority's outside counsel asserted that the documents provided were responsive to our request, but also withheld some information, citing attorney-client privilege. Counsel asserted that the Authority's payments for outside legal services were eligible and supported, but refused to provide documentation to demonstrate that the legal services were legitimate, necessary, and reasonable. The information provided was not sufficient to ascertain if the legal services were legitimate, necessary, reasonable expenses to be paid for with Federal funds.

Comment 24 The Authority has provided copies of written correspondence and e-mails and makes other claims that it asserts indicated that it worked cooperatively with HUD OIG to fulfill its document requests. There was, of course, by necessity, some communication between HUD OIG and the Authority's outside attorneys as

the auditors attempted to perform the audit. Ultimately the responses from the attorneys simply served to delay the progress of the audit and on December 10, 2010, HUD OIG had to serve the Authority with a subpoena to obtain information and documentation.

We requested an automated download of the Authority's accounts payable file (subsidiary ledger) for the audit period. The documents that the Authority provided were not responsive to this request. The Authority's outside counsel stated that the Authority does not maintain a separate accounts payable file. This is contrary to generally accepted accounting principles for an entity on the accrual basis of accounting and is contradicted by the Authority's general ledger trial balances for such accounts. An accounts payable subsidiary ledger contains the detail transaction history and amounts of individual customer accounts which tie into the control account and the general ledger. The Authority's disbursement file, or register, is not the equivalent of an accounts payable file. The disbursements file shows only payments that were generated, not the individual transactions and amounts.

We requested read-only access to the Authority's computer system, specifically, its general ledger, contracts register/database, accounts payable records, and its disbursement register. The documents that the Authority provided were not responsive to this request. The Authority opted to provide selected listings in lieu of the requested access. Because of the Authority's refusal to provide the requested access and because of the limitations imposed by its decision to provide only selected information/data, we were unable to determine the completeness and reliability of information/data that the Authority provided and whether an adequate audit trail existed.

During the audit, the Authority's outside counsel repeatedly stated that **it** would provide only those documents and information that **it** unilaterally determined would satisfy our requests for information/documentation. For example, regarding payments for legal services, we requested **original** invoices including **all** supporting documentation. The copies of invoices that the Authority provided were not responsive to this request. Moreover, although the Authority provided some documentation such as contracts and related documents, we could not verify the completeness and reliability of the information provided because the Authority denied the auditors access to the filing cabinets and office areas where the files were stored.

Comment 25 Based on our review of the invoices the Authority provided for the audit period of April 2007 through August 2010, we determined that the Authority paid the firm of Schnader Harrison Segal & Lewis LLP at least \$672,000 for services it performed on our two recent audits of the Authority's Housing Choice Voucher program. In contrast, salary and benefit costs for the HUD OIG staff that worked on the audits of the Authority's Housing Choice Voucher program totaled about \$321,000. The Authority paid just one of the two law firms working on these

audits more than twice as much to assist it on the two audits as it cost HUD OIG to perform the audits. Invoices from the firm Ballard Spahr Andrews & Ingersoll, LLP showed it was paid \$326,000 for work on HUD OIG audits during the audit period April 2007 until August 2010, but the invoices did not identify costs to the specific audit. This excessive duplicative cost was certainly not reasonable or necessary. In this regard, the reference to the Housing Choice Voucher program regulation is relevant because the costs for these legal services were related to the program. Moreover, the regulations at 24 CFR 982.158(c) provide another example of the Authority's obligation to provide HUD OIG full and free access to all accounts, records, computerized or other electronic records and to any computers, equipment, or facilities containing such records and to provide any information or assistance needed to access the records.

Comment 26 The Authority's statements in this written response were also presented by its outside counsel at the February 14, 2011, exit conference. It is worth noting that, as shown in appendix C, the outside counsel's firm received \$8.7 million from the Authority during the 41-month audit period. As shown in appendix D, HUD OIG reviewed \$1.1 million in payments to this firm and concluded that the Authority has yet to adequately support nearly all of the payments. The outside counsel elaborated in greater detail on the comments that she made at the exit conference regarding the Authority's controls for verifying receipt and supportability of outside legal services (the same type of legal services she was also paid to perform) in the Authority's written response.

As stated in the audit report, the Authority did not have written procedures for approving invoices submitted by law firms. The audit results showed that the Authority made payments to law firms based on invoices in prohibited block billing format and, although the majority of the supporting documentation the Authority provided for the invoices that we reviewed was missing, incomplete, and insufficient, we noted that the Authority continued to pay for costs that were specifically prohibited by the contract requirements. The senior in-house counsel person who was responsible for reviewing and approving invoices submitted by law firms stated that she contacted the departments receiving the benefits of the legal services if she had questions regarding an invoice, but we found no evidence of such communications in the documentation the Authority provided. We could not perform any additional verification because the Authority denied the auditors access to the filing cabinets and office areas where the payment files were stored. Moreover, contrary to counsel's assertion that the Authority consolidated the invoice review process several years ago, another Authority senior counsel person stated during the audit that before about a year ago she reviewed invoices from law firms. She expressed concern that she has not been asked to verify work performed by outside counsel related to her areas of responsibility. She stated she no longer received invoices for review after questioning an invoice from Ballard Spahr Andrews and Ingersoll, LLP.

Comment 27 According to generally accepted government auditing standards, auditors should evaluate whether the audited entity has taken appropriate corrective action to address findings and recommendations from previous engagements that are significant within the context of the audit objectives. The audit report should disclose the status of known but uncorrected significant or material findings and recommendations that could affect the current audit objective(s). If the findings with incomplete action are significant and planned action is not adequate, the auditor should present this information in the reported findings. The fact that a HUD management decision was achieved does not preclude HUD OIG from determining whether or not the audited entity continued to take corrective action to address findings and recommendations from previous engagements. Since we identified significant and material findings that had not been corrected from a prior audit, we had a responsibility to report it.

Comment 28 As stated in the audit report, due to time constraints and the failure of the Authority's outside attorneys to cooperate on this current audit, we did not follow up on these issues. However, HUD OIG reserves the right to review this area of concern on a future audit engagement.

Comment 29 Section VII.C of the Authority's Moving to Work agreement does in fact require the Authority to give access to all requested sources of information including access to files, access to units, and an opportunity to interview agency staff and assisted residents to HUD. This provision would of course include HUD OIG. We are very concerned that the Authority continues to question HUD OIG's statutory authority to access its records.

Comment 30 The Authority has provided these statements in an effort to justify large sums it paid to outside attorneys and has provided no support for these statements to HUD OIG. HUD OIG does not question the Authority's right to obtain outside legal services when warranted. However, as a HUD spokesperson has also similarly articulated, these legal services must be reasonable, necessary and supported when taxpayer dollars are at stake. HUD OIG has reviewed all correspondence and other documentation the Authority provided both during the audit and immediately after the audit exit conference, and have correctly categorized \$4.5 million reviewed as unsupported costs in appendix A to this audit report. The audit showed that the Authority paid \$30.5 million for outside legal services provided by 15 law firms during the period April 2007 through August 2010 (see appendix C). The audit objective was to determine whether the Authority's payments to outside legal firms could be supported and complied with HUD regulations and other applicable requirements. The audit concluded that the Authority's payments to outside attorneys did not comply with HUD regulations and other applicable requirements.

Appendix C

NET PAYMENTS TO LAW FIRMS

Law firm	Net payments
Ballard Spahr Andrews & Ingersoll, LLP	\$ 8,697,998
Wolf Block Schorr & Solis-Cohen, LLP	7,056,703
Duane Morris LLP	4,177,734
Schnader Harrison Segal & Lewis LLP	3,137,900
Fox Rothschild LLP	3,089,427
Cozen O'Conner	1,066,283
Flaster Greenberg PC	936,952
Cohen & Grigsby, P.C.	818,813
Kolber and Freiman & Randazzo	709,053
Blank Rome LLP	530,670
Law Offices of Denise Joy Smyler	112,151
Kelly, Monaco and Naples	102,314
Greenberg Traurig LLP	28,780
Hangley, Aronchick, Segal & Pudlin	20,181
Margaret R. Brogan, Esq.	4,000
Total payments	\$30,488,959

Appendix D

SUMMARY OF PAYMENTS BY DEFICIENCY IDENTIFIED

Law firm	Number of invoices reviewed ²⁵	Total dollar amount	Unsupported amount	Block billing (1)	Redacted information (2)	Insufficient documentation (3)	Missing invoice (4)
Ballard Spahr Andrews & Ingersoll, LLP	183	\$1,073,240	\$1,071,569	29	154	25	23
Wolf Block Schorr & Solis-Cohen, LLP	185	922,566	920,606	45	71	42	108
Flaster Greenberg PC	17	248,475	248,366	3	17	0	0
Duane Morris LLP	45	614,598	613,398	35	8	19	0
Fox Rothschild LLP	14	616,266	609,368	4	7	8	3
Schnader Harrison Segal & Lewis LLP	28	1,032,813	1,032,813	26	10	1	0
Totals	472	\$4,507,958	\$4,496,120	142	267	95	134

(1) Block Billing:

1. Includes only general description of services (e.g., legal advice with no detailed description of services performed) or
2. Includes only a summary of time charged for each attorney (e.g., only attorney name, rate, and total hours and amount billed).

(2) Redacted Information:

1. Evidence in the documentation provided that specific information on one or more pages of the invoice was omitted/redacted or
2. Evidence in the documentation provided that complete page(s) was/were omitted.

(3) Insufficient Documentation:

1. Invoice was provided, but there was no documentation to support the amount invoiced/paid for services and/or costs or

²⁵ Some invoices had more than one deficiency.

2. Invoice was provided, but the accompanying documentation did not adequately support the amount invoiced/paid.

(4) Missing Invoice:

Purchase order(s), remittance record(s), or disbursement record, etc., indicated that a payment was made against the contract on a specific date, but no invoice was provided to support the payment.

Appendix E

EXAMPLE OF BLOCK BILLING

Schnader

ATTORNEYS AT LAW

Suite 3600
1600 Market Street
Philadelphia, PA 19103
(215) 751-2000

Derrick Lancaster, Director of Contracts
Administration
Philadelphia Housing Authority
Contract Administration Department
P.O. Box 8737
Philadelphia, PA 19104-9742

Date: October 10, 2008
Invoice Number: 2246782
Client No: 3008528

For Professional Services Rendered through September 30, 2008

Matter Number	Matter Name	Fee Amount	Cost Amount
3008528-0006	Solicitation No. P-003598 - Legal Advice	\$ 56,730.00	11,126.64
Total Services		\$ 56,730.00	
Total Costs			11,126.64
Total Services and Costs			\$ 67,856.64
Total Due			\$ 67,856.64

RECEIVED
OCT 14 2008
CONTRACT ADMINISTRATION

*Received & approved
10/15/08 by
Helen
20 Senior
Contract
PHH*

Please send payments by check to:
SCHNADER HARRISON SEGAL & LEWIS LLP
P O BOX 8600-6030
PHILADELPHIA, PA 19176-6030
(Please reference client# and invoice# on check.)

Please send payments by wire transfer to:
WACHOVIA BANK
BROAD AND WALNUT STREETS
PHILADELPHIA, PA 19107
SWIFT CODE: [REDACTED]
ABA#: [REDACTED] ACCOUNT#: [REDACTED]
(Please reference client# and invoice#.)

Federal tax identification number: [REDACTED]

Please enclose the remittance copy of this invoice with your payment to ensure proper credit
Note that payments received after the invoice date are not reflected.

1-31

Appendix F

EXAMPLE OF PARTIAL INVOICE

Wolf, Block, Schorr and Solis-Cohen LLP
PHF223 - 217374
Philadelphia Housing Authority (PHA)

Page 3
Invoice # 790223
April 24, 2007

Invoice Total

36,041.95

Payment due upon receipt of invoice.
Additional disbursements, if any, will be billed subsequently.

*Reviewed &
Approved
5/2/07/4/
N. Jerns AS
Senior
Counsel, PHA*

Appendix G

EXAMPLE OF INVOICE MISSING DESCRIPTION



1810 Chapel Avenue West
Cherry Hill, New Jersey 08002-4609
Telephone: (856) 661-4900
Facsimile: (856) 661-1919
EIN: [REDACTED]

INVOICE

Philadelphia Housing Authority
Contract Administration Dept.
Attn: Alicia Wilson
P.O. Box 8737
Philadelphia, PA 19104-9742

April 15, 2010
Client Number P0904
Billing Atty Abbe Fletman
Invoice Number 198434

MATTER RECAP #/Description	Prior Balance	New Fees & Costs	Payments & Adjustments	New Interest	New Balance
P0904.0024:	\$0.00	\$1,645.50	\$0.00	\$0.00	\$1,645.50
TOTAL NEW BALANCE	\$0.00	\$1,645.50	\$0.00	\$0.00	\$1,645.50

ACCOUNT AGING SUMMARY

Current	Over 30	Over 60	Over 90	Total
\$1,645.50	\$0.00	\$0.00	\$0.00	\$1,645.50

April 15, 2010
Bill Number 198434

Page 2

Philadelphia Housing Authority

Through March 31, 2010

RE:
File Number: P0904.0024

PROFESSIONAL SERVICES PERFORMED

<u>Date</u>	<u>Prof</u>	<u>Description</u>	<u>Time</u>	
03/23/10	AFF		0.40	
03/24/10	MHK		1.10	
03/25/10	MHK		1.40	
03/29/10	AFF		0.50	
03/29/10	MHK		0.20	
03/30/10	MHK		0.10	
TOTAL PROFESSIONAL SERVICES				\$1,645.50

PROFESSIONAL SERVICES SUMMARY

Mitchell H. Kizner	2.80 Hrs	1,218.00
Abbe Fletman	0.90 Hrs	427.50
	<u>3.70 Hrs</u>	<u>\$1,645.50</u>

Please make checks payable to Flaster/Greenberg, and include client and matter number on all checks

Payments for services are due upon receipt. Outstanding bills over 30 days will accrue interest at the rate of 1 1/2% per month (18% per annum) on the unpaid balances. Please contact our Controller to make arrangements for payment by credit card or wire transfer.

* - Interest Accumulated Since Last Invoice

April 15, 2010
Bill Number 198434

Page 3

Philadelphia Housing Authority

LESS TOTAL ADJUSTMENTS	\$0.00
CURRENT BILLING FOR THIS MATTER	\$1,645.50

Please make checks payable to Flaster/Greenberg, and include client and matter number on all checks

Payments for services are due upon receipt. Outstanding bills over 30 days will accrue interest at the rate of 1 1/2% per month (18% per annum) on the unpaid balance. Please contact our Controller to make arrangements for payment by credit card or wire transfer

* - Interest Accumulated Since Last Invoice

April 15, 2010
Bill Number 198434

Page 4

Philadelphia Housing Authority

INVOICE TOTAL - ALL MATTERS

\$1,645.50

Please make checks payable to Flaster/Greenberg, and include client and matter number on all checks

Payments for services are due upon receipt. Outstanding bills over 30 days will accrue interest at the rate of 1 1/2% per month (18% per annum) on the unpaid balance. Please contact our Controller to make arrangements for payment by credit card or wire transfer.

* - Interest Accumulated Since Last Invoice

Appendix H

INVOICE SHOWING APPARENT CONFLICT OF INTEREST

245804 4125 PMA Legal 04-10-20 p.a. 05-15-2008 8.5
Wolf, Block, Scharr and Solis-Cohen LLP
PH1223 - 151797 Philadelphia Housing Authority (PHA) Page 4
Invoice # 835218
January 10, 2008

Timekeeper	Hours	Rate	Amount
S.T. Street	37.6	250.00	9,400.00
Total All Timekeepers	42.2	254.36	10,734.00

Invoice Total: \$10,734.00

Payment due upon receipt of invoice.
Additional disbursements, if any, will be billed subsequently.

JAN 10 2008

Approved
1/15/08
V. [Signature]

RECEIVED
JAN 20 2008
Department of Public Health