



**Jefferson County Housing Authority
Wheat Ridge, CO**

Disposition of Low-Income Public Housing Units



Issue Date: September 30, 2013

Audit Report Number: 2013-DE-1005

TO: Carol Ann Roman, Director, Denver Office of Public Housing, 8APH
Craig Clemmensen, Departmental Enforcement Center, CACB

//signed//

FROM: Ronald J. Hosking, Regional Inspector General for Audit, 8AGA

SUBJECT: The Jefferson County Housing Authority, Wheat Ridge, CO, Did Not Properly
Use Its Disposition Sales Proceeds

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our review of the Jefferson County Housing Authority's disposition process.

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the audit.

The Inspector General Act, Title 5 United States Code, section 8L, requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://www.hudoig.gov>.

If you have any questions or comments about this report, please do not hesitate to call me at 913-551-5870.



September 30, 2013

The Jefferson County Housing Authority, Wheat Ridge, CO, Did Not Properly Use Its Disposition Sales Proceeds

Highlights

Audit Report 2013-DE-1005

What We Audited and Why

We audited the Jefferson County Housing Authority based on concerns that there were irregularities in its disposition process. The objective of our audit was to determine whether the Authority followed U.S. Department of Housing and Urban Development (HUD) disposition procedures and used its sales proceeds properly.

What We Recommend

We recommend that HUD require the Authority to (1) recover more than \$6.4 million in ineligible costs associated with its disposition process from non-Federal sources, (2) place the correct number of Section 8 tenants into units purchased, (3) submit required reports, and (4) implement conflict-of-interest restrictions. In addition, we recommend that HUD refer the Authority to the Departmental Enforcement Center for appropriate administrative and civil actions if necessary.

What We Found

The Authority did not follow required disposition procedures and did not use its sales proceeds properly. It did not follow HUD procedures regarding sales requirements, the use of sales proceeds, distribution of the remaining project reserves, the placement of Section 8 tenants, reporting its use of sales proceeds, and the sale of units to an affiliated nonprofit entity.

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BACKGROUND AND OBJECTIVE

The Jefferson County Housing Authority is a public corporation, created and organized under the provisions of the laws of the State of Colorado and the United States of America based on the U.S. Housing Act of 1937 for the purpose of providing low-rent housing for qualified individuals. The Authority is responsible for its Section 8 program, governed by the U.S. Department of Housing and Urban Development (HUD), which allows it to provide rental assistance to eligible individuals and families who rent units in the private rental housing market. The Authority entered into annual contributions contracts with HUD continuously from April 12, 1979, until the disposition of its low-income public housing units on November 29, 2007.

The mission of the Authority is to provide affordable housing throughout Jefferson County to the greatest number of eligible people in the most efficient and cost-effective manner. The executive offices of the Authority are located at 7490 West 45th Avenue, Wheat Ridge, CO.

As of November 29, 2007, the date of disposition, the Authority administered 65 low-income public housing units. According to its 2006 and 2007 audited financial statements, HUD awarded the Authority more than \$22,000 and \$337,000, respectively, for its public housing program. As of November 18, 2011, the Authority administered 1,532 Section 8 units. According to its 2006 and 2007 audited financial statements, HUD awarded the Authority more than \$11 million in each of those years for its Section 8 Housing Choice Voucher program.

The HUD Special Applications Center received the Authority's disposition application through the HUD Public and Indian Housing Information Center on September 11, 2006. The Authority provided HUD supplemental information related to the disposition through January 30, 2007. HUD approved the Authority's disposition request on March 7, 2007. The Authority requested permission to modify the disposition on August 28, 2007, allowing it to sell all 65 units to a nonprofit corporation at the fair market value. HUD approved the Authority's request to modify the disposition on September 20, 2007. The agreement approved the Authority to sell all 65 low-income public housing units for an estimated fair market value of more than \$10.5 million. HUD completed its release of the declaration of trust for the 65 units on November 13, 2007.

The objective of our audit was to determine whether the Authority followed HUD disposition procedures and used its sales proceeds properly.

RESULTS OF AUDIT

Finding: The Authority Did Not Comply With Its Disposition Agreement

The Authority did not dispose of its public housing units in accordance with the terms and conditions of its disposition agreement or HUD regulations. This condition occurred because the Authority chose not to follow the terms of its disposition agreement and misinterpreted guidance it received from HUD. As a result, more than \$6.4 million was not available to acquire and rehabilitate low-income units or build new low-income housing as defined by HUD.

The Authority Did Not Comply With Its Disposition Agreement

The Authority did not comply with the terms of its disposition agreement with HUD. Specifically, it (1) inappropriately accepted a promissory note as payment from the buyer of its 65 low-income public housing units, (2) inappropriately sold its low-income public housing units to an affiliated nonprofit entity, (3) spent more than \$975,000 in disposition sales proceeds on ineligible expenses, (4) did not return its remaining operating fund reserves as directed by HUD, (5) did not place the required number of Section 8 voucher holders into units it purchased using disposition sales proceeds, and (6) did not accurately report to HUD its use of disposition sales proceeds.

The Authority Violated Its Method of Sale Requirements

The Authority inappropriately accepted a promissory note as payment from the buyer of its 65 low-income public housing units. The Authority sold all 65 units in bulk to one buyer for the established fair market value of more than \$10.5 million. It accepted a promissory note from the buyer for that amount. The buyer paid off approximately \$5.1 million of the note, which represented the proceeds the buyer received from reselling 47 of the 65 units.

By investing the proceeds in a note, the Authority violated section 18(a)(5) of the U.S. Housing Act of 1937; regulatory requirements (24 CFR (Code of Federal Regulations) Part 970); and part A, section 9, of its annual contributions contract. Therefore, the uncollected amount of nearly \$5.5 million was not a permissible use of disposition proceeds.

The Authority Made an Inappropriate Sale to an Affiliated Non-Profit Entity

The Authority inappropriately sold its low-income public housing units to an affiliated nonprofit entity. In a letter from the Authority to HUD, dated August 24, 2007, the Authority requested permission to modify its initial disposition application, allowing it to sell all 65 units to Jeffco Housing Corporation. In its letter to HUD, the Authority stated that the Corporation was a separate and independent legal entity that was not owned or controlled by the Authority in any regard. The Authority also stated that the Corporation had its own board of directors, which was not linked to the Authority. Part A, section 19, of the Authority's annual contributions contract prohibits it from entering into any contract or arrangement in connection with projects governed by the annual contributions contract in which the Authority has an interest, either direct or indirect.

However, at the time of the disposition, the Authority's board appointed all members of the Corporation's board. In addition, the Authority's executive director served as the executive director of the Corporation. Several closing documents related to the sale of the units showed the Authority's executive director signing as the executive director of both the Authority and the Corporation.

The Authority Spent Disposition Proceeds on Ineligible Expenses

The Authority spent more than \$975,000 in disposition sales proceeds on ineligible expenses when it purchased a vacant lot and paid the operating expenses of its other non-annual contributions contract (non-public housing) units. This was not an approved use of funds in its disposition agreement with HUD.

The Authority was approved to use its disposition sales proceeds for the acquisition, development, or rehabilitation of other properties that would more efficiently or effectively operate as low-income housing. HUD regulations (24 CFR Part 941) require HUD to approve the acquisition of land for development before the acquisition. However, the Authority did not receive HUD approval before acquiring the vacant lot. In addition, the Authority constructed a storage building on the vacant lot with no plans for future use of the lot. Therefore, the more than \$362,000 spent on the lot was an ineligible use of disposition proceeds.

Below is a picture of the vacant lot purchased by the Authority and the storage unit built on the lot.



The Authority also spent more than \$612,000 of its disposition sales proceeds for operating and other expenses of its other non-annual contributions contract units. However, the use of these funds was limited to public housing units under an annual contributions contract or housing assisted by the Section 8 Housing Choice Voucher program by section 18(a)(5) of the Act . The following table lists the disposition sales proceeds used to pay the operating and other expenses of the Authority’s other non-annual contributions contract units.

Use of Disposition Sales Proceeds for Operating and Other Expenses		
Property	Type Expense	Amount
JCHA New Development	Flood Insurance	\$10,279.00
Caesar Square Apartments	Operating	\$428,396.74
Parkview Apartments	Operating	\$141,838.80
Glendale Apartments	Operating	\$32,387.19

The Authority Did Not Return Operating Fund Reserves to HUD

The Authority did not return to HUD its remaining operating fund reserves totaling more than \$150,000. The Authority was directed by HUD on two occasions to identify and return operating fund reserves upon termination of the project.

The Authority Did Not Place the Required Number of Section 8 Tenants Into Its Units

The Authority did not place the required number of Section 8 voucher holders into units it purchased using its disposition sales proceeds. The U.S. Housing Act

of 1937, Section 18, requires these funds be used toward Section 8 or public housing units. The following table lists the total number of units in the properties purchased or rehabilitated using disposition sales proceeds, the required number of units for Section 8 voucher holders based upon a pro rata percentage, and the actual number of units occupied by Section 8 voucher holders of the Authority.

Pro rata percentage of Section 8 tenants			
Property	Number of units	Required number of Section 8 tenants	Actual number of Section 8 tenants
Parkview Apartments	96	18	11*
Viking Square Apartments	55	6	0*

* This number does not include Section 8 voucher holders from other agencies pursuant to Intergovernmental Agreements and from agencies assisted by the State of Colorado Division of Housing

The Authority Did Not Submit Required Reports

The Authority did not accurately report to HUD its use of disposition sales proceeds by providing a financial statement showing how the funds were expended by item and dollar amount as required by HUD regulations (24 CFR Part 970). In addition, the Authority did not inform HUD about the amount of disposition funds used for the purchase or construction of each new non-annual contributions contract low-income housing project.

The Authority Misinterpreted Guidance It Received From HUD

The Authority chose not to follow the terms of its disposition agreement and misinterpreted guidance it received from HUD. The Authority believed that it was enough to inform HUD that it was going to sell its units to the Corporation. However, it chose not to inform HUD of the specific terms of the sale.

The Authority incorrectly believed that the disposition approval allowed it to use disposition proceeds for any low-income housing. However, HUD later informed the Authority that the approval letter stated that disposition proceeds must be used for housing that benefits low-income residents under the Act, which defines low-income housing as decent, safe, and sanitary dwellings assisted under the Act, and that housing assisted by Section 8 vouchers would also qualify as such housing.

In addition, the Authority incorrectly believed that once it sold the units to the Corporation, it was no longer required to report its activities to HUD. However,

the disposition had not been completed; therefore, the Authority was required to report its disposition activities to HUD.

Funds Were Not Available for Low-Income Housing as Defined by HUD

As a result of the conditions described above, more than \$6.4 million was not available to acquire and rehabilitate low-income units or build new low-income housing as defined by HUD (the nearly \$5.5 million not yet collected by the Authority and the more than \$975,000 in ineligible expenditures). In addition, HUD could not adequately monitor the disposition activity and verify whether the Authority properly used its disposition sales proceeds.

Recommendations

We recommend that the Director of the Denver Office of Public Housing

- 1A. Ensure that the Authority recovers from non-Federal sources \$5,496,367 in disposition sales proceeds that was not received from the sale of its 65 low-income public housing units and use the recovered funds for their intended purposes or return those funds to HUD within a reasonable period.
- 1B. Require the Authority to repay from non-Federal sources \$975,146 in disposition sales proceeds used in violation of its disposition agreement and use the recovered funds for their intended purposes or return those funds to HUD within a reasonable period.
- 1C. Require the Authority to repay from non-Federal sources \$151,828 in project fund reserves to HUD within a reasonable period.
- 1D. Require the Authority to place a pro rata percentage of Section 8 tenants into its non-annual contributions contract units acquired using its disposition proceeds.
- 1E. Require the Authority to submit financial statements that show how its disposition funds were expended by item and dollar amount.
- 1F. Require the Authority to implement management controls to ensure that employees involved in a possible conflict of interest have no direct or indirect participation in the transaction.

We also recommend that the Director of HUD's Departmental Enforcement Center

- 1G. Pursue all applicable administrative and civil actions if the Authority does not (1) recover the funds and use them for their intended purposes or return those

funds to HUD within a reasonable period, (2) place a pro rata percentage of Section 8 participants into its non-annual contributions contract units acquired using its disposition proceeds, (3) follow the reporting requirements, and (4) prevent employees who have a conflict of interest from being involved in decisions associated with the disposition sale.

SCOPE AND METHODOLOGY

Our audit covered the period November 1, 2007, through October 31, 2011. We performed our onsite work from January 2012 through April 2013 at the Authority's office located at 7490 West 45th Avenue, Wheat Ridge, CO.

To accomplish our objective, we obtained and became familiar with applicable sections of the U.S. Housing Act of 1937, HUD regulations, the Authority's annual contributions contract with HUD, and Authority policies related to the disposition of its low-income public housing units.

To determine whether the Authority followed HUD procedures in the disposition of its low-income public housing units, we examined documentation on the application, environmental, reporting, and HUD approval requirements associated with a public housing agency's disposition of its low-income public housing units for all units sold.

To determine whether the Authority used the disposition sales proceeds properly, we examined bank records, invoices, journal entries, and other documentation on all expenditures made using disposition sales proceeds.

We did not use computer-generated data as audit evidence or to support our audit conclusions. We used computer-generated data maintained by the Authority for background information purposes only. All conclusions were based on source documentation reviewed during the audit.

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.

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:

- Controls to ensure compliance with disposition requirements.
- Controls to ensure the safeguarding of contractual interests related to the disposition.

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 Deficiency

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

- The Authority lacked controls to ensure compliance with disposition procedures and instructions received from HUD.

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS AND FUNDS TO BE PUT TO BETTER USE

Recommendation number	Ineligible 1/	Funds to be put to better use 2/
1A		\$5,496,367
1B	\$975,146	
1C	\$151,828	

- 1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or Federal, State, or local policies or regulations.
- 2/ Recommendations that funds be put to better use are estimates of amounts that could be used more efficiently if an Office of Inspector General (OIG) recommendation is implemented. These amounts include reductions in outlays, deobligation of funds, withdrawal of interest, costs not incurred by implementing recommended improvements, avoidance of unnecessary expenditures noted in preaward reviews, and any other savings that are specifically identified. The Authority could have put \$5,496,367 to better use for low-income housing as defined by HUD.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

	7490 West 45th Avenue Wheat Ridge, CO 80033 303.422.8600 fax 303.422.3200 www.jcha.org
September 24, 2013	
<u>SENT VIA EMAIL</u>	
Ronald J. Hosking, Regional Inspector General for Audit (Ronald.J.Hosking@hud.gov) U.S. Department of Housing and Urban Development Office of Audit, Region 8 1670 Broadway, 24 th Floor Denver, CO 80202	
Re: Jefferson County Housing Authority's Response to Audit Report Regarding Disposition of Low-Income Public Housing Units	
Dear Mr. Hosking:	
In connection with the Audit Report issued by the U.S. Department of Housing and Urban Development ("HUD") Office of Inspector General ("OIG") regarding its review of the disposition of the low-income public housing units of the Jefferson County Housing Authority ("JCHA" or the "Housing Authority"), JCHA hereby submits this statement in response thereto.	
The Audit Report comes after almost two (2) years of investigation by OIG during which the Authority provided substantial documentation and cooperated in every regard throughout the review. Meetings were held on earlier draft findings and the Authority exchanged extensive information and analysis with OIG. The Authority respectfully disagrees with the substance of OIG's Audit Report, setting forth its responsive position in this communication. Notwithstanding these differences, JCHA is already actively working with HUD's Region 8 Office of Public Housing Director, Carol A. Roman, to move forward on these issues and resolve any matters that may be outstanding.	
JCHA is one of the most progressive housing authorities in Colorado, developing and operating a wide array of affordable housing options within an extremely successful entrepreneurial framework. The Authority is frequently on the forefront of development and financing opportunities which serves it well in promoting its mission of maximizing the availability of affordable housing throughout Jefferson County, Colorado. Together with its subsidized properties, the Authority has a significant inventory of properties which, due to skilled financial packaging and property management expertise, are kept affordable without the use of any outside subsidy.	
JCHA defends its actions in selling its public housing portfolio to the Jeffco Housing Corporation (the "Corporation" or the "non-profit corporation") and financing the purchase of these units pursuant to valid and enforceable contracts, loan documents and security agreements. The terms of the loan documents allow for repayment over a fixed term and, to-date, approximately half of the original loan amount has been repaid by the Corporation.	

Ref to OIG Evaluation

Auditee Comments

Comment 1

Mr. Ronald J. Hosking, Regional Inspector General for Audit
U.S. Department of Housing and Urban Development
Office of Audit, Region 8
September 24, 2013
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1. Contrary to the Assertions of OIG, the Authority Completed Each Requirement of Its Method of Sale Precisely as Approved by SAC

OIG makes a general assertion that the Authority's acceptance of a Promissory Note from the buyer was inappropriate, but can point to no regulatory or statutory authority specifically citing such a prohibition. There is no express or implied proscription against the use of this financing mechanism in the disposition regulations. OIG also disregards the fact that other housing authorities have received SAC approval for an identical arrangement utilizing a Promissory Note.

When further inquiry was made of OIG regarding the issue of the Promissory Note, OIG stated that the utilization of the Note by the Authority, in and of itself, was not their true concern. Rather, it was that HUD assumed the Housing Authority's dispo was a cash transaction, and HUD did not understand that a Note would be utilized here. However, any assumption or misunderstanding by HUD derived solely from HUD and HUD alone. The Authority concealed nothing from HUD; HUD never inquired about proceeds, did not require the use of an Escrow Agreement for proceeds, and released its Declarations of Trust nearly two (2) months after the closing without imposing any additional restrictions on the proceeds. The mechanisms and requirements now in place to obtain dispo approval and for continuing control of dispo proceeds, such as restrictive covenants, use agreements, escrow agreements, disposition agreements, and the like, were not in place in 2007 at the time of JCHA's dispo approval. Had these matters been raised by HUD at the time, the Authority would have readily complied.

OIG is correct that when the Housing Authority requested its modification of SAC approval in order for it to make a negotiated sale to the non-profit Jeffco Housing Corporation, the Authority represented that the purchase and sale would be accomplished by written contract containing all customary terms, conditions and obligations as in any other commercial real estate transaction. Just as it had represented to SAC, JCHA utilized the standard Colorado Real Estate Commission-approved form for commercial real estate transactions which includes all standard contract terms.

The standard real estate contract form provides for, among other things, customary financing options for this type of transaction. The option for seller-financing is one of the standard financing options contained in the preprinted portion of the form, right next to conventional and other generally accepted financing methods. These sections were completed along with additional provisions detailing terms of the seller carryback loan and also addressing the need for the buyer to comply in all respects with the SAC approval letters. The contract was valid and enforceable in accordance with its terms, and authorized and approved by each respective party's governing Board. The SAC office never requested a copy of the contract.

Ref to OIG Evaluation

Auditee Comments

Comment 2

Mr. Ronald J. Hosking, Regional Inspector General for Audit
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2. Contrary to the Assertions of OIG, the Buyer of the Public Housing Units Is Not Now, And Was Not Then, an Affiliated Non-Profit of JCHA or Otherwise Controlled By JCHA And, Thus, No Conflict of Interest Issue Can Be Implicated

In making the assertion that the sale of the dispo units was inappropriate, OIG ignores HUD's very own audit directives as well as widely accepted auditing reference materials written by prominent experts in the field of government accounting procedures. The non-profit corporate buyer was not, at the time of the dispo transaction, nor is it today, controlled by the Housing Authority in any way. The prevailing rule here, Governmental Accounting Standards Board ("GASB") Statement No. 14 - *The Financial Reporting Entity* (as amended by GASB 39), cited by HUD's own *PHA GAAP Flyer*, Vol. 1 Issue 3, July 1999 (p. 5) as well as the authoritative reference publication, *Wiley GAAP for Governments 2012* (p. 195), makes it clear that, to establish control by a governmental unit over a non-profit corporation, there must be a substantive appointment of a voting majority to the governing body of the non-profit entity and some evidence of imposition of the government unit's will on the non-profit corporation or financial accountability for the non-profit corporation. None of these factors are present here.

At the time of the dispo transaction, the JCHA Board simply approved candidates for the non-profit Board who were selected by the non-profit itself or by others, who did not personally appear before or be interviewed by the JCHA Board, and who were otherwise essentially unknown to the JCHA Board. The non-profit corporation's board holds its own meetings, approves its own budget, passes its own resolutions, transacts its own business, pays its own bills, makes no reports to the Housing Authority Board and is not accountable in any way to the JCHA Board. OIG never interviewed any Housing Authority or Corporate Board members to ascertain directly from the source what, if any, relationship between the governing bodies existed.

The non-profit corporation also has HUD designation as a Community Housing Development Organization ("CHDO") which, by HUD's own definition, evidences that it is separate, distinct and autonomous from the Housing Authority. Once the Authority became aware that HUD had an issue regarding the appointment of Corporate Board members, the Authority Board readily and immediately relinquished such inconsequential responsibility.

The Housing Authority has for years served as the property manager for the Corporation, all such duties performed pursuant to a management agreement for which a fee is earned by JCHA. On occasion, the Housing Authority Executive Director, in signing on behalf of JCHA as the agent for the Corporation, has perhaps not clearly identified the agency capacity of the Housing Authority, but this by no means makes him an "executive" of the non-profit corporation. To arrive at such a determination would be to blindly follow form over substance, especially when there is no actual remuneration paid. This also does not support a claim of conflict of interest, since the Corporation renders its own decisions at its own properly convened Board meetings, just as it did to approve the purchase and sale contract for the dispo properties, as well as for the financing and closing documents, all of which were formally authorized and independently approved by the Corporation's Board of Directors by formal resolution.

Ref to OIG Evaluation

Auditee Comments

Comment 3

Mr. Ronald J. Hosking, Regional Inspector General for Audit
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3. The Authority Contends That Its Dispo Approval Does Permit the Uses Now Questioned By OIG

Approval for the Authority's Public Housing disposition and the two authorized uses for its proceeds are expressly stated in the original SAC approval dated March 7, 2007: For the provision of low-income housing OR to benefit the residents of the public housing agency (emphasis supplied). The vacant lot referenced by OIG abuts the property line of the JCHA office building, so the purchase of this critically situated parcel for the long term was for the future expansion of the Housing Authority offices, the need for which is increasingly apparent with growth in staff. This use will promote better service to housing clients and more efficient and effective operations for the benefit of the residents of the housing agency, an approved use. For the short term, the current municipal regulations limit use for accessory buildings to a modest storage facility but this new facility provides much-needed storage of Housing Authority files as well as a central location for storage of maintenance tools/equipment for easier retrieval and faster response times as may be needed in order to assist the residents of the housing agency.

The remaining sum referenced by OIG concerns dispo proceeds used for administrative and operating expenses for other non-ACC unit properties owned by the Authority. Once again, JCHA utilized dispo proceeds to assist four (4) of its affordable properties in defraying expenses during a low point in the market. This avoided the need to raise rents especially for those properties not otherwise subsidized. Keeping the rents low was clearly a benefit to the Housing Authority's residents and therefore this use of the proceeds was authorized. For all four (4) properties, the Housing Authority established accounts receivable for each property to track all dispo funds used. A substantial portion of these funds has already been repaid when these same properties have a positive cash flow, and all amounts utilized in this manner will be repaid. JCHA is already working with Ann Roman, HUD Region VIII, to set up a timetable and monitor repayments.

Comment 4

4. All Public Housing Operating Reserves Have Been Deobligated, Recaptured or Reimbursed and, Thus, There Were No Public Housing Operating Reserves For the Authority To Return To HUD

OIG mistakenly asserts that the sum of \$151,828 is due to HUD in project reserves. This \$151,828 refers to operating subsidy and capital funds which were awarded to JCHA by HUD. However, all Public Housing operating reserves and capital funds were deobligated, recaptured or reimbursed and, therefore, no operating subsidy, reserves or capital funds for Public Housing were available to be returned to HUD. A cash account did exist at the time of sale of the dispo units and was transferred as part of the complete portfolio to the buyer (along with the expenses as well) but this account was not Public Housing operating subsidy or operating fund reserves but rather simply a bank account for day-to-day use. Should this item need further clarification, the documentation evidencing the deobligation, recapture and reimbursement of all Public Housing operating subsidy and capital funds as between the Housing Authority and Office of Public Housing is available. HUD's records should also reflect the same information as the Authority - that no operating subsidy or capital fund monies for the Public Housing program are due to HUD.

Comment 5

Mr. Ronald J. Hosking, Regional Inspector General for Audit
 U.S. Department of Housing and Urban Development
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5. OIG’s Analysis and Conclusion That JCHA Is Not Housing the Required Number of Section 8 Tenants In Its Units is Fundamentally Flawed

Despite OIG’s continuing assertions to the contrary, the Authority has indeed placed the required *pro rata* number of Section 8 voucher holders into the units it acquired with dispo proceeds. When this issue was first raised by OIG earlier this year, the Authority provided its data and explanation. The correct information reported to OIG as of April 9, 2013 was as follows:

Pro Rata Percentage of Section 8 Tenants			
Property	Number of Units	Required Number of Section 8 Tenants	CORRECT Actual Number of Section 8 Tenants
Parkview Apartments	96	18	27
Viking Square Apartments	55	6	7

The Authority explained that OIG’s figures only accounted for the number of JCHA Section 8 voucher holders residing in these properties, and failed to consider that the Authority houses Section 8 voucher holders from other agencies pursuant to Intergovernmental Agreements or from agencies assisted by the Division of Housing, State of Colorado. The requirement is for a proportionate number of units to be leased to Section 8 assisted tenants, which JCHA has done, not for a proportionate number of this agency’s own vouchers to be utilized in these properties.

Although OIG indicated it would reconsider how this issue would be addressed in light of the Authority’s explanation, there was no change in the finding. As of the time JCHA received the final draft from OIG, JCHA reported that it was continuing to be in compliance with the *pro rata* percentage requirements at these properties and that the correct information as of September 17, 2013 was as follows:

Pro Rata Percentage of Section 8 Tenants			
Property	Number of Units	Required Number of Section 8 Tenants	CORRECT Actual Number of Section 8 Tenants
Parkview Apartments	96	18	28
Viking Square Apartments	55	6	6

The Authority strongly asserts that this finding by OIG has no basis in law or fact, and is simply incorrect.

Ref to OIG Evaluation

Auditee Comments

Mr. Ronald J. Hosking, Regional Inspector General for Audit
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Comment 6

6. The Authority Has Submitted Reports and Responded to Requests for Information Regarding Its Use of Dispo Proceeds But Will Submit Additional Reports As HUD May Request or Require

The Authority properly submitted audited financial statements for each year-end of operation since the 2007 disposition of its Public Housing units, as in prior years as well. Such audited financial statements did contain information on dispo proceeds. Correspondence to HUD advised of the acquisition of properties utilizing dispo proceeds. Requests for information from HUD were answered and documentation was provided such as settlement sheets, purchase and sale contract, line item journal entries, and expense itemizations. The Authority has always been ready, willing and able to document these proceeds for HUD. In certain cases, there was no further response from HUD. However, the Authority is currently working with its Regional Office to clarify any additional detail which HUD may need in this regard, and will provide any type of information or report as and when due pursuant to any reporting schedule to be established.

Comment 7

7. JCHA Used Its Dispo Funds To Acquire and Rehab More Than 3 Times the Number of HUD-Defined Low-Income Housing Units Than the Number It Held In Its Original PH Portfolio, And Will Use the Balance of the Funds To Undertake Additional Successful Projects Under the Dispo Process

OIG has overlooked the fact that the Authority received approval for use of its dispo funds for more than just the acquisition and rehab of Low-Income Housing as defined by HUD, but also for items that "benefit the residents of the Public Housing agency." This category is not limited to housing but encompasses a broader scope of uses beyond the actual shelter of a home, and JCHA has used some of its dispo proceeds for purposes which fall under this category.

In any event, the Authority is confident that all dispo proceeds, less approvable expenses, will be recovered as the Loan documents run their course. There remain 18 units which the Corporation will sell and, with the resurging Colorado real estate market, it is anticipated that the increasing market value and sales potential of these units, together with the ongoing rental income from unsold units, will repay the Loan to the Corporation and allow the Authority to continue to leverage its dispo proceeds for acquisition or rehabilitation of even more Low-Income Housing or to benefit the residents of the JCHA. With the tremendous results JCHA has achieved to-date with only part of its dispo proceeds and the track record of this agency, more positive results are fully expected.

Thank you for appending this response to the Audit Report so that JCHA's position, analysis and explanations can be read in conjunction with the OIG report.

Sincerely,

Alan M. Feinstein
Executive Director

cc: Jefferson County Housing Authority Board of Commissioners

OIG Evaluation of Auditee Comments

The Authority's written response along with its verbal response at the exit conference indicates general disagreement with the findings and recommendations.

Comment 1 We do not address the Authority's use of the standard Colorado Real Estate Commission approved form for commercial real estate transactions in the finding. As such, we are not agreeing or disagreeing that this form provides for the customary options for this type of transaction. We agree that the Special Applications Center probably never requested a copy of this contract because our conversations with the Special Applications Center indicated they were not aware that the Authority was carrying the loan on behalf of the buyer. This is supported by our review of the Authority's request to modify its application for disposition because it did not inform the Special Applications Center of the details of its method of sale. As such, the Special Applications Center proceeded under the belief that the Authority would receive the entire dispositions sales proceeds as a single payment from the buyer.

The terms of the Authority's annual contributions contract states that investments in financial instruments must be approved by HUD. We found no indication that HUD ever gave this approval. The U.S. Housing Act of 1937 and the regulations limit the use of proceeds from the sale low-rent public housing units. The investment of proceeds in a note is not included in permissible uses. In its revised request to sell the 65 low-income public housing units, the Authority stated the "purchase and sale between (the Authority) and (the Corporation) would be accomplished by written contract containing all customary terms, conditions and obligations as in any other commercial real estate transaction." The request contained no further details about the sale and did not mention the sale would be done in the form of a promissory note. As such, the approval to dispose of these units by the Special Applications Center did not allow for the financing of the sale.

Comment 2 The Authority was required to follow the provisions of its annual contributions contract with HUD. These provisions prohibit the Authority from entering into any contract or arrangement in connection with projects governed by the annual contributions contract in which the Authority has an interest, either direct or indirect. This includes any officer of the governing body of the Authority and any employee who formulates policy or who influences decisions. After approval of the revised request to sell its 65 low-income public housing units, at the time of the disposition approval, all Corporation board members were appointed by the Authority's Board of Commissioners. In addition, the Corporation's Internal Revenue Service Form 990, Return of Organization Exempt From Income Tax, shows the executive director of the Authority as the executive director of the Corporation and that he was receiving a salary. This form was submitted after approval of the disposition, and contradicts the Authority's claim that its executive director was simply an agent of the Corporation signing on behalf of the

Authority and that he was not an “executive” of the Corporation. In addition, our review of the seller’s settlement statements issued by the title company and the settlement statement (HUD-1) on the sale of the individual units in question shows the executive director of the Authority signing as the executive director of the Corporation. This violated the Authority’s conflict of interest restrictions specified in its annual contributions contract with HUD. The Authority now claims it has resolved any conflict of interest restrictions between itself and the Corporation. The Authority will need to work with HUD to verify if the conflict of interest violations identified in the finding are no longer present.

Comment 3 The disposition approval letter from the Special Applications Center clearly identified the legally permissible uses of disposition proceeds under section 18 of the U.S. Housing Act of 1937. Disposition proceeds may only be used for the “provision of low-income housing or to benefit the residents of the public housing agency.” It is important to note that “low-income” housing is limited to housing provided under the U.S. Housing Act of 1937. It is not the same as housing for “low-income families.” As such, housing assisted under the U.S. Housing Act of 1937 is limited to annual contributions contract units and units receiving Section 8 assistance under the Housing Choice Voucher Program. The statute is explicit in prohibiting the use of disposition proceeds for the provisions of housing that is not assisted by the U.S. Housing Act of 1937. The purchase of a vacant lot that cannot be used in accordance with an acceptable use is not a permitted use of the disposition proceeds. The building of a storage unit and the future planned expansion of the Authority’s offices is not an acceptable use of disposition proceeds under the U.S. Housing Act of 1937.

The use of disposition proceeds for other than annual contributions contract housing or units receiving Section 8 assistance is not permitted. Therefore, disposition proceeds used to pay the operating expenses of the Authority’s other non-annual contributions contract units also does not qualify under the U.S. Housing Act of 1937. The Authority claims it had repaid a substantial portion of these funds when these properties started receiving a positive cash flow. The Authority will need to work with HUD to verify that these funds have been repaid from non-Federal sources.

Comment 4 The Authority asserts that any project reserve funds at the time of the disposition were included as part of the complete portfolio sold to the buyer. However, our review of the seller’s settlement statement between the Authority and the Corporation for the sale of these units did not indicate this. The Authority also asserts that HUD records should reflect the same information as it has, namely that no project reserve funds for its former public housing program are due to HUD. However, HUD’s Financial Assessment Subsystem on the Authority for calendar year ending 12/31/2007 showed there was \$151, 828 in project reserve funds remaining after completion of the disposition sale in 2007. Information in this subsystem is placed there by the Authority’s certified public accountant. The

Authority will need to work with HUD to verify that these funds have been repaid from non-Federal sources.

- Comment 5** The Authority asserts that it has placed the required pro rata percentage of Section 8 vouchers into the units in question. The Authority indicates it has met this requirement by placing other Section 8 voucher holders from other agencies pursuant to Intergovernmental Agreements and from agencies assisted by the State of Colorado Division of Housing. These Section 8 vouchers are not issued by the Authority and they are not “port-ins” from other public housing agencies. The Authority will need to work with HUD to determine if this is allowable in order to meet the pro rata percentage requirement.
- Comment 6** The Authority indicates it has submitted reports and responded to requests for information related to the disposition by HUD in the past. Our review of the Authority’s reporting responsibilities to HUD on its disposition activities did not support this assertion. However, planned actions on the part of the Authority should resolve this issue.
- Comment 7** The Authority indicates the Office of Inspector General has overlooked the fact that it received approval to use its disposition proceeds for more than just the acquisition and rehabilitation of low-income housing as defined by HUD. The Authority believes it also received approval to use its disposition proceeds for items that “benefit the residents of the public housing agency.” This is incorrect. Although the approval letter contains the language “benefit the residents of the public housing agency,” Section 18 of the Act requires the disposition proceeds to be used only for Section 8 or public housing units.