

FRAUD INFORMATION BULLETIN:

Excess Rent

Purpose

This Bulletin highlights a recurring problem in the Housing Choice Voucher (HVC) program. Specifically, this Bulletin discusses the submission by landlords of false claims for periodic payments under Housing Assistance Payment (HAP) contracts, where such landlords have violated their continuing obligations to not charge tenants rents in excess of what is authorized by the HAP contracts.

The Problem

Improperly requiring tenants to pay rent in excess of what is authorized by the applicable HAP contract represents both an actionable offense under the False Claims Act and deplorable behavior directed towards the very persons whom the HCV program was designed to serve. (Additionally, depending on the intent, such an action may qualify as a criminal offense under 18 U.S.C. §§ 287, 1343, etc.) OIG will not tolerate such conduct, and rather will cooperate with efforts to bring offending landlords to justice and to remedy their wrongs.

Background

The mission of the Office of Inspector General (OIG) is to provide policy direction to the United States Department of Housing and Urban Development (HUD) and to conduct, supervise, and coordinate audits, investigations, and other activities for the purpose of promoting economy and efficiency in the administration of the programs and operations of HUD and preventing and detecting fraud and abuse in such programs.

HUD administers Federal aid to local housing agencies (HAs) that is intended to implement housing assistance programs for low-income residents. With respect to the HVC program, HUD funds HAs via annual contributions contracts. The HAs, in turn, enter into HAP contracts with individual landlords. These HAP contracts provide for periodic housing assistance payments on behalf of eligible low-income tenants. The HAP contracts also may require eligible tenants to make supplemental rent payments; however, the contracts expressly prohibit landlords from requiring tenants to pay rent in excess of what is authorized by the HAP contracts.

Pursuant to *qui tam* complaints and citizen complaints filed throughout the nation and subsequent activities, OIG has become aware of a number of landlords, who have improperly required tenants to pay rent in excess of what is authorized by the HAP contracts, and thereby submitted or caused to be submitted false claims for HAP contract periodic rent payments.

Example

On July 29, 2005, a Connecticut tenant filed a *qui tam* complaint, under 31 U.S.C. § 3730, against her former landlord. See Coleman v. Hernandez, 490 F. Supp.2d 278 (D. Conn. 2007). The tenant complained that pursuant to a HAP contract the landlord had agreed to accept \$1,550 per month for the rental of an apartment in Stamford. Of this \$1,550, the tenant was personally responsible for \$20, and HUD via the HA paid the complementary \$1,530. In spite of the explicit prohibition in the HAP contract, however, the landlord required the tenant to pay an "additional rent payment" of \$60 on six separate occasions. In other words, the landlord inappropriately extracted an additional \$360 from the helpless tenant.

OIG is aware of numerous similar examples of this sort of egregious conduct nationwide.

Penalty

Pursuant to the False Claims Act, 31 U.S.C. § 3729 *et seq.*, persons who submit to HUD or a HUD intermediary claims that are false, fictitious or fraudulent are liable for an assessment equal to three times the amount of the claim, plus a penalty of between \$5,500 and \$11,000 per claim. The United States may take the position that the entire amount of its HAP payment, not merely the amount of the excess payment by the tenant, is the claim that should be trebled where landlords make false certifications concerning excess rent charged. Additionally, each periodic rent payment constitutes a separate claim; thus, in the Coleman case the court levied a \$33,000 (6 x \$5,500) penalty against landlord, for her \$360 victimization of the tenant.

If you have any comments or pertinent information regarding this bulletin, please contact:

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