



Issue Date May 31, 2006
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Audit Report Number 2006-PH-0002
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TO: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing, P

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

SUBJECT: The U.S. Department of Housing and Urban Development Improperly Admitted the Housing Authority of Baltimore City, Baltimore, MD, into the Moving to Work Demonstration Program

## **HIGHLIGHTS**

### **What We Audited and Why**

We audited the process the U.S. Department of Housing and Urban Development (HUD) used to admit the Housing Authority of Baltimore City (Authority) into its Moving to Work Demonstration program (Moving to Work). Our audit objective was to evaluate whether HUD followed applicable statutory requirements when it admitted the Authority into the program.

### **What We Found**

HUD did not follow applicable statutory requirements when it admitted the Authority to its Moving to Work program. In violation of the statute, HUD executed a Moving to Work agreement with the Authority without requiring it to provide for citizen participation through a public hearing or other means. It also violated the statute by not requiring the Authority to develop a plan that considered comments from the public hearing or any other public comments on its

proposed program such as comments from current and prospective residents who would be affected. In addition to violating the statute, HUD also did not follow its normal award making process because it allowed the Authority to submit its expression of interest 31 months past the HUD-established deadline, and it did not require the Authority to demonstrate its ability to properly administer HUD funds.

HUD is prohibited from ignoring or waiving statutory requirements unless Congress expressly empowers it to do so, and Congress had not granted a waiver authorizing the Authority's participation in the program. Rather, HUD's former assistant secretary for Public and Indian Housing disregarded statutory requirements and HUD's normal award making process by signing an agreement admitting the Authority into the Moving to Work program. The former assistant secretary improperly relied on a legal opinion from the Authority's outside legal counsel and did not consult HUD's legal counsel on the propriety of the agreement.

### **What We Recommend**

We recommend that HUD obtain an opinion from its Office of General Counsel to determine whether it has sufficient legal grounds to nullify the Authority's Moving to Work agreement, and if so, we recommend that it nullify the agreement. If the agreement is nullified, we recommend that HUD reinstate recommendations from our prior audits of the Authority's Section 8 and certificate and voucher programs, Audit Reports 2005-PH-1004 and 2001-PH-1003. HUD should immediately recapture \$25.1 million<sup>1</sup> from the Authority's Section 8 reserve account that the Authority carried over to the Moving to Work program. We also recommend that HUD establish policies and procedures requiring it to obtain a legal opinion from its Office of General Counsel when it does not follow the normal award making process in approving housing agencies' participation in future program initiatives.

For each recommendation without a management decision, please respond and provide status reports in accordance with HUD Handbook 2000.06, REV-3. Please furnish us copies of any correspondence or directives issued because of the audit.

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<sup>1</sup>Audit Report 2005-PH-1004 identified \$38 million in unused Section 8 funding from the Authority's program reserve account. Of the total \$38 million in unused Section 8 funding, the audit determined that \$7.4 million had been set aside to pay for court-related decrees such as Thompson Consent Decree, and \$5.5 million represented 1 month of housing assistance payments allowable reserves. Thus we recommend that only \$25.1 million of the \$38 million be recaptured.

## **Auditee's Response**

We provided our draft report to the assistant secretary for Public and Indian Housing on March 20, 2006. We discussed the findings and recommendations with the assistant secretary on March 27, 2006. Based upon comments we received from the assistant secretary subsequent to that meeting, we revised our report and presented a revised draft report to the assistant secretary on May 4, 2006. Formal written comments to our draft report were received on May 12, 2006. The complete text of the Office of Public and Indian Housing's response, along with our evaluation of that response, can be found in appendix A of this report.

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## BACKGROUND AND OBJECTIVES

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In 1996, Congress authorized the Moving to Work Demonstration program (Moving to Work) as a U.S. Department of Housing and Urban Development (HUD) demonstration program. The program allowed certain housing authorities to design and test ways to promote self-sufficiency among assisted families, achieve programmatic efficiency, reduce costs, and increase housing choice for low-income households. Congress exempted the participants 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. For example, participants may combine operating subsidies provided under Sections 8, 9, and 14 of the U.S. Housing Act of 1937<sup>2</sup> to fund HUD-approved Moving to Work activities. Initially, HUD's Office of Policy, Programs, and Legislative Initiatives was responsible for implementing, managing, and monitoring the program. In May 2002, HUD transferred the responsibility to the Office of Public Housing Investments.

The 1996 Appropriations Act (Act) authorized the secretary of HUD to select up to 30 public housing agencies,<sup>3</sup> including Indian housing authorities, administering the Section 8 assistance payments program to participate in the demonstration program. On December 18, 1996, HUD issued a notice announcing the Moving to Work program and inviting applications. Public housing agencies interested in participating in the program were required by the Act to submit an application by the established deadline. HUD's 1996 notice resulted in the selection of 24 public housing agencies for the demonstration program; 19 of the 24 were selected for participation in Moving to Work, and five, including the Authority, were selected for participation in the Job Plus initiative.

The 1996 notice also explained the requirements Congress established and described the relationship between the Moving to Work and Job Plus initiatives. According to HUD's notice, the Job Plus initiative and Moving to Work program shared a similar purpose of providing employment opportunities to residents of those selected developments. However, the Job Plus initiative was limited to one development, while the Moving to Work program was not. Therefore, housing authorities participating in the Job Plus program that wanted to participate in Moving to Work were still required to go through the entire Moving to Work application process. On December 13, 2000, HUD announced the availability of the remaining six Moving to Work slots. HUD invited large qualified housing agencies to voluntarily express interest in filling one of the six vacancies. The deadline for submission of voluntary expression of interest was January 5, 2001.

The objective of our audit was to determine whether HUD followed statutory and administrative requirements when it admitted the Authority into the Moving to Work program.

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<sup>2</sup> Funds provided under Section 8 are for rental housing assistance, Section 9 funds are for housing authority operations, and Section 14 funds are for public housing modernization.

<sup>3</sup>This number was increased to 32 by Pub. Law 105-276 (1999 Appropriations Act) to add the cities of Charlotte and Pittsburgh housing authorities as Moving to Work participants.

## RESULTS OF AUDIT

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### Finding: HUD Did Not Properly Admit the Authority into the Moving to Work Demonstration Program

HUD did not follow applicable statutory requirements when it admitted the Authority into its Moving to Work program. In violation of the statute, HUD executed an agreement with the Authority without requiring it to provide for citizen participation through a public hearing or other means. In addition, it did not require the Authority to develop a plan considering comments obtained from the required public hearing or any other public comments on the proposed program. HUD also did not follow its normal award making process because it accepted the Authority's expression of interest 31 months past the HUD-established deadline, and it did not require the Authority to demonstrate its ability to properly administer HUD funds.

HUD improperly admitted the Authority into the program based on an agreement signed by the former assistant secretary for Public and Indian Housing, less than one month prior to his tendering his resignation. The former assistant secretary used a legal opinion obtained from the Authority's outside legal counsel to justify the award and he did not consult HUD's legal counsel on the propriety of the agreement. Since HUD did not follow applicable statutory requirements when admitting the Authority into the program, it did not ensure that HUD funds would be used efficiently and effectively to assist the maximum number of eligible families in the community.

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#### **HUD Did Not Comply with Applicable Statutory Requirements**

The Authority's failure to solicit input and submit a plan as part of the application process clearly violated the requirements of the statute found at Public Law Number 104-134, Section 204(c). The statute required the Authority to submit an application to participate in the program only after it provided for citizen participation through a public hearing and, if appropriate, other means. Additionally, it required the Authority to include a plan developed to take into account comments from the public hearing or any other public comments on the proposed program, and comments from current and prospective residents who would be affected.

Initially, HUD's deputy assistant secretary for Public Housing Investments responded cautiously to the Authority's late and inadequate written expression of interest in the program. On November 28, 2003, the deputy assistant secretary prudently declined to approve the Authority's request to enter the program. In his

written response, the deputy assistant secretary stated, “as we move further away from the 1996 statute authorizing the program, HUD’s ability to waive the statute and approve amendments becomes much less clear.” On the contrary, HUD has no authority to ignore or waive statutory requirements unless Congress expressly empowers it to do so. HUD had no such waiver authority with respect to the Moving to Work program. Nevertheless, on March 31, 2005, HUD’s former assistant secretary for Public and Indian Housing signed an agreement approving the Authority’s entry into the program.

### **HUD Failed to Consult Its Office of General Counsel**

HUD did not consult its Office of General Counsel concerning the legality of allowing the Authority to participate in the Moving to Work program without complying with the statutory and administrative requirements. HUD’s former assistant secretary for Public and Indian Housing signed an agreement approving the Authority’s entry into the program purportedly based on the Authority’s vague expression of interest and a December 2004 legal opinion from the Authority’s outside legal counsel. However, there was no evidence that HUD’s Office of General Counsel offered an opinion. We believe that such an opinion was warranted given that the Moving to Work agreement had far-reaching implications for HUD. The agreement was for a term of seven years and authorized the Authority to retain more than \$25 million in Section 8 program reserves that it would have otherwise had to return to HUD. Most importantly, under the agreement, the Authority was no longer required to follow many of HUD’s traditional program regulations.

### **HUD Did Not Follow Its Normal Award Making Process**

Public and Indian Housing Notice 2000-52, issued on December 13, 2000, invited housing authorities to submit an expression of interest in the program by January 5, 2001. The Authority was expected to explain its plans for transforming its housing stock and management systems and why its participation would benefit the program. However, the Authority’s expression of interest submitted on August 12, 2003, was short and vague and stated that the Authority would submit an application meeting statutory requirements within 60 days. The Authority never submitted the promised application.

HUD also did not evaluate the ability of the Authority to successfully plan and carry out its proposed Moving to Work program. To determine the potential of the Authority to successfully carry out the program, HUD’s established process

was to use the scores received through its assessment program to assess the performance of public housing agencies<sup>4</sup>. However, the Authority did not obtain the required assessment score of 80 when it entered the Job Plus initiative, nor did it obtain a required score of 80 when it requested the transfer to the full Moving to Work program. Moreover, the Authority was designated as a troubled agency from 2001 to 2003 and an overall troubled agency in 2004 under the Section 8 Management Assessment program. In addition, during this time, the Office of Inspector General (OIG) performed two reviews of the Authority and noted significant problems in the management of its overall programs. Based on its poor performance, the Authority should have been denied entry into the Moving to Work program.

When we discussed the Authority's poor performance with HUD officials, they stated that the former assistant secretary believed that the way Congress established the program to benefit high performing authorities was not beneficial. Instead, he believed the program should work with the poorly performing housing authorities to allow more flexibility to use the available funds without the rigid constraints of HUD's requirements. While the statute does not expressly prohibit the Authority from awarding the program to poor performing authorities, we question this philosophy, since the intent of the program was to reward high performing authorities that had demonstrated that they could perform within HUD's rules and regulations.

### **The Improper Moving to Work Agreement Nullified Key OIG Audit Recommendations**

OIG audits have identified significant problems with the Authority's Section 8 program in recent years that have not been corrected. However, by improperly allowing the Authority entry into the Moving to Work program in March 2005, HUD effectively nullified our audit recommendations since under the agreement, the Authority is no longer required to follow many of HUD's traditional program regulations.

On March 28, 2001, we issued Audit Report 2001-PH-1003 based on our audit of the Authority's Section 8 program. Our audit report noted four significant findings in the areas of financial management, program operations, use of program resources, and management information systems. On December 21,

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<sup>4</sup> HUD measured housing agency performance with the Public Housing Management Assessment program from 1991 through 1999. In 1996 the U.S. Housing Act of 1937 was amended to require HUD to establish the Public Housing Assessment System. That system has been used since fiscal year 2000, to measure housing agency performance to administer the low-income program. HUD established the Section 8 Management Assessment program to evaluate housing agency capacity to administer the Section 8 program and has used this system since fiscal year 2001.



2004, we issued Audit Report 2005-PH-1004 as a result of a corrective action verification review of the Authority's Section 8 program. We conducted this audit to verify the corrective actions taken as a result of our initial audit, issued in March 2001. Our 2004 audit noted that the Authority had not yet fully implemented all key OIG recommendations from our initial review. We found the Authority had not fully developed and implemented

- Financial system controls necessary to ensure its books and records were maintained in accordance with HUD requirements,
- Adequate procedures to improve its administration of the Section 8 program, and
- Procedures to fully budget and use its available Section 8 resources.

Since HUD's approval of the Authority's Moving to Work program was improper and failed to protect HUD's interests, HUD should reinstate key recommendations in these audit reports, which are included below.

## Recommendations

We recommend that the assistant secretary for Public and Indian Housing

- 1A. Obtain a legal opinion from the Office of General Counsel to determine whether there are sufficient legal grounds to nullify the Authority's Moving to Work agreement. If so, nullify the Moving to Work agreement with the Authority.
- 1B. Establish policies and procedures that would require a legal opinion be obtained from the Office of General Counsel when the normal award making processes are not followed in approving housing agencies' participation in future program initiatives.
- 1C. Depending on the results of the legal opinion in 1A, reopen the following recommendations from Audit Report 2001-PH-1003, recommending that the Authority
  - Implement financial system controls and procedures to ensure books and records are maintained according to HUD requirements and year-end reports are complete and accurate.
  - Develop and implement procedures to improve its operation of the Section 8 program. The Authority needs to

- Ensure tenant recertifications are performed according to HUD requirements,
- Ensure housing quality standards inspections are performed according to HUD requirements, and
- Administer its waiting list according to HUD requirements.
- Ensure the Authority implements procedures to fully budget Section 8 resources provided by HUD to assist as many families as possible.

1D. Depending on the results of the legal opinion in 1A, reopen the following recommendations from Audit Report 2005-PH-1004, recommending that the Authority

- Develop and implement procedures to ensure unit counts are adjusted according to the number of months that have passed after the tenant has moved out and ensure the calculation of the administrative fee is adjusted accordingly.
- Develop and implement procedures to ensure documentation is maintained supporting adjustments and deductions.
- Implement procedures to ensure timely payment of housing assistance payments to owners and/or receiving housing authorities.

1E. Depending on the results of the legal opinion in 1A, reopen the following recommendations from Audit Report 2005-PH-1004, recommending that the Baltimore Office of Public and Indian Housing

- Recapture \$25.1 million of the \$38 million in unused Section 8 funding from the Authority's program reserve account.
- Monitor the Authority to ensure that it implements a new Section 8 leasing plan to ensure it fully uses its available vouchers. By ensuring the Authority implements and continuously monitors its aggressive leasing plan, we estimated the Authority could put to better use \$5.5 million in Section 8 funding it would receive from HUD.

## SCOPE AND METHODOLOGY

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To accomplish the audit objectives, we

- Reviewed applicable laws, regulations, and other Moving to Work program requirements.
- Reviewed HUD's policy and procedures for administering the Moving to Work program.
- Reviewed prior OIG audit reports at the Authority; HUD's Moving to Work program files, including the Job Plus initiative and Moving to Work agreements, Section 8 Management Assessment program reports, Public Housing Management Assessment program reports, Public Housing Assessment System reports, and memorandums; and other documents relevant to the Authority's acceptance into the Moving to Work program.
- Conducted interviews with Office of Public Housing and voucher program officials.
- Obtained a legal opinion from the OIG legal counsel.

We performed audit work at various times from May through December 2005.

We performed our review in accordance with generally accepted government auditing standards.

# INTERNAL CONTROLS

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Internal control is an integral component of an organization's management that provides reasonable assurance that the following objectives are being achieved:

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

Internal controls relate to management's plans, methods, and procedures used to meet its mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance.

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## Relevant Internal Controls

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

- Procedures over compliance with applicable laws and regulations in selecting Moving to Work participants.

We assessed the relevant controls identified above.

A significant weakness exists if management controls do not provide reasonable assurance that the process for planning, organizing, directing, and controlling program operations will meet the organization's objectives.

## Significant Weaknesses

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

- HUD did not to comply with applicable statutory and administrative requirements.


# APPENDIXES

## Appendix A

### AUDITEE COMMENTS AND OIG'S EVALUATION

#### Ref to OIG Evaluation

#### Auditee Comments

 <p>U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT WASHINGTON, DC 20410-5000</p> <p>ASSISTANT SECRETARY FOR PUBLIC AND INDIAN HOUSING</p>	<p>U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT WASHINGTON, DC 20410-5000</p>
<p><b>MAY 12 2006</b></p>	
<p>MEMORANDUM FOR: John P. Buck, Regional Inspector General for Audit, Philadelphia Regional Office, 3AGA</p> <p>FROM: <i>[Signature]</i> Mando J. Cabrera, Assistant Secretary for Public and Indian Housing, P</p> <p>SUBJECT: Draft Audit Report on the Department's Acceptance of the Housing Authority of Baltimore City into the Moving to Work Demonstration Program</p>	
<p>We are in receipt of the draft audit report that reviews the United States Department of Housing and Urban Development's (HUD's) admittance of the Housing Authority of Baltimore City (HABC) into the Moving to Work (MTW) Demonstration program.</p>	
<p>My staff and I have reviewed the draft audit report and its recommendations. First of all, we would like to provide the Inspector General (IG) with our general comments about the report's findings and then provide some specific comments on the report's recommendations.</p>	
<p><b>MTW Is a Demonstration Program</b></p> <p>The Moving to Work (MTW) Program is a demonstration program. The purpose of the demonstration program is discussed in the first paragraph of the authorizing statute, Section 204(a) of Public Law Number 104-134: "The purpose of this demonstration is to give public housing agencies and the Secretary of Housing and Urban Development the flexibility to design and test various approaches for providing and administering housing assistance that reduce cost and achieve greater cost effectiveness in Federal expenditures, give incentives to families with children where the head of household is working, seeking work, or is preparing for work..." Section 204(b) goes on to state that an outcome of the program is "to identify replicable program models promoting the purpose of the demonstration" and to "facilitate the transition to work on such terms and conditions as the agency (housing authority) may propose and the Secretary may approve."</p>	
<p>In selecting agencies to participate, Section 204(d) states, "...the Secretary shall take into account the potential of each agency to plan and carry out a program under the demonstration, the relative performance by an agency under the public housing management assessment program and other appropriate factors as determined by the Secretary." Such language gives the Secretary wide latitude in selecting housing authorities to participate in the MTW program and does not mandate that one method of selection be used.</p>	
<p>www.hud.gov      espanol.hud.gov</p>	

**Comment 1****Method of Selection Into the MTW Program**

Because the authorizing statute gives the Secretary wide latitude in selecting participants, there is no “normal award process,” as asserted in the draft audit report. There are three ways that housing authorities have been admitted to the MTW program. First, housing authorities had the opportunity to respond to either a Notice published in the Federal Register on December 18, 1996 or a Public and Indian Housing Notice 2000-52, issued on December 13, 2000. All housing authorities administering the public and Indian housing and Section 8 programs were eligible to respond to the Federal Register Notice. Only housing authorities with over 2,500 units were eligible to respond to the Public and Indian Housing Notice 2000-52. Selection processes were laid out in these Notices. Second, housing authorities have also been admitted into the MTW program by Congressional mandate. Two housing authorities, Charlotte and Pittsburgh, were specifically named and authorized to participate in MTW under the VA, HUD and Independent Agencies Appropriations Act of 1999.

Given the language in the authorizing statute, the third way to become an MTW participant is through the discretion of the Secretary. This is also how HABC was chosen to become an MTW participant. The Assistant Secretary, acting on behalf of the Secretary, had authority under the statute to choose another MTW participant and had the discretion to do so via an application procedure other than those used in the past. This was entirely legal as long as the Assistant Secretary complied with the statute.

**No Statutory Requirement to Consider the Authority’s PHAS Score**

The report is critical that HUD did not use its established process by using scores received through its system for assessing the performance of public housing agencies. We note that Section 204(d) of the MTW statute indicates that, in selecting participants, the Secretary should **take into account** (*emphasis added*) the potential of each agency to plan and carry out a program under the demonstration, the relative performance by an agency under PHAS and other appropriate factors as determined by the Secretary. We believe that this language provides HUD with wide discretion regarding which housing authorities it selects to participate in the MTW demonstration and the criteria used in selection. While HUD needs to consider an authority’s PHAS score, there is no requirement that participants have high scores. HUD does not have to deny participation because of a poor PHAS score.

**Comment 2**

Rather, we believe there is merit in selecting lower-scoring authorities to demonstrate that the flexibility the MTW program affords can help produce well-managed authorities from previously less-well-managed authorities. The report notes on page 8 that HUD officials told the IG that the program should work with poorly performing housing authorities by allowing more flexibility to use the available funds without the rigid constraints of HUD’s requirements.

**Statutory Requirement to Conduct a Public Hearing**

Your report notes that the authorizing statute required HABC to submit an application to participate in the program only after it provided for citizen participation through a public hearing and, if appropriate, through other means. Additionally, the statute required that the application include a plan that takes into account comments from the public hearing and any other public comments on the proposed program and comments from current and prospective residents who would be affected.

**Comment 3**

HABC indicated in its MTW Plan, dated October 28, 2005, that the 2005 MTW Agreement was executed only after approval by HABC's Board of Commissioners and that it made extensive efforts to engage residents and the public in developing the MTW Annual Plan. We have no independent confirmation that a public hearing took place prior to the execution of the MTW Agreement or that public comments were solicited by other means. Nor do we have evidence that HABC provided the public with the opportunity to comment on HABC's plan. We assume that the IG thoroughly investigated this matter and found that HABC did not conduct public hearings prior to the execution of the MTW Agreement.

**Recommendations**

We have the following comments on recommendation 1A:

**Obtain a legal opinion from the Office of General Counsel to determine whether there are sufficient legal grounds to nullify the Authority's MTW agreement. If so, HUD should nullify the MTW agreement with the Authority.**

We are unclear about this recommendation for the following reasons: There is absolute certainty that HUD has the right to terminate the agreement by its own terms as described in the MTW Agreement in Article II.C. This section states, "At any time HUD may terminate this Agreement, and the Agency's MTW demonstration, or take any corrective or remedial action as described in Article III.C of this Agreement, for Agency default, or other good cause as determined by HUD after providing the Agency with notice and a reasonable opportunity to be heard, unless HUD determines the nature of the default requires that HUD take immediate action." It would be entirely within HUD's authority to terminate the Agreement for good cause or to take any of the corrective or remedial actions described in Article III.C.

**Comment 4**

While we believe that the Assistant Secretary clearly had the authority to award MTW status, we agree that the statutory requirements that were essentially conditions precedent to entering into an MTW Agreement were not met. In light of the fact that HABC has filed a motion in the *Thompson et al. v. The United States Department of Housing and Urban Development et al.* case in federal district court regarding the use of Section 8 reserve funds that are governed by the HABC MTW Agreement, we must consult the United States Department of Justice, our litigation counsel in the *Thompson* case, prior to nullifying or otherwise terminating the HABC MTW Agreement.

**1B. Establish policies and procedures that would require a legal opinion be obtained from the Office of General Counsel when the normal award making processes are not followed in approving housing agencies' participation in future program initiatives.**

**Comment 5**

Please see our comments on page 2 and in response to Recommendation 1A.

**1C and 1D. Depending on the results of the legal opinion in 1A, reopen the following recommendations from Audit Report 2001-PH-1003 and Audit Report 2005-PH-1004.**

Should HUD determine that the Agreement should be rescinded at some point in the future and moves to rescind it, HUD would then consider whether to require HABC to implement controls and procedures as discussed in the two audit reports to improve its Section 8 program and implement adequate financial system controls and procedures for its public housing program.

**1E. Depending on the results of the legal opinion in 1A, reopen the following recommendations from Audit Report 2005-PH-1004 recommending:**

- **Recapturing \$25.1 million of the \$38 million in unused Section 8 funding from the Authority's program reserve account.**
- **Routinely monitoring the Authority to ensure that it implements a new Section 8 leasing plan to ensure it fully uses its available vouchers.**

Currently, these funds are under HUD's control. However, in the MTW Agreement, HUD obligated itself to provide the full amount of the Section 8 reserves to HABC for eligible activities under the MTW Agreement, including obligations imposed by the Partial Consent Decree ("Decree") to the extent necessary to meet those obligations. HUD and HABC are currently in litigation over HUD's release of a portion of these funds that the Authority seeks to use for mobility counseling but HUD wants to be used for rent subsidies to enable families in Baltimore to be housed. As such, it is premature to make decisions about the use of any part of the reserve account at this time. More importantly, whether or not there was an MTW Agreement, it would be HUD's desire to make these reserve funds available to HABC in the ordinary course in order to fund rent subsidies for Baltimore families under the Decree.

## Comment 6



## OIG Evaluation of Auditee Comments

- Comment 1** While the statute allows the secretary some discretion in selecting participants, HUD did in fact violate requirements of the statute found at Public Law Number 104-134, Section 204(c) by executing an agreement with the Authority without requiring it to provide for citizen participation through a public hearing or other means. In addition, HUD violated the statute by not requiring the Authority to develop a plan considering comments obtained from the required public hearing or any other public comments on the proposed program. Further, HUD deviated significantly from Public and Indian Housing Notice 2000-52, issued on December 13, 2000, by accepting the Authority's expression of interest 31 months past its established deadline. We also remain concerned that the former assistant secretary for Public and Indian Housing relied on legal advice he obtained from the Authority's outside legal counsel when he signed the Authority's agreement less than one month prior to tendering his resignation.
- Comment 2** The audit report properly acknowledged that the statute does not expressly prohibit the Authority from awarding the program to poor performing authorities. However, based on Section VII of the Moving to Work Notice we continue to believe the intent of the program was to reward high performing authorities that had demonstrated that they could perform within HUD's rules and regulations. OIG audits have identified significant problems with the Authority's Section 8 program in recent years that have not been corrected, which brings to question the Authority's potential to plan and carry out the Moving to Work program. By improperly allowing the Authority entry into the Moving to Work program in March 2005, HUD effectively nullified our audit recommendations and our efforts to ensure the Authority fully utilized housing vouchers to assist the maximum number of needy families and bring the Section 8 program into compliance.
- Comment 3** As stated in the report, HUD violated requirements of the statute found at Public Law Number 104-134, Section 204(c) by executing an agreement with the Authority without requiring it to provide for citizen participation through a public hearing or other means. In addition, HUD violated the statute by executing an agreement without requiring the Authority to submit an application that would include a plan that considered comments obtained from the required public hearing or any other public comments on the proposed program.
- Comment 4** We are pleased that HUD agrees with OIG that the statutory requirements that were essentially conditions precedent to entering into a moving to work agreement were not met. We understand that the Authority has filed a motion in the *Thompson et al. v. The United States Department of Housing and Urban Development et al.* case in federal district court regarding the use of Section 8 reserve funds that are governed by the agreement and therefore HUD must consult the United States Department of Justice, its litigation counsel in the *Thompson*

case, prior to nullifying or otherwise terminating the agreement. In light of the fact that HUD agrees that the statutory requirements that were essentially conditions precedent to entering into a moving to work agreement were not met, HUD needs to ensure it nullifies the agreement pending its consultation with the United States Department of Justice.

**Comment 5** The audit showed and HUD agreed that it did in fact violate requirements of the statute found at Public Law Number 104-134, Section 204(c). In addition, HUD deviated significantly from Public and Indian Housing Notice 2000-52, issued on December 13, 2000, by accepting the Authority's expression of interest 31 months past its established deadline. Based on Section VII of the Moving to Work Notice we continue to believe the intent of the program was to reward high performing authorities that had demonstrated they could perform within HUD's rules and regulations. In light of these facts it is imperative that HUD establish policies and procedures that would require a legal opinion be obtained from the Office of General Counsel when the normal award making processes are not followed in approving housing agencies' participation in future program initiatives.

**Comment 6** Since HUD agrees that the statutory requirements that were essentially conditions precedent to entering into a moving to work agreement were not met, it needs to ensure it nullifies the agreement pending its consultation with the United States Department of Justice. Pending its consultation with the United States Department of Justice it should follow through with the recapture of \$25.1 million of the \$38 million in unused Section 8 funding from the Authority's program reserve account as it was scheduled in August 2005, and monitor the Authority to ensure that it implements a new Section 8 leasing plan to ensure it fully uses its available vouchers.