audit report
OFFICE OF INSPECTOR GENERAL

Issue Date	March 28, 1996
Audit Case Number	96-SE-119-0002

TO: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner, H

John A. Knubel, Chief Financial Officer, F

FROM: A. George Tilley, District Inspector General for Audit, 0AGA

SUBJECT: Review of Savings from FAF Bond Refundings

As of May 1995, about 300 state and local housing agencies (housing agencies) have refunded bonds that financed Section 8 projects with a Financial Adjustment Factor. The refundings will save over $1.1 billion over the life of the Section 8 Housing Assistance Payment (HAP) contracts. Only $135 million of the savings have been realized to date. Under the McKinney Act, the savings are to be shared equally between the housing agencies and HUD. The housing agencies are required to use their share of the savings only for providing decent, safe, and sanitary housing for very low income families and persons.

We performed a review of the savings from the refunding of these bonds. We wanted to know if the housing agencies were using or planning to use their savings in accordance with the McKinney Act requirements, and if HUD was receiving and properly accounting for its share of the savings.

For the most part, the housing agencies we reviewed were using or planning to use their savings in accordance with the McKinney Act requirements, and HUD was receiving the amount due. However, some agencies used or planned to use some of their savings for costs not specifically related to housing, and HUD was not in all cases properly accounting for its share of the savings. Our report includes recommendations for improvement that should, when implemented, give HUD greater assurance that the savings from bond refundings are used consistent with the McKinney Act requirements, and that HUD will receive all the savings it is due.

As provided in HUD Handbook 2000.6 REV-2, within 60 days please provide us with a status report for each recommendation, on the corrective action taken, the proposed corrective action and the date for its completion, or why action in not considered necessary. An additional status report is required on any recommendation without a management decision after 110 days. Also, please furnish us with copies of any correspondence or directives issued related to the audit.

Should your staff have any questions, please have them contact auditors Stanley Svarc or Kristine Burt in the Seattle OIG Audit Office at (206) 220-5360.

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Executive Summary

As of May 1995, about 300 state and local housing agencies (housing agencies) have refunded bonds that financed Section 8 projects with a Financial Adjustment Factor (FAF). The refundings will save over $1.1 billion over the life of the Section 8 Housing Assistance Payment (HAP) contracts. Only $135 million of the savings have been realized to date. Under the McKinney Act, the savings are to be shared equally between the housing agencies and HUD. The housing agencies are required to use their share of the savings only for providing decent, safe, and sanitary housing for very low income families and persons.

We performed a review of the savings from the refunding of these bonds. We wanted to know if the housing agencies were using or planning to use their savings in accordance with the McKinney Act requirements, and if HUD was receiving and properly accounting for its share of the savings. The 28 housing agencies in our review had 75 percent of the savings available to all housing agencies at the time of our review, and the 28 will receive 62 percent of the savings to be received by all housing agencies over the life of the HAP contracts.

For the most part, the housing agencies we reviewed were using or planning to use their savings in accordance with the McKinney Act requirements, and HUD was receiving the amount due. However, some housing agencies have used or planned to use some of their savings for costs not specifically related to housing, and HUD was not in all cases properly accounting for its share of the savings. Our report includes recommendations for improvement that should, when implemented, give HUD greater assurance that the savings from bond refundings are used consistent with the McKinney Act requirements, and that HUD will receive all the savings it is due.

For the most part, housing agencies used or planned to use their savings in accordance with the McKinney Act.

We reviewed how 28 housing agencies used or planned to use their savings. Specifically, of the 28 housing agencies reviewed:

- 18 were using or planning to use their savings to only provide decent, safe, and sanitary housing for very low income families and persons. These 18 housing agencies have to date received $31 million of the $229 million they should receive over the life of the HAP contracts.

    - Three of the 18 housing agencies were, in our opinion, especially effective and innovative in using their savings to provide affordable housing to very low income people. Specifically:

- **New Mexico Mortgage Finance Authority,** through a partnership with Habitat for Humanity, provided affordable home ownership opportunities for very low income families. We consider this use innovative because it leverages other resources, provides low cost homes (less than $30,000 per home) through volunteer labor and donated materials, and reuses the savings as the loans are repaid (see pages 8-9).

- **Delaware State Housing Authority** issued bonds to get all of the savings up front so that it would not have to wait for the savings to be available to provide affordable housing for very low income families and persons. We consider Delaware's process of issuing bonds to be repaid with the savings an innovative way of using the savings because it allowed the agency to use the savings timely (see page 9).

- **Colorado Housing and Finance Authority** and **New Mexico Mortgage Finance Agency** provide, through a partnership with non-profits and local lenders, loans for down payments and closing costs at low interest rates to very low income families and persons. We consider this use innovative because it helps provide home ownership opportunities to the very low income persons and it reuses the savings as the loans are repaid (see pages 9-10).

• 2 housing agencies were undecided on how to use their savings. These two housing agencies have received $3 million of the $11 million they should receive over the life of HAP contracts.

• 8 housing agencies had used or planned to use some of their savings for questionable programs or expenses. These eight housing agencies have received $6 million of the $74 million they should receive. Three housing agencies have used $4 million of the $6 million for questionable expenses such as social and administrative costs. The other five plan to use some of their savings for similar uses. Most of these questionable uses were approved by HUD in the refunding agreements. We question these uses because, in our opinion, they are not specifically housing costs, or the costs are used for either a project that may not be decent, safe, and sanitary or may not benefit very low income families and persons.

HUD does not always receive or properly account for its share of the savings.

HUD does not always receive or properly account for its share of the savings which is about $575 million to be collected over the life of the HAP contracts. Specifically HUD does not always:

- earn and collect interest earned on HUD's share of the savings while it is held by the trustees. For the 16 housing agencies reviewed:
    - 10 did not provide for HUD to either earn or share in the interest on HUD's share of the savings.
    - 6 did provide for HUD to earn and receive interest. But four of the trustees did not always send the interest to HUD.
- properly account for its share of the savings. Specifically HUD :
    - reduced the outstanding receivable by interest it received for 10 of the 26 refundings reviewed.
    - had incorrect savings schedules for 4 of the 26 refundings, and therefore incorrect accounts receivables.
    - had not credited the proper account for 3 of 26 refundings.
    - did not classify accounts as delinquent when payments were short.

These problems are caused by vague or non-existent requirements for earning interest, a lack of communication among the parties involved, and HUD's policies for classifying delinquent accounts. HUD is obligated to collect the savings and properly account for them. As a result of these problems HUD may not receive all of its share of the savings.

HUD does not have adequate controls over how housing agencies use their savings.

HUD does not have adequate controls over how the housing agencies use their savings, which will total more than $512 million over the life of the HAP contracts. As a result, HUD does not know how the savings are being used. HUD does not have adequate controls because HUD does not have enough staff or a finalized strategy to achieve effective controls, and most of the FAF refunding agreements are not clear regarding reporting requirements.

HUD does not have agreements with all of the housing agencies to limit how the savings will be used.

At the beginning of our review, HUD had not yet entered into refunding agreements with the housing agencies for 130 of the refundings. These agreements are needed to govern how the housing agencies use and report their use of the savings, and provide the trustees authority and responsibility to pay housing agencies their share of the savings. Four housing agencies in our sample of 35 received their savings without a refunding agreement limiting how the savings could be spent.

HUD has not entered into these agreements with all housing agencies yet because of staffing constraints. However, HUD officials told us that they have entered into agreements with some housing agencies since the beginning of our review and are currently working on getting agreements with the rest of the housing agencies.

Savings from two rent reduction refundings were not being paid correctly.

The most common method of refundings included the use of trustee sweeps. But twelve refundings used the rent reduction method, including four that used both. Instead of using trustees to collect the savings, HUD sends the housing agencies their savings with the quarterly HAP payments.

HUD was not paying the savings from rent reduction refundings on time or in the correct amount for two of the five refundings reviewed. At one housing agency the payments for one refunding had not yet started and the first payment was over two years late. At the other housing agency the owners of five projects are receiving all the savings, instead of HUD and the housing agency because HAPs to the owners were not reduced. As a result, HUD and the agency will each lose $4,432,274 over the remaining life of the HAP contract, unless the HAP contract is reduced.

Recommendations

We recommend that HUD officials:

- reconsider or formalize their decisions on the use of the savings not specifically related to decent, safe, and sanitary housing for very low income persons, and notify agencies of any ineligible uses.

- establish procedures for obtaining interest earned on HUD's share of the savings while held by the trustee, take action to improve HUD's accounting for its share of the savings, and ensure that all outstanding receivable balances are accurate.

- establish cost-effective controls over how agencies use their savings.

- execute refunding agreements with all agencies that refunded FAF bonds to help ensure that agencies use the savings in accordance with the McKinney Act.

- reduce the HAP for the five projects where the owners are getting all of the savings and recover the saving the owners have received.

We sent a copy of our draft report to the Assistant Secretary for Housing-Federal Housing Commissioner and the Chief Financial Officer for comments on February 9, 1996. We obtained written responses by March 14, 1996, and we incorporated the comments into the report as appropriate. A copy of their comments is included in Appendix E.

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Abbreviations

HUD	Department of Housing and Urban Development
OMB	Office of Management and Budget
FAF	Financial Adjustment Factor
HAP	Housing Assistance Payment
PHA	Public Housing Agency
HDC	Housing Development Corporation
RHDC	Regional Housing Development Corporation
OGC	Office of General Counsel
CFR	Code of Federal Regulations

Introduction

Background

State housing finance agencies and local public housing authorities (housing agencies) have issued tax exempt bonds to finance Section 8 assisted projects. State agencies issued bonds as an instrumentality of the state and interest on those bonds is exempt from federal income taxes under Section 103 of the Internal Revenue Code. Interest on bonds issued by local housing agencies or their instrumentalities were exempt from federal income taxation pursuant to Section 11(b) of the United States Housing Act of 1937 as amended.

High interest rates led to HUD allowing additional subsidies.

During the late 1970's and early 1980's, interest rates rose to unprecedented levels. High interest rates made it difficult to develop feasible projects within the maximum rents allowed by HUD. In 1981, HUD created the Financial Adjustment Factor (FAF) which, in effect, increased Section 8 subsidies to enable projects to be built during periods of high interest rates. On FAF projects the bond issuing housing agencies agreed to use their best efforts to refund bonds at HUD's request, when interest rates decreased. Project owners also agreed to reduced subsidies to reflect the reduction in debt service from bond refunding. The refunding of tax exempt bonds with new bonds at a lower interest rate can result in significant savings in debt service. With the debt service reductions, HUD benefits by lowering the amount of Section 8 subsidies it provides to the projects. Approximately 63,500 units were financed by housing agencies utilizing the FAF.

With lower interest rates, bonds were refunded.

When interest rates declined in the late 1980's, HUD wanted the bonds refunded so that the Section 8 subsidies would be reduced. In 1987, HUD instructed housing agencies to explore the feasibility of taxable refundings. Because taxable bonds have higher interest rates, Section 8 savings were small.

Housing agencies were allowed to share in the savings generated by the refundings.

In late 1988, HUD and OMB agreed that refunding would be permitted to go forward on a tax exempt basis. HUD instructed housing agencies to explore the feasibility of tax exempt refunding. Also, the Stewart B. McKinney

Homeless Assistance Amendments Act of 1988 (McKinney Act) authorized state housing agencies to share in savings from refunding. The McKinney Act provided for 50 percent of the savings from the refunding to be shared with the state housing agencies and required that the savings be used for providing decent, safe, and sanitary housing affordable for very low income families or persons.

On April 21, 1992, the Act was amended to allow local housing agencies to share in the savings, retroactively to January 1, 1992, with the same use restrictions. On October 28, 1992, the Act was amended again to:

- define projects subject to the McKinney Act as those that were provided a FAF, or Section 8 projects constructed or substantially rehabilitated where the HAP contract was entered into during any of calendar years 1979 through 1984, and

- allow the Act to apply retroactively to refundings completed before, on, or after the date of the amendment, to the extent or in such amounts that are provided for in appropriations acts.

However, funds were not appropriated for the retroactive portion of the October 28, 1992, amendment, so local housing agencies can share the savings with HUD only for refundings completed after January 1, 1992. According to HUD officials, HUD retains 100 percent of the savings for local agency FAF bond refundings that were completed before January 1, 1992.

The 367 refundings will result in $1.179 billion in savings.

As of June 30, 1995, the Financial Services Division of HUD had approved 367 refundings of bonds financing FAF Section 8 projects at 299 housing agencies. The refundings completed by May 1995 will result in total savings of about $1.179 billion. The housing agencies which refunded the bonds will receive about $512 million as their 50 percent share of the savings. HUD also will receive about $512 million for these refundings, and, in addition, will receive about $155 million for FAF refundings for which it receives 100 percent of the savings. As of May 1, 1995, housing agencies had earned about $53 million (about 10 percent of the total amount they will receive) in savings available for their use and HUD had received about $82 million of its share of the savings.

Trustee sweep versus rent reduction method of refunding.

The savings from FAF bond refundings are recaptured using either the trustee sweep method or the rent reduction method. All but six housing agencies with eight refundings used the trustee sweep method for all or part of the refunding.

Under the trustee sweep method, none of the contracts are amended, HUD continues to pay the current Section 8 Housing Assistance Payment (HAP) level, and the owners continue to pay the mortgage at the interest level including the Financial Adjustment Factor. The savings are realized when the trustee has excess funds because the mortgage rate exceeds the bond rate. HUD and each agency agreed on a savings schedule providing the amounts and dates that the savings are due HUD and are earned by the agency. Periodically the trustee sweeps the account, wire transfers the agreed amount of the savings to the Department of Treasury (Treasury), and makes available half of the savings to the issuing agency. HUD sets up a receivable for its share and tracks the payments received. HUD's share of the savings are sent to the Treasury, as required by annual HUD appropriations acts, rather than being applied against amounts paid out in Section 8 Housing Assistance Payments.

Under the rent reduction method, all of the contracts are amended by reducing them by 100 percent of the savings, HUD pays a reduced HAP level, and the owner's mortgage payment is reduced. Half of the reduction in HAP is "piggy backed" onto the quarterly Section 8 HAPs. It is more work to amend all of the contracts, but then HUD does not have to set up a receivable and collect the savings.

HUD's Accounting Operations collects and accounts for HUD's share of the savings.

HUD's Office of Accounting Operations (Accounting Operations) receives and accounts for HUD's share of the savings for each trustee sweep refunding. It sets up a receivable based on the savings schedule. After the trustee wire transfers the savings to the Treasury, HUD credits the savings against the outstanding balance in the appropriate receivable. Accounting Operations also sends out notices when the saving payments are due and is responsible for following up on delinquent accounts.

HUD enters into FAF agreements to control the agencies' share of the savings.

HUD and the agency enter into a FAF refunding agreement to control how the savings will be received, used, and reported to HUD. Each agency writes a plan for how they will use the savings as part of the FAF agreement.

Objectives

The savings from the refunding of bonds financing Section 8 projects with Financial Adjustment Factor (FAF) will be over $1.1 billion and only about 10 percent of the savings that the housing agencies will receive have been generated to date. We wanted to determine: (1) if the savings received by housing agencies are being used or will be used only for providing decent, safe, and sanitary housing affordable for very low-income families and persons, and (2) whether HUD is receiving the proper amount of its share of the savings, which will total about $667 million. Our specific objectives were to:

- determine if housing agencies were using or planning to use their share of the savings only for providing decent, safe, and sanitary housing affordable for very low income families and persons, as required by the McKinney Act,

- identify examples of best practices and innovative ways of using the savings which could be helpful to other housing agencies,

- determine if housing agencies that have not yet earned any savings but will receive substantial amounts in the future have made plans for use of the savings,

- determine if HUD receives the proper amount of savings including interest, where applicable, and accounts for its share properly.

- determine if HUD is monitoring how housing agencies are using the savings,

- determine the effect of HUD not having written refunding agreements with the housing agencies governing the use of the savings for those refundings that do not have such agreements,

- determine if HUD's process for providing 50 percent of the savings to housing agencies that used the rent reduction method is working properly.

Methodology and Scope

We reviewed the FAF savings that have been or will be received by both housing agencies and HUD. For our review of the housing agencies share of the savings, we selected two samples. These included:

- a sample of 28 housing agencies (17 housing agencies that had earned savings and 11 housing agencies that had not yet earned savings), and

- a sample of 35 housing agencies without refunding agreements with HUD.

The 28 housing agencies in our review had 75 percent of the savings available to all housing agencies at the time of our review, and the 28 will receive 62 percent of the savings to be received by all housing agencies over the life of the HAP contracts. Twenty-six of the 28 housing agencies in our sample used the trustee sweep method, one used the rent reduction method, and one used both methods. As of June 30, 1995, there had been 355 trustee sweep refundings, 8 rent reduction refundings, and 4 refundings that used both methods.

We selected the 17 housing agencies that had earned savings at the time of our review. To maximize coverage of the FAF savings, we selected 16 of the housing agencies because they had the largest amount of savings available to use. We selected the other because we wanted to include one small housing authority. We visited 15 of the 17 housing agencies in our sample, and obtained information through other means for the other two. The 17 housing agencies are listed in Appendix A.

For the other 11 housing agencies in our sample of 28, we selected those that had not yet earned any savings to determine how the housing agencies plan on using the savings they will receive. The total savings to be received by these 11 is $24 million over the life of the HAP contracts. We contacted these 11 housing agencies by phone and confirmed the information received. The 11 housing agencies are listed in Appendix B.

We selected another sample of 35 refundings for which HUD did not have FAF refundings agreements in its files. The refunding agreements identify HUD's and the agencies' responsibilities under the McKinney Act, including the restrictions on agencies' use of the savings. We wanted to determine if the trustees had released any of the savings to the agencies and what the effect was of not having the agreements. We selected our sample from the 130 FAF refundings that did not have FAF agreements in the Financial Services Division files at the time of our review. The 35 included all 29 cases that should have savings available to draw down of $100,000 or more, and 6 that should have savings available of less than $100,000. We contacted the trustees for these 35 housing agencies by phone and confirmed the information received. The 35 refundings are listed in Appendix C.

From our sample of 28, we reviewed HUD's share of the savings for the 16 housing agencies for which HUD had received savings. (One of the 17 was a rent reduction and was therefore excluded.) For this sample, we determined if HUD was receiving the proper amount of savings, including interest where applicable, and if HUD was accounting for its share of the savings properly.

We also reviewed applicable laws and regulations as well as policies and procedures relevant to our objectives. We reviewed records at HUD Headquarters and at the housing agencies we visited.

We conducted the review in accordance with generally accepted government auditing standards for performance audits.

Audit Period

Our work generally covered the period from the refunding date through June 30, 1995, for the refundings we reviewed. For our 2 samples of 28 and 35 housing agencies, the refundings occurred during the years 1990 through 1994. We performed our work from March 1995 through December 1995.

Housing Agencies Are, For The Most Part, Using or Planning to Use Their Savings For Housing Very Low Income Persons

Twenty of the 28 housing agencies reviewed had, at the time of review, received $33 million of the $240 million they should receive over the life of the HAP contracts. Specifically:

- **18 of the 20 housing agencies are using or planning to use their savings to provide decent, safe, and sanitary housing, affordable to very low income families and persons as required by the McKinney Act.**

- **in our opinion, 3 of these 18 housing agencies found innovative or effective uses for their savings.**

- **2 of the 20 housing agencies are undecided on how to use their savings.**

- **the other 8 housing agencies reviewed have used or planned to use some of their savings for uses we consider not specifically related to decent, safe, and sanitary housing for very low income families or persons. Three of the 8 have already used some of their savings (about $4 million of the $6 million they have earned) for questionable programs or expenses, whereas the other five have planned to use some of their savings for questionable uses.**

  The questionable uses include social programs and administrative expenses. Most of these questionable uses were approved by HUD in the refunding agreements. However, we believe they are inconsistent with the requirements of the McKinney Act because the costs do not relate directly to housing very low income people.

Savings must be used to provide affordable housing for very low income families and persons.

Section 1012 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, as amended, (the McKinney Act) states that the savings that HUD makes available to housing agencies "shall be used only for providing decent, safe, and sanitary housing affordable for very low-income families and persons." HUD enters into refunding agreements with the housing agencies that specify additional requirements for the use of the savings.

We reviewed how 28 agencies used or planned to use their savings.

We reviewed the programs and activities (uses) or planned uses of savings at 28 housing agencies. We found that 18 of the housing agencies used or planned to use their savings in accordance with the requirements of the McKinney Act. (See Appendices A and B for listings of housing agencies in the sample.)

Eligible Uses

The 18 housing agencies used or planned to use their savings for six major categories of activities and programs that met the requirements of the McKinney Act. Twelve of the 18 housing agencies used or planned to use the savings for more than one category. The categories of uses were to:

- make loans or grants to build, rehabilitate, or purchase very low income rental housing,
- provide rental and operating subsidies for very low income housing,
- provide home ownership opportunities to very low income persons,
- house very low income special needs populations,
- repair very low income housing, and
- provide additional security for very low income housing.

Innovative and effective uses of the savings.

We did not make cost/benefit analyses of the uses of the savings for the housing agencies in our sample. However, the following programs, in our opinion, were especially effective and innovative in addressing the housing needs of very low income families or persons in the area.

- Providing affordable home ownership opportunities through a partnership with Habitat for Humanity (Habitat).

  The **New Mexico Mortgage Finance Authority's** (New Mexico) partnership with Habitat was established to use FAF savings to finance housing for very low income families. New Mexico finances the housing by purchasing the mortgages for very low income families

from Habitat after the home owner has established a payments history. Habitat then uses the FAF savings to build additional housing for very low income families. Habitat is able to build the homes for less than $30,000 because they use donated labor and materials. They sell the homes to very low income families for just the hard cost with a 0 percent interest mortgage. New Mexico recycles the savings by putting the mortgage payments back into the Housing Trust Fund to be reused for more very low income housing.
We consider this use innovative because it leverages other resources, provides low cost homes through volunteer labor and donated materials, and the savings are returned for reuse.

- Issuing bonds to obtain the savings up front to use to finance the portion of mixed income housing projects meeting the McKinney Act requirements.

  The **Delaware State Housing Authority** (Delaware) decided that it could best use its savings if it had all of the money it would receive over the life of the HAP contract up front. The agency issued bonds to get the money up front and will pay the bonds off as the savings come in. The money has already been used to finance very low income housing in mixed income developments.

  We consider Delaware's process of issuing bonds to be repaid with the savings an innovative way of using the savings because it allowed the agency to use the savings timely. Two of the housing agencies that have not spent their savings commented that they are waiting to accumulate enough funds for their programs. In our opinion, these agencies could benefit from this approach.

- Loans for down payment and closing costs at low interest rates for very low income persons.

  The **Colorado Housing and Finance Authority** (Colorado) and the **New Mexico Mortgage Finance Agency** (New Mexico) have set up innovative programs to help very low income persons buy homes. They found that down payments and closing costs are often an impediment, keeping very low income persons from buying a home. The housing agencies provide a second (or third) mortgage with a low interest rate to cover the expenses of the down payment and closing costs. The program is administered through partnerships with non-profits or participating lenders with Colorado and New Mexico just reviewing the loans.

We consider this use innovative because it helps provide home ownership opportunities to the very low income persons and it reuses the savings as the loans are repaid.

Two agencies did not have plans to use the savings.

Two of the agencies we reviewed had not yet decided how they would use the savings. These two agencies had received $3 million in savings at the time of our review.

Questionable Uses

Eight of the housing agencies in our sample of 28 have used or planned to use at least some of their savings for uses that were not directly related to providing decent, safe, and sanitary housing and, in our opinion, may not meet the intent of the McKinney Act.

Five housing agencies were using or planning to use at least some of the savings for social programs. These five housing agencies are **Massachusetts, Rhode Island, and Mississippi** state housing agencies; and **Providence, RI** and **Villa Excelator, RI** local housing agencies.

The social programs included medical care, personal care, meals, transportation, child care, youth services, education, training, and recreation. Even though these programs may be worthwhile, successful, and benefit very low income persons, these uses are, in our opinion, questionable because they do not address the aspect of the McKinney Act regarding providing decent, safe, and sanitary housing.

Most of these uses were specified in the FAF refunding agreement between HUD and the agency, which HUD approved. HUD Headquarters officials stated that housing can be defined very broadly, and the current administration is focusing on the social aspects of housing, including programs such as computerized learning centers. One HUD official did say that one of the above uses, medical care, would not be eligible. We consider these types of social programs outside the scope of housing.

The other three housing agencies' use or planned use of their savings were questioned because the costs were:

- used to pay an administrative expense,
- repay loans on a project with life-safety violations, and
- related to fully funding planned structural and Disability Act improvements on mixed income projects.

One agency, the **Alameda, CA Housing Authority**, used part of its savings for an administrative expense. Specifically, it used some of the savings to pay the salary for a self sufficiency coordinator.

This agency's refunding agreement states in Section 6 that "No funds shall be used to pay administrative costs of the Issuer, except as permitted in Section 9 hereof." Section 9 deals with the cost of reviews, inspections, and reports. The April 20, 1995 proposed rule, Refunding of Tax-exempt Obligations Issued to Finance Section 8 Housing, (which applies to refundings by local agencies) also states that eligible costs exclude reimbursement of agency staff expenses, even though the services may involve programs of assistance to very low income families. This use was not listed in the HUD approved refunding agreement. HUD Headquarters officials stated that the salaries of staff that are working on programs funded with the savings are eligible. We question this use because the self-sufficiency program is not housing and in our opinion is against the FAF refunding agreement.

The **New Jersey Housing Finance Agency** has used the savings to pay itself back for two loans made to a 754 unit housing project. The loan payments include interest at 9 percent on one loan and 9.8 percent on the other. The project was inspected by the State in 1993, and the inspection identified various life-safety violations. The violations had not been corrected at the time of our review in August 1995. The State had imposed a penalty of over $130,000 because of the lack of progress in correcting the problems. It is questionable if this project meets the decent, safe, and sanitary requirement of the McKinney Act.

A HUD Headquarters official stated that if the savings were contributing toward making the project decent, safe, and sanitary then this use is eligible. We question this use because in spite of the fact that the agency had loaned the project $3 million in 1985, and $6 million in 1991, the project still has life-safety violations.

The **North Tonawanda Housing Development Corporation** in New York plans on using their savings to fully fund 100 percent of the cost of structural improvements and the cost of improvements needed for compliance with Americans with Disabilities Act for mixed income projects. The projects are 80 percent and 90 percent very low income. According to one HUD Headquarters official, HUD allows the savings to be spent on mixed income projects as long as the percentage of costs paid for with the FAF savings is less than or equal to the percentage of very low income tenants. Therefore, under HUD rules only 80 percent and 90 percent of these costs would be eligible. The housing agency had asked HUD if their FAF Refunding Agreement allows fully funding costs at mixed income projects. But they had not received a response at the time of our review.

During our review some other agencies had questions about the requirements for using the savings. In our opinion, HUD needs to inform housing agencies about eligible uses such as those identified in our report.

Another questionable use.

We found one other questionable use at a housing agency not in our sample of 28. A **Winter Haven, FL Housing Authority** official told us they used part of their savings to purchase a computer. HUD Headquarters officials stated that purchasing a computer was an eligible use of the savings if the computer will be used for activities funded with the savings. We question this use because the agency has not used any of the savings, other than for the computer and, in our opinion, computers are not housing costs.

Two agencies are not identifying projects assisted with the savings.

At two of the housing agencies we visited, the savings were commingled with agency funds and could not be traced to specific projects. In our opinion, since the funds are commingled without being identified to a specific project, a third party reviewer cannot determine if the savings were spent on projects that meet the requirements of the McKinney Act. Since the housing agencies have spent more on very low income housing than the savings they have commingled, we are not questioning how the savings were used, just how housing agencies account for them.

HUD needs to reconsider eligibility.

HUD approved most of the uses we questioned when it executed the FAF agreement, and HUD Headquarters officials were of the opinion that most of the above uses were eligible. We disagree with HUD's opinion that these questionable uses meet the requirements of the McKinney Act. Since the refundings provide Section 8 subsidy savings, it follows that the definition of decent, safe, and sanitary housing for using the savings would be the same definition required in the Section 8 program. That definition found at 24 CFR 880.201 requires that the dwelling units and related facilities be acceptable to HUD when completed and maintained in substantially the same condition. In our opinion, social programs, administrative expenses, and housing with life-safety violations do not meet this definition. We believe HUD needs to reconsider its decisions on the eligibility of these types of uses, and form an official policy for the Department. HUD also should inform housing agencies of its official policy. Since housing agencies have to date received only a small part (about 10 percent) of the total McKinney Act savings, it is important that HUD resolve any questions of eligibility now.

Auditee Comments

The Assistant Secretary disagreed with our questioning the use of the savings for social programs. He stated that:

> ". . . the agencies . . . should not be constrained to subsidizing only the bricks and mortar cost of housing. A residential facility is a package of services, of which shelter is one essential element, but not the only way to improve the environment for very low-income families. Social services give residents a stake in their housing, and this will be crucial to the long-term maintenance and preservation of low-income housing. HUD should err on the side of accommodating creative solutions . . .to housing the poor."

The Assistant Secretary also stated that the use of savings for administrative purposes is limited to the costs of carrying out a McKinney housing plan. He agreed with the other aspects of the finding and recommendations.

OIG Evaluation of Auditee Comments

We agree that agencies should seek creative solutions to housing the poor. However, the McKinney Act says that the savings are to be used ". . .only for providing decent, safe, and sanitary housing affordable to very low income families and persons." Since the savings are generated in the Section 8 program, it would follow that the definition of decent, safe, and sanitary housing for using the savings would be the same as in the Section 8 program. In our opinion, this could preclude using the savings for social services or for administrative expenses.

We believe that if HUD wants to use a broad interpretation of the housing requirements of the McKinney Act in its notice to housing agencies by stating that social services and certain types of administrative expenses are eligible, that it should first obtain an opinion from the Office of General Counsel as to the eligibility of such costs under the McKinney Act.

Recommendations

We recommend that the Assistant Secretary for Housing-Federal Housing Commissioner:

1A. Reconsider HUD's decisions on the eligibility of the uses of FAF savings under the McKinney Act that we consider questionable, including:

- social services programs that provide the following:

  - education, employment training, and recreation for very low income persons or for the children of very low income families,

  - meals, personal care, housekeeping, and transportation for elderly and handicapped very low income families, and

  - child care, medical, dental, and visual care for self sufficiency participants.

- administrative expenses and costs, such as the salaries of agency employees and the purchase of computers.

- assistance to housing projects that have continuing life-safety violations.

- fully funding the cost of improvements at mixed income projects.

1B. Obtain an opinion from the Office of General Counsel to determine if the McKinney Act can be interpreted broadly to include social programs and certain administrative costs, if HUD decides these costs should be eligible.

1C. Develop and distribute a notice to housing agencies that are receiving or that will receive savings from FAF bond refundings, that presents HUD's official policy on the above uses. Also, to help housing agencies in deciding how to use their savings, the notice should include the eligible uses for the savings including those identified as especially effective and innovative.

1D. Instruct housing agencies to ensure that the savings they spend are traceable to specific projects or programs, so that an independent reviewer can determine if the uses of the savings meet the requirements of the McKinney Act.

HUD Has Some Problems Collecting and Accounting For Savings

HUD does not always receive or properly account for its share of the trustee sweep savings which is $575 million over the life of the HAP contracts. Specifically, HUD does not always:

- **earn and collect interest earned on HUD's share of the savings while held by the trustee,**
- **properly account for its share of the savings, and**
- **ensure that all outstanding receivable balances are accurate.**

These problems are caused by vague or non-existent requirements for earning interest, a lack of communication among the parties involved, and HUD's policies for classifying delinquent accounts. As a result of these problems HUD may not receive all of its share of the savings.

HUD should collect its share of the savings.

HUD should collect its share of the savings that result from FAF bond refundings. HUD receives 50 percent of the savings for most of the refundings. However, HUD receives 100 percent of the savings for local housing agency refundings prior to January 1992, as explained in the introduction of this report.

The method most commonly used for recapturing the savings is the trustee sweep method. This method was used in 359 of the 367 FAF refundings (including four refundings that used both methods) that HUD approved through June 30, 1995. With the trustee sweep method, the original documents between HUD and the agency are not amended and the HAP payments and mortgage payments stay the same. The savings result from the lower debt service payments on the new bonds. The bond trustee recaptures the savings and wire transfers HUD's share of the savings to the Department of Treasury (Treasury). HUD records indicate that Treasury has received at least $64 million as of May 1995 and is scheduled to receive a total of $575 million over the life of the HAP contracts from refundings that used the trustee sweep method.

HUD is obligated to collect and properly account for the savings.

When housing agencies refund their bonds using the trustee sweep method, prudent business practices require HUD to collect all of the savings and interest it is due and to properly account for the savings and interest. To meet this obligation, HUD's Office of Accounting Operations (Accounting Operations), in the Office of the Chief Financial Officer sets up an accounts receivable for each trustee sweep for the total amount of the savings due HUD over the life of the HAP contract.

We reviewed HUD's share of the savings at 16 agencies.

We reviewed HUD's share of the savings for 16 housing agencies (from our sample of 28) that received some savings and used the trustee sweep method to refund the bonds. We found that HUD did not always:

- earn interest on its share of the savings, or receive the interest that it had earned on its share of the savings while the savings were held by the trustee,
- properly account for its share of the savings, and ensure that all outstanding receivable balances are accurate.

HUD does not always earn and receive interest.

Trustees generally follow the instructions in the Bond or Trust Indenture which is an agreement between the housing agency and the trustee, and for some refundings, the Escrow Agreement which is an agreement among the trustee or escrow agent, the housing agency and HUD. These agreements provide guidance to the trustee on such issues as the accounts that are to be set up for the savings, how frequently HUD's savings are put into HUD's account, and how often HUD's savings are wire transferred to HUD. However, the agreements are not consistent from one refunding to another. This results in variations in how trustees handle HUD's share of the savings. HUD may or may not earn interest on the savings while held by the trustee depending on what the above agreements require and whether or not the interest is needed to make the scheduled savings payments. Several of the housing agencies in our sample have agreements that are vague or silent on whether or not HUD earns interest on its share when it is held by the trustee.

At 10 of the 16 housing agencies reviewed, HUD did not earn interest or receive interest that it had earned between the time the trustee received the mortgage payments and the time the savings were due HUD. However, the trustees sent interest to HUD when the payments were late from three of those ten housing agencies. For the other six housing agencies, HUD does earn and receive interest. Appendix D lists each of the 16 housing agencies and the interest earned and receive by HUD.

HUD does not earn interest on its share of the savings for two main reasons: 1) trustees do not transfer savings to HUD's savings account monthly as mortgage payments are received, or 2) trustees are not required to set up a separate HUD savings account.

Although trustees received payments on the mortgage each month, for 5 of the 28 agencies they did not transfer savings to HUD's savings account until just before they wire transferred the savings to HUD. Therefore, for these agencies there was no opportunity for HUD's savings to be segregated and earn interest on a regular basis.

One trustee told us they put all of the savings (HUD's share and agency's share) into one account instead of having separate accounts for each. The savings in the single account earn interest, but none is sent to HUD. All the interest earned is retained for the use of the agency. The trustee stated they sent the amount billed by HUD, which was the amount on the savings schedule without interest.

HUD should explore the possibility of trustees setting up separate accounts and transferring the savings to HUD's account as the trustee receives the monthly mortgage payments.

When HUD earns interest on its share, the interest is not always sent to HUD.

At four trustees, a separate account is set up for HUD FAF savings and interest is earned on funds that have accumulated in the account prior to payment being made to HUD. However, the trustees have left the interest in HUD's account rather than sending it to HUD. Appendix D lists the amount of interest these trustee are holding. Three of the four trustees stated that they have not sent the interest accrued in HUD's FAF account to HUD because they had no specific instructions to do so but would send it to HUD when they were given instructions. Although these four trustees were holding only $108,927 at the time of our review, the interest will continue to accrue unless HUD requests it be wired to HUD.

As noted above, in many cases the instructions for the trustees do not ensure that HUD earns and receives interest on its savings. As a result, HUD has not always received interest on its share of the savings. To solve this problem, HUD should issue instructions to the trustees that interest earned on HUD's savings should be sent to HUD. Also, HUD should request that when HUD's share does not earn interest, the trustees take action, if the documents allow, so that HUD's share does earn interest.

HUD sets up a receivable for each trustee sweep.

Trustees are required to wire transfer HUD's savings in the amount and on the dates that are shown on savings schedules that are certified by each agency's bond counsel and approved by HUD's Financial Services Division (Financial Services) in the Office of Housing. These schedules are provided by Financial Services to HUD's Office of Accounting Operations (Accounting Operations) in the Office of the Chief Financial Officer. Accounting Operations uses the schedules as the basis of HUD's accounts receivable for each FAF refunding. The accounts receivable for each refunding represents the total savings that HUD will receive over the life of the HAP contract.

Trustees are required to wire transfer HUD's share of the savings to the Treasury in accordance with the savings schedule and a letter from Accounting Operations. In some cases, the housing agency sends a letter to the trustee authorizing the release of HUD's share. The Treasury sends information to Accounting Operations showing the amount of the wire transfer and other information, which Accounting Operations uses for recording the payments to the accounts receivable ledger.

HUD made several changes to improve internal controls over its share of the savings after various weaknesses were identified in OIG's 1992 and 1993 audit reports on bond refunding. These changes included better separation of duties and the preparation of a manual, "Accounting for Section 8 Bond Refunding Receivables."

HUD does not always properly account for its share of the savings.

Although, in our opinion, HUD has improved the controls over the accounting for its share of the savings, our review disclosed that several accounting and other types of problems still exist. These problems are summarized, for the 16 agencies with 26 refundings, in the following table and discussed in the following sections.

Type of Problem	No. of Housing Agencies	No. of Refundings
HUD reduced the outstanding savings receivable by the interest received from the trustees	9	10
HUD and the agency's savings schedules did not always agree	3	4
HUD did not always credit payments properly	3	3
HUD did not classify accounts as delinquent when payments were short	2	2

HUD reduced the outstanding savings receivable by the interest received from the trustee.

For 10 of the 26 trustee sweep refundings reviewed, HUD reduced the accounts receivable by the full amount of the payment which included interest and other amounts. As a result, for those 10 refundings the outstanding savings balances are understated by $223,539. The refundings for which HUD's account's receivables are understated are Chicago 268, Colorado 162, Delaware 193, Lake County IL 302, Minnesota 200, New Jersey 155, New Mexico 145, Oregon 188 and 263, and Virginia 181. For example:

> HUD's accounts receivable is understated in the amount of $43,720 for Chicago 268 because interest earned on HUD's share was applied against the outstanding balance. The first three payments were late and were paid on April 15, 1994, in a lump sum including interest. Payments made after the lump sum payment were in the proper amount.

The trustee for New Mexico 145 included interest and other amounts of $64,285 in its payments to HUD. The $64,285 is the excess of the amount paid to HUD over the amount due which HUD applied fully to principal. The excess resulted from the trustee splitting the remainder after other expenses and obligations were paid, and sending half to HUD.

The first payment from Virginia 181 was about three years late, and the accounts receivable ledger showed that the payment included $38,223 in interest. This $38,223 was not credited against the account receivable. However, the second payment was larger than the scheduled payment by $36,021 and the entire amount was credited to the amount due HUD. The balance was therefore understated by $36,021.

According to HUD Headquarters officials, the wire transfer system does not always provide Accounting Operations with information on how much of the payment is interest. If the situation is not corrected, HUD records will show savings receivable are paid off before they are and HUD may not collect all of the savings.

Fundamental accounting procedures require that revenue be recognized when it is earned. HUD needs to recognize the interest revenue when it is earned and received, instead of reducing the receivable balance.

HUD's and the agencies' savings schedules do not always agree.

For 4 of the 26 refundings, an incorrect savings schedule was used to record HUD's accounts receivable. Therefore, HUD's accounts receivable for these cases are incorrect. These four refundings are Chicago 397, Delaware 193 and 169, and Virginia 181. For example:

HUD's accounts receivable records are not correct for Delaware 169 because Accounting Operations was not using the savings schedule that the agency had revised and given to the trustee. HUD's accounts receivable records show that a total of $3,671,644 was due on this refunding but the revised savings schedule used by the trustee shows that $3,734,322 was due, therefore HUD has understated the receivable by $62,678.

The original FAF savings schedule for Virginia 181 shows that the payments are due on the first of February, May, August and November. Later it was amended to the last day of each of those months to allow for mortgage payments received after the due date. Financial Services staff had approved the changes. However, Accounting Operations's schedule still shows that the savings payments are due on the first of the month. Since Accounting Operations allows only a 30 day grace period without penalty and has not changed the due dates, Virginia loses their grace period and may be penalized.

In our opinion, this occurred because changes made by housing agencies are not always communicated to the appropriate HUD offices. Without accurate savings schedules, HUD may not receive the proper amount of savings, or, as could be the case with Virginia, the housing agency may be unfairly penalized.

HUD did not always properly credit payments.

For 3 of the 26 refundings, savings payments were not credited to the proper account. These were Minnesota 200, Chicago 397, and New Jersey 155. Specifically:

For Minnesota 200, the savings received was overstated by $24,629. HUD credited this amount to Minnesota 200 even though it was generated from another refunding which HUD officials said was not yet approved.

For Chicago 397, HUD's records show that HUD received $52,017 less than it was due through July 1, 1995. The $52,017 is the amount of the first payment that HUD shows was due on July 1, 1994. The agency's and trustee's records show that this amount was wired to HUD in April, 1994. The trustee used the savings schedule that was in the bond indenture, which calls for payments to be made on April 1 and October 1 each year, whereas HUD's savings schedule shows payments due on July 1 and January 1. HUD's records overstate the accounts receivable by $52,017.

For New Jersey 155, HUD's records show receipt of a $22,428 payment that was due September 1993 that was

> credited against the amount due from New Jersey. The information that Accounting Operations received with the payment showed that it was for FAF number 155, but the agency and trustee did not match this FAF number. We determined from the trustee that the FAF number he put on the wire transfer form was incorrect and the payment was for the Aurora Housing Authority Finance Corporation, FAF 154, not FAF 155. Because HUD only used the FAF number, it applied the payment against the wrong receivable.

HUD did not classify accounts as delinquent when payments were short.

For 2 of the 26 refundings (Chicago 417 and Minnesota 200), HUD did not classify the account as delinquent when payments received were less than the scheduled amount due. Specifically:

> For Chicago 417, the first payment to HUD was \$19,520 short of the scheduled amount because the trustee did not have enough funds to make the full payment. For the next two payments, there was enough in the trustee's account to pay more than the required payment. The trustee said they would continue to pay more than required until the shortage is repaid. HUD records show that the trustee has paid less than is due.
>
> For Minnesota 200, none of the principal payments match the savings schedule. The trustee stated that they send 50 percent of the amount left in the account to HUD on the due date. To date, the trustee is short by \$42,378. However, HUD records for Minnesota 200 show that the savings received exceed the amount due by \$13,950 because HUD included interest and the savings from another refunding in the Minnesota 200 account, as previously discussed.

The total payments were less than the amount due because the trustee did not have enough funds to make the payments required on the savings schedule. HUD officials told us that the HUD approved savings schedules should be followed. They stated that if the actual savings are insufficient to make the scheduled payments, then the savings schedule should be recalculated and renegotiated with Financial Services.

We noted that HUD's manual on Accounting for Section 8 Bond Refunding Receivables addressed delinquencies but did not separately address accounting for payments that are short. Without collection procedures for short payments, HUD may not collect all of its savings.

HUD needs to fix problems receiving and accounting for savings.

As discussed above, HUD has problems receiving and accounting for its savings. To address these problems, HUD needs to:

- instruct the trustees to take the steps necessary for HUD to earn and receive interest on its share of the savings, and
- correct the problems with the accounting for its share of the savings so that is receives all the savings and interest that it is due.

Auditee Comments

The Chief Financial Officer (CFO) and the Assistant Secretary for Housing (Housing) agreed with this finding. Their staff met on February 15, 1995 and divided the responsibility between the two offices for each recommendation.

Recommendation	Housing	CFO	Joint
2A	X		
2B		X	
2C			X
2D		X	
2E		X	
2F			X
2G			X
2H		X	

Recommendations

We recommend that the Assistant Secretary for Housing-Federal Housing Commissioner and the Chief Financial Officer coordinate to:

2A. Instruct trustees:

- to transfer to HUD any interest earned on its share of the savings including the $108,927 identified in the finding,

- to pay the amount on the savings schedule rather than some other amount, and

- that if HUD's share of the savings currently does not earn interest while held by the trustee, and if the documents allow, to take steps so that HUD does earn and receive interest on its savings. These steps would include establishing a separate account for HUD's share of the savings and/or transferring the savings into HUD's savings account monthly. (Housing will be responsible for this recommendation.)

2B. Ensure that interest or other amounts paid to HUD by trustees that are not part of the accounts receivable principal be accounted for separately and not reduce the amount of the outstanding receivable. (Accounting Operations will be responsible for this recommendation.)

2C. Identify those refundings for which the trustee and Accounting Operations have savings schedules that do not agree, resolving any discrepancies that are identified, and inform the trustees of any necessary changes to savings schedules. (Housing will have primary responsibility for this recommendation, with assistance from Accounting Operations.)

2D. Implement procedures to ensure that savings payments are credited to the proper accounts receivable. (Accounting Operations will be responsible for this recommendation.)

2E. Classify accounts as delinquent when payments are short and take appropriate collection actions. (Accounting Operations will be responsible for this recommendation.)

2F. Identify the refundings for which trustees are not sending the savings amounts that are shown on approved savings schedules, and coordinate with the trustees to resolve any problems so that they will send the proper amount of savings. (Housing will have primary responsibility for this recommendation, with assistance from Accounting Operations.)

2G. Ensure that accounts receivable balances for each FAF refunding are correct. (Housing will have primary responsibility for this recommendation, with assistance from Accounting Operations.)

2H. Correct the accounting problems identified in the finding. (Accounting Operations will be responsible for this recommendation.) Specifically:

- Increase the account receivable balances for interest paid, and credit interest revenue for the appropriate amounts for the following refundings:

Chicago 268	$43,720
Colorado 162	$10,604[1]
Delaware 193	$ 1,193
Lake County, Illinois 302	$ 252
Minnesota 200	$31,877
New Jersey 155	$30,256
New Mexico 145	$64,285
Oregon 188	$ 3,760
Oregon 263	$ 1,571
Virginia 181	$36,021

- Use the correct savings schedules for Chicago 397, Delaware 193 and 169, and Virginia 181. Make any necessary changes to the accounts receivable.

[1] This is the difference between the amount paid by the trustee and the amount due according to HUD's payment schedule. Since one of the projects in the refunding was paid off, part of the $10,604 may be principal. In our opinion HUD needs to verify with the trustee how much interest was paid and confirm that the payment schedule is still correct.

- Correct the following payments not credited to the proper account:

  Minnesota 200 - remove from the account receivable the $24,629 payment that was for a FAF refunding not yet approved by HUD.

  Chicago 397 - locate the payment of $52,017 that the housing agency made and credit the FAF 397 accounts receivable for the payment.

  New Jersey 155 - increase the accounts receivable by $22,428 and give credit for the payment to FAF 154.

- Classify Chicago 417 and Minnesota 200 as delinquent since the payments were short, and take collection actions or renegotiate the savings schedules.

HUD Needs Adequate Controls Over Housing Agencies Use Of The Savings

HUD does not have adequate controls over how the housing agencies use their savings which will total more than $512 million over the life of the HAP contracts. As a result, HUD does not know how the savings are being used. HUD does not have adequate controls because HUD does not have enough staff or a finalized strategy to achieve effective controls, and most of the FAF refunding agreements are not clear regarding reporting requirements.

HUD is required to establish cost effective controls.

The Federal Managers' Financial Integrity Act requires HUD to establish and maintain a cost-effective system of management controls to provide reasonable assurance that programs and activities are effectively and efficiently managed (HUD Handbook 1840.1, REV-2, paragraphs 1-1 and 1-2).

HUD requires agencies to submit reports.

In the refunding agreements we reviewed, HUD requires housing agencies to submit annual certifications that the savings have been used in accordance with their plan and the McKinney Act. The FAF refunding agreements also require that the housing agencies submit a triennial report by an independent consultant which gives the results of a programmatic review of the assistance provided, the families or persons assisted in accordance with the Act, and any findings or recommendations.

Agencies do not always submit reports.

We wanted to know whether the housing agencies in our sample had submitted reports to HUD. We selected 17 of the 28 because they had earned some savings. Our review disclosed that 10 of the 17 housing agencies have expended their savings for a year or more and therefore should have submitted the annual certifications. Three of the 10 have not submitted the certifications. These three housing agencies said that it was an oversight, that no one had told them to submit the certifications, or did not know who, in their agency, would submit the reports.

Three of the 17 housing agencies have earned savings for three years or more, and therefore should have submitted the triennial report. Only one has done so.

HUD does not review the reports it does get, and does not have a finalized monitoring strategy.

HUD does not review the reports that it does receive. HUD Headquarters officials told us that they have not had time to review the reports. A HUD official stated that the primary monitoring should be a review of the triennial reports.

HUD Headquarters' Office of Housing has issued a draft memorandum delegating to field offices the responsibility for the review of the triennial reports for refundings involving insured projects that are part of their existing multi-family portfolio. However, the draft has not been finalized and does not address reviews of reports on the savings for bond refundings issued by public housing authorities or redevelopment agencies.

FAF refunding agreements are not clear on reporting requirements.

The requirements in the FAF refunding agreements for the triennial report are not clear on what the reports need to cover, and some of the agreements state that the triennial review can be done as part of the housing agencies' single audit. For the one triennial report that was submitted, the consultant reviewed income eligibility of the tenants in the projects that received the savings, but there was no evidence that the "decent, safe, and sanitary" aspect of the McKinney Act was reviewed.

A HUD Headquarters official stated that the consultants should inspect the projects assisted with the savings. This is necessary to evaluate if the housing meets the "decent, safe, and sanitary" aspect of the McKinney Act. Also, the HUD official stated that the triennial review should not be part of the housing agencies' single audit, but instead it should be a separate review.

FAF refunding agreements were also unclear on the following issues:

> It is unclear on which projects HUD requires annual financial statements and physical inspection reports. In our sample of 17 housing agencies, most of the FAF refunding agreements were not clear on which projects HUD wanted the reports, or did not require these reports

at all. One FAF refunding agreement required reports for the projects assisted with the FAF savings, while a few required reports for the projects financed with the refunding bonds. HUD Headquarters officials stated that this requirement applies to the projects financed with the refunding bonds instead of the projects assisted with the savings. Also, HUD Notice H 94-95 requires that the housing agencies submit to HUD annually, the financial statements and physical inspection reports for the projects financed with the bonds. In our opinion, HUD should provide clarification on which projects the FAF refunding agreements require housing agencies to submit annual financial statements and physical inspections reports, and notify the housing agencies.

It is unclear when the triennial period starts running. The staff at one agency asked us when the triennial report was due. A HUD Headquarters official stated that it would be best if the three year period started on the date that the agency's first savings payment becomes available to the agency.

Since housing agencies will receive $512 million in savings over the life of the HAP contracts, HUD needs to establish an effective system of controls taking into account the staffing constraints.

Auditee Comments

The Assistant Secretary stated that our discussion seriously understated Housing's planned commitment to housing agency monitoring. They stated that the draft memorandum will be finalized shortly and will cover the review of the triennial audit for the refunded projects in each Field Offices asset management portfolio. They stated that this will cover almost all of the local agencies projects and most of the state agency projects. They also stated that the large state agencies with uninsured projects will be monitored by Headquarters.

OIG Evaluation of Auditee Comments

We are not questioning HUD's commitment to housing agency monitoring, but the lack of actual monitoring. Since HUD is not yet monitoring how agencies are using the savings, we think HUD needs to implement an effective system of controls considering the resources it has available and the other responsibilities it must fulfill.

Recommendations

We recommend that the Assistant Secretary for Housing-Federal Housing Commissioner:

3A. Implement effective procedures to provide a reasonable level of assurance that housing agencies use their savings in accordance with requirements of the McKinney Act, as required by the Federal Managers Financial Integrity Act.

3B. Remind housing agencies that they are required by their FAF refunding agreements with HUD (for some housing agencies the agreements still need to be executed) to submit to HUD annual and triennial reports.

3C. Notify housing agencies that in order to evaluate whether or not housing projects assisted with the savings meet McKinney Act requirements, the agency (annual certification) and the independent reviewer (triennial report) need to determine if the housing is decent, safe, and sanitary.

3D. Decide if the triennial review should be part of the housing agencies single audit, or should be a separate review, and notify the housing agencies of HUD's decision.

3E. Provide clarification on which projects the FAF refunding agreements require housing agencies to submit annual financial statements and physical inspections reports, and notify the housing agencies.

3F. Decide when the triennial reporting period starts and notify the housing agencies.

HUD Lacks Agreements With Housing Agencies To Govern Use Of The Savings

At the beginning of our review in March 1995, HUD had not yet entered into refunding agreements with the housing agencies for 130 of the refundings. These agreements are needed to govern how the housing agencies use and report their use of the savings, and provide the trustees authority and responsibility to pay housing agencies their share of savings. Four housing agencies in our sample of 35 received their savings without a refunding agreement limiting how the savings could be spent.

HUD has not entered into these agreements with all housing agencies yet because of staffing constraints. However, HUD officials told us that they have entered into agreements with some housing agencies since the beginning of our review and are currently working on getting agreements with the rest of the housing agencies.

FAF agreements govern the savings.

Executed FAF agreements govern how the savings will be disbursed and used. Specifically the agreements include the following important topics:

- HUD's and trustees' responsibility and authority to pay 50 percent of the savings to the agency,
- the procedure the agency needs to follow to obtain its share of the savings from the trustee, and
- the agency's agreement to use the savings in accordance with the McKinney Act, to limit occupancy to very low income families for a period of 10 years, and to submit annual and triennial reports to HUD.

We contacted the trustees for 35 agencies without signed refunding agreements.

HUD Headquarters' records indicate that 130 of the FAF refundings did not have FAF refunding agreements in their files at the start of our review, in March 1995. HUD officials told us that some of the housing agencies had approved FAF refunding agreements, but the housing agencies had not signed and returned them to HUD. We contacted the trustees for 35 housing agencies for which HUD files indicated that no FAF agreements were signed.

The housing agencies we contacted are listed in Appendix C. We wanted to know if the trustees had released funds to the housing agencies even though there was no FAF agreement. If the trustee had released savings to the agency, we also determined what authority the trustee had for doing so, and how the agency had used the savings when there was no agreement governing the use of the savings.

Four of the trustees released some of the savings without a refunding agreement.

Trustees released some of the savings to 4 of the 35 housing agencies in our sample. Two of the trustees said they released the funds based on a statement in the trust indenture that the trustee would pay to HUD and to the agency amounts as per the attached schedule. One trustee said it released the funds to the agency based on a letter from HUD and language in the trust indenture. The other trustee said it released the savings because the agency requested the savings. For this later case, the trust indenture stated that if the trustee did not receive an executed FAF agreement, the trustee was directed to remit the housing agency's share of the savings to HUD upon the release of the lien of the indenture or the earlier maturity of the bonds. As discussed previously in Finding 1, one of the four housing agencies used part of the savings to purchase a computer for the office, which in our opinion may not be an eligible use of the savings. These housing agencies were not contractually limited on the use of the savings because they did not have a FAF refunding agreement.

Trustees for our sample of 35 were holding $4.9 million in savings.

Trustees for our sample of 35 housing agencies told us they were holding $4.9 million in savings. A Headquarters official told us that trustees normally need a FAF refunding agreement to release the savings to the housing agencies. While we were interviewing the trustees, two trustees told us that they could not release the savings until they had a refunding agreement. When there is no written agreement between the agency and HUD regarding use of the savings and other responsibilities, HUD has little authority to require housing agencies to use their savings in accordance with the McKinney Act, if the savings were released.

HUD officials told us that HUD has not entered into the agreements because of limited staff and other priorities. HUD is aware of the need for the FAF refunding agreements and has made plans to enter into these agreements, now that the staff have finished working on new refundings.

Auditee Comments

The Assistant Secretary agreed with our recommendation to ensure that all agencies which share savings have a refunding agreement.

Recommendation

We recommend that the Assistant Secretary for Housing-Federal Housing Commissioner:

4A. Ensure that FAF agreements are executed between HUD and the agency for all FAF refundings for which housing agencies share in the savings.

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Savings From Two Rent Reduction Refundings Were Not Being Paid Correctly

HUD was not paying on time or in the correct amount the savings from two of five rent reduction refundings reviewed at two agencies. These housing agencies had 5 of the 12 rent reduction refundings nationwide. At one agency the payments for one refunding had not yet started and the first payment was over two years late. At the other, owners of five projects are receiving all the savings, instead of HUD and the agency splitting the savings, as required. As a result, HUD and the agency will each lose $4,432,274 over the life of the HAP contracts, unless the HAP payments are reduced. The owners were getting the savings because the mortgage payments were reduced, but the Housing Assistance Payments (HAP) were not reduced.

Non-trustee sweep method of refunding.

Under the rent reduction method of bond refunding, HUD amends the HAP contracts and the Annual Contributions Contract by reducing them for 100 percent of the savings. HUD pays less HAP so it initially retains all of the savings. Since the McKinney Act requires that HUD share the savings with the agency, HUD sends 50 percent of the savings to the agency. According to a HUD Headquarters official, the payments are "piggy-backed" with the quarterly Section 8 HAP payment. The contract amendments and the payments are handled through the field offices where the projects financed by the bonds are located. Only 12 of the FAF refundings completed through June 30, 1995 used the rent reduction method, including the 4 that used both methods.

We reviewed five non-trustee sweep refundings.

We reviewed five rent reduction FAF bond refundings at two state housing agencies (California and Illinois), out of the total of 12 rent reduction refundings at 9 housing agencies that HUD Headquarters has identified.

One field office had not started paying the savings and the first payment was over two years late.

We found that at one agency, California Housing Finance Agency (California), the regular payments from one HUD field office (Los Angeles) had not yet started and the first payment was over two years late. Payments from California's other two HUD Field Offices were on time and in the proper amount, according to housing agency officials. At the time of our review, HUD Headquarters officials told us they were working with the field office on implementing amendments. At the time of our review, California had not spent any of the savings it had available to spend.

Owners of five projects are getting all of the savings.

In one of Illinois Housing Development Authority (Illinois) rent reduction refundings, the agency included five projects that did not use the FAF. Although the projects did not receive a FAF, according to a housing agency official the projects are still subject to the McKinney Act because they were financed between 1979 and 1984 and Section 1012(a) of the McKinney Act was amended to include projects financed in that time period. Therefore, HUD and the agency should split the savings equally.

For these five Illinois projects, the agency reduced the owners' mortgage payments but did not request that HUD reduce the HAP contract payments to the owners. Therefore, the owners are getting all of the savings.

HUD officials said they were not aware of this and that the savings should be split equally between HUD and the agency rather than going to the owners. This is because the HAPs should be reduced when the mortgage payments are reduced (24 CFR 883.308(d)) and these projects are subject to the McKinney Act.

When informed of this problem, the HUD field office said it would amend the HAP contract to the lesser amount. According to HUD records, as of July 1995, the owners were paid $625,507 that should have been split equally between HUD and the agency. HUD and the housing agency will each lose $4,432,274 over the life of the HAP contracts, unless the HAP payments are reduced.

Conclusion

We found problems with the timeliness or the amount of the savings payments for two of the five refundings using the rent reduction method. HUD needs to resolve the problems with the payments to California for the projects monitored by the Los Angeles field office, so the housing agency can get the rest of its savings. HUD also needs to ensure that the HAP contracts are reduced for the five projects in Illinois and that the owners return the savings to HUD and the state agency.

Auditee Comments

The Assistant Secretary for Housing agreed with our recommendations and assured us that their staff has been assisting, and continues to work with HUD legal, accounting, and agency staff to eliminate the problems cited.

Recommendations

We recommend that the Assistant Secretary for Housing-Federal Housing Commissioner:

5A. Ensure that the problems with the payments to the California Housing Finance Agency for the projects monitored by the Los Angeles field office are resolved, and that the housing agency receives its savings.

5B. Ensure that, for the five projects in Illinois for which the project owners are receiving all of the savings, the field office take the appropriate action so that the savings are shared equally between HUD and the Illinois Housing Development Authority.

5C. Recover from the five Illinois project owners the savings they received that should have been paid to HUD and the agency in the amount of $625,507 as of July 1, 1995, plus any additional savings received by the owners until the date of the corrective action. HUD should share 50 percent of the savings with the agency as required by the Act.

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Management Controls

In planning and performing our work, we considered the management controls of HUD and each of the 15 housing agencies we visited as they related to our audit objectives, and not to provide assurance on management controls. Management controls consists of interrelated components, including integrity, ethical values, competence, and the control environment which includes establishing objectives, risk assessment, information systems, control procedures, communication, managing change, and monitoring results.

A significant management control weakness exists if the controls do not give reasonable assurance that a program meets its objectives; that valid and reliable data are obtained, maintained, and fairly disclosed in reports; that resource use is consistent with laws and regulations; and that resources are safeguarded against waste, loss, and misuse.

HUD's management controls relevant to our objectives included controls to ensure that:

- Housing agencies were using their share of the savings in accordance with the McKinney Act,

- HUD was receiving all of its share of the savings and accounting for those savings accurately, and

- Housing agencies were receiving their scheduled savings from rent reduction refundings.

The housing agencies' management controls relevant to our objectives included controls to ensure that:

- The FAF savings are used in accordance with the McKinney Act and the FAF refunding agreement, and

- The FAF savings are accurately accounted for and traceable to specific projects.

Our review of these controls disclosed that HUD's controls over agencies' use of their share of the savings was not adequate. This is because of HUD's lack of an official policy on eligible and ineligible uses of the savings (Finding 1), the lack of procedures for monitoring agencies use of the savings (Finding 3), and because of the lack of written FAF refunding agreements with some of the agencies (Finding 4). HUD's controls over its share of the savings were not adequate to ensure HUD received all of the interest and savings it was due and that HUD's share was accounted for properly (Finding 2). HUD's controls over the rent reduction method of refunding were not adequate to ensure that the savings were received timely and that HUD and the housing agency received the savings instead of the project owners (Finding 5).

Our review of the housing agencies controls disclosed that at three of the housing agencies we visited, the controls, in our opinion, were not adequate to ensure that the savings were used in accordance with the McKinney Act and the refunding agreement (Finding 1). At two of the agencies we visited, controls over their accounting for the savings were not adequate to ensure that the savings could be traced to specific projects (Finding 1).

List of 17 Agencies in Our Review That Had Earned Savings

Housing Agency	Total Savings to be earned over the life of HAP contracts	Savings earned at the time of review	Savings Spent as of 6/30/95
Illinois	$49,319,149	$ 5,300,916	$ 4,305,986
New Jersey	20,366,815	3,287,848	3,287,848
Massachusetts	44,197,980	2,674,180	2,372,228
Chicago, IL (a)	22,124,946	5,115,366	1,871,847
Delaware	8,118,446	1,461,983	1,202,218
Pennsylvania	37,207,294	1,379,737	1,175,000
Colorado	7,908,816	2,006,796	990,576
Oregon	8,988,307	1,084,705	793,750
Minnesota	15,110,985	2,069,056	472,383
New Mexico	1,480,256	576,988	310,504
Wisconsin	25,015,575	4,113,384	166,891
Alameda CA (PHA)	794,684	100,525	(b) 66,000
New York	15,176,158	3,897,545	
California	20,827,802	3,112,937	
Florida	5,148,696	$1,490,963	
Virginia	5,990,900	1,272,524	
Lake County,IL (PHA)	3,213,709	$ 613,659	
Total	$290,990,518	$39,559,112	$17,015,231
Universe (c)	$511,914,990	$53,024,008	N/A

(a) Chicago Metropolitan Housing Development Corporation

(b) The accounting records at Alameda were insufficient to determine exactly how much of the funds have been spent. We know they have spent at least $66,000.

(c) The universe is just those refundings that the agency shares the savings 50/50 with HUD.

N/A Not Available

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List of 11 Agencies in Our Review That Had Not Earned Any Savings

Agency Name and FAF number	Total Savings to be earned over the life of the HAP Contracts	Were the planned uses in accordance with the McKinney Act?	
		Yes	No
Maryland (336)	$ 9,148,039	X	
Rhode Island(328)	7,426,569		X
Utah(190)	2,112,141	X	
New York City HDC(380)	1,255,819	X	
Keansberg NJ(424)	1,197,000	X	
Providence RI(456)	737,307		X
Maricopa AZ(143)	617,000	X	
Villa Excelator RI (439)	510,935		X
Carbon County PA(311)	564,552	X	
North Tonawanda NY(292)	292,500		X
Mississippi RHDC(418)	162,931		X

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List of 35 Refundings in Our Review Without FAF Agreements in HUD's Files

FAF Number	Issuer	Did the trustee release the FAF savings without a FAF refunding agreement?	
		Yes	No
84	Bucks County Redevelopment Authority		X
151A-B	King County Housing Authority		X
154	Aurora Housing Authority Finance Corporation		X
161A-I	Washington State Housing Finance Commission		X
189	Lillian Cooper Housing Development Corporation		X
221	**North Tampa Housing Development Corporation**	**X**[1]	
225A-D	Ohio Capital Corporation for Housing		X
232A-C	**Lehigh Housing Finance Corporation**	**X**[1]	
235	**Winter Haven Housing Authority**	**X**	
239	Philadelphia Redevelopment Authority Finance Corporation		X
252	**Salinas Redevelopment Agency**	**X**	
257	North Tampa Housing Development Corporation		X
266A-C	Ohio Capital Corporation for Housing		X
285	Allentown PA, Housing Authority		X
293	York Redevelopment Finance Corporation		X
297A-Q	Missouri Housing Development Commission		X
298A&B	San Francisco Redevelopment Agency		X
303	New Brunswick Housing Development Corporation		X

[1] The trust indenture allows the savings to be released without a FAF agreement.

FAF Number	Issuer	Did the trustee release the FAF Savings without a FAF refunding agreement?	
		Yes	No
305	Community Development Commission of the County of Los Angeles		X
310A-D	Ohio Capital Corporation for Housing		X
313	New Britain Senior Citizens Housing Development Corporation		X
314	Greater Iowa Housing Assistance Corporation		X
317A-D	City of Los Angeles		X
319	Mount Clemens Housing Corporation		X
325	Housing Finance Authority of Dade County Florida		X
326	San Leandro Housing Finance Corporation		X
332	Memphis Housing Finance Corporation		X
344	Suffolk Redevelopment and Housing Authority		X
350	City of Newark Housing Finance Corporation		X
356	Outer Drive Housing Finance Corporation		X
378	Scranton Housing Finance Corporation		X
399A-B	City of Los Angeles		X
400A-E	City of Los Angeles		X
401A-B	City of Los Angeles		X
407	Richmond Housing Development Corporation		X

Interest Earned on HUD's Share of the Savings for 16 Housing Agencies Reviewed

State or Local Housing Agency	Interest sent to HUD: Earned	Interest sent to HUD: Late Interest (a)	Interest not sent to HUD
Minnesota	$ 31,042	$ 835	
Virginia	(b)	74,244	
New Mexico	(c)	64,285	
Colorado	10,604 (d)		
Oregon	5,331		
Delaware	1,193		
Chicago		43,720	
New Jersey		30,256	
New York			$ 55,247
Massachusetts			24,618
Florida			19,072
California			9,990
Wisconsin			(e)
Alameda			
Pennsylvania			
Total	$ 48,170	$ 213,592	$ 108,927

The total earned interest that HUD credited against the A/R balances.	$ 48,170
Total late interest that HUD credited against the A/R balances ($38,223 was not credited against Virginia's A/R balance)	$175,369
A/R balances are understated by:	$223,539

(a) Late interest is the interest paid because HUD's savings were not paid when due.

(b) HUD does earn interest on this refunding. The first payment was three years late and included both late interest and interest that HUD would have normally earned. We could not determine how much interest was due to lateness of the payment and how much would have been earned if the payment was on time. Of the $74,244 in interest that was paid on HUD's savings, only $36,021 was credited against the accounts receivable the other $38,223 was not used to reduce the accounts receivable balance.

(c) For New Mexico, the trustee does not separate the savings, so we could not determine how much of the extra payments were interest.

(d) This is the difference between the amount paid by the trustee and the amount due according to HUD's payment schedule. Since one of the projects in the refunding was paid off, part of the $10,604 may be principal. In our opinion, HUD needs to verify with the trustee how much interest was paid and confirm that the payment schedule is still correct.

(e) The trustee does not put the HUD's and Wisconsin's savings in separate accounts, so the interest earned on the savings is not divided. Some of the interest should belong to HUD, but since the savings are not divided, we could not determine how much should go to HUD.

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Auditee Comments

Appendix F

Distribution

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Director, Office of Housing, 1AH, 2AH, 3AH, 4AH, 5AH, 6AH, 7AH, 8AH, 9AH, 0AH

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A copy of the report was sent to the 17 housing agencies that are listed in Appendix A.