



OFFICE *of*
INSPECTOR GENERAL
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UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

Long Branch Housing Authority, Long Branch, NJ, Did Not Properly Handle Income and Expenses Related to Agreements With Other Housing Agencies

PUBLIC HOUSING PROGRAMS | 2022-NY-1003

August 24, 2022

Date: August 24, 2022

To: Marilyn B. O’Sullivan
Acting Director, Office of Public Housing, Newark Field Office, 2FPH

//signed//
From: Kilah S. White
Assistant Inspector General for Audit, GA

Subject: Long Branch Housing Authority, Long Branch, NJ, Did Not Property Handle Income and Expenses Related to Agreements With Other Housing Authorities

Attached are the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General’s (OIG) final results of our review of the Long Branch Housing Authority.

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

The Inspector General Act, Title 5 United States Code, appendix 8M, requires that OIG post its reports on the OIG website. Accordingly, this report will be posted at <https://www.hudoig.gov>.

If you have any questions or comments about this report, please do not hesitate to call Kimberly S. Dahl, Audit Director, at (212) 264-4174.

Highlights

LONG BRANCH HOUSING AUTHORITY, LONG BRANCH, NJ, DID NOT PROPERLY HANDLE INCOME AND EXPENSES RELATED TO AGREEMENTS WITH OTHER HOUSING AGENCIES | 2022-NY-1003

What We Audited and Why

We audited the Long Branch Housing Authority based on the results of our previous audits of the Asbury Park and Red Bank Housing Authorities, which received management services and technical assistance from Long Branch for several years.

The objective of the audit was to determine whether Long Branch properly handled income and expenses associated with its agreements with Asbury Park and Red Bank in accordance with requirements.

What We Found

Long Branch did not properly handle income and expenses related to services provided under agreements with two other public housing agencies. Specifically, it improperly accounted for more than \$2.2 million as non-Federal funds. Additionally, it did not properly allocate and support base payroll expenses and maintain adequate documentation to substantiate incentive payments. This condition occurred because Long Branch improperly considered itself to be a contractor and did not have adequate controls to ensure compliance with Federal requirements. As a result, HUD did not have assurance that \$1.5 million in incentives paid from agreement income was eligible and reasonable, and nearly \$700,000 in unspent agreement income that had not been used continued to improperly reside in a Long Branch account. Additionally, HUD did not have assurance that an estimated \$1 million in base payroll expenses was paid from the proper funds, and any Long Branch program funds used were not available to benefit its own residents.

What We Recommend

We recommend that HUD require Long Branch to (1) provide support to show the reasonableness and eligibility of the \$1.5 million in employee incentives paid from agreement income or reimburse its program for any amount it cannot support, (2) provide support for a reasonable estimate of employee time used to perform services for the two agencies and reimburse its program for any program funds improperly used for those expenses, and (3) implement adequate controls to ensure that it properly classifies income received under any future agreements or activities and to ensure compliance with applicable cost principle requirements in the future. Additionally, we recommend that HUD make a determination regarding nearly \$700,000 in outstanding agreement income, including whether those unspent funds should be returned to the public housing agencies.

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Background and Objective

The U.S. Department of Housing and Urban Development's (HUD) public housing program was established to provide decent and safe rental housing for eligible low-income families, the elderly, and persons with disabilities. Operating funds and capital funds are two major components of HUD's public housing program. Operating funds provide annual operating subsidies to public housing agencies to assist in funding the operating and maintenance expenses of low-income housing units. Capital funds provide annual formula grants to public housing agencies for the development, financing, and modernization of public housing developments and management improvements.

The Long Branch Housing Authority was established in January 1939 to build and manage public housing developments for residents of Long Branch, NJ. It is under the jurisdiction of HUD's Newark Office of Public and Indian Housing and is governed by a seven-member board of commissioners appointed by the mayor, city council, and New Jersey Department of Community Affairs as delegated by the governor. Long Branch owns and manages 449 low-income public housing units and received more than \$14.5 million in operating funds and capital funds from fiscal years 2014 through 2019.

In addition to operating its own programs for the local area, Long Branch entered into agreements with two public housing agencies (the Asbury Park Housing Authority and the Red Bank Housing Authority) for several years to perform management services and technical assistance services, which it provided for Asbury Park until 2018 and Red Bank until 2019. Since April 2014, Long Branch had received more than \$2.2 million under these agreements. During 2018 audits of these agencies, we found that

- Asbury Park did not adequately support payments made to Long Branch for technical, administrative, maintenance, and redevelopment services. Additionally, it did not follow applicable requirements when purchasing goods and services or properly support Public Housing Capital Fund grant obligations. It also improperly used operating funds to pay a settlement with the State of New Jersey. (2018-NY-1003)
- Red Bank did not adequately support payments to Long Branch for technical, administrative, maintenance, and redevelopment services. Additionally, it did not (1) follow applicable requirements when purchasing goods and services, (2) adequately support allocations of contract costs among programs, and (3) ensure that disbursements were properly reviewed and approved before making payments. (2018-NY-1005)

During these audits, we determined that Long Branch employees performing work under the agreements did not maintain detailed time records. We performed this audit in response to these concerns.

Our objective was to determine whether Long Branch properly handled income and expenses associated with its agreements with Asbury Park and Red Bank in accordance with requirements.

Results of Audit

FINDING 1: LONG BRANCH DID NOT PROPERLY HANDLE FUNDS RECEIVED UNDER AGREEMENTS WITH ASBURY PARK AND RED BANK

Long Branch did not properly account for and allocate funds received under its agreements with Asbury Park and Red Bank. Specifically, it accounted for more than \$2.2 million received under the agreements as non-Federal funds in its central office cost center (COCC) when the income should have been handled as Federal funds and as separate projects. This condition occurred because Long Branch improperly considered itself to be a contractor instead of a subrecipient. As a result, funds received under the agreements were not properly handled throughout the life of the agreements. More than \$1.5 million was used for incentive¹ payments that did not comply with requirements (finding 2). Additionally, while the agreements had ended, nearly \$700,000 in unspent agreement income² that could have been used by Long Branch for services performed to carry out Asbury Park's and Red Bank's programs continued to improperly reside in Long Branch's COCC.

Long Branch Did Not Properly Handle Funds Received Under Agreements

Long Branch did not properly handle funds received under its agreements with Asbury Park and Red Bank. Specifically, it accounted for the more than \$2.2 million received as non-Federal income and placed the funds into designated COCC accounts when the income should have been handled as Federal funds and as separate projects.

Based on the substance of the agreements and nature of the work Long Branch performed for Asbury Park and Red Bank, including making programmatic decisions for both agencies, the agreements reflected a subrecipient relationship under 2 CFR (Code of Federal Regulations) part 200. In a subrecipient relationship, the consulting fees earned as well as the corresponding expenditures paid from those fees should be considered Federal funds subject to compliance with both HUD and Federal regulations.

However, Long Branch did not set up separate projects to properly record the more than \$2.2 million and use its fee-for-service model, whereby it would earn fees from providing services to projects as required by section 7.3 in Supplement to HUD Handbook 7475.1, REV, CHG-1, under 24 CFR part 990. Instead, Long Branch recorded the income as non-Federal revenue in designated COCC accounts.

As discussed in finding 2, the Authority used more than \$1.5 million of the \$2.2 million for incentive payments and had a balance of nearly \$700,000 remaining in the accounts as of April 2022.

Long Branch Improperly Considered Itself To Be a Contractor

The condition described above occurred because Long Branch improperly considered itself to be a contractor providing services under a short-term consulting agreement. While the agreements referred

¹ Incentive payments include bonus payments and fringe benefits to Long Branch employees for work conducted for Asbury Park and Red Bank.

² The Authority had \$697,912 in unspent agreement income, which is the difference between the \$2,281,564 in agreement income received less the \$1,583,652 in employee incentives discussed in finding 2.

to Long Branch as a contractor, under the 2 CFR part 200 requirements, the substance of the agreements and the nature of the work performed are what determines whether there is a subrecipient relationship versus the language used in the agreements.

Regulations at 2 CFR 200.331 state that a subaward for the purpose of carrying out a portion of a Federal award will create a Federal assistance relationship with the subrecipient. The requirements lay out characteristics that support the classification as a subrecipient, including when the entity (1) determines who is eligible to receive what Federal assistance, (2) has responsibility for programmatic decision making, (3) is responsible for compliance with applicable Federal program requirements, and (4) uses funds to carry out a program for public purposes specified in the authorizing statute.

In contrast, characteristics that indicate a procurement relationship include when the contractor (1) provides the goods and services within normal business operations, (2) provides similar goods and services to many different purchasers, (3) normally operates in a competitive environment, (4) provides goods or services that are ancillary to the operation of the Federal program, and (5) is not subject to compliance requirements of the Federal program as a result of the agreement.

In this case, Long Branch was compensated by Asbury Park and Red Bank to perform professional management services and technical assistance. The agreements included the following services provided by Long Branch:

- providing the day-to-day direction of the agencies, including planning, organizing, leading, and controlling;
- serving as acting executive director of each agency to make decisions, plan work, and provide overall agency review to improve agencies' performance;
- performing both public housing- and Section 8-related services;
- providing oversight of Rental Assistance Demonstration and tax credit work;
- ensuring proper obligation of Federal funding;
- creating action plans and handling annual reports and prepared financial statements;
- negotiating and reviewing collective bargaining agreements with unions;
- preparing strategy for site beautification and rehabilitation work; and
- providing maintenance supervision.

While the agreements referred to Long Branch as a contractor in places, the substance of the agreements and work performed showed that it acted as a subrecipient versus a contractor. Long Branch oversaw eligibility determinations, made programmatic decisions, ensured compliance with Federal program requirements, and used the agencies' Federal funds to carry out programs for the purposes specified in the National Housing Act of 1937. In other words, Long Branch determined who was eligible to receive what Federal assistance, had responsibility for programmatic decision making, and was responsible for

complying with Federal requirements of the programs it administered on behalf of the agencies. It stood in the place of both Asbury Park and Red Bank and used each agency's funds to carry out its respective Federal housing programs. Long Branch did not merely provide goods and services that were ancillary to the operation of Asbury Park's and Red Bank's programs, nor did it provide these same services to many different purchasers or normally operate in a competitive environment. Finally, the agreements were not procured as would be required for contracts, and they were renewed over the course of several years, so they did not constitute a short-term consulting arrangement.

Conclusion

As a result of Long Branch's improperly considering itself to be a contractor and not treating the income as Federal funds in separate project accounts, the funds and related expenses were not properly handled throughout the life of the agreements. As discussed in finding 2, Long Branch used more than \$1.5 million of the agreement income for incentive payments to employees without documenting how it determined the amounts or showing that they were related to a cost reduction or efficient performance and consistent with agreements with employees as required by 2 CFR 200.430(f). Additionally, while the agreements with Asbury Park and Red Bank had ended, nearly \$700,000 in unspent agreement income continued to improperly reside in designated COCC accounts as of April 2022, including \$478,165 received from Asbury Park and \$219,747 received from Red Bank. This agreement income could have been used by Long Branch for services it provided to carry out Asbury Park's and Red Bank's programs, which benefits the residents of those agencies.

Recommendations

We recommend that the Director of HUD's Newark Office of Public Housing

- 1A. Make a determination regarding outstanding agreement income, including whether those unspent funds should be returned to the public housing agencies, thereby putting up to \$697,912 to better use, including \$478,165 related to Asbury Park and \$219,747 related to Red Bank.
- 1B. Provide technical assistance to Long Branch and require updates to its procedures to ensure that it properly classifies income received under any future agreements or activities.

FINDING 2: LONG BRANCH DID NOT PROPERLY HANDLE PAYROLL AND INCENTIVES FOR EMPLOYEES WHO PERFORMED WORK UNDER AGREEMENTS WITH ASBURY PARK AND RED BANK

Long Branch did not properly handle payroll and incentives for employees who performed work under its agreements with Asbury Park and Red Bank. Specifically, Long Branch did not properly allocate and support base payroll expenses related to time its employees spent working for the other two agencies, and it did not use agreement income to pay for that time. Additionally, it did not maintain adequate documentation to substantiate incentive payments to employees made from the agreement income. Last, documentation created by Long Branch to resolve previous audit findings at the two agencies raised additional concerns. This condition occurred because Long Branch did not have adequate controls in place to ensure that it complied with Federal requirements related to timesheets, payroll, and accounting and with its own policies and procedures related to incentive compensation because it improperly considered the agreement income to be non-Federal funds. As a result, HUD did not have assurance that \$1 million in base payroll expenses and \$1.5 million in incentives were eligible, reasonable, and paid from the proper funds. Additionally, Long Branch's public housing funds used to compensate employees for time spent providing services under the agreements were not available to benefit its own residents.

Long Branch Did Not Properly Handle Base Payroll Expenses

Long Branch did not properly handle base salaries and wages for employees who performed work under its agreements with Asbury Park and Red Bank. Specifically, it did not properly allocate and support payroll expenses related to time its employees spent working for the other two agencies. Long Branch's standard practice was to fund all employee payroll expenses from its regular COCC funds and then reimburse its regular COCC from its own Federal program funds for all or a portion of those costs. While Long Branch provided documentation showing how it allocated certain employee salaries at two points in time, it did not have records showing how much employee time was spent providing services for the two agencies. Accordingly, Long Branch did not use the more than \$2.2 million in agreement income to pay for any of the base payroll expenses related to time worked under the agreements.

Regulations contained in 2 CFR part 200, subpart E, discuss the Federal cost principle requirements that non-Federal entities should apply for costs related to Federal awards, including how employee compensation should be handled. The general cost principle requirements at 2 CFR 200.403 through 200.405 explain that costs must be necessary, reasonable, allocable for the performance of the Federal award, and adequately documented. To be considered allocable, the cost must be incurred specifically for the Federal award. Costs that benefit both the Federal award and other work of the entity can be distributed in proportion or approximated using reasonable methods. Regulations at 2 CFR 200.430 take this requirement a step further by explaining that charges for salaries and wages must be based on records that accurately and reasonably reflect 100 percent of the compensated activities, including both federally assisted and all other activities covered by the compensation. For example, when an employee works on multiple cost objectives, such as work that benefits the residents of Long Branch and other work that benefits the residents of Asbury Park or Red Bank, salaries and wages should be assigned to the various Federal awards in accordance with the actual time worked and relative benefits received. Additionally, Long Branch's annual contributions contract with HUD required it to maintain accurate records to identify the source and application of funds in a manner that allowed HUD to determine that all funds were spent in accordance with program regulations and requirements.

In this case, Long Branch did not maintain detailed timesheets or other records that reflected 100 percent of employee time, including time spent on its own Federal programs and time spent on services provided to the two agencies. Long Branch indicated that employees did not track hours by project and that it did not allocate payroll expenses between its own Federal awards and those of the two agencies it performed services for under the agreements. While Long Branch provided some documentation showing how it allocated certain employee salaries between its public housing funds and regular COCC funds at two points in time, the allocation did not include assigning a portion of employee time to the services employees provided to Asbury Park and Red Bank. Additionally, Long Branch stated that it did not reimburse its public housing funds from the agreement income for the portion of base salaries related to services provided to the two agencies.

This condition occurred because Long Branch did not have adequate controls in place to ensure that it complied with requirements related to timesheets, payroll, and accounting. As a result, HUD did not have assurance that employee compensation was paid from the proper funds, and Long Branch's program funds that should have been used to benefit its own residents were sometimes used to pay for employee time spent working for the other two agencies.

Long Branch Did Not Properly Handle Incentive Payments

Long Branch did not maintain adequate documentation to substantiate incentive payments to employees in connection with the work they performed for Asbury Park and Red Bank.

Payroll and accounting records covering April 2014 to September 2019 showed that Long Branch used more than \$1.5 million for incentive payments to employees who performed work for Asbury Park and Red Bank under the agreements. These payments ranged from \$250 in a year for one employee to \$38,000 in a year for another employee. Long Branch initially indicated that the incentive were awarded quarterly and that the amount was based on decisions by its prior and current executive directors, based on the nature and type of work performed. In later discussions, Long Branch described some of the payments not as incentives, but as stipends or additional compensation received by employees, despite its records' not showing employees' incurring expenses that would justify a stipend, working more than their base hours, or receiving overtime pay.

While the incentive payments were from agreement income that Long Branch had placed into designated COCC accounts, the agreement income should have been handled as Federal funds (finding 1). Therefore, Long Branch should have followed its policy requiring it to prepare annual justifications for incentives. Additionally, it should have followed regulations at 2 CFR 200.430, which required documentation to show that incentive compensation paid to employees was reasonable and based on a cost reduction or efficient performance. Finally, it should have showed that the payments were made under an agreement entered into in good faith between Long Branch and the employees before the services were provided or according to a plan Long Branch followed so consistently as to imply an agreement to make such payments. Long Branch did not prepare or provide justification documenting how it determined the incentive, that they were related to a cost reduction or efficient performance, or that they were consistent with agreements with employees.

This condition occurred because Long Branch did not consider the agreement income to be Federal funds (finding 1) and, therefore, did not apply applicable cost principle requirements for incentive payments.

As a result, HUD did not have assurance that more than \$1.5 million in incentives paid from agreement income was eligible and reasonable.

Long Branch Efforts To Resolve Audits of Other Agencies Raised Additional Concerns Regarding Funds to Benefit Its Residents

Documentation created by Long Branch to resolve previous audit findings at the two agencies raised additional concerns related to how it handled base salaries and wages and incentive payments.

To help Asbury Park and Red Bank resolve findings about a lack of support for payments made under the agreements, Long Branch prepared after-the-fact documentation detailing how much time certain employees spent providing services to Asbury Park from April 2014 through March 2019 and to Red Bank from January 2015 through March 2019. The documentation for Asbury Park included the name, date, and work performed by each employee and was not signed by the employee or supervisor. The documentation for Red Bank included the name, date, and work performed by each employee and was signed and notarized. The documentation estimated that Long Branch employees provided more than 23,000 hours worth of services to the two agencies. By comparing this documentation to payroll records for the same employees, we estimated that this time was valued at \$1 million. Due to the limited record keeping performed at the time the costs were incurred for services performed, \$1 million was the best estimate of base payroll expenses that should have been charged to the agreement income.

However, comparing this after-the-fact documentation to payroll records showed that some employees, who appeared to have performed services under the agreements, did not provide documentation indicating how many hours they spent for Asbury Park and Red Bank activities. This included not having documentation showing hours spent for some employees who received incentives for their work under the agreements as well as for Long Branch's former executive director, which indicated that the estimate may have been low. For example, in 2015, a total of 18 Long Branch employees received incentive payments above their base salaries for work under the agreements with Asbury Park and Red Bank, while Long Branch provided after-the-fact documentation showing only time worked under the agreements for 8 of those employees.

Additionally, comparing the after-the-fact documentation to the allocation figures Long Branch used at two points in time further confirmed that Long Branch used its own program funds to cover salaries and wages for time spent on Asbury Park and Red Bank activities. For example, the after-the-fact documentation for 2017 included more than 3,300 hours for six employees, with the estimated percentage of each employee's total annual hours spent on these services ranging from 2 to more than 55 percent of their time. However, the allocation information provided indicated that these employees' wages and salaries were not allocated among activities and were paid exclusively from Long Branch's own program funds. Therefore, Federal program funds intended to benefit Long Branch's own residents were used for expenses that were not eligible to be charged to its Federal awards.

Accordingly, while \$1 million was the best available estimate of base payroll expenses that should have been charged to the more than \$2.2 million received under the agreements, this figure did not appear to be accurate. The lack of proper timesheets, payroll, and accounting documentation, combined with the discrepancies between the point-in-time allocation information and incentive data and the incomplete after-the-fact documentation provided made it impossible to accurately calculate the total employee

compensation that should have been charged to the agreement income and how much was improperly charged to Long Branch's own Federal program funds.

Conclusion

Because Long Branch did not properly handle and support payroll and incentives for employees who performed work under its agreements with Asbury Park and Red Bank, HUD did not have assurance that an estimated \$1 million in salaries and \$1.5 million in incentives were eligible, reasonable, and paid from the proper funds. Additionally, Long Branch's public housing funds used for payroll expenses related to the agreements were not available to benefit its own residents.

Recommendations

We recommend that the Director of HUD's Newark Office of Public Housing require Long Branch to

- 2A. Prepare and provide support for a reasonable estimate³ of the amount of employee time used to perform services for Asbury Park and Red Bank and the amount of Long Branch program funds used to pay for that time. This estimate should include all employees known or believed to have provided services under the agreements based on language in the agreements, incentive payments, after-the-fact documentation provided, and any other applicable knowledge or documentation, which would show that the employees performed work under the agreements.
- 2B. Reimburse Long Branch's program from non-Federal funds for any Long Branch program funds used for payroll expenses related to services provided to Asbury Park and Red Bank as established in recommendation 2A, estimated to be \$1,014,660.
- 2C. Prepare and provide support to show the reasonableness and eligibility of the \$1,583,652 in employee incentive payments related to services performed for Asbury Park and Red Bank, which was paid from agreement income, or reimburse its program from non-Federal funds for any amount it cannot support.
- 2D. Implement adequate controls to ensure compliance with applicable cost principle requirements for employees, including those covering compensation for personal services, such as wages, salaries, and incentive payments, at 2 CFR 200.430. Records should reasonably reflect the total activity for which Long Branch's employees are compensated by the non-Federal entity and support the distribution of compensation among specific activities and cost objectives.

³ Regulations at 2 CFR 200.430(i)(8) indicate that when the records do not meet the standards, the Government may require personnel activity reports, including certifications, or equivalent documentation.

Scope and Methodology

We conducted the audit from April 2019 through April 2022 at Long Branch's office in Long Branch, NJ, and our office located in Newark, NJ. The audit covered the period April 2014 through March 2019 but was expanded through April 2022 to review after-the-fact documentation prepared by Long Branch in response to our audits of Asbury Park and Red Bank and to include additional agreement income received by June 2020, incentive payments made through September 2019, and the unspent balance of agreement income as of April 2022.

To accomplish our audit objective, we interviewed applicable HUD and Long Branch officials. We also reviewed

- relevant background information;
- applicable laws, regulations, and HUD guidance;
- Long Branch's policies and procedures manual, 5-year annual plans, and annual contributions contract and amendments;
- audited financial statements and other financial reports provided by Long Branch; and
- check registers, invoices, receipts, voucher disbursements, account ledgers, and bank records related to Long Branch's public housing program.

To accomplish our objective, we reviewed the agreements executed between Long Branch and Asbury Park and Red Bank. We reviewed the revenues received and corresponding expenses. We also analyzed payroll registers, general ledger data, yearend payroll summaries, and data contained in HUD's Financial Assessment Submission - Public Housing System and Public and Indian Housing Information System.

To arrive at the \$1,014,660 estimate of base payroll expenses related to services Long Branch's employees provided to the two agencies, we calculated their estimated total annual hours and used the after-the-fact documentation to determine the percentage of each employee's annual hours spent providing services under the agreements. We then multiplied this calculated percentage by each corresponding employee's base salary amount to determine the base payroll expense as stated in finding 2.

We determined that internal controls over compliance with laws and regulations, effectiveness and efficiency of operations, and reliability of financial reporting were relevant to our audit objective. We assessed the relevant controls. Based on our review, we believe that Long Branch did not have adequate controls to ensure that it followed applicable HUD, Federal, and Long Branch requirements.

To achieve our objective, we relied in part on Long Branch's computer-processed data. Although we did not perform a detailed assessment of the reliability of the data, we performed a minimal level of testing, which included comparing information from these systems to Long Branch's records and found the data to be adequate for our purposes.

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

Appendixes

APPENDIX A - SCHEDULE OF QUESTIONED COSTS AND FUNDS TO BE PUT TO BETTER USE

Recommendation number	Unsupported 1/	Funds to be put to better use 2/
1A		\$697,912
2B	\$1,014,660	
2C	1,583,652	
Totals	2,598,312	697,912

- 1/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.
- 2/ Recommendations that funds be put to better use are estimates of amounts that could be used more efficiently if an Office of Inspector General (OIG) recommendation is implemented. These amounts include reductions in outlays, deobligation of funds, withdrawal of interest, costs not incurred by implementing recommended improvements, avoidance of unnecessary expenditures noted in preaward reviews, and any other savings that are specifically identified. In this case, the \$697,912 in unspent agreement income could have been used to carry out Asbury Park's and Red Bank's programs.

APPENDIX B - AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG
Evaluation

Auditee Comments

HOUSING AUTHORITY OF THE CITY OF LONG BRANCH



Gloria J. Wright
Executive Director

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June 29, 2022

Ms. Kilah S. White
Assistant Inspector General for Audit
Office of the Inspector General
United States Department of Housing and Urban
Development
Room 8180
451 7th Street Southwest
Washington, DC 20140

Subject: **Response of the Long Branch Housing Authority to OIG Findings**

Dear Ms. White:

The Office of Inspector General of the United States Department of Housing and Urban Development conducted an audit of the income and expenses of the Long Branch Housing Authority associated with its Interlocal Service Agreements with the Asbury Park Housing Authority and the Red Bank Housing Authority.

OIG FINDINGS: The OIG Audit concluded that the Long Branch Housing Authority (LBHA) mishandled funds generated by its Interlocal Service Agreements (“ISAs” or “Agreements”) with Asbury Park Housing Authority (APHA) and Red Bank Housing Authority (APHA), because LBHA improperly characterized itself as a consultant and not a sub-recipient of federal funds, to restate the position of the OIG.

Further, the OIG contends that the LBHA did not properly account for and allocate funds under its ISAs with APHA and RBHA, in the collective amount of \$2.2 million, which includes a mishandling of payroll funds (\$1.5 million) as well as unspent agreement income (\$700,000).

Lastly, the OIG contends that employees of the LBHA spent time doing the work of the other two agencies and were not available to serve the tenants or the needs of LBHA.

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Comment 1

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Evaluation

Auditee Comments

Comment 2

Comment 3

Comments 3
and 4

Comment 5

Comment 6

Comment 7

Comment 8

HOUSING AUTHORITY OF THE CITY OF LONG BRANCH



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Executive Director

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RESPONSE of the LONG BRANCH HOUSING AUTHORITY

The Long Branch Housing Authority takes exception to the assumptions made by the OIG. The arguments posed by the OIG are not substantiated by the underlying facts of each agreement and the relationships among HUD, the LBHA and each of the other agencies.

As further explained below, the LBHA takes the position that:

1. LBHA properly handled funds it received under its Agreements with the APHA and the RBHA;
2. LBHA was a contractor and not a sub-receiptor of federal funds under the Agreements, as the Agreements were valid and approved by HUD and the agencies:
 - a. HUD had the authority, as authorized by the "U.S. Housing Act of 1937," the "Cooperative Agreement of 1939" between HUD and the City of Long Branch, and 2 CFR 200.201, among other statutes and regulations, to approve the consultancy/contractor Agreements among the PHAs.
 - b. HUD, in fact, approved the contracts among LBHA and the other agencies. See Exhibit A.
 - c. LBHA had the authority to enter into the agreements with APHA and RBHA, as authorized by the enabling statute for LBHA, the New Jersey "Local Redevelopment and Housing Law", N.J.S.A. 40A:12A-17 et. seq. ("Law"), the New Jersey "Interlocal Services Act", N.J.S.A. 40A:8-1 et. seq., and the New Jersey "Uniform Shared Services and Consolidation Act", N.J.S.A. 40A:65-1 et. seq.
3. LBHA was available and capable of serving its own residents and the needs of the LBHA during the tenure of these agreements, as the LBHA redeveloped its own public housing units during the same period of time.
4. LBHA properly handled its payroll and incentive payments to employees who worked under the Agreements.

Factual Background: The LBHA, a public housing authority (PHA), assisted two other New Jersey PHAs to improve their overall ratings. PHAs must maintain their housing and real estate stock in a safe, decent and sanitary condition, in accordance with HUD guidelines and regulations. A PHA

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Auditee Comments

Comment 8

Comment 9

Comment 3

Comment 3

HOUSING AUTHORITY OF THE CITY OF LONG BRANCH



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is considered “troubled” when its overall rating falls below standard in accordance with the HUD Real Estate Assessment Center (REAC) standards. If a PHA is troubled, HUD has several options available to it and can, and often does intervene, to correct the operations and restore the level of service and standards. Both the APHA and the RBHA were sub-standard in their ratings in 2014, when HUD suggested that the LBHA assist APHA, to elevate the APHA scores. Soon thereafter, an agreement was also entered for LBHA to lead the RBHA. These agreements were entered into in accordance with the New Jersey Interlocal Services Act, which authorizes public entities to share or assist other public entities, the enabling Law for PHAs in New Jersey, among other laws and regulations.

Upon the request of the OIG for time records of employees who worked with APHA and RBHA, as indicated by additional payments made to them by LBHA, the LBHA sought to have those employees still employed by the LBHA to provide affidavits/time sheets that they had performed the work at those agencies. As a result of the Audit occurring many years after the work was completed, i.e., as much as seven (7) or eight (8) years after the work was completed, most of the time records are not contemporaneous with the work performed. In addition, many of the employees who worked under the Agreements are no longer employed by LBHA. The LBHA payroll system changed during the years, from ADP to Paylocity, and the system of classification of additional payments changed (as one system recognized Stipend payments and the other only recognized salaries or bonus payments).

Responses to Audit Report:

1. LBHA properly handled funds it received under its Interlocal Service Agreements with the APHA and the RBHA.

The LBHA was not required to handle the money it received from the Agreements as federal funds, as it was a contractor and not a sub-recipient of federal funds, in contravention to the position espoused by the OIG. The federal regulations applicable to the handling of federal funds do not apply when a third-party contractor is paid for services rendered. This was the intended situation among the PHAs and HUD, relative to the Interlocal Agency Agreements. If the LBHA is a contractor and not a sub-recipient of the funds, the allegations made by the OIG should not be sustained.

2. LBHA was a contractor and not a sub-recipient of federal funds under the Agreements. If LBHA is considered a contractor and not a sub-recipient under the Agreements, then the funds paid to LBHA would no longer be considered federal funds and therefore, not subject to repayment. The only other feasible way to recapture the funds under the Agreements is to contend or prove that the agreements were somehow invalid. The Finding 1 of the OIG essentially reverses and nullifies the structure, purpose and intent of the agreements. If the

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Executive Director

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parties did not have the authority to enter such agreements where federal funds were involved, then the agreements would not be valid. LBHA contends that all of the Agreements were valid, passed by resolutions of each of the respective Boards of Commissioners at validly authorized public meetings, and the parties had the ability and authority to enter such Agreements, as permitted under HUD's broad oversight powers of PHAs.

- a. HUD recognized and approved the LBHA as a third-party contractor in the APHA-LBHA Interlocal Service Agreements. **See Exhibit A**, attached hereto and incorporated herein, *Letters from HUD Regional Field Office Director*, which recognizes the transaction as a procured contract. The letter indicates that this is the fourth such approval. Clearly, all parties believed and intended that the relationship was that of a contractor (and not a sub-recipient) of funds.
- b. HUD has several options available to it whenever a Public Housing Agency (PHA) is not performing up to standard, including, but not limited to, appointing another PHA or an external entity to assist a struggling PHA. LBHA was a leader in the redevelopment of PHA properties during the times the APHA and RBHA Agreements were executed, between 2012-2019 and was viewed by HUD as very capable and competent to assist APHA and RBHA. From a cost benefit perspective, having another experienced PHA assist a struggling PHA may be more cost effective than having an outside entity assist a struggling PHA, as PHAs are highly regulated and must comply with local, state and federal laws and regulations. The idea of structuring such assistance should be rewarded rather than thwarted, saving taxpayers dollars. The LBHA was successful in its consultancy with APHA and RBHA, as each agency's REAC scores were raised from sub-standard to standard.
- c. The Agreement with APHA, effective from 2012 to 2019, was initially proffered by HUD itself, in an attempt to assist APHA to raise its sub-standard REAC score. The RBHA Agreement soon followed, under the same premise. HUD has a responsibility to oversee the PHAs and has discretion to appoint or approve third-parties to assist HUD and PHAs to perform more efficiently. HUD can and does make exceptions to procurement of special services; HUD can prescribe a course of action to remedy a failing agency.
- d. The Agreements were both lawful, valid contracts, under the purview of HUD and were approved by HUD, in the ordinary course of its oversight and responsibilities. *2 CFR 200.201* grants the authority of the awarding agency to decide the appropriate instrument for the federal award. It states:

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Federal award instrument. The Federal awarding agency or pass-through entity must decide on the appropriate instrument for the Federal award (*i.e.*, grant agreement, cooperative agreement, or contract) in accordance with the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08).

HUD had the authority to approve the Agreement as a contract that was procured, as evidenced by **Exhibit A**.

3. The LBHA, in accordance with its enabling statute as a public housing agency in New Jersey under the "Local Redevelopment and Housing Law", N.J.S.A. 40A:12A-17 et. seq. ("Law"), has the authority, among other things, to enter into contracts and perform other duties consistent with the Law. PHAs in New Jersey, although authorized to administer federal housing subsidies from HUD, have authority to enter into other kinds of contracts. The Law grants authority to enter contracts and specifically to enter into Agreements with other housing agencies, cities and municipalities under the "Interlocal Services Act". See N.J.S.A. 40A:12A-38, 39.
4. Sub-recipient of Federal Funds:
 - a. Both APHA and RBHA, and **not LBHA**, were the sub-recipient of federal funds from HUD, as distinct public housing agencies and were recognized by HUD as distinct separate entities from LBHA. Under the Agreements, HUD never considered that the federal funds it awarded to RBHA and APHA were then sub-awarded to the LBHA, nor were the federal funds further transferred to the LBHA by APHA or RBHA as a sub-sub-award. A proposed transfer of funds from one agency to the other would have specifically required further approval by HUD. See 2 CFR 200.201. This regulation gives discretion to the federal awarding agency (HUD) to decide as to the appropriate instrument (grant agreement, cooperative agreement or contract) when making an award. The funds awarded from HUD to both APHA and RBHA were never awarded or transferred to, or further granted to LBHA. Some form of an agreement to further transfer these funds would have to have been approved by HUD, the awarding agency. HUD did not transfer these funds to LBHA.
 - b. Although the LBHA often consulted with the APHA and the RBHA, it did not perform the day-to-day line operations of either of the agencies during the contract periods. Each agency remained independent of each other and of LBHA, as each

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agency retained its own Board of Commissioners, line staff; each continued its normal operations, including meeting with tenants to determine eligibility, termination and certification for housing. Each Board retained its power to set policy, pass resolutions, and was able to fire the LBHA at any time. The LBHA Board of Commissioners did not approve any of the budgets, processes, hiring or firing of employees of APHA or RBHA, as their respective Boards were always in place. Each of the agencies, both APHA and RBHA, were audited each year by their own independent financial auditors, without any findings of mismanagement of funds or processes by the LBHA. The OIG Audit mentioned a wrongful payment and use of federal funds by APHA in 2018. However, the statement fails to mention that the payment was not authorized, approved or recommended by LBHA but by the APHA Board of Commissioners itself, a distinct independent authority from LBHA. The LBHA was not in control of the day to day operations of the other agencies.

Both APHA and RBHA were in full operation as PHAs during the periods of the Agreements. They continued to carry out their day-to-day functions, seeking advice from the LBHA when needed.

- c. As stated by the OIG, a subrecipient of federal fund has responsibility:
1. to determine who is eligible to receive what Federal assistance;
 2. for programmatic decision making,
 3. for compliance with applicable Federal program requirements, and
 4. uses funds to carry out a program for public purposes specified in the authorizing statute.

In each program operated by the APHA and RBHA, the LBHA did not perform these functions of a sub-awardee. The Housing Choice Voucher Program (HCV) and the public housing program (PH) staff of each agency performed these functions. Each internal agency staff determined the eligibility of its respective tenant populations, inter-faced with tenants, handled the work-orders and maintenance functions, made decisions and enforcement actions on behalf of each program, handled its finances and expenditures, and sought board resolutions from its respective boards on policy determinations. The LBHA staff members were available to the staff members of each of the other agencies, to answer questions, assist in the HUD reporting in the shared HUD system, etc.

5. The LBHA staff remained available to serve the residents of LBHA properties during the course of the agreements, unlike the statements alleged by the OIG. In fact, the LBHA

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redeveloped most of its public housing stock during this period, using Mixed-Finance, HOPE VI, LIHTC, and conventional methods of financing.

- a. From 2013 through 2017, nine affordable housing development projects of LBHA were completed, among which the LBHA received several accolades and awards, including the following:

- “Excellence in Housing Management” Award by New Jersey Housing and Mortgage Finance Agency, Woodrow Wilson Phase III, 2016
- “Best Overall National Project,” Affordable Housing Finance Reader’s Choice Award, Woodrow Wilson Commons, August 2015
- “HUD VASH Program for Homeless Veterans,” HUD Certificate of Appreciation, Housing Choice Voucher Program, July 2015
- “President’s Award”, the Long Branch Chamber of Commerce, presented to Gregory School Residences, 2014.

Redevelopment of a PHA property is a multi-tiered, complicated real estate transaction that involves skilled professionals. Staff of the PHA must devote inordinate amounts of additional time to their jobs. These skilled employees are often salaried and therefore do not receive overtime payment for any additional hours worked. LBHA could not have accomplished its goals of redevelopment if the employees of the authority did not devote extra time to the agency to meet deadlines imposed by the structured, intricate, tax credit deals involving multiple external partners, beyond the day-to-day operation of the LBHA. Clearly, LBHA employees were available to the agency during the crucial time of redevelopment.

- b. The REAC scores for the LBHA did not fall during the time LBHA consulted with APHA and RBHA. The HCV Program of the LBHA consistently scored as a high-performer and the public housing program scored as a high-performer most of the time and then as a standard performing program.

6. LBHA properly handled the payroll and incentives for employees who worked under the Agreements.

- a. As a contractor of APHA and RBHA (which was properly procured), the LBHA was not required to submit hour-by-hour time sheets for the work it performed. It paid stipends or incentive payments to the LBHA employees who advised and assisted the APHA and RBHA staffers in the performance of their work and tracked the payments in the LBHA automated payroll system. The automated system changed during the

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years, and some payments are recorded as stipends and others are recorded as bonuses or incentive payments. Because the consulting agreements were annually renewed and therefore not expected to continue forever, payments to employees were not added to their base salaries.

- b. LBHA appropriately record base salary as the employees base salaries, charged to LBHA for work they continued to perform for LBHA. The additional compensation paid to employees was segregated into separate accounts for APHA and RBHA in LBHA's general ledger. The auditors appear to assume that because timesheets were not kept, the LBHA employees who worked for the other PHAs were not available to service the LBHA residents. Clearly, LBHA performed its work at home, redeveloping its old public housing developments into seven new and different affordable housing developments, in addition to constructing a new office building and new community center. LBHA was noted for and recognized for all its new development activities for which it received awards and accolades. See Section 5 above.
- c. The income received from the Agreements was not "program income," as defined under the 2 CFR 200. LBHA payments to its employees for additional work to support APHA and RBHA did not violate federal regulations and rules. The term "bonus," as used in earlier payroll reports, segregated the two forms of compensation to distinguish them for the record, upon LBHA's changed of payroll providers. The newer system recorded these payments as stipends, to define it more clearly as extra compensation and not a bonus onto the regular salary. It is worthy of note that the Executive Director of the LBHA often did not receive bonus or incentive payments from the APHA or RBHA and was paid strictly from the contract with the LBHA.
- d. The Agreements were not treated as cost-reimbursement agreements, wherein the LBHA would pay the costs of supporting the PHAs and get reimbursed. As stated in the Agreements, LBHA was paid a fixed fee from for the expressed purposes of helping APHA and RBHA improve their HUD REAC scores and their redevelopment efforts.

7. CONCLUSION:

In conclusion, LBHA was a consultant to the APHA and the RBHA, as approved by HUD. The LBHA's functions were those of a contractor and advisor and not an employee of either of the

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APHA or RBHA, nor were the public functions of those PHAs imputed to LBHA. LBHA was independent of APHA and the RBHA. HUD approved the arrangements as a procured contract and therefore any funds paid to LBHA were not federal funds. See Exhibit A.

The agreements executed by RBHA and APHA for specific purposes of oversight and advisory and did not supplant the internal operations of each of those agencies. Neither APHA nor RBHA intended to transfer any of their functions to the LBHA. Both RBHA and APHA retained their own employees for programmatic work, and each retained their Boards of Commissioners. Each respective Board approved the transactions of the agencies. The Agreements and payments made to the LBHA were approved by resolutions of the respective Boards of Commissioners and renewed annually. The Interlocal Service Agreements, approved via Board resolution of each respective PHA in advance of service rendered, required quarterly payments to LBHA. Moreover, each respective Board of Commissioners further approved the actual payment to the LBHA. The functions to support the Public Housing and Housing Choice Voucher programs, the two major federally subsidized programs administered by each agency, were performed and executed by the managers and employees of those agencies, including required policy actions and resolutions by each Board of Commissioners. In addition, each agency retained its own Maintenance Department and employees. The LBHA did not interact with the tenant-populations or meet with the tenants on behalf of those agencies.

For all the reasons stated above, the funds paid to LBHA should be considered non-federal and the Findings of the OIG should be withdrawn.

Sincerely,

Gloria Wright
Executive Director

Housing Authority of the City of Long Branch
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gwright@lbhousing.org

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**RESPONSE of the LONG BRANCH
HOUSING AUTHORITY to the OIG AUDIT**

EXHIBIT A

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U.S. Department of Housing and Urban Development
Newark Field Office- Region II
One Newark Center 13th Floor
Newark, New Jersey 07102-5260
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MAY 26 2015

Mr. [REDACTED]
Interim Executive Director
Housing Authority of Asbury Park
1000 1/2 Third Avenue
Asbury Park, New Jersey 07712-5806

RE: CFP OSAR
Grant Management/Redevelopment Planning - \$ 85,000 (CFP 2014)
Unit Turnover, Site Improvement, & Landscaping - \$ 120,000 (CFP 2014 & 2015)
Interagency Agreement between LBHA

Dear Mr. [REDACTED]

We have received the supporting documents for the CFP OSAR request. The Long Branch Housing Authority and Asbury Park Housing Authority entered an interagency agreement for the 4th year effective April 22, 2015. The APHA has request obligation for an Interagency Agreement between the Asbury Park Housing Authority and Long Branch Housing Authority to extend maintenance contract service of the amount of \$ 85,000 for vacant unit turnover, site improvements and Landscaping. In addition the APHA is requesting \$120,000 to be reimbursed to the LBHA for service pertaining to Grant Management/ Redevelopment Planning. The APHA had compared similar historical contract and determined that the interagency agreement is the most cost effective alternatives for these services. The APHA has adequately included this agreement on the most current PHA plans.

Based on the supporting documents submitted for approval of the subject contracts/agreement, our office has no objection to approve of this obligation. The PHA must keep in file a written explanation of negotiated work items to make sure that all work will be completed in accordance with the plan & specification. Please be advised that the PHA must comply with the CFP requirements for contract administration in accordance with the HUD guidebook 7485.3G Rev. 3 and the procurement requirement from 24 CFR 85.36. If you have any question or concerns, you may contact my staff [REDACTED]

Sincerely,

[REDACTED]
Director
Office of Public Housing

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Mr. [REDACTED]
Interim Executive Director
Housing Authority of Asbury Park
1000 1/2 Third Avenue
Asbury Park, New Jersey 07712-5806

**RE: CFP OSAR
Grant Management/Redevelopment Planning - \$ 85,000 (CFP 2013)
Unit Turnover, Site Improvement, & Landscaping - \$ 120,000 (CFP 2013 & 2014)
Interagency Agreement between LBHA**

Dear Mr. [REDACTED]

We have received the supporting documents for the CFP OSAR request. The Long Branch Housing Authority and Asbury Park Housing Authority entered an interagency agreement for the 3rd year effective April 22, 2014. The APHA has request obligation for an Interagency Agreement between the Asbury Park Housing Authority and Long Branch Housing Authority to extend maintenance contract service of the amount of \$ 85,000 for vacant unit turnover, site improvements and Landscaping. In addition the APHA is requesting \$120,000 to be reimbursed to the LBHA for service pertaining to Grant Management/ Redevelopment Planning for Boston Way Village. The APHA had compared similar historical contract and determined that the interagency agreement is the most cost effective alternatives for these services. The APHA has adequately included this agreement on the most current PHA plans.

Based on the supporting documents submitted for approval of the subject contracts/agreement, our office has no objection to approve of this obligation. The PHA must keep in file a written explanation of negotiated work items to make sure that all work will be completed in accordance with the plan & specification. Please be advised that the PHA must comply with the CFP requirements for contract administration in accordance with the HUD guidebook 7485.3G Rev. 3 and the procurement requirement from 24 CFR 85.36. If you have any question or concerns, you may contact my staff [REDACTED]

[REDACTED]
Director
Office of Public Housing

OIG Evaluation of Auditee Comments

- Comment 1. Long Branch stated that OIG contends that that its employees were not available to serve the tenants or needs of Long Branch. We disagree. The concern is not about whether Long Branch's employees were available to serve its tenants and needs, but rather that Long Branch public housing funds were improperly used to pay for time employees spent performing work for Asbury Park and Red Bank. (See finding 2 on page 9 of this report.) Under Federal cost principle requirements, only work that is related to Long Branch's public housing program should be paid for with Long Branch public housing funds. If Long Branch had not improperly used its funds to compensate employees for time spent providing services under the agreements, those funds would have been available to benefit its own residents.
- Comment 2. Long Branch maintained that the arguments posed by OIG were not substantiated by the underlying facts of each agreement and the relationships among HUD, Long Branch, and the other agencies. We disagree. As explained on page 14 of this report, we conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions.
- Comment 3. Long Branch maintained that it properly handled funds received under the agreements with Asbury Park and Red Bank and that it was a contractor and not a subrecipient. We disagree. As explained on pages 6, 7, and 8 of this report, the substance of the agreements and nature of the work performed are what determines whether there is a subrecipient relationship. While the agreements referred to Long Branch as a contractor in places, the substance of the agreements and work performed showed that it acted as a subrecipient versus a contractor. Accordingly, we maintain that instead of accounting for the more than \$2.2 million received as non-Federal income and placing the funds into designated COCC accounts, Long Branch should have handled the income as Federal funds and as separate projects.
- Comment 4. Long Branch maintained that the agreements were approved by HUD. We disagree. As discussed during the audit, HUD indicated that it did not approve the agreements, nor was it HUD's practice to approve such agreements. HUD was not a party to the agreements. The letters provided in exhibit A on pages 26 and 27 of this report were approvals of Asbury Park capital fund obligations, not approvals of the agreements themselves or approvals of how Long Branch handled the income and expenses related to the agreements.
- Comment 5. Long Branch maintained that it had the authority to enter into the agreements with Asbury Park and Red Bank. The objective of this audit was to determine whether Long Branch properly handled income and expenses associated with the agreements, and we did not question the authority of Long Branch to enter into agreements with other public housing agencies.
- Comment 6. Long Branch maintained that it was available and capable of serving its own residents and needs during the tenure of the agreements. Specifically, Long Branch noted that it had redeveloped its own public housing units during the same period. It later asserted

that during the period of its agreements with Asbury Park and Red Bank, its Real Estate Assessment Center scores did not fall and it had scored as a high performer. We maintain that Long Branch's performance and work for its residents was not the focus of this audit. Rather, this audit focused solely on how Long Branch handled income and expenses associated with the agreements.

- Comment 7. Long Branch maintained that it properly handled payroll and incentive payments to employees who worked under the agreements. We disagree. As detailed in finding 2 on pages 9, 10, and 11 of this report, Long Branch used its own Federal program funds to pay for base payroll expenses related to time its employees spent working for the other two agencies. This action violated Federal cost principle requirements, which state that only costs incurred specifically for a given Federal award should be paid from it. Additionally, Long Branch did not maintain documentation to substantiate incentive payments to employees made from the agreement income.
- Comment 8. Long Branch noted HUD had suggested that Long Branch assist Asbury Park. During the audit, Long Branch did not provide support for its assertion, nor was the origin of the agreements the focus of this audit. Rather, the objective of this audit was to determine whether Long Branch properly handled income and expenses associated with its agreements with Asbury Park and Red Bank. Regardless of the history of the agreements and the condition of the two agencies it assisted, Long Branch was required to follow applicable requirements when handling the income and expenses associated with the agreements.
- Comment 9. Long Branch explained that it sought to have employees create after-the-fact affidavits and time sheets at the request of HUD OIG and noted that those records were not contemporaneous with the actual work performed because they were prepared as many as 8 years after the fact. We agree that Long Branch prepared this documentation to help Asbury Park and Red Bank resolve findings about a lack of support for payments made under the agreements as discussed on page 11 of this report. As detailed in OIG audit reports 2018-NY-1003 and 2018-NY-1005, neither Long Branch nor the other agencies maintained comprehensive documentation as required under the agreements. Further, Long Branch did not maintain detailed time records that would have allowed it to properly allocate base payroll expenses between its Federal program funds and the agreement income. While the after-the-fact documentation was prepared by Long Branch in response to OIG's audits of Asbury Park and Red Bank, we also used it for this audit in two ways. As detailed on pages 11 and 12 of this report, we compared the after-the-fact documentation to the payroll records provided during this audit, which revealed several discrepancies. Second, we used it to help estimate the amount of base payroll expenses that was attributable to time worked under the agreements. Long Branch also noted that it had changed payroll systems over the years, which resulted in a change in terminology. One system classified the additional payments to employees as bonuses, while the other system classified them as bonuses or stipends. As explained on pages 10 and 11 of this report, regardless of the terminology used in its systems, this income was considered incentive payments under Federal cost principle requirements. Therefore, HUD did not have assurance that more than \$1.5 million in incentives paid from agreement income was eligible and reasonable.

- Comment 10. Long Branch stated that HUD recognized and approved of it as a third-party contractor in the Asbury Park agreement and asserted that HUD recognized the transaction as a procured contract in letters provided in exhibit A on pages 26 and 27 of this report. We disagree that HUD provided approval of Long Branch as a contractor. The letters provided in exhibit A were approvals of Asbury Park capital fund obligations, not approvals of the agreements themselves or approvals of how Long Branch handled the income and expenses related to the agreements. Additionally, it is important to note that exhibit A did not contain any references to the Asbury Park operating funds used or to Red Bank. Lastly, the letters did not refer to Long Branch as a contractor and used both contract and agreement when referring to the agreements.
- Comment 11. Long Branch maintained that when a public housing agency was not performing up to standard, HUD had several options available, including appointing another agency or external entity to assist a struggling public housing agency. Additionally, Long Branch noted that it was a leader in the redevelopment of public housing properties at the time the agreements were executed and was viewed as capable and competent by HUD and that there were benefits to an experienced public housing agency's assisting a struggling public housing agency, as all public housing agencies must comply with local, State, and Federal laws and regulations. It asserts that structuring such assistance should be rewarded and noted that it had been successful in its consultancy with Asbury Park and Red Bank. Long Branch did not assert here or during the audit that HUD had appointed it to assist Asbury Park and Red Bank. However, we acknowledge that (1) HUD has options available when a public housing agency is not performing up to standard, (2) there are benefits to arrangements between public housing agencies when they are handled properly and all parties follow requirements, and (3) Long Branch's work with the two agencies met a need at the time. However, the objective of this audit was not related to the need, history, or quality of services provided. Rather, it was to determine whether Long Branch properly handled income and expenses associated with the agreements in accordance with requirements, including regulations related to relationships and cost principles, as discussed in this report's findings.
- Comment 12. Long Branch noted that HUD can and does make exceptions to procurement of special services, and can prescribe a course of action to remedy a failing agency. However, Long Branch did not assert here or during the audit that its agreements with Asbury Park and Red Bank were an exception to requirements.
- Comment 13. Long Branch noted that 2 CFR 200.201 gives Federal awarding agencies authority to decide on the appropriate instrument for Federal awards, such as grant agreements, cooperative agreements, or contracts. It then states that HUD had the authority to approve the agreement as a contract that was procured, as evidenced by the letters contained in exhibit A on pages 26 and 27 of this report. HUD executes grant agreements with each public housing agency. HUD was not a party to the agreements between Long Branch and the two agencies, nor did it provide approval of the agreements or instruct Long Branch on the type of instrument that should be used for its agreements with Asbury Park and Red Bank.
- Comment 14. Long Branch maintained that Asbury Park and Red Bank were subrecipients of Federal funds from HUD. It also stated that HUD did not consider that Federal funds it awarded to the two agencies would then be subawarded to Long Branch, nor were Federal funds

further transferred to Long Branch. We disagree with the assertion that Asbury Park and Red Bank were subrecipients. Rather, they were grantees with whom HUD executed grant agreements. Additionally, the question of the nature of the relationships Long Branch had with the two agencies, how the funds were handled, and how they should have been handled are the subject of this report. Regardless of how funds were handled, pages 6, 7, and 8 of this report explain that the substance of the agreements and nature of the work performed are what determines whether there is a subrecipient relationship.

Comment 15. Long Branch maintained that although it consulted with Asbury Park and Red Bank, it did not perform the day-to-day line operations of the agencies or function as a subrecipient. To support its assertions, Long Branch explained that each agency remained independent of the other, retained its own board of commissioners and line staff, continued its normal operations, and was audited by independent financial auditors each year. Further, Long Branch maintained that the staff of each agency determined the eligibility of tenants, handled maintenance functions, made decisions, and handled finances.

We disagree that Long Branch was not involved in the day-to-day operations of the agencies and maintain that it functioned as a subrecipient. As explained on pages 6, 7, and 8 of this report, the substance of the agreements and nature of the work performed are what determines whether there is a subrecipient relationship. In this case, Long Branch was compensated by Asbury Park and Red Bank to perform professional management services and technical assistance. The agreements included the following services provided by Long Branch:

- providing the day-to-day direction of the agencies, including
- planning, organizing, leading, and controlling;
- serving as acting executive director of each agency to make decisions, plan work, and provide overall agency review to improve agencies' performance;
- performing both public housing- and Section 8-related services;
- providing oversight of Rental Assistance Demonstration and tax credit work;
- ensuring proper obligation of Federal funding;
- creating action plans and handling annual reports and prepared financial statements;
- negotiating and reviewing collective bargaining agreements with unions;
- preparing strategy for site beautification and rehabilitation work; and
- providing maintenance supervision.

While the agreements referred to Long Branch as a contractor in places, the substance of the agreements and work performed showed that it acted as a subrecipient versus a contractor. Long Branch oversaw eligibility determinations, made programmatic decisions, ensured compliance with Federal program requirements, and used the agencies' Federal funds to carry out programs for the purposes specified in the National Housing Act of 1937.

- Comment 16. Long Branch noted that this audit report mentions a wrongful payment made by Asbury Park in 2018 (see page 5 of this report) and maintained that the payment was not authorized, approved, or recommended by Long Branch. However, we noted that during the period covered by our audit of Asbury Park, Long Branch was providing services to the agency.
- Comment 17. Long Branch maintained that as a contractor for Asbury Park and Red Bank, it was not required to submit hour-by-hour timesheets for the work it performed. It further stated that it paid stipends or incentives to its employees who provided services to the two agencies and that it tracked these incentive payments in its automated payroll system. We agree that Long Branch tracked incentive payments in its automated payroll system. However, while the agreements did not specifically require that Long Branch submit hour-by-hour timesheets, the Asbury Park agreements required it to maintain a comprehensive system of expense and operational records associated with the agreement, and the Red Bank agreements required it to maintain comprehensive records related to the agreement and specifically required Long Branch to dedicate at least 40 staff hours each week to Red Bank. Long Branch did not maintain such documentation.

Further, regardless of what the agreements required, Long Branch was required to follow Federal cost principle requirements. Those requirements state that for a cost to be considered allocable to a Federal award, the cost must be incurred specifically for the Federal award. Regulations at 2 CFR 200.430 take this requirement a step further by explaining that charges for salaries and wages must be based on records that accurately and reasonably reflect 100 percent of the compensated activities, including both federally assisted and all other activities covered by the compensation. For example, when an employee works on multiple cost objectives, such as work that benefits the residents of Long Branch and other work that benefits the residents of Asbury Park or Red Bank, salaries and wages should be assigned to the various Federal awards in accordance with the actual time worked and relative benefits received.

- Comment 18. Long Branch stated that payments to employees for services provided to Asbury Park and Red Bank were not added to base salaries because the agreements had to be renewed several times and it did not expect the agreements to continue forever. Further, Long Branch maintained that it appropriately recorded employees' base salaries and charged them to its funding for work the employees continued to perform for Long Branch. We acknowledge the unique circumstances but maintain that Long Branch did not handle employee pay properly. Long Branch should have handled payroll and incentive payments based on the nature of the work. For example, base payroll expenses cover an employee's normal work hours and include any type of work performed during that time; overtime covers hours worked beyond an employee's normal hours; and incentive payments are not tied to the time itself, but rather to cost reduction, efficient performance, etc.

Long Branch's payroll records showed that employees received hourly rates for their normal work hours. While employee time spent providing services under the agreements may have helped an employee qualify for incentive payments, the actual time spent working for Asbury Park and Red Bank also needed to be accounted for through base pay or other hourly pay and charged to the proper source of funds. In this case, because Long Branch's payroll records did not show that employees received overtime pay or otherwise worked more than their base hours, it is implied that time spent providing services to Asbury Park and Red Bank was during an employee's regular base hours. Accordingly, base payroll expenses related to the portion of time spent providing those services was not allocable to Long Branch public housing funds and should have been paid from the agreement income. As detailed on pages 11 and 12 of this report, we estimate that \$1 million in base payroll expenses that should have been paid from agreement income was improperly paid from Long Branch public housing funds.

- Comment 19. Long Branch states that the additional compensation paid to employees was segregated into separate accounts for Asbury Park and Red Bank. This comment refers to incentive pay, and we agree that the incentives were paid from agreement income that was recorded as non-Federal funds in separate accounts. However, as discussed on pages 10 and 11 of this report, we identified several issues related to the handling of incentive payments. For example, the agreement income should have been handled as Federal funds, which would have impacted the incentive payments. Additionally, Long Branch should have followed its policy requiring it to prepare annual justifications for incentives and followed regulations at 2 CFR 200.430, which required documentation to show that incentive compensation paid to employees was reasonable and based on a cost reduction or efficient performance.
- Comment 20. Long Branch maintained that the income received from the agreements was not program income. We agree and did not use the term "program income" when discussing the income received under the agreements. Rather, we maintain that the funds should have been classified as Federal funds.
- Comment 21. Long Branch maintained that the payments it made to employees for additional work to support Asbury Park and Red Bank did not violate Federal regulations. We disagree. Long Branch explained that it classified these payments as bonuses or stipends to distinguish them from other compensation (that is, base payroll expenses) and noted that it called the payments stipends because they were compensation versus a bonus on top of a regular salary. However, its policies did not support the method used, and it did not provide records indicating that employees worked more than their base hours. In contrast, during interviews, Long Branch employees who provided services under the agreement asserted that they normally worked 35 to 37.5 hours per week. If the bonus or stipend payments were truly for time worked, they should have been accounted for as wages.
- Comment 22. Long Branch stated that the agreements were not treated as cost-reimbursement agreements and that it was paid a fixed fee for the expressed purposes of improving Asbury Park's and Red Bank's scores and redevelopment efforts. We agree that in practice, agreement payments were paid as fixed fees. However, the agreements did

not state that the fee was based solely on Long Branch's ability to improve score and redevelopment efforts at the two agencies. Rather, the agreements detailed the many services Long Branch was expected to provide and contained nuances in how they discussed compensation and documentation. For example, Asbury Park agreements⁴ did not detail how compensation would be determined but indicated that it would not exceed a certain monthly amount.

Comment 23. Long Branch asserted that it did not function as an employee of either Asbury Park or Red Bank. We agree and did not characterize Long Branch as an employee in the report.

Comment 24. Long Branch maintained that it provided oversight and advisory services and did not supplant the internal operations of Asbury Park or Red Bank and asserted that the agencies retained their own employees for programmatic work. Specifically, it noted that (1) programs were performed and executed by the managers and employees of those agencies, (2) each agency retained its own maintenance department and employees, and (3) it did not interact with the tenant populations on behalf of the agencies. We disagree. Long Branch performed more than oversight and advisory services as detailed on page 7 of this report. Further, the Asbury Park agreement indicated that an employee from its resident services department would be interacting with the senior population, and Long Branch's payroll records showed that a variety of employee types performed services under the agreement, ranging from maintenance employees to senior staff.

Comment 25. Long Branch noted that the agreements were renewed annually and required quarterly payments to Long Branch. We disagree. The agreements with Asbury Park were annual and stated that payment would be made monthly; the agreements with Red Bank were semiannual and stated that payments would be made monthly.

⁴ See HUD OIG Audit Report 2018-NY-1003, page 4.

APPENDIX C - KEY REGULATIONS

2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

200.1, Definitions

Contract means, for the purpose of Federal financial assistance, a legal instrument by which a recipient or subrecipient purchases property or services needed to carry out the project or program under a Federal award. For additional information on subrecipient and contractor determinations, see §200.331. See also the definition of subaward in this section.

Contractor means an entity that receives a contract as defined in this section.

Pass-through entity means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Recipient means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients.

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

200.331, Subrecipient and Contractor Determinations

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

- (a) Subrecipients. A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See §200.92 Subaward. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

- (1) Determines who is eligible to receive what Federal assistance;

- (2) Has its performance measured in relation to whether objectives of a Federal program were met;
 - (3) Has responsibility for programmatic decision making;
 - (4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
 - (5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.
- (b) Contractors. A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See §200.22 Contract. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:
- (1) Provides the goods and services within normal business operations;
 - (2) Provides similar goods or services to many different purchasers;
 - (3) Normally operates in a competitive environment;
 - (4) Provides goods or services that are ancillary to the operation of the Federal program; and,
 - (5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.
- (c) Use of judgment in making determination. In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

200.403, Factors Affecting Allowability of Costs

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards:

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.

- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also § 200.306(b).
- (g) Be adequately documented. See also §§ 200.300 through 200.309 of this part.
- (h) Cost must be incurred during the approved budget period. The Federal awarding agency is authorized, at its discretion, to waive prior written approvals to carry forward unobligated balances to subsequent budget periods pursuant to § 200.308(e)(3).

200.404, Reasonable Costs

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:

- (a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.
- (b) The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state, local, tribal, and other laws and regulations; and terms and conditions of the Federal award.
- (c) Market prices for comparable goods or services for the geographic area.
- (d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government.
- (e) Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.

200.405, Allocable Costs

- (a) A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received. This standard is met if the cost:
 - (1) Is incurred specifically for the Federal award;

- (2) Benefits both the Federal award and other work of the non-Federal entity and can be distributed in proportions that may be approximated using reasonable methods; and
 - (3) Is necessary to the overall operation of the non-Federal entity and is assignable in part to the Federal award in accordance with the principles in this subpart.
- (b) All activities which benefit from the non-Federal entity's indirect facilities and administration cost, including unallowable activities and donated services by the non-Federal entity or third parties, will receive an appropriate allocation of indirect costs.
- (c) Any cost allocable to a particular Federal award under the principles provided for in this part may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the non-Federal entity from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.
- (d) Direct cost allocation principles: If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then, notwithstanding paragraph (c) of this section, the costs may be allocated or transferred to benefitted projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized under a Federal award, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required. See also §§ 200.310 through 200.316 and 200.439.
- (e) If the contract is subject to CAS [Cost Accounting Standards], costs must be allocated to the contract pursuant to the Cost Accounting Standards. To the extent that CAS is applicable, the allocation of costs in accordance with CAS takes precedence over the allocation provisions in this part.

200.412, Classification of Costs

There is no universal rule for classifying certain costs as either direct or indirect (F&A) under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect (F&A) cost in order to avoid possible double-charging of Federal awards. Guidelines for determining direct and indirect (F&A) costs charged to Federal awards are provided in this subpart.

200.415, Required Certifications

Required certifications include:

- (a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows: “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).”

200.430, Compensation – Personal Services

- (a) General. Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits which are addressed in § 200.431. Costs of compensation are allowable to the extent that they satisfy the specific requirements of this part, and that the total compensation for individual employees:
 - (1) Is reasonable for the services rendered and conforms to the established written policy of the non-Federal entity consistently applied to both Federal and non-Federal activities;
 - (2) Follows an appointment made in accordance with a non-Federal entity’s laws and/or rules or written policies and meets the requirements of Federal statute, where applicable; and
 - (3) Is determined and supported as provided in paragraph (i) of this section, when applicable.
- (f) Incentive compensation. Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the non-Federal entity and the employees before the services were rendered, or pursuant to an established plan followed by the non-Federal entity so consistently as to imply, in effect, an agreement to make such payment.
- (i) Standards for Documentation of Personnel Expenses
 - (1) Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:
 - (i) Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;
 - (ii) Be incorporated into the official records of the non-Federal entity;

- (iii) Reasonably reflect the total activity for which the employee is compensated by the non-Federal entity, not exceeding 100% of compensated activities (for Institutes of Higher Education (IHE), this per the IHE's definition of Institutional Base Salary (IBS));
- (iv) Encompass federally-assisted and all other activities compensated by the non-Federal entity on an integrated basis, but may include the use of subsidiary records as defined in the non-Federal entity's written policy;
- (v) Comply with the established accounting policies and practices of the non-Federal entity (See paragraph (h)(1)(ii) above for treatment of incidental work for IHEs.);
- (vi) [Reserved]
- (vii) Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one Federal award; a Federal award and non-Federal award; an indirect cost activity and a direct cost activity; two or more indirect activities which are allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.
- (viii) Budget estimates (i.e., estimates determined before the services are performed) alone do not qualify as support for charges to Federal awards, but may be used for interim accounting purposes, provided that:
 - (A) The system for establishing the estimates produces reasonable approximations of the activity actually performed;
 - (B) Significant changes in the corresponding work activity (as defined by the non-Federal entity's written policies) are identified and entered into the records in a timely manner. Short term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term; and
 - (C) The non-Federal entity's system of internal controls includes processes to review after-the-fact interim charges made to a Federal award based on budget estimates. All necessary adjustment must be made such that the final amount charged to the Federal award is accurate, allowable, and properly allocated.
- (ix) Because practices vary as to the activity constituting a full workload (for IHEs, IBS), records may reflect categories of activities expressed as a percentage distribution of total activities.
- (x) It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting. When recording salaries and wages charged to Federal awards for IHEs, a precise assessment of factors that contribute to costs is therefore not always feasible, nor is it expected.

- (2) For records which meet the standards required in paragraph (i)(1) of this section, the non-Federal entity will not be required to provide additional support or documentation for the work performed, other than that referenced in paragraph (i)(3) of this section.
- (3) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day.
- (4) Salaries and wages of employees used in meeting cost sharing or matching requirements on Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.
- (5) For states, local governments and Indian tribes, substitute processes or systems for allocating salaries and wages to Federal awards may be used in place of or in addition to the records described in paragraph (1) if approved by the cognizant agency for indirect cost. Such systems may include, but are not limited to, random moment sampling, “rolling” time studies, case counts, or other quantifiable measures of work performed.
 - (i) Substitute systems which use sampling methods (primarily for Temporary Assistance for Needy Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:
 - (A) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in paragraph (i)(5)(iii) of this section;
 - (B) The entire time period involved must be covered by the sample; and
 - (C) The results must be statistically valid and applied to the period being sampled.
 - (ii) Allocating charges for the sampled employees’ supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.
 - (iii) Less than full compliance with the statistical sampling standards noted in subsection (5)(i) may be accepted by the cognizant agency for indirect costs if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the non-Federal entity will result in lower costs to Federal awards than a system which complies with the standards.
- (6) Cognizant agencies for indirect costs are encouraged to approve alternative proposals based on outcomes and milestones for program performance where these are clearly documented. Where approved by the Federal cognizant agency for indirect costs, these plans are acceptable as an alternative to the requirements of paragraph (i)(1) of this section.
- (7) For Federal awards of similar purpose activity or instances of approved blended funding, a non-Federal entity may submit performance plans that incorporate funds from multiple

Federal awards and account for their combined use based on performance-oriented metrics, provided that such plans are approved in advance by all involved Federal awarding agencies. In these instances, the non-Federal entity must submit a request for waiver of the requirements based on documentation that describes the method of charging costs, relates the charging of costs to the specific activity that is applicable to all fund sources, and is based on quantifiable measures of the activity in relation to time charged.

- (8) For a non-Federal entity where the records do not meet the standards described in this section, the Federal Government may require personnel activity reports, including prescribed certifications, or equivalent documentation that support the records as required in this section.

24 CFR Part 990, The Public Housing Operating Fund Program

990.280, Project-Based Budgeting and Accounting

- (a) All PHAs [public housing agencies] covered by this subpart shall develop and maintain a system of budgeting and accounting for each project. Also this system should allow for analysis of the actual revenues and expenses associated with each property as per project-based budgeting and accounting.
- (b)
 - (1) Financial information to be budgeted and accounted for at a project level shall include all data needed to complete project-based financial statements in accordance with Accounting Principles Generally Accepted in the United States of America (GAAP), including revenues, expenses, assets, liabilities, and equity data. The PHA shall also maintain all records to support those financial transactions. At the time of conversion to project-based accounting, a PHA shall apportion its assets, liabilities, and equity to its respective projects and HUD-accepted central office cost centers.
 - (2) Provided that the PHA complies with GAAP and other associated laws and regulations pertaining to financial management (e.g., 2 CFR part 200), it shall have the maximum amount of responsibility and flexibility in implementing project-based accounting.