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INDEPENDENT STATE AUDITOR'S REPORT
ON CERTAIN ACTIVITIES OF THE
CHICOPEE HOUSING AUTHORITY
JULY 1, 2005 TO SEPTEMBER 30, 2007

OFFICIAL AUDIT
REPORT
JANUARY 21, 2009

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The Chicopee Housing Authority was established in 1948 pursuant to Chapter 121B of the Massachusetts General Laws as a state-aided housing project composed of 510 elderly (Chapter 667), 80 family (Chapter 705), and 226 family/veteran (Chapter 200) housing units located in Chicopee. In accordance with Chapter 11, Section 12, of the General Laws, the Office of the State Auditor has conducted an audit of certain activities of the Authority for the period July 1, 2005 to September 30, 2007. The objectives of our audit were to assess the adequacy of the Authority's management control system for measuring, reporting, and monitoring the effectiveness of its programs, and to evaluate its compliance with laws, rules, and regulations applicable to each program. Based on our review, we have concluded that, except for the issues addressed in the Audit Results section of this report, during the 27-month period ended September 30, 2007, the Authority maintained adequate management controls and complied with applicable laws, rules, and regulations for the areas tested.

AUDIT RESULTS

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1. CONTROLS OVER SERVICE CONTRACTS NEED IMPROVEMENT

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Our review of the Authority's vendor contracts for tenant services revealed a contract for washer/dryer machine services that expired prior to the audit period. We noted that the Board of Directors did not formerly extend, renew, or rebid for this contract. The Authority continued to utilize the same vendor for its services without a current executed contract, contrary to Chapter 30B of the Massachusetts General Laws, the state's Uniform Procurement Act. In its response, the Authority indicated that it requested proposals for the service and prepared a new contract that conforms to the Massachusetts Uniform Procurement Act and Chicopee Housing Authority's Procurement Policy and was passed by the Board of Commissioners on October 22, 2008 and has been forwarded to the Department of Housing and Community Development (DHCD) for approval. In addition, the Authority stated that, in order to develop better controls over contractual services, it has developed a comprehensive inventory list of all active contracts and a memorandum of understanding and has assigned the Assistant Executive Director the responsibility of maintaining and monitoring the inventory.

2. EXCESSIVE VACANCIES MAY HAVE RESULTED IN APPROXIMATELY \$289,405 IN LOST POTENTIAL RENTAL INCOME

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Our review of the Authority's vacant unit turnaround time disclosed that the Authority did not fill vacant units within the 21-day timeframe established by DHCD. Specifically, we found that 285 units remained unoccupied for periods beyond DHCD's recommended 21-day guideline. Consequently, the Authority may have lost the opportunity to earn approximately \$289,405 in potential rental income during the total 30,738 days that these units were vacant during the audit period. Moreover, since the Authority was not maximizing its tenant rental income, the Commonwealth provided increased operating subsidies to the Authority to offset its operating deficits (see Audit Result No. 3). In its response, the Authority calculated that its lost potential rental

income totaled only \$102,739 for the 27-month period ended September 30, 2007. However, our review of the Authority's calculations found that it did not use the proper criteria for analyzing unit vacancies and turnaround times when determining its lost potential rental income. Consequently, the Authority understated the amount of lost potential rental income it incurred during the audit period by \$186,666.

3. EXCESSIVE UNIT VACANCIES RESULTED IN INCREASED OPERATING SUBSIDIES **7**

As noted in the prior Audit Result, excessive unit vacancies required the Authority to seek additional operating subsidies from DHCD. Since the Authority's annual operating subsidy reflects the difference between its operating revenues and authorized expenses, the Authority received increased subsidies during fiscal years 2006 and 2007 because of its inability to reoccupy vacated units on a timely basis to maximize its tenant rental income. The Authority could have saved the Commonwealth \$257,248 had its vacant units been filled within the timeframe advocated by DHCD. In its response, the Authority contended that the excessive unit vacancies were overstated by 64.5% and that during the audit period it collected an additional \$67,892 and \$74,853 in fraud and past-due rents. Accordingly, the Authority claimed, the calculation for possible subsidy loss was incorrect and no subsidies should be returned. However, as we stated in the prior Audit Result, the Authority did not use DHCD's established criteria for analyzing unit vacancies and turnaround times when it calculated its lost potential rental income for the 27-month period ended September 30, 2007. Moreover, although we commend the Authority for collecting \$67,892 and \$74,853 in fraud and past-due rents, these items have no direct bearing on lost potential rental income due to tenant vacancies. Consequently, we maintain that the lost potential rental income for the Authority totaled \$289,405 during the audit period and that, accordingly, its subsidy should possibly be reduced in accordance with DHCD's Policy for Unit Turnover and Rent-Up.

4. NO SIGNED PAYMENT IN LIEU OF TAXES AGREEMENT WITH THE CITY OF CHICOPEE; MISCALCULATED PILOT PAYMENTS RESULTING IN OVERPAYMENTS OF \$1,034 **9**

In accordance with Chapter 121B, Section 16, of the General Laws, the Authority remits an annual Payment In Lieu of Taxes (PILOT) to the City of Chicopee. However, contrary to DHCD's Accounting Manual, the Authority did not have a signed, written PILOT Agreement with the City of Chicopee documenting what services are to be received by the Authority in exchange for the PILOT payment. In addition, the Authority miscalculated PILOT payments it had made to the City of Chicopee during fiscal years 2006 and 2007, resulting in overpayments totaling \$1,034. In its response, the Authority stated that it has contacted the city and will develop a new PILOT agreement. Moreover, the Authority stated that it anticipates that the agreement will be negotiated and completed with the city by the end of December 2008. In addition, the Authority acknowledged that its PILOT payments to the city were miscalculated, resulting in the overpayment of \$1,034. The Authority stated that it would recover the money from the city either through a refund or a reduction in future PILOT payments.

5. ANNUAL RENT RE-DETERMINATION DEFICIENCIES **11**

Our review of the Authority's records revealed that the Authority did not annually re-determine all its tenants' monthly rent in accordance with 760 Code of Massachusetts Regulations 6.04(4). We reviewed the September 2007 rent rolls and determined that 25 of tenant rents had not been re-determined in over a year. Consequently, the Authority may have charged 25 of 558 tenants an inappropriate amount of rent during the audit period. In addition, state regulations require local housing authorities to verify information provided by tenants during the rent re-determination process, including tenant income and exclusions from income and deductions. We further examined 10 of the 25 tenant files and found that in four instances tenants were charged improper rent due to mathematical errors and various rent re-determination processing problems. Further, we noted that one tenant who died in 2003 remained on the Authority's rent roll. In its response, the Authority stated that it has re-certified the monthly rent for the 25 late cases identified by the audit and corrected the five cases in which mathematical errors were found. In addition, the Authority detailed the training, supervision, and monitoring improvements it planned on implementing to improve the quality of work performed by its Project Clerks.

6. INADEQUATE INTERNAL CONTROLS OVER EMPLOYEE PAYROLL AND PERSONNEL RECORDS **13**

Our review disclosed that the Authority needs to strengthen its internal controls over employee payroll and personnel records. Specifically, we found that (a) employee timesheets were not properly authorized, (b) the Authority did not prepare written employee evaluations, and (c) administrative staff received unauthorized compensatory time. Consequently, the Authority is not conducting its payroll and personnel activities in accordance with DHCD's guidelines and its Personnel Policy. In its response, the Authority stated that (a) it now requires its Human Resource Department and Executive Director to review each time sheet for proper authorization for weekly payroll, (b) it is reviewing all personnel policies governing the Authority and will address the policy concerning written employee evaluations to resolve this matter, and (c) it is considering allocating two additional personnel days each year for senior staff to address the additional work hours they work and that "time coming" compensation will be ended.

7. CONTROLS OVER PROPERTY AND EQUIPMENT NEED IMPROVEMENT **16**

Our review of the Authority's internal controls over its inventory control procedures determined that the Authority was not in compliance with DHCD's established guidelines for inventory control over furniture and equipment. Specifically, our review of the Authority's inventory, including its records and assets, noted that the Authority did not conduct an annual inspection of furniture and equipment during the audit period. Further, the Authority did not dispose of certain computer equipment in compliance with its Procurement Policies. In its response, the Authority stated that all fixed assets will be inventoried annually and added to the Fixed Asset Schedule according to Generally Accepted Accounting Principles and DHCD guidelines. Regarding the disposal of a laptop computer, the Authority stated that the hard drive was removed and is in the Executive Director's office but the laptop itself was discarded in an environmentally appropriate manner. Moreover, the Authority stated that the laptop computer was written off the fixed asset schedule for June 30, 2008 and that, in the future, all required paperwork will be completed to support the disposition of assets.

8. RESULTS OF INSPECTIONS – NONCOMPLIANCE WITH STATE SANITARY CODE **18**

DHCD's Property Maintenance Guide, Chapter 3(F), requires that inspections of dwelling units be conducted annually and upon each vacancy to ensure that dwelling units conform to minimum standards for safe, decent, and sanitary housing as set forth in Chapter II of the State Sanitary Code. Additionally, the Property Maintenance Guide requires local housing authorities to correct deficiencies within an average of 30 calendar days. During the audit, we reviewed 10 unit inspection reports prepared by the Authority between March and October 2007. The Authority's Unit Inspector noted that of eight units with 51 deficiencies, 20 of these deficiencies violated Chapter II of the State Sanitary Code. Our current review determined that the Authority had not resolved 18 of these 20 violations of the State Sanitary Code. Moreover, our review of the work order history reports for the eight units found that the Authority had not resolved 35 of the 51 noted deficiencies, or 69%. We also noted that these 35 deficiencies have been outstanding for periods ranging from three to 10 months beyond the Property Maintenance Guideline of 30 days. In its response, the Authority stated that it has begun to correct all code deficiencies and that it is in the process of reviewing the work order system in order to reduce the time to repair items generated through work orders and to comply with the 30-day timeframe required by the State's Property Maintenance Guide.

9. POTENTIAL VIOLATION OF MASSACHUSETTS CONFLICT-OF-INTEREST LAW **19**

Our audit found that the Authority's former Executive Director, who retired on August 8, 2008, may have violated Chapter 268A of the General Laws, the state's Conflict-of-Interest Law. Specifically, the Authority maintains certificates of deposit, money market accounts, and its corporate checking accounts at Chicopee Savings Bank (CSB), a local banking institution whose board members include the former Executive Director. Moreover, during calendar year 2006, the former Executive Director received compensation for his services that included cash payments totaling \$19,292, as well as 4,136 shares of CSB's publicly traded stock. The former Executive Director received the stock at no cost on July 26, 2007, at which time the market value of the shares was approximately \$59,000. However, we found that the former Executive Director did not disclose his financial relationship with CSB to the Authority's Board of Directors as required by the state's Conflict-of-Interest Law. In addition, the former Executive Director neither sought nor received a written opinion from the State Ethics Commission regarding his dual role as the Authority's Executive Director and a paid member of CSB's Board of Trustees. Consequently, the former Executive Director may have violated Chapter 268A. In its response, the Authority conceded that the former Executive Director, who retired on August 8, 2008, did serve on the Board of Trustees for the Chicopee Savings Bank but that any conflict of interest that may have existed ended with his employment. In addition, the Authority's current Executive Director stated that she does not serve on any boards or have any relationships with any contractors or organizations doing business with the Authority.

APPENDIX I - STATE SANITARY CODE NONCOMPLIANCE NOTED

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INTRODUCTION

Background

The Chicopee Housing Authority was established in 1948 pursuant to Chapter 121B of the Massachusetts General Laws as a state-aided housing project composed of 510 elderly (Chapter 667), 80 family (Chapter 705), and 226 family/veteran (Chapter 200) housing units located in Chicopee.

Audit Scope, Objectives, and Methodology

In accordance with Chapter 11, Section 12, of the General Laws, the Office of the State Auditor has conducted an audit of certain activities of the Authority for the period July 1, 2005 to September 30, 2007. The objectives of our audit were to assess the adequacy of the Authority's management control system for measuring, reporting, and monitoring the effectiveness of its programs and to evaluate its compliance with laws, rules, and regulations applicable to each program.

Our audit was conducted in accordance with applicable generally accepted government auditing standards for performance audits and, accordingly, included such audit tests and procedures, as we considered necessary.

To achieve our audit objectives, we reviewed the following:

- Tenant-selection procedures to verify that tenants were selected in accordance with Department of Housing and Community Development (DHCD) regulations.
- Vacancy records to determine whether the Authority adhered to DHCD procedures for preparing and filling vacant housing units.
- Annual rent re-determination procedures to verify that rents were calculated properly and in accordance with DHCD regulations.
- Accounts receivable procedures to ensure that rent collections were timely and that uncollectible tenant accounts receivable balances were written off properly.
- Site-inspection procedures and records to verify compliance with DHCD inspection requirements and to determine whether selected housing units were in safe and sanitary condition and in compliance with Chapter II of the State Sanitary Code.
- Procedures for making payments to employees for salaries, travel, and fringe benefits to verify compliance with established rules and regulations.

- Property and equipment inventory-control procedures to determine whether the Authority properly protected and maintained its resources in compliance with DHCD regulations.
- Cash management and investment policies and practices to verify that the Authority maximized its interest income and that its deposits were fully insured.
- DHCD-approved operating budgets for the two fiscal years in comparison with actual expenditures to determine whether line-item and total amounts by housing program were within budgetary limits and whether required fiscal reports were submitted to DHCD in a complete, accurate, and timely manner.
- Operating reserve accounts to substantiate that the Authority's reserves fell within DHCD's provisions for maximum and minimum allowable amounts and to verify the level of need for operating subsidies to determine whether the amount earned was consistent with the amount received from DHCD.
- Modernization awards to verify that contracts were awarded properly and funds were received and disbursed in accordance with the contracts, and to determine the existence of any excess funds.
- Chapters 121B and 268A of the Massachusetts General Laws and Chapter 760 of the Code of Massachusetts Regulations regarding the conduct of municipal employees.

Based on our review, we have concluded that, except for the issues addressed in the Audit Results section of this report, during the 27-month period ended September 30, 2007, the Authority maintained adequate management controls and complied with applicable laws, rules, and regulations for the areas tested.

AUDIT RESULTS

1. CONTROLS OVER SERVICE CONTRACTS NEED IMPROVEMENT

On June 17, 1992, the Chicopee Housing Authority (CHA) awarded a three-year contract to a local vendor for washer/dryer machine services. The contract expired in 1995, yet the Board of Directors did not renew, extend, or rebid the contract. Instead, the Authority continued to utilize the same vendor for these services without a current executed contract contrary to Section 12 of Chapter 30B of the Massachusetts General Laws, the state's Uniform Procurement Act, which states, in part:

(a) Unless otherwise provided by law and subject to paragraph (b), a governmental body may enter into a contract for any period of time which serves the best interests of the governmental body; provided, however, that the procurement officer shall include in the solicitation the term of the contract and conditions of renewal, extension or purchase, if any. The procurement officer shall not enter into a contract unless funds are available for the first fiscal year at the time of contracting

(b) Unless authorized by majority vote, a procurement officer shall not award a contract for a term exceeding three years, including any renewal, extension, or option. Such authorization may apply to a single contract or to any number or types of contracts, and may specify a uniform limit or different limits on the duration of any such contracts.

Furthermore, the Authority did not consistently comply with its own Procurement Policies, which state, in part:

No contract shall be solicited or awarded for a term greater than 3 years, including extension, renewals and options, unless authorized by majority vote of the Board of Commissioners, prior to solicitation. Each contract that exceeds one year shall contain a clause indicating it is contingent upon an annual appropriation and shall be contingent upon Federal and State requirements.

Recommendation

The Authority should establish internal controls to ensure compliance with the Uniform Procurement Act and its own procurement policies.

Auditee's Response

Automatic Washing Machine Co. was cited in the audit as a contract that had expired prior to the audit. As of this date, the Housing Authority requested proposals for the service and a new contract was prepared. The new contract does conform to the Massachusetts Uniform Procurement Act and the terms comply with the Chicopee Housing Authority Procurement Policy. The contract was passed by the Board of Commissioners on October 22, 2008 and has been forwarded to DHCD [the Department of Housing and Community Development] for approval.

In order to develop better control over the contractual services at the CHA, the Housing Authority has developed a comprehensive inventory list of all active contracts and memorandum of understanding. The maintaining and monitoring of the inventory has been assigned to the Assistant Executive Director. This specific staff person will review the contracts and memorandum semi-annually and will notify the Executive Director of any upcoming contract expirations in advance so that the Housing Authority can take the appropriate action necessary.

2. EXCESSIVE VACANCIES MAY HAVE RESULTED IN APPROXIMATELY \$289,405 IN LOST POTENTIAL RENTAL INCOME

Our review of the Authority's vacant unit turnaround time disclosed that the Authority did not fill vacant units within the 21-day timeframe established by the Department of Housing and Community Development (DHCD). Specifically, we found that the Authority had 285 units that remained unoccupied for periods beyond DHCD's recommended 21-day guideline. Consequently, the Authority may have lost the opportunity to earn approximately \$289,405 in potential rental income during the total 30,738 days that these units were unoccupied during the audit period. Moreover, since the Authority was not maximizing its tenant rental income, the Commonwealth provided increased operating subsidies to the Authority to offset its operating deficits (see Audit Result No. 3). The following table details the 285 units that were not occupied on a timely basis:

July 1, 2005 to September 30, 2007

| Program <u>Number</u> | Vacant <u>Units</u> | Avg. Days <u>Vacant</u> | Excess Days <u>Vacant</u> | Average <u>Daily Rent</u> | Lost Potential <u>Rental income</u> |
|--------------------------|------------------------|----------------------------|------------------------------|------------------------------|--|
| 667-1 | 13 | 52 | 679 | \$8.50 | \$ 5,771.50 |
| 667-2 | 19 | 61 | 1,161 | \$8.50 | 9,868.50 |
| 667-3 | 22 | 117 | 2,583 | \$8.50 | 21,955.50 |
| 667-4 | 28 | 115 | 3,210 | \$8.50 | 27,285.00 |
| 667-6 | 35 | 137 | 4,802 | \$8.50 | 40,817.00 |
| 667-7 | 10 | 102 | 1,016 | \$8.50 | 8,636.00 |
| 667-8 | 17 | 81 | 1,383 | \$8.50 | 11,755.50 |
| 200-1 | 61 | 118 | 7,182 | \$10.50 | 75,411.00 |
| 200-1 | 53 | 142 | 7,509 | \$10.50 | 78,844.50 |
| 705-1 | <u>27</u> | 45 | <u>1,213</u> | \$7.47 | <u>9,061.11</u> |
| Total | <u>285</u> | | <u>30,738</u> | | <u>\$289,405.61</u> |

The Authority's former Executive Director stated that the inability to attract and maintain administrative and maintenance personnel led to the untimely turnover of its vacant units. In this regard, he further stated that DHCD did not allow for budget or salary growth for the two fiscal years ended June 30, 2007. Consequently, low salaries without the prospect of any annual increase made it difficult to retain existing maintenance and administrative staff and to attract new staff. Also, he informed us that the Authority's long-time (24 years) Tenant Selector retired in December 2006 and that, since her retirement, there has been constant turnover in the position (five employees over the past 14 months). Moreover, he stated that turnover in the Tenant Selector position has adversely affected waiting list maintenance and the determination of tenant eligibility, ultimately extending the Authority's unit turnaround time, and that 10 of the 18 maintenance positions have turned over during the past two fiscal years, which also reduced productivity due to the need to train and properly manage new staff.

Since April 2007, the Authority has attempted to reduce excess vacancies at two sites within its elderly housing program by offering homemaker and laundry services, medication reminders, and a weekday congregate lunch program. A local human service agency provides these services without cost to the Authority. Most recently, the Authority has added a staff person to assist in tenant-selection duties with the expectation of improved performance. Finally, the former Executive Director stated that the Authority's approved fiscal year 2008 budget contained salary increases, which have permitted retention of staff in sufficient numbers to help address the backlog of vacant units.

Recommendation

The Authority should continue its efforts to reduce excess vacancies, thereby increasing potential rental income.

Auditee's Response

For the 27-month period July 1, 2005 to September 30, 2007, total possible days occupied totaled 660,960 days (816 units x 30 days x 27 months). Total excess days vacant were 30,738 or 4.65%. The recommended occupancy rate of 97% allows 3% to be deducted from the 4.65% or 19,826 days to be excluded from this report. In addition, the report should also exclude \$186,667 in lost potential rental income leaving a possible loss of \$102,739. For FY06 and FY07, CHA collected an additional \$67,892 and \$74,853 in fraud and retro rents that offset the lost rental income of \$102,739. CHA occupancy rate for FY08 was 97.62% and 98% for FY09 for the three months ending 9-30-08.

Auditor's Reply

DHCD's Property Maintenance Guide, which provides local housing authorities (LHAs) with specific guidance on refurbishing and reoccupying vacant units, states, "The average time to turn-around a vacant unit and execute a new lease is 21 days. Maintenance work is complete within 14 days of assignment." Moreover, the Guide emphasizes that every day a unit is vacant is a day of lost rent.

In addition, DHCD's Policy for Unit Turnover and Rent-Up provides local housing authorities with the same 21-day timeframe for turning around unit vacancies by stating, in part:

DHCD believes that a reasonable outside time limit for turning around vacancies is 21 days where notice has been given... Where units are out of service exceeding 21 working days all rent up efforts will need to be properly documented and in your vacancy ledger (and rent up records).

In addition, the Policy for Unit Turnover and Rent-Up specifies that a reduction in subsidy for lost rent may be imposed for units that are not rented within the 21-day time frame.

Clearly, these two documents establish a 21-day timeframe for local housing authorities to refurbish and reoccupy vacant units. Accordingly, our calculation of the Authority's lost potential rental income was based upon the turnaround time established by DHCD.

In contrast, the Authority calculated its lost potential rental income based upon a recommended occupancy rate of 97%. However, DHCD's Property Maintenance Guide and its Policy for Unit Turnover and Rent-Up do not reference a 97% occupancy rate. Consequently, the rate is not a legitimate criterion for 1) evaluating the timeliness of the Authority's maintenance operations, and 2) determining its lost potential rental income. In fact, the 97% occupancy rate utilized by the Authority comes from DHCD's Budget Guidelines. In this regard, every year, each local housing authority is responsible for preparing an operating budget for its programs for submission to state and federal funding agencies (DHCD and the Department of Housing and Urban Development). As part of this process, DHCD requires local housing authorities to budget shelter rent assuming an occupancy rate of not less than 97% for the projected twelve-month period. Since DHCD established this rate as part of the annual budgetary process, and not for analyzing vacancy delays, the Authority's calculation of lost potential rental income of \$102,739 is understated by \$186,666.

We commend the Authority for increasing its fiscal year 2008 occupancy rate, and collecting \$67,892 and \$74,853 in fraud and past-due rents. However, these factors do not affect the Authority's lost potential rental income (\$289,405) that we calculated for the audit period.

3. EXCESSIVE UNIT VACANCIES RESULTED IN INCREASED OPERATING SUBSIDIES

Each fiscal year, the Massachusetts Legislature appropriates subsidy funds for local housing authorities (LHAs) that are paid through DHCD. Chapter 121B of the Massachusetts General Laws and each Authority's Contract for Financial Assistance provide for an Authority to seek operating subsidies to offset operating deficits. Each LHA is expected to calculate its operating subsidy using a DHCD-prescribed annual subsidy-earned calculation form. During fiscal years 2006 and 2007, the Chicopee Housing Authority received operating subsidies that totaled \$797,449 and \$1,238,663, respectively.

As previously noted, the Authority had 285 units that remained unoccupied for a total of 30,738 days beyond DHCD's 21-day guideline, which may have resulted in lost potential rental income totaling \$289,405. Of this amount, approximately \$257,248 is applicable to the two fiscal years ending June 30, 2007. Since the Authority's annual operating subsidy reflects the difference between its operating revenues and authorized expenses, the Authority received increased subsidies during the past two fiscal years because of its inability to reoccupy vacated units on a timely basis to maximize its tenant rental income. The Authority could have saved the Commonwealth \$257,248 had its vacant units been filled within the timeframe mandated by DHCD. The following table details the additional \$257,248 subsidy the Authority received from the Commonwealth during the two fiscal years ended June 30, 2007:

| | <u>Fiscal Year 2007</u> | <u>Fiscal Year 2006</u> | <u>Total</u> |
|--|-------------------------|-------------------------|---------------------|
| Total Revenue | \$2,713,581 | \$2,689,394 | \$5,402,975 |
| Non-Utility Cost | (2,186,759) | (2,043,700) | (4,230,459) |
| Utilities | (1,484,895) | (1,414,857) | (2,899,752) |
| Approved Exemptions | (280,590) | (74,849) | (355,439) |
| Total Expenses | (3,952,244) | (3,533,406) | (7,485,650) |
| Other DHCD Adjustments | - | 46,563 | 46,563 |
| Total Operating Subsidy Received | 1,238,663 | 797,449 | 2,036,112 |
| OSA Adjustment: Lost Potential Rental Income | <u>(128,624)</u> | <u>(128,624)</u> | <u>(257,248)</u> |
| Adjusted Operating Subsidy | <u>\$ 1,110,039</u> | <u>\$ 668,825</u> | <u>\$ 1,778,864</u> |

DHCD's Policy for Unit Turnover and Rent-Up provides that a reduction in subsidy for lost rent may be imposed for units vacant over 60 days. Specifically, where DHCD determines that rent-up efforts were unacceptable, thereby leading to an unnecessary loss of rent, a reduction in subsidy will be imposed as follows:

A reduction of subsidy will be calculated as follows: units vacant over 60 days but less than 90 days and are not yet rented will lose half the average monthly tenant rent payment for a unit in the program as of the year end statement; units vacant more than 90 days will lose the equivalent of the average monthly tenant rent for the period exceeding 90 days; units vacant more than 180 days will lose the allowable routine expense level as the subsidy penalty, but at no time will this amount be lower than the average rent.

DHCD officials informed us that the Authority's operating subsidies have not been reduced in accordance with the Policy for Unit Turnover and Rent-Up, noting that the policy is still in effect and will be looked at more closely.

Recommendation

We commend the Authority for recognizing and addressing its maintenance and tenant selection staffing needs, adequately conducting due diligence in the selection of qualified applicants, and recently making homemaker services available at two of its program sites. However, the Authority should increase its efforts to reduce the number of vacant days by reoccupying those units in compliance with DHCD's guidelines.

Auditee's Response

In Item #2 the excessive vacancies were overstated by 64.5% in vacancy days and possible rental income losses were recaptured from fraud and tenant retro income collected during the period. As a result, the calculation for possible subsidy loss was incorrect and no subsidies should be returned. Reducing subsidies from FY 06 and FY 07 would hurt tenants, staffing, and capital budget items needed to maintain a well run Housing Authority in this current period of economic uncertainty and hardship for people needing housing. CHA has improved its occupancy rate to 97.62% in FY 08 and 98.0% for FY 09. The added rental income above 97% will reduce current and future subsidies.

Auditor's Reply

As stated in the prior Audit Result, the Authority did not use DHCD's established criteria for analyzing unit vacancies and turnaround times when it calculated its lost potential rental income for the 27-month period ended September 30, 2007. Moreover, while we commend

the Authority for increasing its fiscal year 2008 occupancy rate, and collecting \$67,892 and \$74,853 in fraud and past-due rents, these items have no direct bearing on lost potential rental income due to tenant vacancies. Consequently, we still contend that the lost potential rental income for the Authority totaled \$289,405 during the audit period, and its subsidy for this period should possibly be reduced in accordance with DHCD's Policy for Unit Turnover and Rent-Up.

4. NO SIGNED PAYMENT IN LIEU OF TAXES AGREEMENT WITH THE CITY OF CHICOPEE; MISCALCULATED PILOT PAYMENTS RESULTING IN OVERPAYMENTS OF \$1,034

In accordance with Chapter 121B, Section 16, of the Massachusetts General Laws, the Chicopee Housing Authority remits an annual Payment in Lieu of Taxes (PILOT) to the City of Chicopee. However, contrary to DHCD's Accounting Manual, the Authority did not have a signed, written PILOT Agreement with the City of Chicopee documenting what services are to be received by the Authority in exchange for the PILOT payment. Section 15 (G) of the Accounting Manual states:

LHAs [local housing authorities] may make Payment In Lieu of Taxes (PILOT) in accordance with the applicable provision of the "PILOT Agreement" with the local taxing body for certain management projects.

LHAs should actively monitor the services and charges resulting from a PILOT Agreement. In this regard, Section 15 (G) of the Accounting Manual further states:

The housing authority should determine that all public services provided for in the PILOT Agreement are being received at no additional expense. If there are any such authority expenditures, the PILOT should be reduced to reflect these payments.

In addition, the Authority miscalculated PILOT payments it made to the City of Chicopee during fiscal years 2006 and 2007, resulting in overpayments that totaled \$1,034. DHCD's Accounting Manual, Section 15 (G), also states, in part:

PILOT is determined separately for each program as follows:

Chapter 667 – None

Chapter 707 – None

Chapter 200 – Maximum \$3.00 Per Unit Month

Chapter 705 – (a) Not to exceed the amount that would be levied at the current tax rate upon the average of the assessed value of such real estate,

including buildings and other structures, for the three years preceding the year of acquisition thereof, the valuation for each year being reduced by all abatements thereon; or

- (b) *Not to exceed the amount of ½ Full Value Tax Rate + \$100 times the number of bedrooms.*

Chapter 689 – Same formula as Chapter 705 (b)

The Authority paid a \$34,340 PILOT to the City of Chicopee for the two fiscal years ended June 30, 2007. However, based upon the computation instructions in DHCD's Accounting Manual, the Authority's PILOT during the period should have totaled \$33,306. Consequently, as detailed in the table below, the Authority overpaid the City of Chicopee \$1,034.

| <u>Fiscal Year</u> | <u>PILOT Payments</u> | | <u>PILOT Due</u> | | <u>Variance</u> |
|--------------------|-----------------------|--------------------|--------------------|--------------------|-------------------|
| | <u>Chpt. 200</u> | <u>Chpt. 705</u> | <u>Chpt. 200</u> | <u>Chpt. 705</u> | |
| 2006 | \$ 8,136.00 | \$ 9,047.20 | \$ 8,136.00 | \$ 8,523.60 | \$ 523.60 |
| 2007 | <u>8,136.00</u> | <u>9,020.80</u> | <u>8,136.00</u> | <u>8,510.40</u> | <u>510.40</u> |
| Totals | <u>\$16,272.00</u> | <u>\$18,068.00</u> | <u>\$16,272.00</u> | <u>\$17,034.00</u> | <u>\$1,034.00</u> |

Recommendation

The Authority should develop a PILOT Agreement that will reflect the services to be provided by the City of Chicopee as consideration for a PILOT payment. The Authority's Board of Commissioners should present the PILOT Agreement to the city for its authorized execution. Also, the Authority should develop and implement policies and procedures that provide for accurate payments. In addition, the Authority should make arrangements for the recovery of its overpaid PILOT amounts with appropriate city officials.

Auditee's Response

The Housing Authority does not have a Pilot Agreement with the City of Chicopee as previously believed. The Housing Authority has contacted the City and will develop a new agreement. It is anticipated that an agreement will be negotiated and completed with the City by the end of December 2008.

The Housing Authority's Pilot Payments to the City were miscalculated resulting in the overpayment of \$1034.00. The Housing Authority will recover the money from the City either through a deduction of the amount owed from the upcoming Pilot Payments or request a refund of the overpayment.

5. ANNUAL RENT RE-DETERMINATION DEFICIENCIES

Our review of the Authority's records revealed that the Authority did not annually re-determine all its tenants' monthly rent in accordance with 760 Code of Massachusetts Regulations (CMR) 6.04(4):

The LHA shall re-determine each tenant's monthly rent once annually to be effective on a specific re-determination date, which shall be the first day of a month...

In addition, 760 CMR 6.04(6)(a) requires LHAs to verify information provided by tenants during the rent re-determination process, including tenant income and exclusions from income and deductions:

The tenant shall provide and authorize reasonable verification of information regarding income, exclusions from income and deductions (whether at initial determination or at any re-determination) in order to insure reliability of the information...

We reviewed the Authority's September 2007 rent roll to ensure that tenant rents were re-determined annually as required by 760 CMR 6.04(4) and determined that 25 of tenant rents had not been re-determined in over a year. Consequently, the Authority may have charged 25 of 558 tenants an inappropriate amount of rent during the audit period. As detailed in the table below, the Authority's delays ranged from one to 38 months as of September 30, 2007:

| <u>Tenants</u> | <u>Rent Re-Determination</u> | | |
|----------------|------------------------------|----------------|---------------|
| | <u>Completed</u> | <u>Due</u> | <u>Delays</u> |
| 1 | August 2003 | August 2004 | 3 yrs/2 mos. |
| 1 | February 2004 | February 2005 | 2 yrs/8 mos. |
| 1 | September 2004 | September 2005 | 2yrs/1 mo. |
| 1 | December 2004 | December 2005 | 1yr/10 mos. |
| 1 | September 2005 | September 2006 | 1yr/1 mo. |
| 1 | December 2005 | December 2006 | 10 mos. |
| 1 | January 2006 | January 2007 | 9 mos. |
| 2 | February 2006 | February 2007 | 8 mos. |
| 1 | April 2006 | April 2007 | 6 mos. |
| 2 | May 2006 | May 2007 | 5 mos. |
| 1 | June 2006 | June 2007 | 4 mos. |
| 2 | July 2006 | July 2007 | 3 mos. |
| 1 | August 2006 | August 2007 | 2 mos. |
| 9 | September 2006 | September 2007 | 1 mo. |

In addition to reviewing the September 2007 rent roll, we examined 10 of these 25 tenants' files to ensure that financial information reported by the tenants was supported by adequate documentation and that the Authority's mathematical calculations were correct. Our detailed review identified additional problems with five of the 10 files, as detailed below:

- During April 2007, a tenant who paid a monthly rent of \$545 was moved from one unit to another unit, which required the Authority to create a new tenant lease. Under the new lease, the rent was determined to be \$562 per month. The Authority charged the tenant the proper amount for April 2007. However, from May 2007 to January 2008, the Authority allowed the rent to revert back to \$545 per month.
- Since July 2006, the Authority has charged a tenant a monthly rent of \$237. However, based upon information within the tenant's file, the Authority should have charged this individual only \$198 per month. The difference resulted from a mathematical error made during the tenant's most recent rent re-determination. Also, we noted that the Authority did not consider the tenant's \$102 per month medical insurance premium, which was documented in the tenant's file. In addition, the tenant's file contained a memorandum dated July 7, 2006 indicating that the Authority had miscalculated the tenant's rent and that the Authority would notify the tenant, by both telephone and letter, about signing a new lease. However, our review found that the Authority had taken no further action.
- During January 2007, a couple provided the Authority with documentation necessary for their annual rent re-determination. However, as of January 2008, the Authority had not made that annual rent re-determination.
- During January 2007, the Authority notified a tenant that her rent was to increase from \$219 to \$225 per month, effective March 1, 2007. However, we found that the Authority improperly recorded a March 2008 effective date within its records. Consequently, as of February 15, 2008, the Authority was still charging the tenant \$219 per month.
- During December 2003, a tenancy was terminated due to the tenant's death. However, we found the Authority's September 2007 rent roll continued to list the deceased as a tenant.

The former Executive Director stated that the Authority annually budgets for three Project Clerks who are responsible for tenant eligibility, rent re-determination, and managing rental accounts and that 10 individuals have filled the three positions over the past two years. Moreover, the former Executive Director stated that the regular turnover in these positions has affected some continuity in the work performed by Project Clerks.

Recommendation

The Authority should establish policies and procedures whereby newly hired Project Clerks are adequately trained to re-determine tenant rents. In addition, the Authority should provide

management oversight and review of Project Clerks' work to ensure compliance with DHCD's guidelines.

Auditee's Response

The audit concluded that the Housing Authority did not conduct redeterminations for twenty-five (25) late cases. These cases have been recertified in response to this audit finding.

The Auditor also found five (5) cases where mathematical calculations were incorrect and the staff corrected the cited five (5) cases.

All new project clerks will be required to have eight weeks of training once hired for the position. All training will be supervised by the Administrative Operations Manager and 30% of the case work performed by newly hired project clerks will be checked as a quality control measure. The Administrative Operations Manager will also more closely monitor all monthly work reports for all project clerks which will alert the supervisor to any pending problems completing work assignments.

Another issue found to contribute to this problem was related to the amount and type of work each clerk had to perform. After a review of staff work assignments, the Authority found that the project clerk staff was assigned a number of additional work tasks not essential to their job and these tasks created problems for them in completing their assigned work. Those extra assignments have been removed allowing staff more time to focus and complete their required assigned tasks.

6. INADEQUATE INTERNAL CONTROLS OVER EMPLOYEE PAYROLL AND PERSONNEL RECORDS

Our review disclosed that the Authority needs to strengthen its internal controls over employee payroll and personnel records. Specifically, we found that (a) employee timesheets were not properly authorized, (b) the Authority did not prepare written employee evaluations, and (c) administrative staff received unauthorized compensatory time. Consequently, the Authority is not conducting its payroll and personnel activities in accordance with DHCD's guidelines and its Personnel Policy.

DHCD's Accounting Manual for State-Aided Housing Programs provides LHAs with guidance relative to payroll and personnel records. Section 8 of DHCD's Accounting Manual indicates that LHAs are responsible for developing and implementing a system of internal controls to safeguard the assets of the organization and ensure the accuracy and reliability of accounting data. Moreover, Section 8 requires LHAs to observe certain fundamental internal control requirements, including the use of forms, documents, and procedures that facilitate control and

provide for proper approvals. Further, Section 15(I) of the Accounting Manual requires LHAs to maintain attendance reports and leave balances for all employees, as follows:

Attendance Reports: Formal attendance reports will be necessary to provide information for the preparation of payroll and to maintain adequate control of annual leave, sick leave, overtime, holiday work, and paid leave with respect to each employee.

Leave Record: If the personnel policy of the Local Authority provides the accrual of annual and sick leave for employees, a record of all leave earned and taken must be maintained for each employee.

Attendance and leave reports must be kept on all employees. These reports are to be kept on an updated basis as pay periods close.

In addition, the Authority's Personnel Policy states, "Personnel shall be evaluated by their appropriate supervisor, and/or the Executive Director, at least annually." Finally, the Personnel Policy does not authorize management staff to accrue compensatory time.

The Authority did not develop adequate internal controls over employee payroll and personnel records to safeguard its assets and ensure compliance with DHCD's Accounting Manual and its Personnel Policy, as follows.

a. Employee Time Sheets

Our sample test of the Authority's payroll records identified that employee time sheets were not consistently approved by a supervisor. Specifically, four of 11 employees whose timesheets were tested did not contain supervisory approval. Consequently, the Authority cannot adequately ensure that employee timesheets accurately reflect the hours worked by its employees.

b. Employee Evaluations

The Authority's Personnel Policy requires that an appropriate supervisor and/or the Executive Director conduct an annual evaluation of each employee. However, a sample test of eight of 55 employees evaluated found that the Authority was not complying with this requirement. In fact, as detailed in the table below, two of the eight employees were never evaluated, while the others, on average, had not been evaluated in over 12 years.

| <u>Employee Title</u> | <u>Hired</u> | <u>Most Recent Evaluation</u> |
|--------------------------------|--------------|-------------------------------|
| Maintenance Operations Manager | 11/09/98 | None Performed |
| Tenant Selector | 09/24/01 | 09/27/02 |
| Tenant Selector | 10/12/82 | None Performed |
| Modernization Coordinator | 01/21/90 | 12/08/95 |
| Maintenance Aide | 01/30/84 | 05/01/84 |
| Executive Director | 10/16/78 | 01/27/92 |
| Assistant Executive Director | 11/03/97 | 02/06/98 |
| Maintenance Aide | 10/26/92 | 03/20/97 |

The former Executive Director stated that employee evaluations are conducted during an employee's probationary period. However, with more frequent evaluations, the Authority can apprise the employees of their work performance.

c. Compensatory Time

Our review of the Authority's payroll records identified that five managerial employees, including the former Executive Director, received compensatory time during the audit period. As previously noted, DHCD's Accounting Manual provides LHAs with guidance to payroll and personnel records. The U.S. Office of Personnel Management defines compensatory time as follows:

Compensatory time off is time off with pay in lieu of overtime pay for irregular or occasional overtime work, or when permitted under agency flexible work schedule programs, time off with pay in lieu of overtime for regularly scheduled or irregular or occasional overtime work.

However, the Authority's Personnel Policy, which is authorized by the Board of Directors, does not provide for this benefit. In addition, we found that the Authority did not maintain a central record of compensatory time earned and taken by each employee. Rather, the former Executive Director stated that each of the five employees maintains his/her own log. In addition, the former Executive Director stated he has sole discretion over granting employee compensatory time and its use. The Authority's Personnel Policy states, "the Executive Director shall have the primary responsibility of the enforcement of the policies and procedures contained in this Personnel Policy." However, the Personnel Policies do not authorize the Executive Director to unilaterally establish fringe benefits such as compensatory time.

Recommendation

The Authority should ensure that employee timesheets are reviewed and signed by a supervisor. Further, the Authority should develop controls to ensure that its employees are evaluated annually in accordance with the Personnel Policy. Finally, the Board of Directors should review the practice of granting unauthorized compensatory time and the board should resolve to either strike the current policy or authorize it as an employee benefit. If the board decides to authorize compensatory time as an employee benefit, a board member should have discretion over who receives compensatory time and how much time will be awarded.

Auditee's Response

The Housing Authority now requires the Human Resource and Executive Director to review each time sheet for proper authorization for weekly payroll. Under the new Executive Director, the Authority is reviewing all personnel policies governing the Housing Authority. The policy regarding staff written reviews will be addressed and this matter will be resolved to correct the finding. The issue of "time coming" compensatory time is one that only affects six (6) senior staff members. The cited staff members are not entitled to receive overtime, yet must conduct Housing Authority business, outside of the normal work day and in addition to their assigned hours. The Housing Authority is considering allocating two (2) additional personnel days each year for senior staff to address the additional work hours they work and the "time coming" compensation will be ended. This change in policy will be presented to the Board for approval before it is instituted.

7. CONTROLS OVER PROPERTY AND EQUIPMENT NEED IMPROVEMENT

Our review of the Authority's internal controls over its inventory control procedures determined that the Authority was not in compliance with DHCD's established guidelines for inventory control over furniture and equipment. Specifically, our review of the Authority's inventory, including its records and assets, noted that the Authority did not conduct a physical inventory of furniture and equipment during the audit period. Further, the Authority did not dispose of certain computer equipment in compliance with its Procurement Policies.

The DHCD Accounting Manual for State-Aided Housing Programs provides local housing authorities with guidance to ensure that furniture and equipment purchased with state funds are properly accounted for and protected against misuse or loss. Specifically, Section 15(D) of the Accounting Manual requires that Authorities conduct a physical inventory of all furniture and non-expendable equipment each year. In addition, Section VIII of the Authority's Procurement Policy states, in part:

Sales of excess personal property shall be made by resolution of the Authority authorizing the C.O./C.P.O. or the Executive Director to dispose of such property in the following manner:

... if the property has no scrap or salvage value and a purchaser cannot be found, a statement shall be prepared by the C.O./C.P.O. or the Executive Director listing the prospective bidders solicited and all other efforts made to sell the property, together with recommendations as to the manner of disposition. This statement shall be referred to the Board for its approval. A copy of the Board's approval together with the complete documentation in support of the destruction, abandonment, or donation, shall be retained as part of the permanent records.

While the Authority completed an inventory of its furniture and equipment during August 2006, it had not, as of the end of our fieldwork, conducted an inventory in 17 months. Consequently, the Authority has not consistently accounted for and protected its fixed assets against misuse or loss as required by DHCD's Accounting Manual.

In addition, we noted that a laptop computer listed on the Authority's inventory control records could not be located. Authority officials stated that the laptop had been deemed inoperative by a vendor and discarded. However, the Authority did not prepare documents to support the disposition of this asset as required by its operating policies.

Recommendation

The Authority should conduct an annual physical inventory of all property and equipment, and reconcile the inventory list to its financial records. Also, the Authority should follow its established operating policies relative to the disposition of assets.

Auditee's Response

All fixed assets will be inventoried annually and added to the Fixed Asset Schedule according to GAAP and DHCD guidelines. The physical inventory is annually conducted to determine which assets were to be removed, discarded, or sold, and this will practice will continue.

In regards to the laptop mentioned in the audit, the laptop was sent to Tech Cavalry for repair. Tech Cavalry determined that the cost of repair would far exceed the worth of the laptop. The laptop was not repaired and returned to the Housing Authority. The hard drive was removed and is in the Executive Director's office but the laptop itself was discarded in an environmentally appropriate manner. The asset was written off the fixed asset schedule for 6-30-08. In the future, all required paperwork will be completed to support the disposition of assets.

8. RESULTS OF INSPECTIONS – NONCOMPLIANCE WITH STATE SANITARY CODE

DHCD's Property Maintenance Guide, Chapter 3(F), requires that inspections of dwelling units be conducted annually and upon each vacancy to ensure that every dwelling unit conforms to minimum standards for safe, decent, and sanitary housing as set forth in Chapter II of the State Sanitary Code. Additionally, the Property Maintenance Guide requires LHAs to correct deficiencies within an average of 30 calendar days.

During the audit, we reviewed 10 unit inspection reports prepared by the Authority between March and October 2007. The Authority's Unit Inspector noted that of eight units with 51 deficiencies, 20 did not comply with the State Sanitary Code. Instances of noncompliance with the State Sanitary Code included damaged floor tiles, peeling paint, mold, a missing smoke detector, insect infestation, and faulty plumbing issues.

The Authority maintains a work order history report for all its units. The report lists include each work order date and number, a work description, job status (i.e., completed/ outstanding), and tenant name and unit location. We reviewed the work order history reports for the eight units previously noted to determine whether the Authority corrected the 51 noted deficiencies on a timely basis. As detailed in the table below, as of January 2008, the Authority had not resolved 35 of the 51 noted deficiencies, or 69%. Moreover, these 35 deficiencies have been outstanding for periods ranging from three to 10 months, well beyond DHCD's limit, as follows:

| <u>Program Number</u> | <u>Date</u> | <u>Unit Inspector's Report</u> | | <u>Work Order History Report</u> | | |
|-----------------------|-------------|--------------------------------|------------------------------------|----------------------------------|--------------------------|---|
| | | <u>Items Noted</u> | <u>MA. Sanitary Code Violation</u> | <u>Items Noted</u> | <u>Items Outstanding</u> | <u>Sanitary Code Violations Outstanding</u> |
| 200-1 | 10/18/2007 | 17 | 6 | 16 | 8 | 6 |
| 200-1 | 6/21/2007 | 14 | 4 | 3 | 13 | 3 |
| 667-1 | 3/30/2007 | 7 | 4 | 2 | 6 | 4 |
| 667-3 | 6/08/2007 | 5 | 3 | 5 | 4 | 3 |
| 667-4 | 9/14/2007 | 2 | 1 | 1 | 1 | 1 |
| 667-6 | 9/20/2007 | 1 | 0 | 1 | 0 | 0 |
| 667-8 | 8/06/2007 | 4 | 2 | 3 | 2 | 1 |
| 705-1 | 7/09/2007 | <u>1</u> | <u>0</u> | <u>1</u> | <u>1</u> | <u>0</u> |
| | Total | <u>51</u> | <u>20</u> | <u>32</u> | <u>35</u> | <u>18</u> |

Finally, as detailed in the previous chart, the Authority had not resolved 18 of the 20 State Sanitary Code violations noted within these units. Appendix I describes the specific State Sanitary Code violations that have not been resolved.

The former Executive Director stated, in part:

The deficiencies should have been corrected in the specified 30-day timeframe. However, the past few years have been difficult due to very limited budgets and late budget approvals. In addition to zero budget growth, overall salary lines were limited to zero growth two years in a row by DHCD. Low salaries without the prospect of any annual increase made it extremely difficult to retain existing staff and to attract new staff. The same budgetary constraints also apply to the ability to attract and maintain maintenance personnel. Turnover has risen sharply resulting in 10 to 18 positions turning over in the past two fiscal years. Most turnover has been due to retirement and competition for qualified employees in the workforce. This rate of employee turnover has reduced productivity while new staff are broken in and trained.

Recommendation

The Authority should take the necessary steps to ensure that the remaining deficiencies noted during its annual inspections are corrected and future corrections be made within 30 days, as required by the Property Maintenance Guide.

Auditee's Response

The Housing Authority has begun to correct all code deficiencies and will have the corrections completed by October 31, 2008.

The Housing Authority is in the process of reviewing the work order system in order to reduce the time to repair items generated through work orders. The goal is to comply with the 30 day timeframe required by the State's Property Maintenance Guide.

9. POTENTIAL VIOLATION OF MASSACHUSETTS CONFLICT-OF-INTEREST LAW

Our audit found that the Authority's former Executive Director, who retired August 8, 2008, may have violated Chapter 268A of the General Laws, the state's Conflict-of-Interest Law. Specifically, the Authority maintains certificates of deposit, money market accounts, and its corporate checking accounts at Chicopee Savings Bank (CSB), a local banking institution whose board members include the Authority's former Executive Director. Moreover, during calendar year 2006, the former Executive Director received compensation for his services that included cash payments totaling \$19,292, as well as 4,136 shares of CSB's publicly traded stock. The former Executive Director received the stock at no cost on July 26, 2007, at which time the market value of the shares was approximately \$59,000. However, we found that the former

Executive Director did not disclose his financial relationship with CSB to the Authority's Board of Directors as required by the state's Conflict-of-Interest Law. In addition, the former Executive Director neither sought nor received a written opinion from the State Ethics Commission regarding his dual role as the Authority's Executive Director and paid CSB Director. Consequently, the former Executive Director may have violated Chapter 268A of the General Laws. Accordingly, the Office of the State Auditor will refer this matter to the Massachusetts State Ethics Commission for further review.

Authority's Service Agreement with CSB

Our audit noted that the Authority, after completing a public solicitation of proposals, entered into a three-year service agreement with CSB commencing on October 1, 2001. Under the agreement, CSB agreed to provide the Authority with financial/deposit services through September 30, 2004. After the three-year term expired, the Authority did not formally extend the contract and continues to maintain its state and federal deposits with CSB. As detailed in the table below, the Authority maintained daily account balances at CSB as high as \$1,916,109.54 and \$2,384,184.01 during June and September 2007, respectively, as follows:

| <u>Account Number</u> | <u>Account Name</u> | <u>June-07</u> | <u>September-07</u> |
|-----------------------|-------------------------|------------------------|-----------------------|
| State Funds | | | |
| 81-19-0492469 | Certificate Account | \$ 451,591.40 | \$ 457,593.64 |
| 81-50456023 | Money Market Account | 547,678.34 | 630,042.88 |
| 69-90011675 | Corporate Checking | <u>292,264.46</u> | <u>395,245.16</u> |
| | Sub Total State Funds | <u>\$1,291,534.20</u> | <u>\$1,482,881.68</u> |
| Federal Funds | | | |
| 81-50456036 | Money Market Account | \$ 407,468.99 | \$ 402,384.87 |
| 81-50456081 | Money Market Account | <u>217,106.35</u> | <u>498,917.46</u> |
| | Sub Total Federal Funds | <u>\$ 624,575.34</u> | <u>\$ 901,302.33</u> |
| | Total Funds | <u>\$ 1,916,109.54</u> | <u>\$2,384,184.01</u> |

The Authority's former Executive Director has served as either Corporator or Trustee for CSB since 1994. However, his relationship with CSB did not pose a potential ethics violation until the Authority decided to solicit proposals for financial services and CSB was a likely respondent. In

fact, this event motivated the former Executive Director to disclose his potential conflict-of-interest situation to the Massachusetts State Ethics Commission. Within the former Executive Director's disclosure form, dated May 24, 2001, he stated the following:

I am Executive Director at the Chicopee Housing Authority. The CHA is soliciting proposals for banking services. A likely respondent to our solicitation is the Chicopee Savings Bank. I am a corporator at Chicopee Savings Bank and have served in that capacity since 1994 – as Corporator. I have no financial interest in Chicopee Savings Bank and I am not active in the administration of bank business. I do serve on the nominating committee at the bank and attend an annual meeting.

During the audit, the former Executive Director informed us that the State Ethics Commission advised him of his obligation to inform the Authority's board about his role at CSB and indicated that he should not act on matters that would affect the common financial interest of the organizations. As advised, the former Executive Director informed the Authority's board about his situation during the board's May 23, 2001 meeting. Further, the Authority's board meeting minutes, dated September 12, 2001, indicate that the former Executive Director recused himself during discussion the board had relative to the pending CSB financial services agreement. Therefore, it appears that the former Executive Director had adequately disclosed his relationship with CSB to the Commonwealth and the Authority's board, as required by the state's Conflict-of-Interest Law.

In 2006, CSB changed its organizational structure from a mutual bank to a publicly owned corporation. At that time, CSB's prospectus, which described its initial public offering of shares of common stock, indicated that the Authority's former Executive Director had succeeded to the role of CSB Trustee during 2004. Moreover, the prospectus, dated May 15, 2006, indicated that each non-employee trustee receives a \$3,000 annual retainer and \$450 per meeting. In addition, CSB's Notice and Proxy Statement, dated May 30, 2007, identified that the former Executive Director received \$19,292 in paid compensation from CSB during calendar year 2006. Finally, based upon "insider transaction" data reported publicly by CSB, the former Executive Director received 4,136 shares of CSB's stock on July 26, 2007. The shares, which were provided to the former Executive Director at no cost, trade on the Nasdaq National Market under the symbol (CBNK). At that time, the former Executive Director's shares had a market value of approximately \$59,000.

Employees of LHAs are considered by state law to be “municipal employees” and, as such, are covered by the provisions and restrictions imposed by the state’s Conflict-of-Interest Law. In this regard, Massachusetts General Law Chapter 121B, Section 7 states, in part:

Each housing and redevelopment authority shall be considered a municipal agency and, without limiting the power of a city council or board of alderman or board of selectmen to classify additional special municipal employees pursuant to said chapter, each member of such an authority, and any person who performs professional services for such an authority on a part-time, intermittent or consultant basis...shall be considered a special municipal employee.

The state’s Conflict-of-Interest Law attempts to prevent both actual and apparent conflicts of interest by municipal employees. Specifically, Chapter 268A, Section 17 of the General Laws states, in part:

No municipal employee shall, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receive or request compensation from anyone other than the city or town or municipal agency in relation to any particular matter in which the same city or town is a party or has a direct and substantial interest.... Whoever violates any provision of this section shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both...

The Executive Office of Housing and Economic Development (EOHED), under 760 Code of Massachusetts Regulations (CMR) 4.00, provides for the general administration of LHAs. Under Sections 4.04(1)(a) and 4.04(1)(b), EOHED emphasizes the applicability of Chapter 268A to LHAs and prohibits improper, or the appearance of improper, conduct by LHA employees, as follows:

760 CMR 4.04(1)(a): M.G.L. c. 268A specifies standards of conduct for all Massachusetts public officials and employees. Board members, employees, and professional consultants employed by LHAs are considered to be public officials or employees subject to these standards.

760 CMR 4.04(1)(b): M.G.L. c. 268A prohibits improper conduct by public officials and employees. The statute also prohibits conduct which appears to be improper. An LHA board member or employee cannot have a financial interest in contracts with the LHA. An LHA board member or employee cannot accept gifts to influence a decision, and he or she cannot accept compensation, other than that paid by the LHA, in connection with any matter in which the LHA has an interest.... When questions arise as to whether certain conduct may be improper under the statute, the affected person should consult the State Ethics Commission.

Moreover, the Authority’s Personnel Policy emphasizes that its employees are subject to the state’s Conflict-of-Interest Law and states, in part:

Employees of the Chicopee Housing Authority are "public employees" and as such have a burden beyond the normal code of ethics expected by society. CHA employees are subject to state and federal statutes, acts and regulations which address behavior and actions of public employees.... (U)nder no circumstances may an employee accept any gift or any other form of remuneration from any resident, program participant or vendor during their employment.... The failure of any employee to fully comply with a regulatory requirement...shall be cause for dismissal.

In order for either an actual or apparent conflict of interest to arise, a municipal employee must have a direct financial interest in an entity over which he/she has managerial responsibility. As noted above, the Authority maintains substantial deposits at CSB. Further, as previously noted, the Authority's former Executive Director received cash payments totaling \$19,292 in fiscal year 2006 and 4,136 shares of CSB stock at no cost in 2007. Moreover, as a CSB Corporator and Trustee, the Authority's former Executive Director has the ability to exercise authority over CSB's operations. Specifically, according to the Form 8-K that CSB submitted to the U.S. Securities and Exchange Commission on July 26, 2007, "All corporate power shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed under the direction of, the Board of Directors, subject to any limitation set forth in the Articles or in one or more shareholders' agreements."

The former Executive Director has not notified the State Ethics Commission or the Authority's board about the compensation he now receives as a CSB Director. To comply with the state's Conflict-of-Interest Law, the former Executive Director needed to notify the Authority in writing prior to receiving any compensation. Specifically, Chapter 268A, Section 19(b)(1), states:

It shall not be a violation of this section if the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular interest and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee.

Recommendation

The Authority's Board of Directors should notify the State Ethic's Commission in writing about this potential conflict-of-interest situation. Further, all housing authority employees, especially those in policy making positions, should be made aware of the standards of conduct required by the Commonwealth's Conflict-of-Interest law.

Auditee's Response

The past Executive Director, who retired as of August 8, 2008, did serve on the Board of Trustees for the Chicopee Savings Bank. The conflict of interest that may have existed ended with his employment. As the current Executive Director, I want to state that I do not serve on any Boards or have any relationships with any contractors or organizations doing business with the Chicopee Housing Authority.

APPENDIX I

State Sanitary Code Noncompliance Noted

| <u>Program and Unit Location</u> | <u>Noncompliance</u> | <u>Regulation</u> |
|---|--|---------------------|
| 200-1; 19 Elcon Drive, Unit #35 | <u>Bathroom</u> : Tiles on floor are buckling | 105 CMR 410.504 |
| | Tub needs caulking | 105 CMR 410.150 |
| | Tiles under spout need caulking | 105 CMR 410.500 |
| | Paint peeling on walls and ceiling and walls are moldy | 105 CMR 410.500 |
| | <u>Basement</u> : Broken light fixture | 105 CMR 410.253 |
| | <u>Bedroom</u> : Air conditioner in window with no brackets. | 105 CMR 410.351 |
| 200-1; 57 Marshall Ave., Unit #210 | <u>Bathroom</u> : Tub stopper not working, broken soap dish in tub | 105 CMR 410.150(D) |
| | <u>Kitchen</u> : Floor tiles in center of room are lifting | 105 CMR 410.504 |
| | Hole in wall inside cabinet is covered with duct tape | 105 CMR. 410.100 |
| 667-1; 16 Grocki Drive, Unit #52 | <u>Kitchen</u> : Ceiling fan is covered with soot from stove | 105 CMR 410.500 |
| | <u>Bathroom</u> : Tub spout needs caulking. | 105 CMR 410. 150(D) |
| | <u>Bedroom</u> : Attic and crawl space doors not secure. | 105 CMR 410.480 |
| | <u>Living Room</u> : Smoke detector missing. | 105 CMR 410.482 |
| 667-3; 33 Benoit Circle, Unit #172 | <u>Living Room & Bedroom</u> : Ants and spiders are entering below the baseboards. | 105 CMR 410.550 |
| | <u>Bathroom</u> : Paint peeling on wall. | 105 CMR 410.500 |
| | Broken toilet | 105 CMR 410.150 (D) |
| 667-4; 64A Riverview Terrace, Unit #231 | <u>Kitchen</u> : Faucet dripping | 105 CMR 410.351 |
| 667-8; 630 Chicopee Street, Unit #408 | <u>Bathroom</u> : Sink stopper missing and tub spout needs to be caulked. | 105 CMR 410.150(D) |