



# The Commonwealth of Massachusetts

**AUDITOR OF THE COMMONWEALTH**

ONE ASHBURTON PLACE, ROOM 1819  
BOSTON, MASSACHUSETTS 02108

A. JOSEPH DeNUCCI  
AUDITOR

TEL. (617) 727-6200

NO. 2007-5129-3A

**INDEPENDENT STATE AUDITOR'S REVIEW ON  
THE HANDLING OF FEDERAL DISASTER FUNDS  
RECEIVED (DR-1642-MA) BY THE  
COMMONWEALTH ON BEHALF OF  
TWENTY-FOUR LOCAL HOUSING AUTHORITIES  
THAT SUSTAINED DAMAGES AS A RESULT OF THE  
MAY 2006 FLOODS**

**OFFICIAL AUDIT  
REPORT  
MARCH 24, 2008**

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In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, we have conducted an audit of the processing of Federal Disaster Funds, DR-1642-MA, received by the Commonwealth on behalf of 24 Local Housing Authorities (LHAs) as a result of the damages sustained during the severe floods that occurred in May 2006. LHAs are independent local public authorities (a public body politic and corporate) that operate in accordance with Chapter 121B of the General Laws, and are managed, controlled, and governed by a locally elected or appointed Board of Directors. A list of the 24 LHAs, the damage claims approved, and the amount reimbursed by the Federal Emergency Management Agency (FEMA) for each LHA is included in Appendix A of this report.

Our audit was initiated due to concerns raised by the Senate Post Audit and Oversight Committee (see Appendix B), the LHAs, and the Massachusetts Chapter of the National Association of Housing and Redevelopment Officials (Mass. NAHRO) regarding reimbursements to the affected LHAs that were not made in a timely manner or directly as had been the case with past disasters, but were instead deposited into the Commonwealth's General Fund.

The 24 LHAs filed a total of \$780,003 of FEMA-approved claims for reimbursements, of which the federal share was approximately 75%, or \$602,156, (including additional administrative fees of \$17,153.)

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Although FEMA approved a total of \$602,156 in qualifying federal funds to be distributed to the 24 LHAs affected by the floods of May 2006, the status of these funds is still in question almost two years later. Due to confusion, lack of coordination, and misinterpretations and misapplication of policy at the state level, it is unclear how, when and if LHAs will ultimately be reimbursed for their losses, given the way in which this situation was mishandled.

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## INTRODUCTION

### ***Background***

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, we have conducted an audit of the processing of Federal Disaster Funds, DR-1642-MA, received by the Commonwealth on behalf of 24 Local Housing Authorities (LHAs) as a result of the damages sustained during the severe floods that occurred in May 2006. LHAs are independent local public authorities (a public body politic and corporate) that operate in accordance with Chapter 121B of the General Laws and are managed, controlled, and governed by a locally elected or appointed Board of Directors. A list of the 24 LHAs, the damage claims approved, and the amount reimbursed by the Federal Emergency Management Agency (FEMA) for each LHA is listed in Appendix A of this report.

Our audit was initiated due to concerns raised by the Senate Post Audit and Oversight Committee (See Appendix B), the LHAs, and the Massachusetts Chapter of the National Association of Housing and Redevelopment Officials, (Mass. NAHRO) regarding reimbursements to the affected LHAs that were not being made in a timely manner or directly, as had been the case with past disasters, but were instead deposited into the Commonwealth's General Fund.

The 24 LHAs filed a total of \$780,003 of FEMA-approved claims for reimbursements, of which the federal share was approximately 75% of the total approved claims, or \$602,156, (including additional administrative fees of \$17,153.)

### ***Audit Scope, Objectives, and Methodology***

In order to perform our audit, we surveyed by questionnaire and conducted interviews with designated responsible officials of the Massachusetts Emergency Management Agency (MEMA), the Department of Housing and Community Development (DHCD), the 24 affected LHAs, and Mass. NAHRO to obtain the relevant information and facts that pertained to the process that occurred in providing reimbursement for the damages as a result of the May 2006 floods and approved for payment by FEMA to the LHAs.

The scope of our audit did not include a review of the claims themselves, since the amounts had been reviewed and approved by FEMA in accordance with applicable governing procedures, but rather consisted of a performance review and evaluation of the process and its timeliness, efficiency,

and effectiveness in order to make recommendations for changes that would streamline the process and allow for a more timely and efficient system of reimbursing LHAs for their damages in the future.

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## AUDIT RESULTS

### **MISINTERPRETATION AND MISAPPLICATION OF STATE POLICIES DEPRIVES AFFECTED LOCAL HOUSING AUTHORITIES OF NEEDED AND APPROVED FEDERAL DISASTER RELIEF FUNDS**

In May 2006, severe floods adversely impacted several northeastern Massachusetts communities, after which a disaster was declared and 24 Local Housing Authorities (LHAs) became eligible for Federal Emergency Management Agency (FEMA) disaster funds under DR-1642-MA. FEMA and the Massachusetts Emergency Management Agency (MEMA) responded responsibly and timely by reaching out and by holding briefings in June to assist the affected LHAs with the application process for financial assistance, as they had with past disasters. Although it was determined that the Department of Housing and Community Development (DHCD) was the holder of a blanket insurance policy for all housing authorities, this policy has a \$1,700,000 deductible and a separate \$100,000 flood deductible that applied, and the claims fell within these thresholds. Based on this, FEMA began to approve and obligate LHA payments to MEMA.

However, in August 2006, after further review, FEMA determined that the LHAs would not be able to apply for reimbursement directly, and that because DHCD was the holder of a blanket insurance policy, DHCD, as the “most responsible party”, would have to be the applicant. Accordingly, the names of the applicants for reimbursement were changed from the individual LHAs to DHCD. In spite of these complications, FEMA made the funds available in a timely manner to MEMA in September 2006. The funds were transferred on various dates as FEMA approved and processed each claim.

However, based on a misinterpretation and misapplication of a previous Office of the State Comptroller (OSC) April 2005 policy memorandum to the State Budget Director, a total of \$559,028.44 was deposited into the General Fund at the direction of the Executive Office for Administration and Finance (EOAF), instead of being immediately directed to the LHAs. The \$559,028.44 represents the federal share of the approved claims for 23 of the 24 LHAs (all except Lawrence Housing Authority, which will be explained later in this discussion). The OSC memorandum addressed “federal disaster funds awarded to the Commonwealth”, and indicated that the funds “represent reimbursement to the Commonwealth” for costs actually incurred during a disaster. The memorandum went on to explain that the funds “represent reimbursement for actual costs expended from appropriated funds.” The memorandum further

stated, “since Commonwealth agencies will have already charged all expenses to appropriated dollars, the reimbursement subsequently received from FEMA will be treated as unrestricted federal reimbursement, and will be deposited directly into the General Fund as such.”

However, this directive by the former EOAF officials erroneously interpreted and applied the memorandum to LHAs, as shown below:

- Contrary to EOAF’s claim, LHAs are not agencies of the Commonwealth. Instead, they are separate local public authorities established at the community level by vote in the city or town in accordance with Chapter 121B, Section 3, of the Massachusetts General Laws, and are managed, controlled, and governed by a Board of Directors, similar to the Massachusetts Port Authority, the Massachusetts Bay Transportation Authority, or the Turnpike Authority, which receive their disaster funds directly.
- Unlike a state agency that receives direct appropriations from the State Legislature and charges its expenses to appropriated dollars, LHAs may or may not receive state subsidies or capital improvement grants from DHCD, based upon a contract for financial assistance. If they do, they are pass-through subsidies, not direct appropriations, in this case, through DHCD. Cities and towns receive local aid and are likewise independent, not state agencies, even though they receive state funds.

Accordingly, if for convenience and because DHCD was the holder of insurance coverage on LHAs, it was held that DHCD would be the applicant on behalf of the LHAs. The FEMA funds should have been deposited into an expendable trust fund and then paid directly to the LHAs, instead of being erroneously deposited into the General Fund as revenue subject to appropriation. This would have avoided an eight-month delay (until January 2007) to reimburse the LHAs, prompting Authorities to look for alternate funding sources and inappropriately using funds from the Hurricane Katrina Aid account (Chapter 81 of the Acts of 2005) to pay the overdue reimbursements to the LHAs. This was not the intent and purpose of the Hurricane Katrina Aid appropriation of September 6, 2005, which was originally intended solely to help Hurricane Katrina victims. The Act was subsequently amended by Chapter 192 of the Acts of 2006 and by outside Section 38 of the state budget, Appropriation Act of 2008, to be used to meet the costs associated with the May 2006 floods. The amendment is limited to “certain municipalities and eligible private nonprofit organizations” and to the Commonwealth’s 25% share of the total certified damage. Although it is recognized that officials were looking for a solution, this only further complicated the process, because Hurricane Katrina Aid funds were used to reimburse the LHAs for the 75% federal share of the approved claims, not the 25% state

share, and there remains a question as to whether the LHAs were included in the language of the amendment, since, as previously explained, they are municipal corporations and not municipalities or private nonprofit organizations.

Further, it was noted that the Lawrence Housing Authority received its \$43,127.45 in October 2006, not January 2007 as did the other 23 LHAs, because it directly received federal funds. It is a Chapter 121B Authority as are all the other LHAs that incurred damages. Some of the Authorities operate federal housing programs as well. However, the Lawrence Housing Authority is excluded by FEMA policy from receiving any assistance beyond emergency protective measures, and it was therefore required to apply to the Department of Housing and Urban Development directly for assistance with physical damages.

Subsequently, although FEMA provided funds for LHA reimbursement through the Commonwealth, it was determined that DHCD's insurance company was also paying off on some claims. (See Appendix A.) Accordingly, this situation resulted in a duplication of benefits for those LHAs who, through no fault of their own, received reimbursement from two sources. This is contrary to federal law, which prohibits reimbursement for damages that were or should have been covered by another program, source, or insurance.

Thus, DHCD was declared liable and obliged to return to FEMA the overpayments that were deposited into the General Fund, since DHCD was the recipient of these funds on behalf of the LHAs, except for the Lawrence Housing Authority. As the applicant for reimbursement, DHCD should have immediately contacted the insurance carrier to determine coverage eligibility and met with all the LHAs to plan, organize, and coordinate a timely application on their behalf to ensure 100% reimbursement and avoid this dilemma. DHCD should also have contacted and coordinated with MEMA to determine its role in expediting the process.

### ***Conclusion***

The intent and purpose of the federal disaster declarations was to ensure that the 24 LHAs and the affected communities were reimbursed in a timely manner for the costs they incurred as a result of the May 2006 floods. Instead, because of confusion, lack of coordination, misinterpretations and misapplication of policy, the LHAs are unclear who should be applying to whom, and for how much funding, while DHCD is seeking the return of funds from the LHAs.



It is also not clear whether insurance claims can still be filed on behalf of those who did not file. In the end, after almost two years, it is not clear when these LHAs will be made whole for their approved loss claims. It would not be fair for any of the LHAs to not be ultimately reimbursed for their losses, when funds were approved, forwarded, and subsequently returned because of the way this situation was mishandled.

Equally important to making certain that there are no duplicate payments is to ensure that there are no shortfalls, and that payments are sought, obtained, processed, and forwarded immediately to the LHAs. It should be recognized that LHAs have been operating on tight and unrealistically low budgets for many years, and that LHA operations suffer when they lack the funds to cover unexpected losses or damages. It is fortunate that the flood damages were not more significant.

Accordingly, it should be DHCD that is obliged to return to FEMA the funds that were received from FEMA, not the LHAs, since the funds were deposited into the General Fund, not forwarded by DHCD to the LHAs. As indicated previously, the source of the funds received by the LHAs was the Hurricane Katrina Aid account. Reimbursement to FEMA should be made from the General Fund, which likely will require a legislative act. For DHCD to attempt to recover the Hurricane Katrina Aid funds from the LHAs and to then forward these funds to FEMA would be further inappropriate.

In the end, the LHAs should be fully reimbursed from the insurance coverage, FEMA should be reimbursed from the General Fund, and the funds returned from the LHAs should be deposited into the Hurricane Katrina Aid account.

***Recommendation***

A reoccurrence of these problems in the future could be avoided if:

- It is recognized that LHAs are not state agencies but separate legal entities, and treated accordingly.
- The LHAs are dealt with directly and individually.
- An immediate determination is made of the applicability and extent of any insurance coverage by the most responsible party, the holder of the insurance policy, which in this case is DHCD.

- When there is blanket insurance coverage, the responsible holder (DHCD), expeditiously coordinates with MEMA and the LHAs to ensure that the application is made for all affected parties, so that no one is left out because of failure to apply in a timely manner.
- Concerning the existing problems, before any reimbursements are made, DHCD needs to take immediate steps to rectify this situation for the LHAs and make them whole. This should include reconciliation and agreement by all the parties on how much is owed, and by whom to whom.
- To prevent further missteps, officials from EOAF, the Budget Bureau, the Office of the State Comptroller, DHCD, and the LHAs or their representative organization (Mass. NAHRO) should meet with MEMA officials to develop a solution for this problem that complies with state finance law. Legislative consultation and input should be obtained, since Legislation may be required.
- State agencies and local governments should receive the appropriate guidance and training concerning federal and state statutory requirements, as well as policies and procedures regarding the application for funding, the documentation of allowable costs, and the mechanisms for receipt of reimbursements.

During our review, it was noted that MEMA officials were very cooperative and knowledgeable of the rules, procedures, and facts applicable to this situation. It is therefore important to place reliance on MEMA to ensure compliance with all applicable rules, regulations and laws.

It is also essential to realize that as the state's foremost authority in these matters, MEMA should be the lead agency in charge of coordinating and expediting reimbursements to the Commonwealth's instrumentalities.

In formulating improved, updated disaster recovery plans for the Commonwealth, the Administration should review what happened with these LHAs in the wake of the May 2006 floods and take corrective action to preclude a reoccurrence of this situation and provide for timely, efficient, and effective response recovery and funding.

**AUDITEE RESPONSES****Senate Post Audit and Oversight Committee**

*I am writing in response to the State Auditor's recent review of the handling of federal disaster funds received by the Commonwealth on behalf of 24 Local Housing Authorities ("LHA"). Your research and analysis substantiate my initial concerns regarding the disbursement of federal recovery funds from the Federal Emergency Management Agency. Your audit further uncovers even more disturbing evidence of mismanagement by the former officials of the Executive Office for Administration and Finance ("A&F"), such as their decision to authorize the Massachusetts Emergency Management Association to transfer the LHAs' federal share amount to the Commonwealth's General Fund. Such decision making undermines the Commonwealth's ability to deliver the effective and efficient assistance needed in situations such as those faced by the LHAs after the 2006 floods.*

*It is my hope that our current Administration and A&F officials will take the necessary steps to resolve the outstanding issues raised in the Auditor's report and rectify the actions taken by the previous administration.*

**LHAs**

The collective comments received from the 24 LHAs and their representative association, Mass. NAHRO, are summarized as follows: The Authorities appreciated that the State Auditor and the Senate Post Audit and Oversight Committee looked into the reimbursement process and delays that followed in the aftermath of the May 2006 floods, and hoped that these efforts would result in a more efficient and timely system in the future, and that this situation can be resolved once and for all. They questioned (a) why the process changed which resulted in the LHAs not being direct recipients, as was the case in previous occurrences; (b) that they were not given prior notice that DHCD (the state) would be the direct recipient; (c) the propriety of federal FEMA funds being diverted to the state's General Fund by former EOAF officials; and (d) when they will finally receive the state 25% share of the approved claims.

Two LHAs, Gloucester and Waltham, believe that claims of \$4,124.90 and \$4,696.24, respectively, are still due, and have received no explanation as to the status.

**DHCD**

*Given that nearly two years have elapsed since the event, LHA concerns over the cause of delays in obtaining FEMA/MEMA funding is understandable, as is preventing any such future delays in payment for flood or other event damages. DHCD agrees that efforts should be made by all involved parties, including the LHAs, to improve the process for future claims of this nature. DHCD has already worked with the new ANF under the current administration to ensure the problems related to the May 2006 event funding do not recur.*

*DHCD has made the following observations with respect to the May 2006 event and future handling of such claims:*

- *Flood Insurance coverage was/is available to LHAs for their state-aided housing with local deductibles at \$5,000 or less through the property insurance program procured and administered by DHCD on behalf of LHAs.*
- *The above-noted coverage remains in effect for the current policy period through 11/17/2008.*
- *Assistance with flood and other property damage claims for state-aided housing is always available by contacting DHCD's Risk Management Specialist.*
- *DHCD agrees miscommunication and/or misunderstanding about the nature and details of the Property Insurance Program for state-aided housing existed between DHCD, FEMA and MEMA representatives. Communication between FEMA, MEMA, ANF and DHCD is currently addressing this misunderstanding to ensure the circumstances related to the May 2006 disaster funds do not recur.*
- *DHCD will continue to provide information to LHAs regarding the details and availability of the property insurance program. In addition, DHCD will make every effort to further communicate this program information to LHAs via workshops at conferences and other available forums, as has always been done.*
- *Most importantly, it should be noted that DHCD staff met with FEMA representatives and also had tele-conferences with FEMA representatives on numerous occasions in order to communicate the nature of the property insurance program and the deductible and the consequent effects on LHA eligibility for FEMA funding. DHCD and certain FEMA representatives had come to an agreement with regard to LHA eligibility and process, however there were changes in FEMA personnel handling the funding and further communications from FEMA were not made available. Through no fault of anyone's, the change in the FEMA representatives handling this matter greatly contributed to confusion, misinformation and thus caused delays. DHCD provided the same information numerous times to numerous people at FEMA.*

## APPENDIX A

### Twenty-Four Local Housing Authorities' Claims History

LHA	Approved Project Costs	75% Federal Share	25% State Share	Insurance Received
Amesbury*	\$3,280.45	\$2,460.34	\$820.11	-
Belmont*	5,274.57	3,955.93	1,318.64	-
Beverly	12,055.04	9,041.28	3,013.76	\$9,282.29
Danvers*	3,680.94	2,760.71	920.23	-
Everett*	1,920.00	1,440.00	480.00	-
Gloucester	4,374.50	3,280.88	1,093.62	3,368.37
Haverhill*	4,693.91	3,520.43	1,173.48	-
Lawrence	55,291.60	41,468.70	13,822.90	-
Lynn	142,729.91	107,047.43	35,682.48	109,902.04
Malden	12,609.00	9,456.75	3,152.25	9,786.00
Manchester*	1,266.22	949.67	316.55	-
Melrose	108,364.46	81,273.35	27,091.11	83,560.29
Methuen*	13,606.88	10,205.16	3,401.72	-
Nahant	10,209.89	7,657.42	2,552.47	7,861.61
North Andover*	6,329.24	4,746.93	1,582.31	-
North Reading*	4,625.19	3,468.89	1,156.30	-
Peabody	260,549.00	195,411.75	65,137.25	200,742.01
Reading*	15,960.50	11,970.38	3,990.12	-
Salem*	3,888.30	2,916.23	972.07	-
Somerville*	41,500.00	31,125.00	10,375.00	-
Stoneham*	36,924.00	27,693.00	9,231.00	-
Swampscott*	2,126.80	1,595.10	531.70	-
Wakefield	27,316.90	20,487.68	6,829.22	21,003.68
Waltham*	<u>1,426.10</u>	<u>1,069.58</u>	<u>356.52</u>	-
	<u>\$780,003.40</u>	\$585,002.59	<u>\$195,000.81</u> ***	
		<u>17,152.99</u> **		
		<u>\$602,155.58</u>		

\* No claims submitted to insurance carrier

\*\* Additional administrative fees of \$17,152.99 provided by FEMA and distributed to each LHA

\*\*\* Still not received by LHAs

## APPENDIX B

Senate Post Audit and Oversight Committee  
Letter

MARC R. PACHECO  
STATE SENATOR  
1ST PLYMOUTH AND BRISTOL  
DISTRICT  
ROOM 312B  
TEL (617) 722-1651

COMMONWEALTH OF MASSACHUSETTS  
MASSACHUSETTS SENATE  
STATE HOUSE, BOSTON 02133-1053

COMMITTEES  
SENATE POST AUDIT AND OVERSIGHT  
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SENATE WAYS AND MEANS  
ENVIRONMENT, NATURAL RESOURCES AND AGRICULTURE (VICE CHAIR)  
PUBLIC SAFETY AND HOMELAND SECURITY  
TELECOMMUNICATION, UTILITIES AND ENERGY

January 30, 2007

Secretary Leslie A. Kirwan  
Executive Office for Administration and Finance  
State House, Room 373  
Boston, MA 02133

Dear Secretary Kirwan:

I am writing in regard to the Senate Committee on Post Audit and Oversight's investigation into funding issues involving local housing authorities ("LHA") in Massachusetts. As a result of this investigation, the Senate Committee on Post Audit and Oversight ("Committee") learned some troubling information about the funding issues faced by the LHAs and I thought it would be advisable to share this with you during this time of transition.

In May 2006, as a result of the May 2006 Floods, several LHAs applied to the Federal Emergency Management Agency ("FEMA") for federal disaster recovery funds. In November 2006, the LHAs were notified by the Massachusetts Emergency Management Agency ("MEMA") of FEMA's approval of funding and covered damages. However, instead of the approved federal disaster recovery funds going to the LHAs at that time, the LHAs were advised by MEMA that the Executive Office of Administration and Finance ("Administration and Finance") authorized MEMA to transfer the LHAs' federal share amount into the Commonwealth's General Fund. MEMA advised the LHAs to contact the Department of Housing and Community Development ("DHCD") to obtain information on reimbursement of funding.

On November 30, 2006, the Committee was advised by MEMA that Administration and Finance would promptly be releasing the funds to the LHAs. However, it was only within the last two weeks that the LHAs received funding from DHCD. Also, the Committee has learned that the funding paid to the LHAs did not come from the General Fund, where the FEMA funds were initially deposited, but were deducted from the operating subsidy account. In appropriating money to the operating subsidy account for DHCD, the Legislature did not consider FEMA funds to be part of the requested allocation. Accordingly, there will be less money available to pay LHAs for the intended uses of the operating subsidy account, such as operating deficits and utility bills. This

**APPENDIX B (CONTINUED)**

**Senate Post Audit and Oversight Committee  
Letter**

Secretary Kirwan  
January 30, 2007  
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budgeting practice appears to set an extremely dangerous precedent. I respectfully request that you look into this issue.

Additionally, the Committee learned that DHCD has allegedly misrepresented the LHAs' need for adequate operating subsidies to Administration and Finance during budget proceedings and as a result, the authorities are drastically underfunded and in disrepair. Authorities are owed millions of dollars in subsidies from Fiscal Years 2005 and 2006. Allegedly, DHCD has used present fiscal year budgets to pay debts from the preceding years. Also, the reserve accounts have been depleted drastically in the housing authorities and in many cases, the reserves are not even at 20%.

Please find enclosed the executive summary from the report by the State Auditor's Office, Independent State Auditor's Comprehensive Report on the Physical Condition of And Resources Allocated for the Operation and Upkeep of State-Aided Public Housing in the Commonwealth of Massachusetts (hereinafter, "Auditor's Report") that discusses this funding problem. As discussed in the Auditor's report, in fiscal year 2006, DHCD expenditures for operating subsidies totaled \$34.8 million, which is \$3.2 million less than what it expended for operating subsidies in fiscal year 1986. "During the interim period subsidy payment to LHAs have been irregular, inadequate, and untimely." (*Auditor's Report*, p. 1). Furthermore, the Auditor found that due to years of underfunding, the state-aided housing inventory has deteriorated and LHAs have been forced to defer maintenance or inappropriately use federal funds. (*Id.*)

The Auditor found that the underfunding and undersubsidizing of the LHAs has been caused by a "flawed and misguided budget process whereby the true annual operating and capital costs and needs of the LHAs are understated and therefore do not disclose the extent of these conditions to the Governor and the Legislature." (*Auditor's Report*, iv). I strongly urge you to look into these funding issues at the LHAs. If funding of LHAs remains unchanged and the current practices go unchecked, it is impractical to believe that these housing units can be sustained to a habitable level and several LHAs could end up bankrupt. Accordingly, this will cause a substantial decrease in the number of low income housing available in the Commonwealth, which is the primary housing source for low income individuals, families, the elderly, homeless, disabled and veterans.

I hope that you find this information useful. Please feel free to contact me with any questions or concerns regarding this matter.

Sincerely,



Marc R. Pacheco  
Senate Post Audit & Oversight Committee

MRP:krg

enc.