

CHAPTER 9. DETERMINATION OF PHA SUSTAINED AUDIT FINDING COSTS AS A
DEBT OWED HUD

9-1. PURPOSE.

This Chapter provides guidance for use by HUD Field Office action officials in determining whether or not a PHA audit finding of Sustained Cost results in a debt owed HUD (account receivable). It includes: (a) guidelines in determining whether or not a sustained audit cost is a debt owed HUD or the PHA, (b) discussion of GAO offset restrictions applicable to the payment of debt owed by PHAs to HUD, and (c) information on procedures for the final determination and disposition of sustained audit cost indebtedness by the HUD action official in the Field Office.

9-2. REFERENCES.

HUD Handbook 2000.6 REV, Audits Management System, May 1982.
Handbook 1900.25 REV-3, Delinquent Debt Collection Handbook.

9-3. AUDIT FINDINGS: DISALLOWED COSTS, QUESTIONED COSTS, AND
SUSTAINED COSTS.

- a. Disallowed Costs. HUD Handbook 2000.6 REV., Appendix 1, paragraph 3 defines disallowed costs as follows:

"Costs charged to a HUD-financed or insured program or activity which are not allowable by law, contract, or Federal, State or local policies and regulations.

Disallowed costs may be applicable to development or construction type expenditures, operating or administrative type expenditures, fund reserves, distribution of project equity, or revenue activities that could cause higher net expenses. The auditor removes disallowed costs from the Schedule of Project or Audited Costs included in the audit report and recommends that HUD officials direct the auditee to adjust the project records and reimburse the project or HUD for any amounts due as a result of that disallowance."

- b. Questioned Costs. HUD Handbook 2000.6 REV., Appendix 1, paragraph 9 defines questioned costs as follows:

"...costs charged to a HUD-financed or insured program or activity whose eligibility cannot be determined at the time of audit. These costs require a future decision on the part of HUD program officials regarding their eligibility. This decision can involve a legal interpretation or clarification of Departmental policies and procedures.

Questioned costs may be applicable to development or construction type expenditures, operating or administrative type expenses, fund reserves, distributions of project equity, or revenue activities that could cause higher net expenses.

- c. Sustained Costs. HUD Handbook 2000.6 REV., Appendix 1, paragraph 12 defines sustained costs as follows:

"Questioned or disallowed costs which HUD officials have concurred in and have agreed to seek recovery of the related amounts....Sustained costs do not have to be categorized into questioned and disallowed costs."

9-4. SPECIAL PROBLEM IN TREATMENT OF AUDIT RELATED DEBT.

A special problem that arises in the treatment of audit related debt is set forth in Secretary Pierce's response to the General Accounting Office Report entitled, "Federal Agencies Negligent in Collecting Debts Arising from Audits," dated January 22, 1982. The following is an excerpt from the letter:

"...audit findings at HUD that reflect disallowed costs do not necessarily result in a debt owed to HUD or the Federal Government. In many cases, because of the nature of the statutory and regulatory structure of the programs involved, the audit disallowance may not create a debt at all, or the disallowed costs may be owed to a HUD-insured or funded housing project, to a program account, or even to program beneficiaries, rather than directly to HUD or the Federal Government. Thus, it is not appropriate to set up accounts receivable in favor of the Government until there has been a determination as to whether the audit disallowances are due and owing to HUD." (Underlining supplied.)

9-5. CONSIDERATIONS INVOLVED IN DETERMINING WHETHER AN AUDIT FINDING OF SUSTAINED COST WOULD BE AN AMOUNT PAYABLE TO HUD.

- a. Increase in Federal Funding. A significant point is whether the amount of a sustained audit debt resulted in an increase in Federal funding liability or whether the level of Federal funding is unchanged as a result of the action causing the finding. In this connection, it is important to note that the regulations for the Performance Funding System (PFS) control the amount of operating subsidy to be approved in a PHA operating budget, and that this amount may well be unaffected by actions resulting in audit findings. Accordingly, if that is the case, there is

really no basis for recording the amount included as a debt to HUD. Certainly, however, if the sustained audit cost resulted from an overpayment of operating subsidy to the PHA (e.g., error in calculation), a debt to HUD occurs.

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b. Commingling of Funds. It is important to determine whether the sustained audit cost was the result of commingling of funds. In this context, commingling of funds is construed to mean the use of funds obligated for a specific program purpose for an alternative unauthorized purpose, i.e., the use of development funds to support operating expenditures of projects under management. It does not relate to the fact that such funds from separate funding sources are jointly deposited in the general fund. If the sustained audit cost has not resulted in the PHA being paid federal funds for which it was not otherwise eligible under the PFS regulations at 24 CFR 990, it should be accounted for as a debt in which the PHA must reimburse its individual program account.

c. Who is Responsible? If the sustained audit cost is well documented, the person(s) responsible will, in most instances, be identified. If not, the HUD Field Office action official and the PHA should attempt to pinpoint personal responsibility wherever feasible. If PHA employees, in some way, profited as a result of the sustained audit costs, appropriate recovery efforts must be made. In so doing, appropriate legal and employee disciplinary action must be taken. Again, this is a PHA responsibility subject to Field Office oversight.

d. Cause of the Sustained Audit Cost. Ordinarily, the cause of the sustained audit cost will be discussed in the audit finding; however, in some instances, further examination of the underlying cause(s) will be needed on the part of the Field Office and the PHA. Frequently, the basic causes relate to employee error, inadequate supervision and control, and inadequate operating policies and procedures. The sustained audit cost may also derive from gross negligence, malfeasance, and fraud. The PHA is accountable and responsible for the sustained audit cost, and for corrective and remedial action, subject to Field Office oversight. If payment of additional program funds did not result, the audit cost does not constitute indebtedness to HUD. In these cases, however, recovery of loss by the PHA should be vigorously pursued against responsible employees and appropriate disciplinary action should be taken. PHA operating policies and procedures that will prevent recurrence of a sustained audit cost must be established, maintained and reviewed periodically by both the PHA and Field Office.

e. Impact of PHA Reimbursement to HUD for a Sustained Cost. The Department should not as a general rule pursue corrective actions which would impact adversely on the physical or financial condition of the PHA's program, or involve

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retroactive payments by project tenants on a matter over which they had no control. In the event that the corrective action involves the repayment of funds to a PHA program account and the PHA submits documentation that immediate repayment would have an adverse impact, a repayment schedule may be established by the Field Office. Such schedules would not exceed 5 years. Questioned and disallowed costs which result in a debt owed to HUD or the Federal Government will be transmitted in accordance with instructions contained in Chapter 10, Exhibit 10-1. Again, repayment should not result in an adverse impact upon the PHA (see discussion which follows in paragraph 9-6).

9-6. EFFECT OF DEBT OWED HUD COLLECTION UPON THE PERFORMANCE LEVEL OF A PHA: GENERAL ACCOUNTING OFFICE (GAO) OFFSET RESTRICTIONS.

GAO guidelines do not allow the use of offset in the case of audit related debt if the performance level of a program participant is reduced thereby. Comptroller General decision B-171019, "Setoff Against Block Grant Funds," December 14, 1976, advises:

"...by administrative policy, this office has limited the availability of grant funds as a source for setoff where setoff would have the effect of defeating or interfering with the purpose of the grant."

The decision refers to provisions now included in Attachment J, OMB Circular No. A-102 which also provides:

"Unless otherwise required by law, grantor agencies shall not withhold payments for proper charges made by State and local governments at any time during the grant period unless (a) a grantee has failed to comply with the program objectives, grant award conditions, or Federal reporting requirements, or (b) the grantee is indebted to the United States and collection of indebtedness will not impair accomplishment of the objective of any grant program sponsored by the United States." (Emphasis supplied.)

The GAO Report, "Federal Agencies Negligent in Collecting Debts Arising from Audits," January 22, 1982, not only prohibits offsets reducing program participant performance, but recommends certification by program participants that the payment of audit-related debt has not decreased performance. The Report

concludes:

"Regardless of the method agencies use to recover audit disallowances, the recovery should not reduce the performance level of the program... All involved program performance must be maintained."

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These GAO requirements and principles are treated in greater detail in HUD Notice 83-7, Financial Control Requirements for Sustained Costs Resulting from Inspector General Audit Findings, March 18, 1983, Appendix 7.

9-7. DETERMINATION OF INDEBTEDNESS TO HUD.

If the Field Office action official determines that a sustained audit cost is not a debt to HUD, and there is a disagreement on this point with the Regional Inspector General for Audit (RIGA), he/she should prepare a written explanation and justification setting forth the reasons why. This must be discussed with the RIGA and every effort made to reach agreement. If agreement cannot be reached, the determination becomes appealable in accordance with HUD Handbook 2000.6 REV., Audits Management System. A similar approach would be appropriate when offset is recommended if the Field Office action official determines that an offset would not be consistent with the principles discussed above.

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