



# Office of Public and Indian Housing, Washington, DC

## Overincome Families Residing in Public Housing Units



**To:** Milan M. Ozdinec, Deputy Assistant Secretary for Public Housing and Voucher Programs, PE  
*//signed//*  
**From:** David E. Kasperowicz, Regional Inspector General for Audit, Philadelphia Region, 3AGA  
**Subject:** Overincome Families Resided in Public Housing Units

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our review of HUD's policies governing overincome families residing in public housing units.

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

The Inspector General Act, Title 5 United States Code, section 8M, requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://www.hudoig.gov>.

If you have any questions or comments about this report, please do not hesitate to call me at 215-430-6730.



Audit Report Number: 2015-PH-0002

Date: July 21, 2015

Overincome Families Resided in Public Housing Units

## Highlights

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### What We Audited and Why

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We audited the U.S. Department of Housing and Urban Development's (HUD) public housing program. We conducted the audit as part of our annual audit plan and a congressional request. Specifically, Congressman David P. Roe requested that we review the number of families residing in government-subsidized housing whose income exceeded current income limits. Our audit objective was to determine the extent to which HUD-subsidized public housing units were occupied by overincome families and evaluate the impact of HUD policies.

### What We Found

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Public housing authorities provided public housing assistance to as many as 25,226 families whose income exceeded HUD's 2014 eligibility income limits. Of these 25,226 families, 17,761 had earned more than the qualifying amount for more than 1 year. HUD regulations require families to meet eligibility income limits only when they are admitted to the public housing program. The regulations do not limit the length of time that families may reside in public housing. However, HUD's December 2004 public housing final rule gave public housing authorities discretion to establish and implement policies that would require families with incomes above the eligibility income limits to find housing in the unassisted market. The 15 housing authorities that we contacted choose to allow overincome families to reside in public housing. HUD did not encourage them to require overincome families to find housing in the unassisted market. As a result, HUD did not assist as many low-income families in need of housing as it could have. We estimate that HUD will pay \$104.4 million over the next year for public housing units occupied by overincome families that otherwise could have been used to house low-income families. Although it would be reasonable to expect that a minimum number of overincome families would reside in public housing at any time, HUD can significantly reduce the number of overincome families that reside in public housing.

### What We Recommend

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We recommend that HUD direct housing authorities to establish policies to reduce the number of overincome families in public housing, thereby putting as much as an estimated \$104.4 million to better use by providing those funds to eligible low-income families in need of housing assistance.

# Table of Contents

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<b>Background and Objective.....</b>	<b>3</b>
<b>Results of Audit .....</b>	<b>5</b>
<b>Finding: Overincome Families Resided in Public Housing Units .....</b>	<b>5</b>
<b>Scope and Methodology.....</b>	<b>12</b>
<b>Internal Controls.....</b>	<b>14</b>
<b>Appendixes.....</b>	<b>15</b>
<b>A. Schedule of Funds To Be Put to Better Use.....</b>	<b>15</b>
<b>B. Auditee Comments and OIG’s Evaluation.....</b>	<b>16</b>
<b>C. Overincome Families Residing in Public Housing Units Nationwide .....</b>	<b>24</b>
<b>D. Overincome Families Sorted by Income Greater Than HUD’s 2014 Program     Eligibility Income Limits.....</b>	<b>28</b>
<b>E. Length of Time Overincome Families Had Lived in Public Housing Units .....</b>	<b>27</b>
<b>F. Overincome Families Compared to Families Waiting for Public Housing     Assistance.....</b>	<b>28</b>

# Background and Objective

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The U.S. Department of Housing and Urban Development (HUD) established its public housing program to provide decent and safe rental housing for eligible low-income families, the elderly, and persons with disabilities. Nationwide, there are approximately 1.1 million families receiving public housing assistance in public housing units managed by approximately 3,300 public housing authorities. HUD's Public Housing Operating Fund provides operating subsidies to public housing authorities to assist in funding the operating and maintenance expenses of their public housing developments.

HUD administers Federal aid to local public housing authorities that manage the housing for low-income residents at rents they can afford. The authorities use income limits as one of several factors to determine a family's eligibility for the program. HUD sets the low-income limits at 80 percent and very low-income limits at 50 percent of the median income for the county or metropolitan area in which the household resides. Once a family is accepted into the public housing program, it may stay in the program as long as it complies with leasing requirements. Since the demand for housing assistance often exceeds the limited resources available, long waiting periods are common before a family obtains a public housing unit.

The Quality Housing and Work Responsibility Act of 1998 made significant changes to the income and rent policies in the public housing program. It gave assisted families the choice of paying either an income-based rent or a market-based flat rent established by the public housing authority. Annually, assisted families determine which type of rent they will pay. The income-based rent can be up to 30 percent of the family's monthly adjusted household income. The income-based rent included a ceiling rent component that acted like a flat rent. However, HUD effectively ended the ceiling rent when it revised its flat rent policy in May 2014 and required housing authorities to establish flat rents set at no less than 80 percent of the applicable fair market rent<sup>1</sup> and use them by October 31, 2014, to recertify participating families and admit new families to the program.

In a letter to the HUD Inspector General, dated October 23, 2013, Congressman David P. Roe requested that we review the number of families residing in government-subsidized housing whose income now exceeds the allowable amount that qualifies families for assistance, for the purpose of understanding how pervasive the problem is and so that Congress can consider any necessary corrective action.

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<sup>1</sup> HUD annually estimates fair market rents for 530 metropolitan areas and 2,045 nonmetropolitan county fair market rent areas.

For purposes of this report, we considered a family to be overincome if its annual household income was greater than HUD's 2014 qualifying income limits for families applying for admission to the public housing program.

Our audit objective was to determine the extent to which HUD-subsidized public housing units were occupied by overincome families and evaluate the impact of HUD policies.

# Results of Audit

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## **Finding: Overincome Families Resided in Public Housing Units**

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Public housing authorities provided public housing assistance to as many as 25,226 families whose annual household income exceeded HUD's 2014 program eligibility income limits. Most of these families had earned more than the qualifying amount for more than 1 year, were not participating in programs that would allow them to reside in public housing, and occupied units while many families were waiting for public housing assistance. This condition occurred because HUD regulations require families to meet eligibility income limits only when they are admitted to the public housing program. The regulations do not limit the length of time that families may reside in public housing. Although HUD had given public housing authorities discretion to establish and implement policies that would require families with incomes above the eligibility income limits to find housing in the unassisted market, the public housing authorities that we contacted choose to allow overincome families to reside in public housing. HUD did not encourage them to require overincome families to find housing in the unassisted market. As a result, HUD did not assist as many low-income families in need of housing as it could have. We estimate that HUD will pay as much as \$104.4 million over the next year for public housing units occupied by overincome families that otherwise could have been used to house eligible low-income families in need of housing assistance. Although it would be reasonable to expect that a minimum number of overincome families would reside in public housing at any time, HUD can significantly reduce the number of overincome families that reside in public housing.

### **As Many as 25,226 Overincome Families Resided in Public Housing Units**

As of July 2014, 2,257 public housing authorities<sup>2</sup> provided public housing rental assistance to as many as 25,226 families whose annual household income exceeded HUD's 2014 program eligibility income limits (see appendix C for details). The family composition of the overincome families showed that there were

- 6,442 one-person households,
- 8,566 two-person households, and
- 10,218 households of three or more persons.

Of the 25,226 overincome families, 13,388 (53 percent) had income that was up to \$10,000 greater than HUD's 2014 income limits and 11,838 (47 percent) had income that was more than

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<sup>2</sup> Located in the 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands

\$10,000 greater than the income limits (see appendix D for details).<sup>3</sup> The following examples illustrate how excessively some families' income exceeded the qualifying income limits:

- Case 1 – New York City Housing Authority, New York, NY – The Authority admitted the family to the program in November 1988, and it had been overincome since at least 2009. As of November 2013, the four-person household's annual income was \$497,911, while the low-income threshold was \$67,100. Three members of the household earned income. The member with the highest income earned \$275,757. In addition, the head of the household owned real estate that produced \$790,534 in rental income between 2009 and 2013. As of July 2014, the family paid an income-based ceiling rent of \$1,574 monthly for its public housing unit. According to the Authority, it did not evict this family from its 3-bedroom unit because its policy does not require it to terminate the tenancy or evict families solely because they are overincome. The Authority believes that allowing overincome families to reside in public housing is beneficial because it shows that participation in the public housing program can help families achieve a more stable life and the average rent paid by overincome families is greater than that paid by other low income families.
- Case 2 – Housing Authority of the City of Los Angeles, Los Angeles, CA – The Authority admitted the family to the program in October 1974, and it had been overincome since at least May 2011. As of June 2014, the five-person household's annual income was \$204,784, while the low-income threshold was \$70,450. Five members of the household earned income. The member with the highest income earned \$132,224. As of June 2014, the family paid a flat rent of \$1,091 monthly for its public housing unit. According to the Authority, it did not evict this family from its 4-bedroom unit because its policy does not require it to evict overincome families because HUD regulations don't require it. The Authority claimed that evicting overincome families would work against HUD's efforts to deconcentrate poverty in public housing developments.
- Case 3 – New Bedford Housing Authority, New Bedford, MA – The Authority admitted the family to the program in January 2003, and it had been overincome since at least August 2010. As of November 2013, the three-person household's annual income was \$212,845, while the low-income threshold was \$42,950. The member with the highest income earned \$129,789. As of July 2014, the family paid a flat rent of \$525 monthly for its public housing unit. According to the Authority, it did not evict this family from its 2-bedroom unit because its policy does not require it to evict families solely because they are overincome. HUD regulations require families to be income eligible only at admission to the program.

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<sup>3</sup> HUD sets the low-income and very low-income limits by county or metropolitan area to account for local factors. Similarly, the amount by which a family is overincome needs to be considered in light of local factors. For example, a family that is \$10,000 over the income limit in New York City is not necessarily in the same situation as another family that is \$10,000 over the income limit in another part of the country.

- Case 4 – Oxford Housing Authority, Oxford, NE – The Authority admitted the tenant to the program in October 2005, and it had been overincome since at least October 2010. As of April 2014, the single-member household’s annual income was \$65,007, while the low-income threshold was \$33,500. Also, this tenant had total assets valued at nearly \$1.6 million, which included stock valued at \$623,685, real estate valued at \$470,600, a checking account with a balance of \$334,637, and an individual retirement account with a balance of \$123,445. As of April 2014, the tenant paid a flat rent of \$300 monthly for the public housing unit. According to the Authority, it did not evict this tenant from the 1-bedroom unit because the tenant was income eligible at admission and has not violated the lease agreement, therefore the Authority has no reason to evict the tenant or terminate the lease. The Authority also claimed that it has had difficulty fully leasing units in all of its public housing projects. Leasing a unit to an overincome family is preferable to having a vacant unit in order to keep a project occupied and viable in the community.

### **Overincome Families Had Resided in Public Housing Units for Years**

Although 7,465 (30 percent) of the 25,226 overincome families had resided in public housing for less than 1 year, 17,761 (70 percent) had resided in public housing for more than 1 year (see appendix E for details). Program regulations do not limit the length of time that families may reside in public housing units. As long as families comply with the terms of their rental agreements, they may continue to reside in public housing. Families in the public housing program only have to meet eligibility income limits when they are admitted to the program. In contrast, HUD’s housing choice voucher program, which provides eligible families assistance in obtaining rental housing in the private market, has an annual income limit. If a family can afford to pay an unassisted rent for 180 consecutive days, then the family’s participation in the program is terminated and the family’s voucher is made available to another eligible family in need of rental housing assistance. Public housing authorities use an automated system of integrated income data<sup>4</sup> to conduct periodic recertifications for families participating in both programs, however, since the public housing program does not have an annual income limit, they do not use the automated income data as a basis to evict or terminate the tenancies of overincome families.

### **Overincome Families Did Not Participate in Programs That Would Allow Them To Reside in Public Housing**

Regulations at 24 CFR (Code of Federal Regulations) 960.261(b) state that public housing authorities may not evict or terminate the tenancies of a family solely because the family is over the income limit for public housing if the family has a valid contract for participation in a Family Self-Sufficiency program<sup>5</sup> or the family received an earned income disallowance.<sup>6</sup> Automated

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<sup>4</sup> The Enterprise Income Verification system

<sup>5</sup> The Family Self-Sufficiency program provides low-income families the opportunity to receive education, job training, counseling, and other forms of assistance while residing in assisted housing so they can obtain skills necessary to achieve self-sufficiency.

data reported by the housing authorities to HUD showed that only 232 of the 25,226 overincome families participated in a Family Self-Sufficiency program. The data also showed that 13,670 families did not participate in a Family Self-Sufficiency program. For the remaining 11,324 families, HUD did not have data to show whether they participated in a Family Self-Sufficiency program because the housing authorities did not enter either a “yes” or “no” answer into the automated system. HUD did not capture earned income disallowance information in its automated system. However, none of the files for 25 overincome families reviewed showed that those families received an earned income disallowance.

### **Overincome Families Occupied Units While Many Families Waited for Public Housing Assistance**

A sample of 15 public housing authorities with overincome families showed that all 15 provided public housing assistance to 12,425 overincome families, although they also had 579,890 families on their waiting lists (see appendix F for details).

### **HUD Did Not Require Overincome Families To Exit the Public Housing Program**

Regulations at 24 CFR 960.201(a) require that families meet low-income eligibility requirements only at admission to the public housing program. The regulations do not limit the length of time that families may reside in public housing. Paragraph 3-2(a)(5) of HUD’s Public Housing Occupancy Handbook 7465.1 supports these statements. As long as families comply with the terms of their rental agreements, they may continue to receive public housing assistance. However, HUD’s December 2004 public housing final rule gave public housing authorities discretion to establish and implement policies that would require families with incomes above the eligibility income limits to find housing in the unassisted market. The final rule was established so that housing authorities could require overincome families to find housing in the unassisted market and serve truly low-income families on program waiting lists. Specifically, the final rule gave public housing authorities flexibility and discretion to establish and implement policies to address overincome families. The final rule suggested that public housing authorities establish additional policies that could (1) define appropriate time limits during which overincome families could remain in public housing; (2) determine the timeframe needed to execute an eviction notice to the overincome family; (3) exempt eviction of specific classes, such as elderly persons and persons with disabilities, as long as civil rights laws were not violated; and (4) consider asset limitations of overincome families in their policies as long as the limitations met State and local legal requirements. By giving public housing authorities flexibility and discretion to establish and implement policies to address overincome families locally, HUD allowed authorities to address overincome families within the context of their own unique demographic and economic situations.

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<sup>6</sup> The earned income disallowance allows tenants who have been out of work to accept a job without having their rent increase right away. It encourages self-sufficiency by rewarding residents who go to work to increase their earnings.

We reviewed the admission and continued occupancy policies of 15 housing authorities<sup>7</sup> and found that none of the authorities had established and implemented policies to evict overincome families or reduce the number of overincome families in its programs. The housing authorities choose to allow overincome families to reside in public housing and explained that there were several benefits to having overincome families reside in public housing units, such as higher rental revenue and a reduced concentration of poverty. Also, overincome families were viewed as role models by the public housing community because they had demonstrated that self-sufficiency could be achieved. Since regulations and policies did not require housing authorities to evict overincome families or require them to find housing in the unassisted market, overincome families continued to reside in public housing units.

### **HUD Believed That It's Revised Flat Rent Policy Would Reduce the Number of Overincome Families in Public Housing**

In May 2014, HUD issued Public and Indian Housing Notice 2014-12, which requires public housing authorities to establish flat rents set at no less than 80 percent of the applicable fair market rents. Before this policy change, housing authorities generally set flat rent amounts relatively low compared to the fair market rents. For example, a May 2010 HUD study of rents and rent flexibility reported that in 2008, housing authorities set about two-thirds of flat rents at less than half the fair market rent. The Notice requires housing authorities to use the new flat rents by October 31, 2014, to recertify families receiving public housing assistance and admit new families to the program and limits rental payment increases to no more than 35 percent annually. HUD believed that this policy change would reduce the number of overincome families residing in public housing because rather than pay an increased flat rent for public housing, the overincome families would choose to spend the additional 20 percent and rent a unit on the open market. While the revised flat rent policy could reduce the number of overincome families residing in public housing over time, the immediate impact would be marginal because rental payment increases are limited to no more than 35 percent annually and it may not prevent the egregious cases illustrated above. Moreover, the flat rent statute<sup>8</sup> prohibits rents from creating a disincentive for continued residency in public housing by families who are attempting to become economically self-sufficient through employment or who have attained a level of self-sufficiency through their own efforts.

### **HUD Had a Financial Incentive To Keep Overincome Families in Public Housing**

HUD repeatedly objected to our audit on the grounds that the governing statute and regulations require that public housing authorities not deter overincome families from residing in public housing. HUD stated that the governing statute and regulations encourage housing authorities to permit families to remain in public housing once they became overincome. HUD also stated that housing authorities are required to create rent policies that encourage employment and self-sufficiency. Further, it stated that housing authorities are obligated to establish admission policies that promote the deconcentration of poverty and income mixing within public housing

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<sup>7</sup> Listed in appendix F

<sup>8</sup> 42 U.S.C. (United States Code) Part 1437a(a)(2)(B)

properties.<sup>9</sup> Therefore, to amend policies that would force overincome families to leave public housing could negatively affect their employment and destabilize properties. Such changes could result in increased subsidy needs for the program because the rents paid by overincome families reduce operating subsidies requested by the public housing authorities. HUD claimed that if all overincome families were removed from the public housing program, it would need to request nearly \$116.5 million more in public housing operating subsidies annually.

We do not expect HUD and the housing authorities to develop policies that would eliminate all overincome families from public housing. However, creating limits to avoid egregious cases seems reasonable. While we agree that HUD and the housing authorities need to encourage families in public housing toward employment and self-sufficiency, and deconcentration of poverty and income mixing within public housing properties are desirable, it is unclear to what extent limiting public housing to overincome families negatively affects their employment or destabilizes properties. Any new policies should allow families sufficient time to become stable after becoming financially independent before their public housing assistance would be terminated. Although the reduction in overincome families could increase HUD's request for operating subsidies, the loss in additional rents that offset housing authority operating costs needs to be weighed against the opportunity cost of continuing to deny housing assistance to eligible low-income families in need of housing assistance.

### **Conclusion**

Public housing authorities provided public housing assistance to as many as 25,226 families whose income exceeded HUD's 2014 eligibility income limits. The majority of these families had earned more than the qualifying amount for more than 1 year. The public housing program was created to provide affordable housing to eligible low-income families, the elderly, and persons with disabilities. Although HUD had given public housing authorities discretion to implement policies that would require families with incomes above the eligibility income limits to find housing in the unassisted market, the public housing authorities that we contacted choose to allow overincome families to reside in public housing. As a result, HUD did not assist as many low-income families in need of housing as it could have. We estimate that HUD will pay as much as \$104.4 million over the next year for public housing units occupied by overincome families that otherwise could have been used to house eligible low-income families in need of housing assistance. This estimate represents all overincome families living in public housing even though we would not expect that any new policies would eliminate all overincome families from public housing.

### **Recommendations**

We recommend that the Deputy Assistant Secretary for Public Housing and Voucher Programs

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<sup>9</sup> 42 U.S.C. (United States Code) Part 1437n allows public housing authorities to establish and implement income-mix criteria for the selection of low-income and very low-income residents for units in public housing projects.

- 1A. Direct housing authorities to establish policies to reduce the number of overincome families in public housing, thereby putting as much as an estimated \$104,417,212 to better use by providing those funds to eligible low-income families in need of housing assistance.
- 1B. Reemphasize to all public housing authorities the need to populate the family self-sufficiency indicator in the Public and Indian Housing Information Center (PIC) system.

# Scope and Methodology

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We performed our audit work from August 2014 through February 2015 at HUD's offices located in Washington, DC, and our offices located in Pittsburgh, PA and Richmond, VA. The audit covered the period July 2011 to July 2014 but was expanded when necessary.

To accomplish our audit objective, we

- Reviewed the U.S. Housing Act of 1937 and the Quality Housing and Work Responsibility Act of 1998.
- Reviewed applicable HUD regulations at 24 CFR Parts 903, 960, 966, and 984 and Federal regulations at 24 CFR Part 5.
- Reviewed applicable guidance contained in HUD Public and Indian Housing Notice 2014-12, HUD's rule, "PHA Discretion in Treatment of Over-Income Families", HUD's Public Housing Occupancy Handbook and HUD's Housing Choice Voucher Program Guidebook.
- Analyzed data contained in HUD's PIC system.
- Reviewed the tenant files for 25 overincome families residing in public housing units.
- Reviewed 2014 income limits.
- Reviewed the waiting lists and admissions and continued occupancy policies of 15 public housing authorities. We included the 13 authorities related to the 25 overincome families whose tenant files we reviewed and added the 2 authorities identified by Congressman Roe in his request.

We also interviewed public housing authority officials and members of HUD's public housing staff.

To achieve our audit objective, we relied on computer-processed data from HUD's PIC system to identify overincome families residing in public housing. The data that we used were current as of July 2014 for all housing authorities.<sup>10</sup> Although we did not perform a detailed assessment of the reliability of the data, we did perform a minimal level of testing and found the data to be adequate for our purposes. To assess the reliability of the data, we selected a sample of 25

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<sup>10</sup> Moving to Work and non-Moving to Work housing authorities

overincome families participating in public housing programs at non-Moving to Work housing authorities based on their income, admission date, and value of assets held by the family. The families that we selected were either admitted to the program after January 1, 2013, or had more than \$1 million in assets, or had income that was significantly greater than the income limits. We contacted the associated public housing authorities and requested historical tenant data for the families for the last 4 years, including income documentation such as wage and earnings statements. We compared the family's annual household income to the applicable 2014 income limit for the family to determine whether it was overincome. We determined that there were 25,228 overincome families residing in public housing units administered by 2,257 public housing authorities nationwide. Since we found that the family income recorded in PIC was significantly inaccurate<sup>11</sup> for 2 of the 25 families reviewed, we adjusted the total number of overincome families residing in public housing units from 25,228 to 25,226. Accordingly, to conservatively estimate the amount of funds that HUD could put to better use, we reduced HUD's estimate of \$112.3 million for the total public housing operating funds related to housing the 25,226 overincome families by 7 percent<sup>12</sup> to compensate for other potential errors in the universe. This change reduced our estimate of funds that HUD could put to better use to as much as \$104.4 million.

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

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<sup>11</sup> The correct total family income was not greater than the 2014 eligibility income limit for the family.

<sup>12</sup> The annual public housing operating funds related to housing the 2 families was \$8,096, which was 7 percent of the \$116,841 in annual public housing operating funds related to housing the 25 families reviewed (\$8,096 divided by \$116,841 equals 7 percent).

# Internal Controls

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Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

## **Relevant Internal Controls**

We determined that the following internal controls were relevant to our audit objective:

- Program operations – Policies and procedures that management has implemented to reasonably ensure that a program meets its objectives.
- Compliance with laws and regulations – Policies and procedures that management has implemented to reasonably ensure that resource use is consistent with laws and regulations.
- Safeguarding resources – Policies and procedures that management has implemented to reasonably ensure that resources are safeguarded against waste, loss, and misuse.

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

## **Significant Deficiency**

Based on our review, we believe that the following item is a significant deficiency:

- HUD lacked effective policies and controls to minimize the number of overincome families residing in public housing units.

# Appendixes

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## Appendix A

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### Schedule of Funds To Be Put to Better Use

Recommendation number	Funds to be put to better use 1/
1A	\$104,417,212

- 1/ Recommendations that funds be put to better use are estimates of amounts that could be used more efficiently if an Office of Inspector General (OIG) recommendation is implemented. These amounts include reductions in outlays, deobligation of funds, withdrawal of interest, costs not incurred by implementing recommended improvements, avoidance of unnecessary expenditures noted in preaward reviews, and any other savings that are specifically identified. In this instance, if HUD implements our recommendation and reduces the number of overincome families in public housing, housing authorities will no longer spend HUD's operating subsidies for overincome families but will instead spend those funds to house eligible low-income families in need of housing assistance. Our estimate reflects only the initial year of this benefit and includes all overincome families even though we would not expect that all would be removed under any new policies.

# Appendix B

## Auditee Comments and OIG's Evaluation

### Auditee Comments

#### Ref to OIG Evaluation

  
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-5000  
OFFICE OF PUBLIC AND INDIAN HOUSING

**JUN 19 2015**

MEMORANDUM FOR David E. Kasperowicz, Regional Inspector General for Audit, Philadelphia Region, 3AGA

FROM: Milan M. Ozdincec, Deputy Assistant Secretary, Office of Public Housing and Voucher Programs, PE

SUBJECT: OPHVP Response to Office of the Inspector General Audit: *Over-Income Families Resided in Public Housing Units*

On June 10, 2015, the Office of the Inspector General (OIG) sent to OPHVP a revised draft of an OIG audit of the number of families in the public housing program that have incomes above the low income threshold for their locality, herein referred to as "over-income." Using data from HUD's PIC system (50058), OIG found that of the 1.1 million families served, 25,226 families, or 2.6% were living in public housing that were over-income at the time of the data request. OIG estimates that HUD will provide approximately \$104 million of operating subsidy over the next year for units occupied by these families that should otherwise be used to house families that are not over-income.

OPHVP is concerned with the OIG position that these funds could be put to better use, primarily because the program statute and regulations encourage public housing authorities (PHAs) to not deter these families from living in public housing. Further, OPHVP agrees with the sample housing authorities that there are positive social benefits from having families with varying income levels residing in the same property. Finally, OPHVP believes that there is a serious flaw in the methodology utilized by OIG to estimate the subsidy cost of housing over-income families.

This memo highlights the relevant statutory and regulatory framework pertaining to over-income families, outlines OPHVP's concerns with the OIG methodology, provides an explanation of the proper methodology for determining subsidy costs, and provides an estimate of the cost to house over income families based on the proper methodology.

**Statutory and Regulatory Framework**

OPHVP believes that the governing statute and regulations encourage PHAs to permit families to remain in public housing once they become over-income. Specifically, PHAs are required to create rent policies that encourage employment and that do not create a disincentive for continued residency by families who are attempting to become self-sufficient or who have

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Comment 1  
Comment 2

Comment 3

Comment 4

## Auditee Comments

### Ref to OIG Evaluation

Comment 5

attained a level of self-sufficiency through their own efforts<sup>1</sup>. Further, PHAs are obligated to establish admissions policies that promote the de-concentration of poverty and income mixing within public housing properties.<sup>2</sup>

HUD's regulations at 24 CFR Part 960.261 permit PHAs to evict or otherwise not renew a lease for over-income households except in the case of families that are participating in HUD Family Self-Sufficiency program. OPHVP is concerned that amending policies to force over-income families to leave could negatively affect their interest and full participation in achieving self-sufficiency.

Comment 6

On page 10 of the audit, OIG states that "...it is unclear to what extent limiting public housing to over-income families negatively affects their employment or destabilizes properties." To wit, forcing families to leave public housing could impact their ability to maintain employment if they are not able to find suitable housing in the neighborhood. Further, for families with children, it may be more difficult to find affordable child care, and it may impact school-age children's learning if they are forced to change schools during a school year. Although OPHVP understands the sentiment that the existence of over-income families denies income-eligible families from obtaining housing, there are many potential factors that determine why over-income families may choose to stay in public housing rather than to move to unassisted housing, and OPHVP is concerned that blanket policies may not fully consider those factors.

Comment 7

Consistent with the findings in the audit, through discussions with PHAs during the implementation of flat rent changes included in the 2014 Appropriations Act, many PHAs expressed their belief that over-income families are "model tenants" that serve as role models for other families regarding employment and self-sufficiency activities. These PHAs expressed concern that forcing these tenants to leave public housing could destabilize properties.

Comment 8

As mentioned in the OIG audit on page 9, OPHVP believes that the forthcoming changes to flat rents, as amended in the FY 2014 and FY 2015 appropriations acts, will reduce the number of over-income families, and would increase the subsidy collected from over-income families that choose to remain in the program. OPHVP concedes that due to the statutory provision limiting flat rent increases to no more than 35 percent for current households paying the flat rent would delay the full impact of the statutory provision for some families by up to three years, these families will ultimately pay the full rent increase which will result in some families choosing to rent unassisted units.

<sup>1</sup> 42 USC Sections 1437a(B) and 1437a(D) encourage PHAs to establish rental policies that promote employment and self-sufficiency through the use of alternative rents and flat rents.

<sup>2</sup> 42 USC Section 1437n

## Auditee Comments and OIG's Evaluation

### Ref to OIG Evaluation

### Auditee Comments

Comment 9

#### **OPHVP Concerns with Audit Report and OIG Methodology**

OPHVP is concerned that the methodology employed by OIG is inappropriate for an analysis of funds to be put to better use in the public housing program. This issue is magnified when using a data set that includes the entire universe of a particular group of public housing households. The reason for OPHVP's concern is that the operating subsidy is provided to PHAs through the funding formula described in 24 CFR Part 990, which is distributed at the project level and the amount of subsidy eligibility varies widely amongst properties.

Because OIG does not properly employ the Operating Fund Formula in their analysis, the analysis does not accurately reflect the cost to house over-income families. OPHVP's analysis has shown that OIG significantly overstates the amount of subsidy that is being provided to PHAs to house over-income families. As described below, the reality is that these families, as a group, not only effectively receive no housing subsidy, but they actually serve to reduce subsidy needs in the public housing program. Given that appropriations have generally failed to cover full operating costs, the elimination of over-income families from the program could serve to further destabilize and worsen project conditions.

#### **OPHVP Estimate and Methodology**

The funding formula described above offsets project funding eligibility by the amount of rental revenue received by the project. As such, the proper methodology for determining the subsidy cost to house over income families is the actual per unit, per month project eligibility less the actual rent paid by the family. This is the methodology used by PIH to determine and distribute operating subsidies and codified in HUD regulations.

OPHVP conducted this analysis using the data file provided by OIG and data provided by the public housing Financial Management Division. Based on this analysis, OPHVP determined that there was actually a negative cost to the program to house these families. Specifically, over-income families actually reduce program costs by nearly \$116.5 million annually.

OPHVP understands, but disagrees with the philosophical position of OIG that some over-income families should be forced to leave public housing and replaced with lower income families. However, OPHVP is dismayed by OIG's conclusion that \$104 million are being used by PHAs to subsidize units occupied by over-income families. OPHVP has demonstrated that, as a collective group, over-income families actually reduce the cost to operate public housing. Therefore, OPHVP respectfully requests that OIG replace their estimate with the analysis provided by OPHVP.

Comment 10

In summary, HUD believes this report over-emphasizes a problem when, in actuality, over-income households only represent 2.6 percent of all public housing households. HUD has

## Auditee Comments

### Ref to OIG Evaluation

Comment 4

Comments 5,  
6 and 7

demonstrated that the policies in place regarding over-income families are consistent with the statute, permit PHAs to address local housing needs through local policy decision making, and provide a benefit to the program, both socially and financially. The existence of over-income families aid PHAs in meeting their obligation to deconcentrate poverty and also serve to stabilize neighborhoods because families working towards self-sufficiency serve as good role models to other tenants. Further, the policies in place encourage families to obtain employment and stay employed by not mandating termination of tenancy when a family becomes over-income. These policies aid families as they strive for self-sufficiency, and serve to improve the lives of these families for the future.

Please feel free to reach out to Todd Thomas at [Todd.C.Thomas@hud.gov](mailto:Todd.C.Thomas@hud.gov) for further clarification or with any concerns. Thank you for the opportunity to collaborate on this effort.

## OIG Evaluation of Auditee Comments

- Comment 1** HUD is concerned with our position that funds could be put to better use, primarily because the program statute and regulations encourage public housing authorities to not deter overincome families from living in public housing. However, the public housing program was created to provide affordable housing to eligible low-income families, the elderly, and persons with disabilities. HUD did not assist as many low-income families in need of housing as it could have. We estimate that HUD will pay as much as \$104.4 million over the next year for public housing units occupied by overincome families that otherwise could have been used to house eligible low-income families in need of housing assistance.
- Comment 2** HUD agrees with the statements of the 15 housing authorities that we contacted during the audit that there are positive social benefits from having families with varying income levels residing in the same property. As stated in the audit report, the public housing program was created to provide affordable housing to eligible low-income families, the elderly, and persons with disabilities. We agree that deconcentration of poverty and income mixing within public housing properties are desirable, however, HUD did not provide any quantitative evidence to demonstrate the positive social benefits from having overincome families residing in public housing.
- Comment 3** HUD believes that our methodology to estimate the subsidy cost of housing overincome families is seriously flawed. We disagree. Our methodology used data provided by HUD to estimate the amount of subsidies HUD provided for the 25,226 overincome families.
- Comment 4** HUD believes that the governing statute and regulations encourage public housing authorities to permit families to remain in public housing once they become overincome. Specifically, public housing authorities are required to create rent policies that encourage employment and that do not create a disincentive for continued residency by families who are attempting to become self-sufficient or who have attained a level of self-sufficiency through their own efforts. Further, the authorities are obligated to establish admissions policies that promote de-concentration of poverty and income mixing within public housing properties.

As stated in the audit report, program regulations do not limit the length of time that families may reside in public housing units. As long as families comply with the terms of their rental agreements, they may continue to reside in public housing. They only have to meet eligibility income limits when they are admitted to the program. Regulations at 24 CFR 960.261(b) prohibit public housing authorities from evicting or terminating the tenancies of a family solely because the family is over the income limit for public housing if the family has a valid contract for participation in a Family Self-Sufficiency program or the family received an earned income disallowance. The audit evidence presented in the

audit report showed that only a small number of families participated in a Family Self-Sufficiency program and none received an earned income disallowance. HUD's December 2004 public housing final rule gave public housing authorities discretion to establish and implement policies that would require families with incomes above the eligibility income limits to find housing in the unassisted market. The final rule was established so that housing authorities could require overincome families to find housing in the unassisted market and serve truly low-income families on program waiting lists. By giving public housing authorities flexibility and discretion to establish and implement policies to address overincome families locally, HUD allowed authorities to address overincome families within the context of their own unique demographic and economic situations. However, none of the 15 housing authorities that we reviewed had established and implemented policies to evict overincome families or reduce the number of overincome families in its programs. The housing authorities choose to allow overincome families to reside in public housing without any limitations.

**Comment 5** HUD is concerned that amending policies to force overincome families to leave public housing could negatively affect their interest and full participation in achieving self-sufficiency. We agree that amending policies to force overincome families to leave public housing could negatively affect the interest and full participation to achieve self-sufficiency of some overincome families. However, we do not expect HUD and the housing authorities to eliminate all overincome families from public housing. As shown in the audit report, there are families living in public housing who are clearly self-sufficient. Any new policies should allow families sufficient time to become stable after becoming financially independent before their public housing assistance would be terminated.

**Comment 6** HUD stated that forcing families to leave public housing could impact their ability to maintain employment if they are not able to find suitable housing in the neighborhood; it may be more difficult for families with children to find affordable child care; it may impact school-aged children's learning if they are forced to change schools during a school year; and there are many potential factors that determine why overincome families may choose to stay in public housing rather than to move to unassisted housing. We agree that these issues may affect overincome families, as they do unassisted families, but HUD provided no quantitative evidence to demonstrate that these issues affect their decisions to stay in public housing. While these issues present challenges to the overincome families they may pale in comparison to the challenges facing the families, including children, waiting for housing assistance. Because public housing authorities have flexibility and discretion to establish and implement policies to address overincome families locally, they can address overincome families within the context of their own unique demographic and economic situations including these issues.

**Comment 7** HUD supports the public housing authorities who expressed their belief that overincome families are “model tenants” that serve as role models for other families regarding employment and self-sufficiency activities, and their concern that forcing these tenants to leave public housing could destabilize properties. HUD provided no quantitative evidence to support their belief and their concern. In our opinion, overincome families can serve as role models for other families regarding employment and self-sufficiency activities when they leave the public housing program. The goals of employment and self-sufficiency include financial stability and independence. To a lesser or greater extent, participation in the public housing program contributed to the four overincome families discussed in the audit report becoming financially stable and able to live independently. When overincome families leave the public housing program they create opportunities for other families to be assisted and hopefully achieve financial stability and independence.

**Comment 8** HUD believes that flat rents will reduce the number of overincome families but, due to the statutory provision limiting flat rent increases, would delay the full impact of the statutory provision for some families by up to 3 years. Eventually families will pay the full rent increase which will result in some families choosing to rent unassisted units. As stated in the audit report, while the revised flat rent policy could reduce the number of overincome families residing in public housing over time, the immediate impact would be marginal because the annual rental payment increases are limited and it may not prevent the egregious overincome cases discussed in the audit report.

**Comment 9** HUD is concerned that our methodology is inappropriate for an analysis of funds to be put to better use in the public housing program because we do not employ the operating fund formula in our analysis, and therefore it does not accurately reflect the cost to house overincome families. We disagree. Our methodology to estimate the amount of subsidies provided for overincome families was based on per unit per month project eligibility amounts for the overincome families provided by HUD. We used these figures to estimate the subsidy that HUD will provide for the public housing units occupied by the overincome families. The operating fund formula offsets a housing project’s operating subsidy eligibility amount by the rental income the public housing authority expects to receive for the project. Therefore, the rents paid by overincome families are considered in the formula before the per unit month project eligibility amount is calculated. In the audit report, we acknowledge HUD’s analysis and it’s determination that if all overincome families were removed from the public housing program, it would need to request nearly \$116.5 million more in public housing operating subsidies annually. Although the reduction in the number of overincome families could increase HUD’s request for operating subsidies, the loss in additional rents that offset housing authority operating costs needs to be weighed against the opportunity cost of continuing to deny housing assistance to eligible low-income families in need of housing assistance. Therefore, we estimated that HUD will

pay as much as \$104.4 million over the next year for public housing units occupied by overincome families that otherwise could have been used to house eligible low-income families in need of housing assistance.

**Comment 10** HUD believes that the report over-emphasizes the problem because overincome households represent 2.6 percent of all public housing households. Although 25,226 overincome families is a small percentage of the approximate 1.1 million families receiving public housing assistance, we did not find that HUD and public housing authorities had taken or planned to take sufficient steps to reduce at least the egregious examples of overincome families in public housing and therefore it is reasonable to expect the number of overincome families participating in the program to increase over time. Neither HUD nor the 15 housing authorities that we contacted during the audit provided any quantitative data to demonstrate that overincome families were leaving the public housing program. The problem is not over-emphasized to as many as 25,226 families in need of housing that continue to wait for assistance because overincome families choose to remain in public housing rather than find housing in the unassisted market.

## Appendix C

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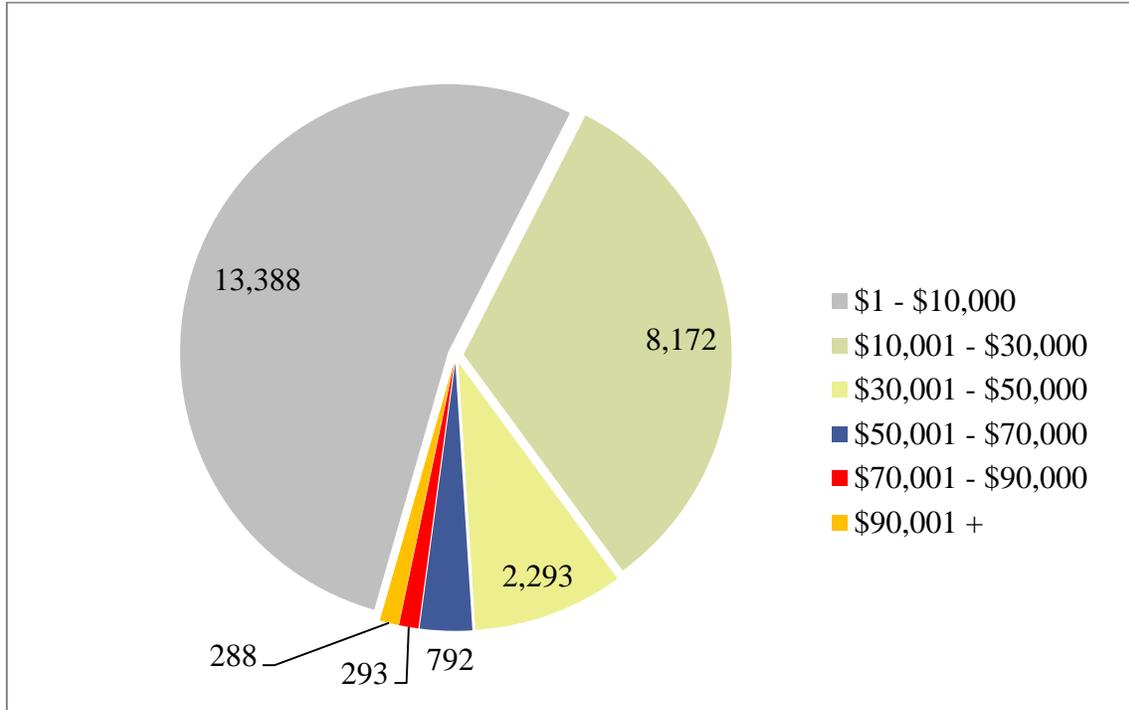
### Overincome Families Residing in Public Housing Units Nationwide

Sequential number	Location	Number of overincome families
1	New York	10,903
2	Puerto Rico	1,219
3	Texas	1,056
4	Alabama	811
5	New Jersey	755
6	Pennsylvania	750
7	Louisiana	682
8	Georgia	666
9	Illinois	637
10	Massachusetts	621
11	Kentucky	571
12	Tennessee	545
13	California	505
14	North Carolina	405
15	Ohio	384
16	Missouri	366
17	Mississippi	341
18	Arkansas	332
19	Florida	297
20	Oklahoma	288
21	Michigan	243
22	South Carolina	243
23	Minnesota	229
24	Wisconsin	213
25	Indiana	172
26	Virgin Islands	160
27	Nebraska	157
28	Maryland	156
29	Kansas	152
30	Virginia	147
31	Connecticut	144
32	West Virginia	140
33	New Mexico	98
34	Rhode Island	87
35	Iowa	85

Sequential number	Location	Number of overincome families
36	Washington	81
37	North Dakota	70
38	Washington, DC	69
39	Arizona	60
40	Maine	60
41	Colorado	54
42	Oregon	50
43	Montana	33
44	Alaska	27
45	New Hampshire	25
46	Vermont	25
47	Nevada	24
48	Delaware	20
49	Hawaii	20
50	South Dakota	17
51	Wyoming	13
52	Idaho	11
53	Utah	7
	<b>Total</b>	<b>25,226</b>

## Appendix D

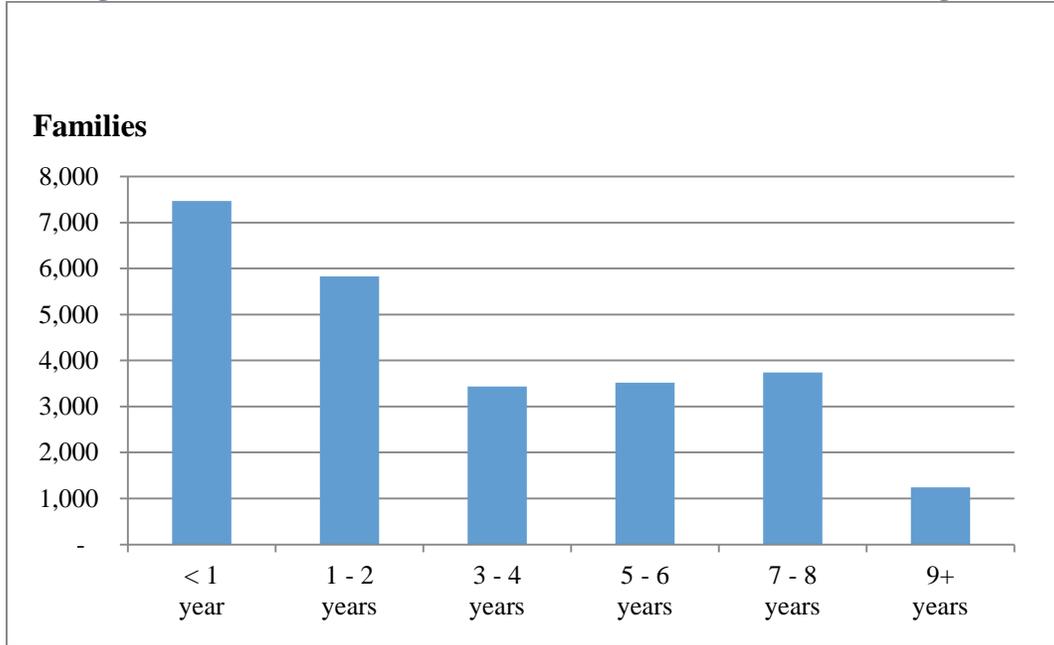
### Overincome Families Sorted by Income Greater Than HUD's 2014 Program Eligibility Income Limits



Category	Number of families	Percentage of total
Up to \$10,000 greater than the income limits	13,388	53%
Between \$10,001 and \$30,000 greater than the income limits	8,172	33%
Between \$30,001 and \$50,000 greater than the income limits	2,293	9%
Between \$50,001 and \$70,000 greater than the income limits	792	3%
Between \$70,001 and \$90,000 greater than the income limits	293	1%
\$90,001 or more greater than the income limits	288	1%
<b>Totals</b>	<b>25,226</b>	<b>100%</b>

## Appendix E

**Length of Time Overincome Families Had Lived in Public Housing Units**



Category	Number of families	Percentage of total
Lived in public housing and exceeded HUD's 2014 eligibility income limits for less than 1 year	7,465	30%
Between 1 and 2 years	5,827	23%
Between 3 and 4 years	3,435	13%
Between 5 and 6 years	3,515	14%
Between 7 and 8 years	3,742	15%
9 years or more	1,242	5%
<b>Totals</b>	<b>25,226</b>	<b>100%</b>

## Appendix F

### Overincome Families Compared to Families Waiting for Public Housing Assistance

Sequential number	Public housing authority	Number of overincome families	Number of families on waiting list
1	New York City Housing Authority, NY	10,250	302,079
2	Puerto Rico Public Housing Administration	1,219	74,240
3	Boston Housing Authority, MA	184	117,663
4	Virgin Islands Housing Authority	160	836
5	Newark Housing Authority, NJ	134	15,470
6	Jersey City Housing Authority, NJ	131	9,813
7	Housing Authority of the City of Los Angeles, CA	129	43,488
8	New Bedford Housing Authority, MA	100	1,219
9	Metropolitan Development and Housing Agency, TN	68	7,655
10	Housing Authority of the City and County of San Francisco, CA	20	7,172
11	Johnson City Housing Authority, TN	16	211
12	Lake Linden Housing Commission, MI	7	24
13	Housing Authority of Benson, MN	3	8
14	Housing Authority of Throckmorton, TX	2	8
15	Oxford Housing Authority, NE	2	4
<b>Totals</b>		<b>12,425</b>	<b>579,890</b>