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

ASSISTANT SECRETARY FOR
PUBLIC AND INDIAN HOUSING

March 28, 2011

VIA UPS AND/OR ELECTRONIC MAIL

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Mr. Joseph Dennis
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Mr. Shirley Vigé
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Subject: Declaration of Substantial Default – Consolidated Annual Contributions Contract

Dear Gentlemen:

Pursuant to the United States Housing Act of 1937, on January 10, 1996, the Housing Authority of the City of Lafayette ("HACL") entered into a Consolidated Annual Contributions Contract ("ACC") with the Department of Housing and Urban Development ("HUD"). Under the terms of the ACC, HUD provides funding to HACL for public housing programs.

Section 4 of the ACC requires HACL to "develop and operate each [ACC covered] project solely for the purpose of providing decent, safe, and sanitary housing for eligible families in a manner that promotes serviceability, economy, efficiency, and stability of the projects, and the economic and social well-being of the tenants." Section 5 of the ACC requires HACL to "develop and operate all projects covered by the ACC in compliance with all the provisions of this ACC and all applicable statutes, executive orders, and regulations issued by HUD, as they shall be amended from time to time..." Section 9 of the ACC permits HACL only to use funds received in connection with the development, operation and improvement of the projects under the ACC for the payment and costs of development and operation of the projects under the ACC, unless HUD grants approval to spend the funds for other purposes. Section 15 of the ACC also requires HACL to maintain complete and accurate books of account of its operations.

HACL must furnish HUD with financial and project reports in a time and form as required by HUD. HUD has determined that HACL has violated both the provisions of the ACC and the statutes and/or regulations that implement HUD's Low Rent Public Housing program. Accordingly, for the reasons set forth herein, HUD hereby declares that HACL is in substantial default of its Consolidated ACC.

## I. HACL has failed to resolve systemic operational problems

HACL's independent audit firm has made numerous adverse findings concerning HACL's operations during the fiscal years ending on September 30, 2008 and 2009. These findings, some of which are summarized below, include misuse and mismanagement of HACL funds and violation of program requirements. Despite having been informed of these serious issues by its independent auditor and by HUD, HACL has failed to address these systemic problems.

A. HACL has weak accounting controls
The independent auditor determined that in fiscal year 2009, HACL failed to maintain good internal controls, thereby creating a risk of fraud, waste and abuse, and threatening HUD funds. Specifically, the independent auditor tested travel expenses, credit card statements, vendor files, check disbursements, bank reconciliations, general ledger transactions, vendor payments, accounts payable and employees' salaries, and determined that deficiencies existed in each area. Most, if not all, of these deficiencies were identified previously in the audit for fiscal year 2008.

B. HACL misused HUD funds on non-ACC projects
The independent auditor found that in fiscal year 2009, HACL improperly used $91,000 in HUD funds to pay for the development of a non-ACC project.

C. HACL violated HUD requirements concerning compliance with the Davis Bacon Act
The independent auditor found that in fiscal years 2008 and 2009, HACL violated HUD regulations by not including prevailing wage rates in construction contracts that exceeded $2,000, in violation of the Davis Bacon Act.

D. HACL's cash management system is not in compliance with HUD requirements
The independent auditor determined that in fiscal year 2009, there were numerous and significant problems with HACL's cash management policies. In reviewing a sample of 33 vendor disbursements, the following deficiencies were found:

i. Four payments were not considered allowable activities in accordance with the budget.
ii. Five payments were not correctly charged to the correct account.
iii. Five payments did not have adequate supporting documentation.
iv. Fourteen payments were not made within three business days of receipt of the requested funds.

The independent auditor noted similar problems with HACL's cash management practices in fiscal year 2008.

E. HACL's procurement procedures violated HUD requirements
The independent auditor concluded that in fiscal year 2009, HACL did not comply with federal requirements in the awarding of contracts. HACL was unable to provide records to substantiate that there was full and open competition in the awarding of contracts. In addition, HACL approved a change order in a contract that was not within the scope of the original contract.

F. HACL improperly verified tenant income and family composition
The independent auditor determined that in fiscal year 2009, HACL improperly documented tenant eligibility because it failed to properly verify tenant income and family composition. HUD regulations at 24 C.F.R. § 960.257 require housing authorities to re-examine family income and composition at least once every 12 months. The independent auditor noted the following deficiencies in a sample of 40 files:

i. One file was missing third party confirmation.
ii. One file had an error in the tenant's income calculation.
iii. Two tenant's rental charge did not match up with the rent roll.

The independent auditor also found the same problem in the HACL's administration of the Housing Choice Voucher (Section 8) program. In a review of forty-three tenants participating in the Section 8 program, the independent auditor noted the following problems:

i. Ten files that did not have proper supporting documentation.
ii. Eleven files contained errors in income calculation.

The independent auditor also reported similar problems with HACL's verification of tenant income in both its public housing and Section 8 programs in the audit for fiscal year 2008.

## II. HACL lacks effective leadership

As noted in the audit reports for 2008 and 2009, HACL has been plagued by problems concerning its books and records, cash management, use of funds, and compliance with federal program requirements. During and subsequent to the time covered by the audit reports, the Executive Director of HACL did not adopt corrective measures to address these problems, and the Board did not demand action to do so, notwithstanding that the Executive Director's responsibilities pursuant to his employment contract included:

i. Assuring that the housing authority's activities are within federal, state and local laws, regulations and procedures;
ii. Overseeing the planning, directing, and implementation of all programs, policies, and procedures of HACL;

iii. Preparing and implementing the operating budget, and conducting analyses of the budget to ensure compliance and conformance;
iv. Ensuring that audit findings are cleared as prescribed by law; and,
v. Paying all HACL bills upon ratification by the Board.

On October 25, 2010, the Executive Director ("ED") and the Deputy ED concurrently submitted their resignations, which the Board accepted at a meeting held on October 28, 2010. The Board then authorized two of its members to co-sign checks so that HACL could continue to operate. Since then, HACL has had no ED or Deputy ED to run the agency. As of the date of this Notice, HACL has yet to submit to HUD its unaudited financial statements for fiscal year 2010, which were due on November 30, 2010.

In an effort to assist HACL after the resignation of the ED, HUD has permitted one of HUD's program center coordinators, Daniel Rodriguez, Jr., to devote as many as three days a week to review HACL records and provide guidance to HACL staff. On January 3, 2011, the Board approved a resolution granting Mr. Rodriguez sole signing authority on HACL's accounts. However, aside from providing guidance and paying bills, Mr. Rodriguez's authority is very limited. The arrangement is temporary and insufficient to generate short or long-term solutions to HACL's problems.

The Board has taken no steps to address the problems noted above or to hire competent management, even though the Board is vested with the power to make decisions on behalf of the public housing authority, including, but not limited to, voting to adopt or amend bylaws, to adopt rules and regulations related to carrying out the goals and mission of the authority, and to approve contracts and agreements related to the operation and purpose of the authority. See 40 La. R.S. §§ 40:401 and 40:431. In fact, aside from issuing a resolution in January of 2011 to permit Mr. Rodriguez to sign checks on behalf of HACL, the Board has done nothing to address HACL's problems.

Meanwhile, the Lafayette City-Parish President and the City Council have attempted to remove three Board members. The City-Parish President has named other individuals to replace them. As a result, two separate groups of individuals are claiming to be members of the Board of Commissioners. The newly-appointed members convened a meeting on March 7, 2011. Subsequently, a Court order reversed the City's actions and reinstated the previously-removed members, thereby calling into question the validity of the City's appointment of the new Board members and the actions taken by those members. This conflict has caused further instability and uncertainty.

As a result, HACL has not been operated in a serviceable, economic, efficient and stable manner, in violation of Section 4 of the ACC. Just as it is necessary to have an Executive Director for the efficient and stable operation of a public housing authority, it is important to have a properly-appointed, functioning, and engaged Board of Commissioners to confront the problems and challenges that HACL is currently facing.

## III. HACL is in default of its obligation to submit its required reports to HUD

The ACC requires HACL to submit financial statements to HUD in a form and manner prescribed by the Secretary. Pursuant to 24 C.F.R. § 902.33, all PHAs must electronically submit unaudited and audited financial data to HUD on an annual basis. Unaudited financial information must be submitted to HUD no later than two months after the end of the PHA's fiscal year. HACL was required, under HUD's regulations, to submit its unaudited financial data to HUD sixty days after the end of its fiscal year. HACL's fiscal year ends on September 30. To date, HACL has failed to submit its financial statements to HUD, which were due on November 30, 2010. Accordingly, HACL is in default of its obligation under the ACC.

## IV. HACL did not properly implement its Disaster Housing Assistance Program

While not grounds for substantial default under the ACC, it is worth noting that HACL also failed to properly implement the Disaster Housing Assistance Program by, *inter alia*, failing to document the files of families eligible for this assistance. Specifically, the independent auditor determined that, in fiscal years 2008 and 2009, HACL improperly administered its Disaster Housing Assistance Program. Pursuant to the terms of the program, HACL was required to submit information to HUD through the Disaster Information System about each family receiving benefits. The information submitted had to be consistent with the information contained in each family's file. Additionally, HACL was required to submit quarterly information to HUD concerning case management data. HACL was also required to perform annual inspections and rent reasonableness procedures to ensure that the units met HUD's standards and that the rent was reasonable in comparison to the area and amenities of unassisted units. For fiscal year 2009, the independent auditor tested forty-one files and found problems in all of the files:

i. In ten files, there were no records to ascertain whether the family qualified for assistance under the program.
ii. In thirteen files, HACL did not pay the correct rents, with most payments resulting in overpayments.
iii. In all forty-one files there was inadequate paperwork to determine whether the information submitted to HUD through the Disaster Information System was accurate.
iv. In thirty-nine files, HACL failed to properly conduct property inspections. In some files, the inspections were not completed at all or they were not performed timely. In cases where the property failed inspection, HACL failed to perform re-inspections.
v. In all forty-one files reviewed, HACL did not properly perform rent reasonableness studies. The auditor determined that for some of the files, the rent studies had been fabricated.
vi. In twenty-one files, HACL did not adequately submit case management information to HUD.

The independent auditor also identified similar problems with the administration of the Disaster Housing Assistance Program in fiscal year 2008.

HACL also improperly compensated the contract workers implementing the Disaster Housing Assistance Program. The independent auditor noted that HACL hired the workers under the program as contract workers. The contracts stipulated that the contractors were to be paid on an hourly basis. However, HACL failed to monitor the time spent by these workers on the program and, instead, compensated the contractors by paying them a salary based on an eighty-hour pay period. At least one contractor also worked full-time for HACL and received dual compensation.

## V. Conclusion

As described above, HACL has failed to resolve its systemic operational problems, lacks effective leadership, and is in default of its obligation to submit financial statements to HUD. The systemic operational problems have existed over a number of years without being rectified. HUD is unable to rely on the existing Board of Commissioners to manage effectively and efficiently the affairs of the HACL. HUD has determined that HACL has substantially and materially violated its Consolidated ACC. Further, HACL has demonstrated that it is not capable of correcting these violations and ensuring that they do not recur.

Because of the material and substantial nature of these violations, HUD has determined that there are no remedies and procedures that are appropriate other than to declare a substantial default. Moreover, HUD has determined that it would be futile to provide HACL with additional time to cure the substantial default because HACL has had ample notice of the repeated violations of HUD requirements,[1] as set forth specifically in its own audited financial reports. Yet HACL has failed repeatedly to take corrective action.

As provided in Section 17 of the Consolidated ACC, upon the occurrence of substantial default, HACL shall deliver possession and control of the projects to HUD. See also 42 U.S.C. § 1437d(g). Accordingly, HUD is taking possession and control of all projects covered by the Consolidated ACC. Please be advised that this letter constitutes final agency action and there is no further right to administrative review by HUD.

Sincerely,

Sandra B. Henriquez
Assistant Secretary for Public and Indian Housing

cc: Gertrude Batiste
Leon Simmons
Buddy Webb
Donald Fuselier
Gregory Day
Mary Guidry
Penny Malbrew
Polly Williams
Amos Batiste

[1] On October 15, 2010, HUD sent a letter to HACL reiterating the need for HACL to take corrective action to address the violations noted in the audit reports.