



STATE OF NEW YORK  
OFFICE OF THE STATE INSPECTOR GENERAL  
**Final Report**  
**March 26, 2013**

**EXECUTIVE SUMMARY**

In November 2011, the Inspector General received allegations from a bank that Agnes Bernier, an administrator at New York State Homes and Community Renewal (HCR), had deposited in her personal bank account thousands of dollars in doctored checks originally intended for payment to the New York State Housing Trust Fund Corporation (HTFC). The bank's branch manager had observed that, in a number of instances, Bernier had written her name over "HTFC," the original payee.

The Inspector General's investigation of these allegations determined that Bernier had abused her position as a custodian of refund checks from Section 8 housing subsidy recipients for overpayment of those subsidies. Specifically, the Inspector General discovered that Bernier, over a period of seven years, diverted at least \$944,000 to her personal bank account by altering recipients' checks to HTFC to make herself the payee. The Inspector General referred its findings to the United States Attorney for the Southern District of New York for criminal prosecution. Following her guilty plea to theft of government funds and bank fraud, Bernier was sentenced on October 1, 2012, to 33 months in prison and three years of supervised release. She was also ordered to repay \$944,000 to HTFC. Bernier was suspended by HCR at the time of her arrest, subsequently resigned, and is currently serving a prison sentence.

In the course of this investigation, the Inspector General found significant deficiencies in HCR's administration of the overpayment refund process. Notably, the process lacked any meaningful procedures or oversight to verify the integrity of the overpayment refund process to ensure that all checks were appropriately accounted for, deficiencies which enabled Bernier to perpetrate her illegal scheme and potentially exposed the program to further abuse.

After being advised by the Inspector General of Bernier's conduct, HCR took steps to strengthen oversight of the check refund process. These actions include newly implemented procedures with enhanced security features, information technology upgrades, hiring of additional internal audit staff, and mandatory training for all agency employees in fraud awareness and prevention. In addition, HCR commenced a

procurement for an outside accounting firm or firms to conduct an historical audit of the Section 8 refund process utilized by all local administrators to determine whether additional monies were not properly refunded or processed. HCR will advise the Inspector General of the results of the audit. Finally, as recommended, HCR took disciplinary action against appropriate staff.

## **INTRODUCTION AND BACKGROUND**

### **The Section 8 Program and Overpayment Refund Process**

HCR is an umbrella agency that “includes all of the state’s major housing and community renewal agencies.”<sup>1</sup> These include the Division of Housing and Community Renewal (DHCR), Housing Finance Agency (HFA), and Housing Trust Fund Corporation (HTFC). All of the component agencies of HCR are organized under a single leadership and management structure.<sup>2</sup> HCR’s responsibilities include oversight of the administration of New York State’s Section 8 housing programs in approximately 50 local program areas. These programs provide low-income families with rent subsidies through a federal contract with HTFC. New York State receives nearly \$1 billion annually from the United States Department of Housing and Urban Development to administer and fund the state’s Section 8 programs.

Residents who receive Section 8 subsidies typically pay a percentage of their income in rent to a private landlord, and the subsidies cover the balance. At times, however, the state pays Section 8 recipients larger subsidies than they are entitled to under the law, due to changes in recipients’ income and family composition, instances where recipients provide inaccurate or false information about income, family composition, or other factors that affect the amount of subsidy. When subsidy overpayments are reported or discovered, recipients are required to refund the overpayment amount through a payment plan. Refund payments must be made in the form of certified check or money order, payable to HTFC. Local Section 8 administrators – generally not-for-profit or local government entities which, by contract with HCR, administer the delivery of Section 8 funds within the local areas – are responsible for establishing participant repayment agreements and ensuring compliance. Until Bernier’s arrest, recipients submitted refund payments to the local Section 8 administrators, who then forwarded those payments to an HCR office in New York City for processing.

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<sup>1</sup> See <http://www.nyshcr.org/AboutUs/AgencyDescription.htm>

<sup>2</sup> *Id.*

## **THE INSPECTOR GENERAL FINDS ILLEGAL CONDUCT BY BERNIER AND DEFICIENCIES IN AGENCY OVERSIGHT AND ACCOUNTABILITY**

### **The Section 8 Refund Administrative Process Enabled and Failed to Prevent Bernier's Illegal Conduct**

Prior to being informed of Bernier's scheme, HCR and local Section 8 administrators processed checks and money orders in a manner that permitted Bernier to steal funds with virtual impunity. In fact, as noted, it was not HCR, but rather Bernier's bank, which detected the theft.

No uniform mechanism existed for Section 8 local administrators to record the receipt of refund checks, nor were local administrators required to track participants' fulfillment of payment plans. Further, refund checks for Section 8 overpayments were processed through an HCR office in New York City, and not sent directly to HTFC in Albany. Rather than forward the checks to HTFC the day they were received, it was HCR's practice to hold checks and send a larger batch on a weekly basis to HTFC, but no mechanism existed at HCR to ensure that Bernier – virtually the only staff member responsible for receiving and forwarding these checks – did so. In fact, Bernier's activities were substantially unsupervised. When the Director who had supervised Bernier retired some years ago, she was not replaced, and Alan Smith, the Assistant Commissioner above that Director, did not assume responsibility for supervising Bernier. Vincent LaCapra, who asserted that he supervised Bernier only for purposes of signing her time and attendance records, did not monitor her activities regarding refund check administration. According to LaCapra, no employee performance evaluations had been conducted for years.

Moreover, tracking the transmittal of revenues was not performed properly. Because local administrators had no contact with HTFC, HTFC was not aware of the number or value of checks sent to HCR's New York City office, but instead relied on HCR for a proper accounting. When HTFC received the batches of checks, HTFC only recorded the check numbers and amounts; it did not record any information about the payer. Indeed, HTFC did not even separate the recording of repayment deposits from other unrelated deposits (such as deposits resulting from accounting for recipients moving from one county to another). Thus, HTFC's finance unit was unable to respond to the Inspector General's demand for an accounting of deposits of repayments that Bernier actually did send.

Finally, while certain aspects of the Section 8 program, including efficiency and effectiveness, were analyzed through internal audits, no audit or other assessment was ever performed regarding the potential for theft or loss of revenues passing through Bernier, or at other points of the overpayment plan process. Only after Bernier's arrest did the agency perform such an assessment.

Because of the glaring lack of accountability procedures and oversight by HCR to verify the integrity of the process and ensure that all checks were appropriately forwarded to HTFC, Bernier was able to perpetrate her illegal scheme.

### **Bernier Abused Her Position to Illegally Divert Close to \$1 Million in State Funds for Personal Gain**

In April 1984, Agnes Bernier was hired by DHCR, now one of HCR's component agencies. In April 2004, she was given responsibility for, among other duties, processing Section 8 refund payments submitted by local administrators throughout the state. Over a period of at least seven years, instead of processing refund payment money orders made out to HFA or its successor agency, HTFC, Bernier wrote her own name over the payee name and deposited the altered money orders into her personal bank accounts.

Bernier engaged in this fraud on hundreds of occasions, stealing a total of at least \$944,000 from the state. In December 2011 alone, Bernier deposited 17 falsified money orders, worth more than \$7,500 in total, into her personal bank account.

As part of her scheme, Bernier photocopied the checks she received, even if she deposited them in her own bank account, and maintained a copy with the appropriate paperwork, apparently so that any review of the copies would make it appear as if she had recorded their receipt and forwarded them to Albany. Based upon a review of Bernier's paperwork, it appears that in limited instances where routine inquiries were made by local administrators as to whether a particular check was deposited, Bernier would show or send the photocopy to the local administrator, and the inquiry would end there.<sup>3</sup>

Additionally, during the investigation, the Inspector General's investigators conducted a search of Bernier's desk area and found checks totaling over \$16,000 from 2010 – more than a year prior – in the bottom of a file drawer. The checks had neither been sent to HTFC in Albany for deposit in HTFC's bank account, nor deposited in Bernier's bank account, yet no one at HCR had noted their disappearance.

Bernier's scheme was uncovered when a branch manager at her bank noticed a number of money orders Bernier had presented for deposit on which Bernier had written her name over "HTFC," the original payee. The bank contacted the Inspector General.

The Inspector General referred its findings to the United States Attorney for the Southern District of New York, and Bernier was arrested on January 19, 2012. She was suspended from state service at that time and resigned on March 30, 2012, with criminal charges pending. On May 16, 2012, she pleaded guilty to one count of theft of government funds and one count of bank fraud. On October 1, 2012, Bernier was sentenced to 33 months in prison and three years of supervised release. She was also

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<sup>3</sup> Memoranda reflecting inquiries about missing checks were found in Bernier's desk, stapled to a photocopy of the relevant check and transmittal form. Moreover, interviews of Bernier's supervisors reflected that they received no follow-up complaints regarding the checks.

ordered to pay \$944,000 in restitution to HTFC, to forfeit \$944,000 to the United States, and to pay a \$200 special assessment fee. Bernier is currently serving her prison sentence.

## **FINDINGS AND RECOMMENDATIONS**

The Inspector General found that Agnes Bernier, while employed as an administrator at HCR, stole at least \$944,000 of Section 8 overpayment funds by altering checks made payable to HTFC and depositing the checks in her personal bank accounts. The Inspector General found that Bernier was able to perpetrate this fraud due to a lack of effective controls in the refund check process. After the Inspector General referred its findings to the United States Attorney for the Southern District of New York, Bernier was arrested and pleaded guilty to one count of theft of government funds and one count of bank fraud. Bernier was sentenced to 33 months in prison and three years of supervised release, and was ordered to repay \$944,000 to HTFC. Bernier was suspended at the time of her arrest and resigned from state service effective March 30, 2012. She is currently imprisoned.

HCR acknowledged fundamental weaknesses in its refund check process which it indicated it has taken steps to address. The Inspector General requested that HCR advise this office of the specific controls implemented or actions taken or planned to correct the systemic problems identified in this investigation. In addition, the Inspector General recommended that HCR forthwith commence an historical audit of refunds through local administrators to determine if other monies were not properly refunded or processed. Finally, the Inspector General recommended that HCR review the conduct of the relevant employees and take disciplinary action as appropriate.

### **Response of Homes and Community Renewal to the Inspector General's Findings and Recommendations**

HCR Commissioner and Chief Executive Officer Darryl C. Towns advised the Inspector General of specific actions that have been taken to protect Section 8 overpayment refunds from the vulnerabilities identified in this investigation.

These actions include newly implemented procedures with enhanced security features, information technology upgrades, hiring of additional internal audit staff, and mandatory training for all agency employees in fraud awareness and prevention. In addition, HCR advised that it has issued a Request for Proposals as part of a procurement to hire an outside accounting firm or firms to conduct an independent historical audit of all local administrators, and will advise the Inspector General of the results of this audit. HCR also has taken disciplinary action taken against the appropriate employees.