Houston Housing Authority failed to collect at least $2.7 million from developers for affordable housing

By R.A. Schuetz, Yilun Cheng, Houston Chronicle Aug 12, 2024

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The Houston Housing Authority's controversial tax break program has proven lucrative, but poorly overseen, according to a Houston Chronicle analysis of an audit of the program.

So far, the authority has raised more than $50 million in fees from developers — but failed to collect millions more that were supposed to fund affordable housing projects.

Before Mayor John Whitmire's administration requested an audit of the tax breaks, at least $2.7 million in payments that should have been made by developers had gone uncollected over the past seven years, housing authority records show, causing some experts to question the program's accountability.

Housing advocates and state legislators have voiced concerns about how much these tax breaks – which can save a large apartment complex roughly $1 million a year by completely exempting it from property taxes – ultimately benefit tenants by reducing their rents. Increasing the state's affordable housing stock has become a pressing issue as housing costs rise faster than wages. Houston faces a particularly dire shortage, according to the National Low Income Housing Coalition.

In its self-audit, the housing authority did not disclose how much rent was discounted at its properties. The agency explained it was looking at the public benefit of such deals in a different way: not only the rent discount for residents, but also the cash benefits for the housing authority itself, which earns hefty payments from developers when the deals close, as well as

additional fees on an ongoing basis.

As of April 30, it reported it had collected $53 million in cash benefits.

That cash, the argument goes, can then be used by the housing authority to create affordability in other ways. But the audit also shows that developers have not always been paying what they owe. What's more, it's unclear how many affordable units the money from the tax break deals is adding to Houston's housing stock — and at what levels of affordability.

Jay Mason, director of real estate investment and development at the housing authority, said in an email that the discrepancies in payments were detected "during our routine financial review process, and the HHA is actively working to recoup outstanding fees."

When asked how much of the $53 million had been spent, he did not answer. He said that the authority used the money it received from the tax break deals to address "funding gaps in our extremely low-income and very low-income housing developments." Funds were also being allocated to projects such as a grand vision to redevelop Cuney Homes and the surrounding Third Ward and buying land for future affordable housing developments, though he did not say how much money was going toward Cuney Homes. The Houston Chronicle asked multiple times to speak with a housing authority official on the phone or in person about the audit, but those requests were not granted.

In the meantime, Houstonians with the lowest incomes struggle to find housing, and those facing revenue shortfalls because of the tax exemptions are facing tough decisions.

"This mismanagement of funds... is an affront to those who desperately need these resources," said Ericka Bowman, founder of Project 8, a nonprofit advocating for tenants of subsidized housing. She called for the housing authority to make regular, transparent financial reports on the proceeds collected and spent by the program.

Michael Bacon, an attorney who represents several water and sewage service providers whose budgets have been impacted by the shortfall in property tax revenue, didn’t take a charitable view of the tax exemption resulting in fees to the housing authority.

“I don’t want to use any inflammatory terms, but those deposits are going into the coffers of subsidiaries of the housing authority,” Bacon said. “And we are unaware of what is the purpose of those deposits.”

Whitmire’s office highlighted to the Chronicle that these projects predated his time in office. The mayor revamped the housing authority’s board shortly after he was elected, saying the agency was “moving in the opposite direction” of its mission to increase Houston’s affordability with transparency and accountability.

"I asked my new appointees before moving forward to review all HHA projects for conflicts of interest and to ensure they are in the best interest of my administration's goal to make Houston the best city in the nation for affordable housing," Whitmire said. "The previous board I inherited did not meet any of those standards."

Steven David, Whitmire's deputy chief of staff, added the mayor has felt encouraged by the opportunities for improvements that the new board has identified in just a couple of months.

The administration, however, is still working with the authority to clarify some aspects of these deals, David said. When asked if the mayor's office knows how the agency spent the $53 million in fees, he said, "that understanding is in the process of being developed."

Calls for transparency

The city has been scrutinizing the housing authority's tax break deals, many of which use public facility corporations, or PFCs, since the beginning of 2023. That winter, residents of the wealthy Tanglewood area had learned that a PFC deal would create some affordable units in their neighborhood, and they quickly arranged a meeting with public officials to voice their concerns.

Within weeks, then-Mayor Sylvester Turner instructed the housing authority to pause any upcoming votes on such deals until he could examine them more closely. That summer, more politicians banded around the issue and passed state legislative reforms. The reforms, which only applied to deals that had not yet closed, included requiring new PFC deals to give notice to all impacted taxing authorities before their public hearings and conducting annual audits.

Meanwhile, city tensions with the housing authority persisted. In a highly unusual move, Whitmire replaced most of the authority's board members in February and requested an audit of its existing tax break deals.

In March, following an internal review, the housing authority sent letters to developers it determined were behind on fees. It quickly received $2.7 million in default payments. When asked, Mason did not say how much, in total, the demand letters asked for.

Nonetheless, the housing authority reported in May that a number of developers were still out of compliance. A spreadsheet shared with the Chronicle showed that 21 properties had paid a collective $2 million less than what the housing authority believed should have been funded at closing.

When confronted with that accounting, several developers had questions.

The housing authority identified four developers – Aspen Oak, Argosy, Beleveron & Redbud and Olive Tree Holdings – as “non-responsive to our demands for financial compliance.”

But the spreadsheet shows Belveron & Redbud had paid both the amounts it owed at the time of its projects’ closing and subsequent fees. When reached by the Chronicle, the company said it hadn’t received any demands for financial compliance.

“We reached out to HHA and they confirmed these projects are in physical and financial compliance,” Kelly Magee, the Belveron spokesperson, said in an email. “They also noted they are getting similar calls from other owners/developers.”

The housing authority said the developer had provided all requested information after the report was finalized.

Argosy, an investor in Kingsland West Apartments along with InvestRes, told the Chronicle it has not received any notification from the housing authority regarding potential noncompliance. The authority's spreadsheet shows the project has an outstanding balance of over $99,000.

InvestRes did not respond to requests for comment from the Chronicle. But Joshua Cohen, Argosy's vice president, said InvestRes has reached out to the housing authority on the project's behalf.

"We believe that we are in financial compliance with the agreement but are working to confirm the same with HHA," Cohen said. "If a discrepancy is ultimately reconciled, we are fully prepared to remit any amounts due."

Aspen Oak and Olive Tree Holdings did not respond to the Chronicle's repeated requests for comment.

Similar tax incentive programs in other parts of the country have also faced scrutiny over lack of sound compliance systems, according to Sarah Saadian, senior vice president of public policy and field organizing at the National Low Income Housing Coalition.

Investigators at the Government Accountability Office, for instance, said in 2017 that the multi-billion-dollar Low-Income Housing Tax Credit Program lacked basic accountability to an extent that no federal regulators understood how it was working. The office determined again in a 2023 report that there had been minimal federal oversight of the program.

"For the most part, landlords are operating in a highly unregulated marketplace," Saadian said. "Oftentimes, developers are going to try to find every single loophole that they can find to get out of the protections that are put in place."

Tax break winners and losers

While the Houston Housing Authority tries to track down the millions it says it is owed, water and sewage service providers are pinching pennies in their attempts to close budget holes created by now tax-exempt properties.

Municipal utility districts provide water and sewage services to small areas, sometimes less than a square mile. That makes them vulnerable to large swings in tax revenues when an apartment complex, where hundreds of tenants receive water and sewage services, becomes tax exempt.

For example, one MUD near the Addicks Reservoir, lost 20% of its tax base, or $410,000 a year, to public facility corporations, according to a board member; in Spring, the Northwest Harris County Municipal Utility District 36 lost 8% of its tax base when the 168-unit Cardiff at Louetta Lakes was exempted from taxes, a board member said.

Also in Spring, the Northampton Municipal Utility District, which makes its revenues through taxes and fees, has faced a $175,000-a-year budget hole since the 316-unit Ariza Gosling apartments – now rebranded as Wyldewood Gosling – made a tax-break deal with the housing authority.

Since the property no longer paid taxes, but still received the same services, the MUD decided to change its fee structure. Properties that didn't support water and waste services through taxes would be charged higher fees, so that their total contributions still covered the services they received, explained John Wallace, a lawyer for the MUD.

The apartment complex, which is owned by the Dallas-based investor Aspen Oak Capital Partners, is fighting back. Lawyers for the apartments filed an appeal against the rates with the state Public Utility Commission of Texas, and the legal battle has stretched for over a year.

In legal documents, Brian Driesse, managing director at Aspen Oak Capital Partners, said that the apartment complex had seen its annual water bill go up by $195,000 in 2023 compared to 2022. He said the apartments had “endured severe economic hardship due to the increased water utility rate.”

What’s more, he said, “based on my personal knowledge, a portion of the increased water and sewer charges were passed on to the low-income tenants Ariza Gosling serves.”

Serving low-income tenants was the basis of the public facility corporation deal the investors made with the housing authority, which saves the apartment complex approximately $800,000 a year in property taxes.

Aspen Oak is one of the developers the housing authority has alleged is not responsive to demands for financial compliance. According to the audit, the property is $108,000 behind in fees owed to the housing authority.

“When these funds are mishandled, it’s the people who suffer the most,” Bowman said. “This is a classic example of half-measures and symbolic gestures that fail to… truly serve the people.”