



**Comptroller General  
of the United States**

**Washington, D.C. 20548**

B-229732

December 22, 1988

The Honorable Samuel R. Pierce, Jr.  
The Secretary of Housing and  
Urban Development

Dear Mr. Secretary:

On August 3, 1988, in testimony before the Employment and Housing Subcommittee of the House Government Operations Committee, the General Accounting Office reported the results of its review of the commercial trade promotion activities undertaken by the Department of Housing and Urban Development (HUD) in its role as the United States executive agency for implementation of the bilateral Agreement on Cooperation in the Field of Housing and Other Construction, June 28, 1974, United States - Union of Soviet Socialist Republics, TIAS No. 7898 (Agreement). The Assistant Secretary for Policy Development and Research (PD&R) responded to our May 13, 1988 request for HUD'S position on a number of issues by letter dated June 23, 1988. We carefully considered the Assistant Secretary's responses before reporting to the Subcommittee on August 3.

Among the findings that we reported to the Subcommittee was our conclusion that HUD does not have authority to spend its appropriated funds for commercial trade promotion activities. We are now writing to advise you of the basis for this finding and to recommend, for the reasons which follow, that HUD report a violation of the Antideficiency Act to the President and to the Congress in accordance with 31 U.S.C. § 1351 (1982).

**BACKGROUND**

HUD's commercial trade promotion efforts grew out of its role as the responsible United States agency for implementation of the Agreement. The original purpose of the Agreement was to carry out a mutually beneficial program of technical cooperative projects with the Soviet Union in

housing, construction, and urban development. In 1985, HUD and its Soviet counterpart agreed to add a commercial dimension to the Agreement. HUD's agreement to engage in this new undertaking is documented in a protocol signed on September 17, 1985.<sup>1/</sup> The HUD Assistant Secretary for PD&R was then appointed as coordinator of United States commercial activities under the Agreement and was directed to organize "a major United States presence" at Stroyindustriya '87--a 10-day international construction exhibition sponsored by the Soviet government in Moscow in May 1987.

We estimate that HUD spent about \$3 million for activities related to the Agreement during fiscal years 1984 through 1987. Over half of this amount was spent, from fiscal year 1987 appropriations, for commercial activities in support of the trade exhibit. These commercial activities are to be distinguished from HUD's traditional technical cooperative projects.

Traditional technical projects frequently involved reciprocal exchange visits, information exchange and the development of technical papers and seminars in a manner mutually beneficial to both the United States and the Soviet Union. Topics have included utility systems, construction, seismic effects and urban development, and rehabilitation of buildings. These projects necessarily involved private firms with products or technological expertise in the topic fields. Although the participating companies undoubtedly hoped to see business opportunities developing from their support and participation in the program, HUD's primary purpose in involving them was to facilitate the exchange of information related to housing and urban planning and development which would be potentially useful in developing new methods of meeting problems encountered with the topic areas in the United States.

HUD's new "commercial activities," on the other hand, were primarily intended to enhance the business opportunities of the American companies which desired to do business in the Soviet Union. According to information received from HUD,

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<sup>1/</sup> The September 17, 1985 Protocol provides, in relevant part:

"The Committee noted the possibility of building mutually beneficial cooperation on a commercial basis with respect to individual project areas and directed Working Group leaders to undertake appropriate steps for establishing the required contacts prior to and during joint meetings."

after identifying key Soviet construction and housing needs and priorities, HUD officials met with Soviet technical experts in Moscow and reviewed catalogs from the American firms which had expressed interest in the trade exhibition. This review was to assure HUD and the firms that there was Soviet interest in the U.S. products and that they fit Soviet priorities. In November 1986, HUD sponsored a delegation of public and private sector executives to Moscow to conduct another catalog show and a series of seminars designed to acquaint Soviet officials with examples of American products and technology that would be exhibited at Stroyindustriya '87. The following January, HUD officials led a delegation of U.S. business men in an advance marketing mission to Moscow to begin negotiations on machinery, equipment and products that would be purchased off the floor at Stroyindustriya '87.

In serving as the principal domestic organizer of U.S. participation in Stroyindustriya '87, HUD identified, contacted, and recruited the participating U.S. firms. Some of the companies HUD chose to participate in the trade show were marketing products which do not directly relate to housing construction or to community development. Examples of such products include airport runway sweepers, protective playground equipment, potato storage construction technology, add-on green houses, carpeting, drapery hardware, and upholstered furniture. In Moscow, HUD and its contractors handled the details of renting the exhibition building and other fair logistics. During the exhibition, HUD staff worked to arrange individual and group meetings for American exhibitors with Soviet officials, provided directories of the participating companies, and sponsored a reception for Soviet officials.

HUD's response to our inquiry indicates that it paid for these and other Agreement-related activities with funds from its appropriations for Salaries and Expenses and for Research and Technology. HUD's response does not cite any other appropriation which it believes to be available to pay for activities related to trade promotion.

#### DISCUSSION

Section 604 of the Housing Act of 1957, as amended, 12 U.S.C. § 1701d-4 (1982), authorizes the Secretary of HUD to participate, and pay the expenses of participation, in international conferences and other similar activities for the purpose of exchange and assembly of information relating to housing, urban planning, and urban development as deemed beneficial in carrying out the Secretary's responsibilities

under legislation which he is charged to administer. Based on our review of the legislative history of Section 604, we conclude that the Congress intended the exchanges to be reciprocal as well as useful in developing new methods of meeting problems encountered in these fields in the United States.<sup>2/</sup> In the absence of expanded authority in its appropriation acts, HUD's authority under 12 U.S.C. § 1701d-4, however, does not extend to participation in international conferences or similar activities if their purpose is not the exchange and assembly of information relating to housing, urban planning, and urban development.

HUD's annual appropriation for Salaries and Expenses under the heading "Management and Administration," provides funding only for "necessary administrative and nonadministrative expenses of the Department not otherwise provided for." It finances all salaries and related costs associated with administering HUD's programs.<sup>3/</sup> Accordingly, so long as (1) the Secretary of HUD deems his international activity under the Agreement beneficial in discharging his statutory responsibilities and, (2) those activities are for the purpose of exchanging and assembling information which relates to housing, urban planning, and urban development, HUD's information exchange activities in support of the agreement may be funded from its appropriation for Salaries and Expenses.

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2. "Section 604 of the bill directs the [HUD Secretary] to exchange with other nations data relating to housing and urban planning and development. Because of the significant recent progress made in this country in dealing with problems in these fields, the [Secretary] is very frequently called upon to provide information to other countries which the committee believes is helpful to those countries in solving similar problems. Furthermore, the committee believes that the housing and urban planning experience of many other countries (particularly in specialized fields) has been and will continue to be helpful to the housing industry, the Congress, and the [Secretary] in developing new methods of meeting related problems in this country." S. Rep. No. 368, 85th Cong., 1st Sess. 31-32, reprinted in 1957 U.S. Code Cong. & Ad. News 1319, 1349.

3/ See, e.g., Executive Office of the President, Budget of the United States Government, 1987 - Appendix, H.R. DOC. NO. 144, 99th Cong., 2d Sess. at 1-M36 (1986).



With respect to HUD's activities under the commercial Component of the Agreement<sup>4/</sup>, we examined materials issued by HUD to publicize its new initiative and concluded that the purpose of the commercial activities undertaken pursuant to the 1985 Protocol in support of Stroyindustriya '87 was the promotion of international trade rather than an exchange of data related to housing and urban development.<sup>5/</sup> HUD's new commercial emphasis was illustrated by the catalog exhibits, advance marketing missions, the exhibition itself,

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<sup>4/</sup> By letter of June 23, 1988, HUD stated its position that:

"The Agreement authorizes the parties to agree to areas of cooperation and to forms of cooperation other than those specifically mentioned in the Agreement. Accordingly, the two parties can, by Protocol, expand the areas and means of cooperation so long as the cooperation continues to be related to housing and other construction. There is no question that the 'cooperation on a commercial basis' contemplated in the 1985 Protocol related to housing and other construction and, even if not totally within the scope of the original Agreement, is a means of cooperation that could be mutually agreed upon by the parties under Article III of the Agreement."

<sup>5/</sup> For example, HUD News Release No. 87-51, May 14, 1987, announced that:

"Samuel R. Pierce, Jr., Secretary of Housing and Urban Development, will lead a U.S. delegation of over 200 public and private sector executives to Moscow to participate in the International Construction exhibition from May 27 to June 5. A total of 105 U.S. companies will be represented in this major effort to generate Soviet commercial interest in American construction materials and technology. . . . The strong American business participation in STROYINDUSTRIA '87 resulted from a variety of advance marketing activities, led by Secretary Pierce and Dr. June Q. Koch, HUD Assistant Secretary for Policy Development and Research, designed to match Soviet priorities in the civil construction field with capabilities of American firms. . . . As a result of secretary Pierce's initiative, there is now a significant 'commercial dimension' to the technical exchange program under the 1974 U.S.-U.S.S.R. Agreement on Housing and other Construction."

and follow-up activities to monitor new business with the Soviets. HUD described these initiatives as "a major departure from past practice." Expenses relating to the Agreement were classified as either "technical" or "commercial." On the basis of these facts, it is clear that HUD's primary purpose for participating in Stroyindustriya '87 and its related activities was to facilitate commercial trade rather than to exchange technical information. Accordingly, 12 U.S.C. § 1701d-4 does not provide statutory authority for the activities HUD undertook pursuant to the commercial component of the agreement. Absent such statutory authority, HUD's appropriation for Salaries and Expenses is not available to pay for them.

The HUD Secretary's statutory responsibility to undertake "programs of research, studies, testing, and demonstrations" under Section 501 of the Housing and Urban Development Act of 1970, as amended, 12 U.S.C. § 1701z-1 (Supp. IV 1986), is limited to those which relate to the mission and programs of HUD.<sup>6/</sup> The primary mission of HUD is stated in the Declaration of Policy of the Housing and Urban Development Act of 1968, § 2, 12 U.S.C. § 1701t (1982), in which the Congress affirmed the national goal, as set forth in section

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<sup>6/</sup> HUD, in response to our May 13 inquiry, noted that Section 502 of the 1970 Act:

"requires the Secretary of HUD to take measures necessary to encourage large-scale experimentation in the use of new technologies, methods and materials in producing housing and related facilities. Section 502 also authorizes the Secretary to provide advice and technical assistance in connection with activities authorized under Section 501 and to pay the cost of writing and printing reports concerning those activities. Section 502 further authorizes the Secretary to carry out his responsibilities under Section 501 either directly or by contract or grant. Section 502 also contemplates and authorizes mutual cooperation between this Department [HUD] and Federal, State and private agencies in furthering this Department's research missions."

2 of the Housing Act of 1949,<sup>7/</sup> of "a decent home and suitable living environment for every American family."<sup>8/</sup>

The Agreement provides for cooperation with the Soviet Union in the areas of innovative techniques for the improvement of buildings and building materials; performance criteria for housing and other construction in seismic areas; improvement of construction methods in areas of extreme climatic conditions; services to housing and other buildings; and planning, design, and construction of new towns. Article II, TIAS 7898. Under 12 U.S.C. § 1701z-1, HUD is authorized to participate in such cooperative activities so long as they relate to HUD's mission of providing for the nation's housing needs.

HUD's appropriations under the heading "Policy Development and Research: Research and Technology" are available:

"[f]or contracts, grants, and necessary expenses of programs of research and studies relating to housing and urban problems, not otherwise provided for, as authorized by title V of the Housing and Urban Development Act of 1970, as amended (12 U.S.C. § 1701z-1 et seq.) . . . ."<sup>9/</sup>

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<sup>7/</sup> 42 U.S.C. § 1441 (1982).

<sup>8/</sup> See 7 Warren, Gorham & Lamont, Housing and Development Reporter at 13 (1987). The responsibilities of the HUD Secretary are further defined at 42 U.S.C. § 3532 (1982), and include the responsibility to:

". . . encourage private enterprise to serve as large a part of the Nation's total housing and urban development needs as it can and develop the fullest cooperation with private enterprise in achieving the objectives of the Department; and conduct continuing comprehensive studies, and make available findings, with respect to the problems of housing and urban development."

<sup>9/</sup> Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1986, Pub. L. No. 99-160, 99 Stat. 909 (1985); Joint Resolution making continuing appropriations for the fiscal year 1987, and for other purposes, Pub. L. No. 100-202, approved October 30, 1986, 100 Stat. 3341-242.

Therefore, to the extent that a cooperative activity (1) relates to HUD's mission as required by 12 U.S.C. § 1701z-1 and, (2) qualifies as a program of research and studies related to housing and urban problems, HUD's Research and Technology appropriation is available to pay for it.

The Assistant Secretary for PD&R stated in his June 23 response to our inquiry that HUD's participation in Stroyindustriya '87 and other trade promotion activities grew from HUD's agreement to support a "commercial" initiative as documented in the September 1985 protocol. Neither the statutes making appropriations to HUD for Research and Technology nor 12 U.S.C. § 1701z-1 contains authority for HUD to undertake commercial endeavors. Commercial activities are not analogous to the "technical" research, study, testing, and demonstration programs authorized by 12 U.S.C. § 1701z-1 nor, do they qualify as a program of research and study for which Research & Technology appropriations are available.

Where, as here, the purpose of providing information on American construction and building technology to the Soviets was the acquisition of information of Soviet needs and the potential for sale of American products and services in the Soviet Union,<sup>10/</sup> we cannot conclude that the 12 U.S.C. § 1701z-1 requirement for HUD's programs of research, studies, testing and demonstrations to relate to its mission has been satisfied. Had the intended benefit to U.S. commerce been a by-product of an authorized HUD research, study, or demonstration program to improve housing in the United States, HUD's appropriations would have been available to fund such activities. Here, however, HUD's primary purpose was to enhance business opportunities for American companies, many of which marketed products to the housing industry. Inasmuch as the promotion of trade does not qualify as a program of Research or Study related to housing and urban problems, HUD's Appropriations for Research and Technology are not available for that purpose.

#### CONCLUSION

When an agency's appropriation is not available for a designated purpose, and the agency has no other funds available for that purpose, any officer of the agency who

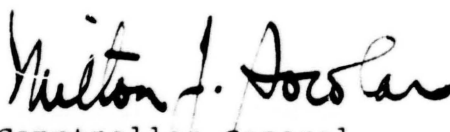
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<sup>10/</sup> See Department of Housing and Urban Development, Construction Industry Technology of the United States: Stroyindustriya '87, "Fact Sheet: U.S. Participation in Stroyindustriya '87."



authorizes an obligation or expenditure of agency funds for that purpose violates the Antideficiency Act.<sup>11/</sup> Since the Congress has not appropriated funds for the designated purpose, the obligation may be viewed either as being in excess of the amount (zero) available for that purpose or as in advance of appropriations made for that purpose. In either case the Antideficiency Act is violated.<sup>12/</sup> As discussed above, HUD has no funds available for its trade promotion activities.<sup>13/</sup> This finding was the basis for our testimony on August 3, 1988, in which we reported our conclusion that HUD's trade promotion activities had resulted in a violation of the Antideficiency Act.

Sincerely yours,

*for*   
Comptroller General  
of the United States

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<sup>11/</sup> 31 U.S.C. § 1341(a) provides that:

"(1) An officer or employee of the United States Government or of the District of Columbia government may not - (A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation; or (B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law."

<sup>12/</sup> 60 Comp. Gen 440 (1981). See also, B-204270, Oct. 13, 1981.

<sup>13/</sup> Other than its appropriations for Research and Technology and for Salaries and Expenses, HUD did not cite any other appropriation which it believes to be available to pay for activities related to the promotion of international trade.