



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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B-197274

APRIL 30, 1980

The Honorable Jamie L. Whitten  
Chairman, House Appropriations Committee 00300

The Honorable Edward P. Boland  
Chairman, Subcommittee on HUD  
and Independent Agencies 00305  
House Appropriations Committee

The Honorable Herbert E. Harris II  
Chairman, Subcommittee on 02915  
Human Resources  
House Post Office and Civil  
Service Committee

The Honorable Warren G. Magnuson  
Chairman, Senate Appropriations Committee 00300

The Honorable William Proxmire  
Chairman, Subcommittee on HUD and 00306  
Independent Agencies  
Senate Appropriations Committee



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Subject: [Unsupported Year-End Obligations Overstate  
the Progress of Assisted Housing] (PSAD-80-41)

We believe that a substantial portion of the year-end obligations reported by the Department of Housing and Urban Development (HUD) since FY 1976 for a certain no-year appropriation, have been invalid because they did not meet the statutory test of legal sufficiency. In a subsequent year, HUD deobligated many of the invalid obligations of prior years and reobligated the amounts involved. While we are unable to determine how much was deobligated from each year prior to FY 1979, agency officials indicated that they expected several billion dollars in deobligations in the current fiscal year.

In performing a review of year-end spending at the request of the Chairman, Subcommittee on Human Resources of the House Committee on Post Office and Civil Service, we

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found that HUD had an \$18 billion surge in obligations in the last month of fiscal year (FY) 1978. In examining the causes for this increase, we found that about \$16.5 billion was in one appropriation account entitled "Annual Contributions for Assisted Housing." After further analysis we found that the year-end obligations were inadequately documented. HUD has been recording obligations for this housing account and reporting them to the Treasury, Office of Management and Budget, and Congress, when in reality there was no legal obligation on the part of the United States Government. Subsequently, HUD deobligated and reobligated a portion of its previously reported obligations. This procedure provides HUD with significant amounts of obligational authority in excess of that indicated by its financial reports.

The assisted housing account includes such programs as lower income housing and public housing. Obligations for these programs have been based on "notification" and "reservation" letters. These documents advise project sponsors that their projects have tentatively been selected for funding and that when and if they develop more detailed plans, HUD will review them for final approval. Upon approval, a contract is entered into. We questioned HUD accounting officials about the propriety of recording obligations on the basis of these "letters" and they agreed that the obligations are questionable. Other HUD officials said obligations for lower income housing (Section 8) have been based on "notification" letters since FY 1976, after HUD's conversion to "Budget Authority" mandated by the Congressional Budget Act of 1974. With respect to "reservation" letters, in January 1977 the then acting Under Secretary decided to use them as obligating documents, apparently at the urging of HUD's then Assistant Secretary for Housing and with the agreement of HUD's Office of General Counsel and Office of Budget.

In our opinion, recording obligations on the basis of reservation and notification letters is improper, and does not meet the criteria of 31 U.S.C. 200 which states in part:

- (a) ". . . . no amount shall be recorded as an obligation . . . . unless it is supported by documentary evidence of (1) a binding agreement in writing . . . ."
- (e) "Any statement of obligation of funds furnished . . . . to the Congress . . . . shall include only . . . . valid obligations . . . ."

We believe the notification and reservation letters are not legally sufficient to constitute obligations.

In reporting obligations based on these letters, we believe HUD could have misled the Congress on its needs for additional budget authority the next fiscal year by understating the balance available for obligation. This gives the impression that HUD has carried out its mission by actually contracting for assisted housing to a greater extent than it has. An indication of the tentative nature of these obligations is the ease with which large amounts are deobligated and reobligated in subsequent periods. For example, during FY 1979 HUD deobligated and then reobligated about \$7 billion of fiscal years 1976, 1977, and 1978 obligations. HUD officials said they expect to deobligate and then reobligate many billions of dollars during FY 1980.

HUD officials do not agree with the conclusions of this report, and their comments are incorporated in appropriate sections of this letter.

According to HUD officials, for FY 1976, "approved lists" of contracts not yet executed, were used as a basis for recording obligations in public housing. Since FY 1977, however, HUD obligations have been recorded on the basis of "letters" even though the letters clearly state they are not a "legal obligation" of the Government.

HUD officials were cautioned on the use of "paper reservations" in a report prepared by the Surveys and Investigations Staff of the House Appropriations Committee dated February 21, 1978, and presented during congressional hearings in the spring of 1978. The report disclosed the problem of HUD making "reservations" too early in the discussion stage and subsequent terminations. The report recommended that HUD must curtail the use of "gimmicks" such as "paper reservations." In a follow-on review, the Staff reported that HUD made significant efforts to eliminate "paper reservations" and has been very successful in doing so. However, they reported that the elimination of "paper reservations" appears to be another area where the use of review teams can be effective. If HUD based its obligations on executed contracts only, rather than "reservation" documents, we believe it would have avoided

the problem with respect to invalid obligations being reported to the Congress.

HUD officials maintain that the extent of deobligations in relation to obligations is not nearly as high as is implied by the data available for fiscal year 1979 and the deobligations they expect will occur in the current fiscal year. They believe that less than 10 percent of the obligations, fail to result in contracts with the intended parties. However, HUD officials informed us that the records maintained by HUD are inadequate to document their opinion.

HUD further states that its procedure of recording reservation documents as obligations did not mislead any of its legislative or appropriation subcommittees in the Congress or the examiner from Office of Management and Budget. HUD officials maintained that congressional committees were fully aware of the basis on which HUD recorded its obligations and had tacitly approved it. We found that although the staff of committees that reviewed HUD's programs and budget had been made aware of HUD's policy of recording commitments and reservations as obligations, they were not aware of the extent of HUD's deobligations. Had they been fully apprised of the extent of deobligations they would have questioned the basis for HUD's obligations.


For the public housing program, HUD officials advised that the change making a reservation document adequate to support an obligation was made because they believed that they could be liable to a recipient of the reservation if the recipient had incurred costs in relation to the project. and HUD later withdrew the reservation. Thus they contend their intent was not to overstate obligations, but rather to recognize potential liabilities. We note however, that the reservation document clearly states that it is not a legal obligation. Absent the existence of any real or potential liability, it appears to us the procedure followed by HUD served no purpose except to inflate the amount of reported obligations.

We are recommending to the Secretary of HUD that:

--a complete review of this account from FY 1976 to date be made to determine valid obligations based on contracts,

- the HUD Inspector General's Office validate the results of the review mentioned above,
- HUD record obligations on the basis of executed contracts, and
- a cumulative (including fiscal years 1976, 1977, and 1978) corrected Year-End Closing Statement be prepared for FY 1979 and certified to by the responsible HUD officer as required by law.

Until this is accomplished, we believe that HUD is in no position to accurately advise the Congress on what the unobligated balance is of this account or the new obligational authority needed. We suggest that the House and Senate Appropriations Committees consider deferring any action on HUD's current appropriation request for this account until HUD can report to the Congress an accurate and complete statement of valid obligations as required by law.

  
Comptroller General  
of the United States