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RESOURCES, COMMUNITY,
AND ECONOMIC DEVELOPMENT
DIVISION

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Approved for Release by the Director of the Office of Management and Enterprise Services
Accounting and Financial Management Division
By the Office of Congressional Relations

The Honorable Donald W. Riegle
Ranking Minority Member
Subcommittee on Housing and
Urban Affairs
Committee on Banking, Housing
and Urban Affairs
United States Senate

The Honorable Paul S. Sarbanes
United States Senate

The Honorable Jim Sasser
United States Senate

The Honorable Charles McC. Mathias
United States Senate

Subject: Department of Housing and Urban Development's
Fiscal Year 1983 Reductions in Force
(GAO/RCED-83-47)

Your October 15, 1982, joint letter requested that we review the Department of Housing and Urban Development's (HUD's) planned reductions in force (RIFs) for fiscal year 1983. You specifically asked that we answer 12 questions which were enclosed with your letter. Further, as stated in the letter and after discussions with your representative, you asked that we answer five of the questions by October 29, 1982, and the remainder by December 23, 1982.

This report addresses the following five questions of immediate concern to you. The questions deal with:

- The regulatory justifications for the RIFs.
- Whether HUD officials performed job analyses of positions to to be abolished in accordance with regulatory requirements.
- The requirement for establishing competitive levels for HUD employees and whether HUD's operating below personnel ceiling constitutes an impoundment of funds.
- Whether the planned RIF will terminate a disproportionate number of minority and female employees.

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--Whether HUD's current expenditure of fiscal year 1983 funds on the "reorganization/RIF" is allowable under HUD's appropriation act.

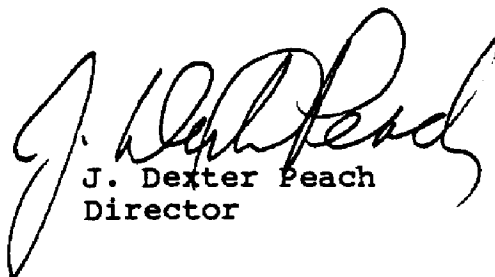
Based on our work to date, it does not appear that HUD has violated legal or regulatory requirements applicable to the first four questions. Regarding the fifth question, title I of HUD's Fiscal Year 1983 Appropriation Act (Public Law 97-272, Sept. 30, 1982) contains the following restriction on the expenditure of funds appropriated under the heading "Management and Administration, Salaries and Expenses":

"[N]one of the funds made available in this paragraph may be used prior to January 1, 1983, to plan, design, implement or administer any reorganization of the Department without the prior approval of the Committees on Appropriations."

We were unable, in the short time available, to determine whether all current expenditures by HUD to implement central office RIFs are allowable, in view of this restriction. We did, however, determine that of the 83 jobs abolished to date, 21 were justified by HUD on grounds that appear to us to violate the statutory restriction. We will continue to examine further the circumstances related to all job abolishment actions as part of our further work.

Our response to the five questions is contained in enclosure I. It also contains an explanation of the objectives, scope, and methodology we followed in making this review.

At your request we did not take the additional time needed to obtain agency comments on this report. Also, as arranged with your offices, unless you publicly announce its contents earlier, we will not distribute this report until 3 days after its issue date. At that time, we will send copies to other interested parties.


J. Dexter Peach
Director

Enclosure

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT'S
PROPOSED FISCAL YEAR 1983 REDUCTIONS IN FORCE

OBJECTIVES, SCOPE, AND METHODOLOGY

Our objective in this review was to assess selective procedures and impacts of HUD actions relating to proposed fiscal year 1983 RIFs. By October 31, 1982, HUD plans to abolish 83 headquarters positions. Among the 83 employees who are slotted for termination, 22 will be offered temporary appointments. As agreed with the requestors' representative, this report concentrates on HUD actions pertaining to the 83 positions. However, HUD plans to further reduce its headquarters and field staffs during fiscal year 1983. We will consider HUD plans for these further reductions in our subsequent review of the remaining questions.

We obtained the information used in this report primarily by interviewing officials in HUD's Office of Administration and by examining pertinent HUD records and files relating to the RIF. We reviewed legislation and Office of Personnel Management (OPM) requirements and procedures for conducting a RIF. We performed our review in accordance with generally accepted government audit standards.

QUESTIONS AND OUR RESPONSE

1. Question:

OPM regulations (5 CFR 351) prescribe only certain circumstances in which a RIF may be carried out. To date, HUD has cited a "skills imbalance" as the justification for the current RIF. This reason is not found in the regulations. If the skills imbalance was precipitated by a lack of work or reorganization, it would apparently be within the regulatory framework. What is the cause or reason for the HUD RIF and does it meet the regulatory requirements?

Response:

The OPM regulations in 5 CFR 351.201 state that the RIF provisions apply when the release of employees is required because of (1) lack of work, (2) shortage of funds, (3) reorganization, (4) reclassification due to change in duties, or (5) the exercise of reemployment or restoration rights. HUD files list 12 reasons for abolishing 83 jobs as of October 31, 1982. According to HUD's Acting Director of Personnel, skills imbalances is an umbrella term that applies to many of the specific reasons.

We examined the reasons for job abolishment appearing in HUD files and concluded that, in all cases, HUD's reasons matched at least one of the five reasons required by OPM's

regulations. Of the 83 positions abolished, 63 cited shortage of funds as the justification for job abolishment, 26 cited reorganizations within the department, 3 cited lack of work, and 3 cited reclassification of duties. (The total exceeds 83 because some jobs were abolished for multiple reasons.) Accordingly, based on HUD's records, HUD appears to have met the regulatory requirements for justifying a RIF.

2. Question:

Secretary Pierce has publicly stated in hearings before the Subcommittee on Housing and Community Development, House Committee on Banking, Finance and Urban Affairs, that the positions abolished were submitted to him by the various assistant secretaries. It was on this basis that the alleged skills imbalance was ascertained.

- a. Does this rather informal assessment meet the regulatory requirement (5 CFR 300.103) for a job analysis preceding the personnel action?
- b. Were the assistant secretaries adequately prepared, trained, or assisted to conduct a bona fide job or skills analysis to determine a skills imbalance?

Response:

The job analysis required in 5 CFR 300.103 applies only to the recruitment, measurement, ranking, and selection of individuals for initial appointment and competitive promotion in the competitive service as outlined in 5 CFR 300.101. Therefore, a job analysis requirement does not apply to RIFs.

3. Question:

Critics of the proposal have questioned the mechanical procedures that have been utilized to conduct the RIF.

- a. There are some 1,200 competitive levels for approximately 4,000 HUD headquarters employees or approximately 1 for every 3 employees. The Federal Government Service Task Force found this practice to be "extreme based upon the experience reported by other agencies." Since this narrowness of competitive levels makes it rather easy for HUD management to target individuals for termination, is that practice consistent with law?

Response:

Implementing a RIF decision requires an agency to first determine the scope of competition. The establishment of competitive area(s) constitutes the initial step in

this process. Within each competitive area, competitive levels are then established by grouping all positions within the identified competitive area according to the employee's grade or occupational level. These positions must also be sufficiently alike in qualification requirements, duties, responsibilities, pay schedules, and working conditions so that an agency can essentially interchange individuals within the competitive level without changing the terms of employees' appointments or unduly interrupting the work program.

While the RIF regulations make it clear that many separate competitive levels are to be identified, (5 CFR § 351.403 (b)), HUD created 1,211 competitive levels for only 4,115 HUD headquarters employees, a seemingly excessive number of levels. Nevertheless, in view of the broad discretion the RIF regulations grant to agencies to determine which positions to abolish, to draw the boundaries of a competitive area and its concomitant competitive levels, and in the absence of any evidence indicating bad faith or ulterior motive on the part of HUD, we cannot conclude that HUD actions were improper or inconsistent with the requirements of the current RIF regulations. In this regard, we observe that the HUD employees affected by the RIF may challenge it by appealing to the Merit Systems Protection Board (MSPB) or utilizing grievance procedures, as appropriate. Title 5 U.S.C. § 1205(a) (1) (Supp. IV 1980) provides that MSPB will hear and adjudicate all matters within its jurisdiction and take final action on such matters. Direct judicial review of MSPB decisions is also available. Such appeals are now heard by the newly established United States Court of Appeals for the Federal Circuit. Federal Courts Improvement Act of 1982, Public Law 97-164, § 144, 96 Stat. 45 (1982).

Question:

- b. HUD is currently under ceiling by some 500 positions. Does the attempt by HUD to further reduce the staffing level below congressionally appropriated staffing levels constitute an impoundment of funds by this department of the executive branch?

Response:

The Impoundment Control Act of 1974, Public Law 93-344, title X, 88 Stat. 332, requires that withholdings of budget authority from obligation or expenditure be reported by the President to the Congress. There are two types of impoundments: rescission proposals and deferrals. If the President seeks to have budget authority permanently withdrawn from availability, the act requires that a rescission proposal for

the funds involved be submitted. If the Congress does not approve the rescission within 45 legislative days from receipt of the President's proposal, the funds must be made available for obligation. If the President wants to withhold budget authority from obligation temporarily, the President is required to report a deferral of the funds. The President may continue to withhold the deferred funds unless either House of the Congress disapproves the deferral.

A reduction in staffing levels does not automatically result in an impoundment; rather, it is necessary to examine whether any funds will be withheld from obligation as a result of a staffing reduction. No impoundment would occur if funds saved as a result of a staffing reduction were used to offset other costs or were reprogramed to other activities funded from the same appropriation. However, if the result of the staffing reduction is to leave funds unused, the reduction could constitute an "Executive action * * * which effectively precludes the obligation or expenditure of budget authority * * *" as defined in section 1011 of the Impoundment Control Act.

For fiscal year 1983, staff positions at HUD are funded from a lump-sum appropriation in the 1983 Department of Housing and Urban Development--Independent Agencies Appropriation Act, Public Law 97-272 (Sept. 30, 1982). The act provides a total of \$575.2 million "[f]or necessary administrative and non-administrative expenses" of the agency.

A HUD official in the Office of Budget told us that HUD's budget request for fiscal year 1983 projected a staffing level of 14,300 at the end of fiscal year 1982, to be reduced to 14,000 by the end of fiscal year 1983. The actual staffing level at the end of fiscal year 1982 was 13,828, 472 below the projected level.

However, according to the budget official, the current reduced staffing level and other reductions should not result in any excess funds or "savings" in the account, because HUD must defray other expenses funded from the account that were not included in its fiscal year 1983 budget estimate. For example, HUD's fiscal year 1983 appropriation is \$13.5 million less than the amount requested in its budget estimate. The Congress appropriated the lower amount after projecting the savings to result from HUD's reorganization activities and reductions in lower priority activities. Also, HUD must defray the increase in salary costs resulting from the 4 percent pay raise for fiscal year 1983 and its contribution to Medicare, required beginning in January 1983. These two expenses, which HUD estimates will total \$21 million, were not included in its budget estimate.

Based on this information, we see no evidence that the funds in the management and administration account will be withheld from obligation as a result of staff reductions at HUD. Accordingly, as of this time there is no impoundment of funds within the meaning of the Impoundment Control Act.

4. Question:

Could the planned RIF cause the termination of a disproportionate number of minority and female personnel, especially among technical and clerical staff?

Response:

HUD data shows that the RIF did impact on minority and female staff in a higher proportion than on white and male staff. As shown below, minority employees comprise 53 percent of the actual separations resulting from the RIF, while they only make up 44 percent of the total HUD headquarters staff. Similarly, 59 percent of the separations involve female employees, while females comprise only 50 percent of the total HUD headquarters staff.

Job Separations by Race and Sex

	<u>Separations</u>		<u>Total HUD headquarters employees</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
<u>Race</u>				
White	39	47	2,290	56
Minority	<u>44</u>	<u>53</u>	<u>1,785</u>	<u>44</u>
Total	<u>83</u>	<u>100</u>	<u>4,075</u>	<u>100</u>
<u>Sex</u>				
Male	34	41	2,033	50
Female	<u>49</u>	<u>59</u>	<u>2,042</u>	<u>50</u>
Total	<u>83</u>	<u>100</u>	<u>4,075</u>	<u>100</u>

HUD also provided us with data on the impact of the RIF on minorities and females among the technical and clerical staff. As shown in the next table, the RIF did not affect minority technical and clerical staff in a disproportionate manner. Minorities comprise 74 percent of HUD's technical staff, yet represent only 60 percent of the technical separations. Further, among clerical staff, the percentage of

minorities being separated approximates the percentage of minorities among total headquarters clerical staff. Analyzing the data by sex shows that, among the technical staff, females were separated in a considerably higher proportion than males. However, among the clerical staff, 81 percent of the separations were female, while females comprise 93 percent of all clerical staff at HUD.

	<u>Separations</u>		<u>Total HUD headquarters employees</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
<u>Technical</u>				
White	4	40	182	26
Minority	<u>6</u>	<u>60</u>	<u>508</u>	<u>74</u>
Total technical	<u>10</u>	<u>100</u>	<u>690</u>	<u>100</u>
Male	5	50	462	67
Female	<u>5</u>	<u>50</u>	<u>228</u>	<u>33</u>
Total technical	<u>10</u>	<u>100</u>	<u>690</u>	<u>100</u>
<u>Clerical</u>				
White	7	22	186	24
Minority	<u>25</u>	<u>78</u>	<u>600</u>	<u>76</u>
Total clerical	<u>32</u>	<u>100</u>	<u>786</u>	<u>100</u>
Male	6	19	57	7
Female	<u>26</u>	<u>81</u>	<u>729</u>	<u>93</u>
Total clerical	<u>32</u>	<u>100</u>	<u>786</u>	<u>100</u>

5. Question:

On September 30, 1982, the President signed into law the fiscal year 1983 appropriations bill. Included in this law is language that prohibits the administration from using salary and expense funds to "...plan, design, implement or administer any reorganization of the Department without prior approval of the Committees on Appropriations" prior to January 1, 1983. This language was adopted in conference committee by adoption of House passed language. The House subcommittee report (p. 9) specifically states that the proposed central office RIF appears questionable, and "The Committee intends to carefully review the planned central office

personnel action." Is the current expenditure of fiscal year 1983 moneys implementing the HUD reorganization/RIF allowable under the appropriations act?

Response:

Title I of HUD's Fiscal Year 1983 Appropriation Act (Public Law 97-272, Sept. 30, 1982) contains the following restriction on the expenditure of funds appropriated under the heading "Management and Administration, Salaries and Expenses":

"[N]one of the funds made available in this paragraph may be used prior to January 1, 1983, to plan, design, implement or administer any reorganization of the Department without the prior approval of the Committees on Appropriations." [1/]

We were unable, in the short time available, to determine whether all current expenditures by HUD to implement central office RIFs are allowable, in view of this restriction. We did, however, determine that of the 83 jobs abolished to date, 21 were justified by HUD itself on grounds that appear to us to violate the statutory restriction.

According to HUD officials, its central office RIFs are the result primarily of staffing imbalances, personnel ceiling reductions, and position abolishments. If the RIFs are part of a reorganization, then any expenditures necessary for administering the related RIF actions are prohibited by the provision quoted above. There is no definition of the term "reorganization" in the act itself or in the legislative reports on the appropriation restriction. HUD itself has no pertinent definition in its regulations. The only relevant definition that we can use to test the assertion that HUD's actions were not related to a prohibited reorganization is in OPM's RIF regulations (5 CFR 351.203(f)). These regulations define reorganization as a "planned elimination, addition, or redistribution of functions or duties in an organization." We then proceeded to compare HUD's own justifications for each job abolishment or RIF with OPM's definition. HUD assigned a code letter to each action, which was explained in a HUD Code Guide.

1/On October 27, 1982, the Department of Justice issued an opinion that this provision is unconstitutional. However, GAO regards all enactments as being constitutional unless or until a court of competent jurisdiction has ruled otherwise.

Although HUD does not use the term reorganization two of its justifications use the exact language of OPM's definition. These are:

- "G. Redistribution of organization functions; and
- K. Elimination of specific functions within the organization."

Three other justifications appear to clearly describe reorganization activities, as we interpret OPM's definition:

- "C. Program abolishment;
- E. Reallocation of resources based on changes in program priorities; and
- F. Realignment of program functions within principal staff functions."

The "G" and "K" justifications were cited in 18 cases and were used as the sole justification in 10 instances. Three other RIFs were justified on the basis of "C." It appears, therefore, that any expenditures incurred in administering the RIFs attached to these 21 job actions are prohibited by the appropriation restriction.

We will continue to examine the 21 job actions discussed above and the remaining central office RIFs, as well as the planned regional office changes, in light of the appropriation restriction, and will report further on this issue in our subsequent report.