### U.S. Department of Housing and Urban Development

# Office of Inspector General Office of Investigation



Investigation into Alleged Violation of Federal Appropriations Law by the Office of the Secretary

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### **Introduction & Executive Summary**

In February 2018, the Office of Inspector General (OIG) for the U.S. Department of Housing and Urban Development (HUD) received multiple complaints alleging that HUD's Secretary, Dr. Benjamin S. Carson, Sr., may have violated federal appropriations law by causing the Department to purchase a new set of dining room furniture for his secretarial suite at a cost in excess of \$31,000. Due to Secretary Carson's position as a presidentially-appointed official, federal law requires the Department to provide advance notification to the House of Representatives and Senate Committees on Appropriations before obligating or expending funds in excess of \$5,000 to redecorate, purchase furniture for, or make improvements to any portion of his office suite.

The OIG investigated this matter and confirmed that HUD initiated a procurement in mid-2017 for replacement of the dining room furniture in the secretarial suite. We also confirmed that, as part of this procurement effort, HUD officials obligated \$31,561 in departmental funds on December 21, 2017, for the purchase of new dining room furniture for the secretarial suite, but did not make the required notification to the Committees on Appropriations before doing so. However, HUD did not ultimately purchase this furniture, and the procurement did not result in the expenditure of any departmental funds because it was canceled on March 1, 2018, at the direction of Secretary Carson in response to media reports about the procurement. We did not find sufficient evidence to substantiate allegations of misconduct on the part of Secretary Carson in connection with this procurement.

We found that this procurement initially went forward because career officials with responsibility for maintaining and purchasing departmental property determined that the existing dining room furniture set in the secretarial suite was in poor condition, that it could not be repaired, and that it should be replaced. These officials also informed the Office of the Secretary that the Department had funds available to replace the furniture. The evidence shows that departmental officials involved in decision-making about this procurement were aware of the law prohibiting furniture purchases in excess of \$5,000 without advance notice to Congress, but either failed to consider or did not understand that this law applies to (1) the replacement of damaged or unusable furniture and (2) any purchase of furniture to be used in areas under the Secretary's control, not just furniture to be used in his immediate office.

As for Secretary Carson's role in the dining-room-furniture procurement, the evidence shows that he indicated he was "fine" with replacing the furniture upon learning of career officials' assessment of its condition, but left this matter for members of his staff to handle in consultation with his wife, who provided stylistic input after the Department decided to purchase new furniture. We found no evidence indicating that either Secretary or Mrs. Carson exerted improper influence on any departmental employee in connection with the procurement. During his OIG interview, Secretary Carson said it "seemed like" he had heard prior to the procurement that he could not spend more than \$5,000 on purchases to improve his office space, but said he was under the impression at the time that this limit applied only to his personal office, and not to his entire suite. Secretary Carson also said that he told his staff to take care of any improvements necessary in the Deputy Secretary's office space before making improvements to his own.

HUD has since acknowledged that its obligation of funds to purchase dining room furniture for the secretarial suite without advance notification to Congress violated federal appropriations law. The Department has also acknowledged that it has historically lacked effective internal controls to ensure that purchases for presidentially-appointed officials comply with the law, and that this may have resulted in other impermissible obligations or expenditures prior to Secretary Carson's tenure. To address this deficiency, the Department has put in place stricter interim controls to ensure compliance with appropriations law while it formulates more effective permanent controls.

We are not making any recommendations to the Department as a result of the evidence gathered in this investigation because we found no evidence of misconduct, and because the Department is working to address the legal ramifications of the dining-room-furniture procurement and to prevent future appropriations-law violations.<sup>1</sup>

## Applicable Legal Framework

Section 710 of the Financial Services and General Government Appropriations Act of 2017 (Appropriations Act), as carried forward by the Continuing Appropriations Act of 2018, states that "no [federal] funds may be obligated or expended in excess of \$5,000 to furnish or redecorate the office" of "the head of any department or agency" or any other presidentially-appointed official, "or to purchase furniture or make improvements for any such office" without advance notice to the House of Representatives and Senate Committees on Appropriations.<sup>2</sup> Section 710 defines "office" to include "the entire suite of offices assigned to the individual, as well as any other space used primarily by the individual or the use of which is directly controlled by the individual."

Obligating more than the \$5,000 limit imposed by Congress implicates the Antideficiency Act (ADA), which states that a federal agency may not "make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation." If a federal agency determines that a violation of the ADA has occurred, the head of that agency must report the violation and all relevant facts to the President, Congress, and the Comptroller General, who oversees the U.S. Government Accountability Office (GAO).<sup>5</sup>

<sup>&</sup>lt;sup>1</sup> We provided counsel for Secretary Carson with an opportunity to review and provide comments on a draft of this report. After receiving those comments, we made a limited number of revisions to the report, but we did not alter any of our factual findings or conclusions.

<sup>&</sup>lt;sup>2</sup> See Financial Services and General Government Appropriations Act, 2017, Pub. L. No. 115-31, Div. E, Tit. VII, § 710, 131 Stat. 135, 379 (May 5, 2017); Continuing Appropriations Act, 2018, Pub. L. No. 115-56, Div. D, § 101, 131 Stat. 1129, 1139 (Sept. 8, 2017), amended by Further Continuing Appropriations Act, 2018, Pub. L. No. 115-90, Div. A, § 101, 131 Stat. 1280, 1280 (Dec. 8, 2017) (extending continuing appropriation until December 22, 2017).

<sup>&</sup>lt;sup>3</sup> See Appropriations Act, § 710, 131 Stat. at 379.

<sup>&</sup>lt;sup>4</sup> 31 U.S.C. § 1341(a)(1)(A).

<sup>&</sup>lt;sup>5</sup> 31 U.S.C. § 1351.

## Factual Findings

# The Department Prepares the Secretarial Suite for Secretary Carson's Arrival

In early 2017, career HUD employees worked with political appointees deployed to the Department by the new presidential administration in preparation for Dr. Carson's March 2017 Senate confirmation and arrival at HUD's Washington, D.C., headquarters. This work included preparing the secretarial suite located on the tenth floor of the building for Secretary Carson's arrival. Documentary evidence and witness testimony gathered by the OIG shows that key individuals involved in this process were aware that Congress had imposed a \$5,000 limit on furnishing, renovation, or improvement work done to at least certain portions of Secretary Carson's office space during his tenure.

For example, when a career administrative officer assigned to the Secretary's office (Administrative Officer), sought guidance from the Department's Chief Administrative Office regarding procedures for redecorating the secretarial suite, she received a January 19, 2017 email attaching an earlier version of the Public Law that establishes the \$5,000 limit. Administrative Officer later forwarded this attachment to Sheila Greenwood, one of the political appointees handling preparations for Secretary Carson's arrival who would later become Secretary Carson's Chief of Staff. Specifically, Administrative Officer sent Ms. Greenwood the following email on February 2, 2017:

[I understand] that you are interested in finding out if there are other furniture options for the Secretary. I was just downstairs in the warehouse looking through the inventory and there's really nothing that would be more suitable/nicer th[a]n what is in the office now. The Secretary does have an allocation for furniture but it is limited to \$5,000. I've attached the section of Public Law 101-136 related to furnishing department heads' offices for you[r] review.

When the OIG interviewed Ms. Greenwood, she acknowledged that she was involved in the furnishing of Secretary Carson's office space in early 2017, and said she personally requested that new blinds be installed in the space. According to Administrative Officer, some of the existing blinds in the office space were broken, and she took action at Ms. Greenwood's request to have the blinds replaced using the Secretary's \$5,000 redecorating allotment, as evidenced by a February 24, 2017 email she sent to a director in HUD's Office of Administration:

The Chief of Staff, Sheila Greenwood, would like to know if the blinds in the Secretary's private office can be switch[ed] out. We would of course use the \$5,000 allotted for redecorating to fund the cost. Sheila was think[ing] along the

<sup>6</sup> The names of certain individuals referenced in this report are masked to protect their privacy interests.

<sup>&</sup>lt;sup>7</sup> The Chief Administrative Office provides administrative and customer support to HUD employees and is part of HUD's Office of Administration, which is the Department's mission support function. The Office of Administration also includes the Office of the Chief Procurement Officer and the Office of the Chief Human Capital Officer.

lines of wooden blinds but she is open to options/suggestions. Please let me know what is possible, including a cost estimate.

According to Administrative Officer, the Department used essentially all of Secretary Carson's \$5,000 allotment to fund the cost of replacing blinds in the secretarial suite.

#### The Department Determines that an Existing Dining Room Furniture Set in the Secretarial Suite Has Exceeded Its Service Life

The evidence shows that by May 2017, Ms. Greenwood had noticed that a dining room set in the secretarial suite was also in need of repair. During her OIG interview, Ms. Greenwood described this dining room furniture as old, in very poor condition, and an "embarrassment." Indeed, Ms. Greenwood told the OIG, on at least one occasion she almost fell out of one of the dining room chairs because it was so unstable.

Administrative Officer agreed with Ms. Greenwood's assessment of the dining room furniture's condition. During her OIG interview, Administrative Officer estimated that the dining room set was approximately 30 years old, and said the dining room chairs were in poor condition, had nails protruding from them in places, and were unstable despite multiple attempts to repair them over the years. Administrative Officer also noted that the dining room table was worn with scratches, and that a portion of the china cabinet was held together with duct tape.

On May 15, 2017, Ms. Greenwood wrote to members of HUD's Office of Facilities Management Services (OFMS) saying she had "just noted that a few [dining room] chairs [in the secretarial suite] are fairly precarious" and that she was "trying to avoid someone having an accident (and embarrassment!) should the chair collapse beneath them." In this email exchange, one OFMS staff member concurred with Ms. Greenwood's assessment, saying the staff needed to "get all the dining room chairs tighten[ed] up" because "[m]ost of them are loose and wiggling." In response, another member of the OFMS staff (OFMS Employee) went to the secretarial suite to see what could be done to fix the dining room chairs.

OFMS Employee told the OIG that when he personally evaluated the dining room furniture in the secretarial suite, he saw that at least four of the chairs had screws missing from them and were "wobbly." OFMS Employee said he was familiar with the dining room furniture from past attempts by the Department to fix it, and he believed that attempting to repair the furniture further would be beyond his ability, which he told his direct supervisor (OFMS Supervisor), who in turn directed him to arrange for a departmental contractor to fix the chairs.

OFMS Employee said he contacted a contractor who had repaired furniture for HUD in the past (Repair Contractor) to come and assess the dining room furniture. According to OFMS Employee, Repair Contractor advised him that all of the dining room chairs were in need of

<sup>&</sup>lt;sup>8</sup> OFMS is a component of the Chief Administrative Office and is responsible for procuring and repairing furniture in HUD offices located in the Washington, D.C., headquarters building. When these procurements involve substantial dollar amounts or complex contracting procedures, OFMS employees coordinate with the Office of the Chief Procurement Officer, which is responsible for obtaining all contracted goods and services required by the Department efficiently and in a cost-effective manner.

repair, but that he was not sure whether the necessary repairs would be effective, as the furniture had been repaired many times before. OFMS Employee provided the OIG with a May 24, 2017 estimate in the amount of \$1,100 that Repair Contractor submitted to him for the necessary repair work. OFMS Employee also provided the OIG with a purchase order showing approval for payment to Repair Contractor for work he did to fix loose joints on ten chairs, and additional work done to the back of one chair.

The evidence shows that concerns about the condition of the dining room furniture persisted into the summer of 2017. According to Administrative Officer, Ms. Greenwood asked her at some point during that summer whether anything further could be done to improve the condition of the dining room furniture. In response, Administrative Officer said, she contacted OFMS about Ms. Greenwood's concerns, and OFMS Employee subsequently came to the secretarial suite to evaluate the furniture again, this time accompanied by OFMS Supervisor. According to OFMS Employee, he told OFMS Supervisor that he believed the dining room chairs would need to be replaced, and OFMS Supervisor agreed with him after inspecting the dining room furniture herself.

During their inspection, OFMS Employee and OFMS Supervisor took pictures of the dining room furniture, which OFMS Supervisor provided to the OIG during her interview. OFMS Supervisor pointed out that one of the pictures shows a worn paper tag attached to the bottom of one piece of the dining room set stating that HUD received the piece on or around November 30, 1967. Although OFMS Supervisor said she could not be certain, she believed each piece of the furniture set was the same age. OFMS Supervisor also noted how the other pictures of the dining room furniture show wear and tear to the entire set, particularly to the chairs and china cabinet. OFMS Supervisor noted how the original screw holes in the chairs were no longer serviceable, as longer and heavier screws had been used over time in various attempts to reinforce the chairs. OFMS Supervisor also pointed out how a number of chair cushions were loose, and that duct tape had been used in an attempt to fix a corner of the china cabinet.

OFMS Supervisor told the OIG that, after personally viewing the dining room furniture, it was absolutely clear to her that the furniture was no longer serviceable and should be replaced, which she informed OFMS leadership officials. OFMS Supervisor stated several times during her interview that "[i]t was [her] decision to replace the furniture," said she believed that this was the "correct" decision based on her years of professional experience, and explained that she reached this decision independently by applying "fair wear and tear" or "life expectancy" standards used in her profession. OFMS Supervisor said she did not hear anything indicating that Secretary Carson wanted the furniture replaced. OFMS Supervisor reiterated that her decision that the furniture should be replaced was not influenced by anything other than her own professional judgement.

According to Administrative Officer, OFMS Supervisor contacted her after inspecting the dining room set to tell her that nothing more could be done to repair the furniture, and that replacing it was "justifiable." OFMS Supervisor also informed Administrative Officer that around \$20,000 in departmental funds was potentially available to procure new dining room furniture, and that she was waiting to hear back from "budget folks" about this issue. The evidence shows that

Administrative Officer went on to relay this information to others working in the Secretary's office.

According to a special assistant assigned to Secretary Carson (Special Assistant), Administrative Officer contacted her during the summer of 2017 to advise her that the dining room furniture in the secretarial suite was in poor condition, and that there were departmental funds available to replace it. Special Assistant told the OIG that she recalled Administrative Officer telling her that funding to replace the furniture was only available until a certain date, at which point it would be lost. According to Special Assistant, she mentioned what Administrative Officer had told her to Secretary Carson, who she said responded by telling her, if it made sense to replace the dining room furniture, he was "fine" with doing it.

During Secretary Carson's OIG interview, he recalled someone on his staff telling him during the first several months of his tenure that the dining room furniture in the secretarial suite had to be replaced due to its age and condition. Secretary Carson recalled hearing that, despite multiple attempts to repair it, problems with the furniture persisted. Secretary Carson also recalled hearing that approximately \$24,000 or \$25,000 in departmental funds was available to purchase new dining room furniture for the secretarial suite, and that if the funds were not used by a certain date, they would be lost.

When the OIG asked if Secretary Carson knew presidentially-appointed officials like himself could not spend more than \$5,000 on purchases to improve their office spaces, he said it "seemed like" he was involved in a discussion on this subject at some point, but he said he was under the impression at the time that this limit applied only to his personal office, and not to the entire secretarial suite.

Secretary Carson told the OIG that he left decisions about the dining room furniture to others, but made it clear to his staff that any available funds should be used to take care of any needs the Deputy Secretary's office may have first, and that any remaining funds could be used for the dining room furniture. Secretary Carson noted that he was focused on much more important aspects of his job responsibilities at the time, and that the procurement of new dining room furniture was not a matter of great concern to him.

#### The Department Selects New Dining Room Furniture for the Secretarial Suite

Special Assistant told the OIG that she relayed her conversation with Secretary Carson to Administrative Officer, and at some point thereafter, Administrative Officer provided her with catalogs of furniture available for purchase. The evidence shows that these catalogs were provided to Administrative Officer by OFMS Employee, who had contacted a vendor that had a blanket purchase agreement (BPA) with the Department to obtain them. OFMS Employee told the OIG that he was familiar with this company and its owner (Company Owner) because HUD had used it a number of times in the past to obtain office furniture.

Company Owner told the OIG that she is the president and sole employee of her company, which is certified as a woman-owned small business by the U.S. Small Business Administration, and provides both interior design and furniture procurement services. Company Owner explained that OFMS Employee contacted her at some point in mid-2017 asking for assistance in procuring

dining room furniture for the secretarial suite. Company Owner noted that OFMS Employee did not give her a budget or guidelines regarding the amount the Department would spend on this procurement. In response, Company Owner gave OFMS Employee a "binder" of furniture her company could provide the Department under its BPA.

After OFMS Employee gave the catalogs that Company Owner had provided him to Administrative Officer, she in turn gave them to Special Assistant, who sent the catalogs home with Secretary Carson for his wife to review. Special Assistant told the OIG she did this because she thought Mrs. Carson would be interested in helping to select the new furniture that would go in her husband's suite.

During his OIG interview, Secretary Carson recalled receiving the furniture catalogs from his staff, and that he may have taken them home for his wife to review. Aside from recalling that he thought some of the prices he saw in the catalogs were too high, Secretary Carson did not recollect much else about the dining-room-furniture procurement. Secretary Carson said he left the matter with his staff and his wife to handle together.

According to Administrative Officer, she met with Special Assistant, Mrs. Carson, and possibly one or two other HUD employees in the secretarial suite's dining room at some point shortly after she gave Company Owner's furniture catalogs to Special Assistant. Administrative Officer recalled the discussion that day focusing initially on whether any of the existing furniture could be salvaged. Administrative Officer specifically recalled Mrs. Carson asking whether the dining room table could be refinished, rather than replaced, and someone responding to this inquiry by saying the table had been refinished previously and would not withstand further sanding. Ultimately, Administrative Officer said, everyone at the meeting concurred with OFMS Supervisor's judgment that the entire furniture set should be replaced given its age and condition.

According to Special Assistant, Mrs. Carson reviewed the catalogs provided by Company Owner but returned them without making a selection from them. This was so, Special Assistant said, because the catalogs contained nothing but commercial office furniture and nothing suitable for a dining room. Special Assistant said she returned the catalogs to Administrative Officer and told her that they would need to find a source that could supply a traditional dining room set.

Company Owner told the OIG that, after learning none of the furniture in the catalogs she provided was suitable, she began searching for alternative sources and sent the Department several links to other furniture vendors' websites. The evidence shows that Company Owner sent these links to Administrative Officer, who forwarded them to Special Assistant, who in turn forwarded them to Secretary and Mrs. Carson. According to Company Owner, none of the alternative furniture sources she provided met with approval.

At some point in this process, OFMS Employee told the OIG, Administrative Officer provided him with printouts from the internet showing dining room furniture produced by a specific manufacturer and told him something to the effect of, "these are the pieces that they selected."

When the OIG asked Special Assistant who selected this particular furniture, she said that Mrs. Carson "guided the conversation" regarding the furniture selection over the course of several

"spontaneous" discussions they had on the subject. Special Assistant noted that Mrs. Carson never made a trip to Department headquarters specifically for the purpose of discussing the furniture selection, and that her interactions with Mrs. Carson on this subject generally took place on occasions when Mrs. Carson came to see her husband at work, either at the end of his work day or on other occasions when she was in town. The OIG sought to confirm these statements with Mrs. Carson, but she declined our request to be interviewed in connection with this matter.

Regarding Ms. Greenwood's involvement, she told the OIG that she essentially had no involvement in either the decision to replace the dining room furniture in the secretarial suite or in the selection of new furniture once the decision was made. Ms. Greenwood said she and Secretary Carson never had a conversation regarding the furniture procurement, and that neither Secretary nor Mrs. Carson put pressure on the staff to obtain new furniture for the dining room. Ms. Greenwood noted further that the "last thing" Secretary Carson would have "cared about" was the furnishing or decorating of his office suite.

Administrative Officer concurred with Ms. Greenwood's assessment, telling the OIG that Secretary Carson was not involved in the dining room furniture selection to her knowledge, nor was he present at any meetings or discussions she had with others on the subject. According to Administrative Officer, it seemed to her that Secretary Carson was "perfectly happy" with how his suite was decorated.

After OFMS Employee provided Company Owner the printouts of the dining room furniture selected for the secretarial suite, she began working with OFMS Employee and Administrative Officer on the details of the selection, including what wood finish and fabric the furniture would have. The evidence shows that Administrative Officer would relay questions from Company Owner about these finer details to Special Assistant, who would provide her with answers, which Administrative Officer believed resulted from consultation between Special Assistant and Mrs. Carson.

# The Department Finalizes Its Procurement of New Dining Room Furniture for the Secretarial Suite

After finalizing the details of the selection, Company Owner contacted a representative of the vendor that supplied the particular furniture selected (Commercial Vendor) in late August 2017 to ask for a price quote.

The evidence shows that the Department initially contemplated purchasing the new dining room furniture using fiscal year 2017 funds, but the Department could not finalize the procurement before the end of that fiscal year. As such, the procurement effort continued into fiscal year 2018, culminating in the Department executing a December 21, 2017 order for supplies and services from Company Owner's company for the "Secretary's Furniture Procurement" in the

amount of \$31,561.9 There is no evidence that the Department notified any congressional appropriations committee about this obligation of funds.

Company Owner was still in the process of finalizing delivery dates with Commercial Vendor for the requested dining room furniture in February 2018, when media reports about the procurement began to surface.

#### The Department Cancels the Dining-Room-Furniture Procurement

Secretary Carson told the OIG that he first learned the new dining room furniture for his suite was going to cost in excess of \$31,000 from media reports. Secretary Carson said he was surprised to learn of this cost, and immediately directed that the Department cancel the procurement.

The contracting officer who oversaw the procurement (Contracting Officer) told the OIG that she received a memorandum from the Department directing her to cancel the procurement soon after the media began reporting about it, and that she understood this direction came from Secretary Carson. Accordingly, Contracting Officer worked with Company Owner to terminate the procurement, and the Department fully executed a modification to the contract to terminate it and de-obligated all funding for it on March 1, 2018. Contracting Officer explained that this termination resulted in the government incurring no cost for the procurement, and provided the OIG with email correspondence between Company Owner and Commercial Vendor showing that Commercial Vendor agreed to waive any fees associated with cancelling the order that it might ordinarily have charged. According to Company Owner, Commercial Vendor representatives with whom she spoke agreed to waive any otherwise chargeable fees because they "just wanted the matter to go away" given the negative media attention.

OFMS Employee told the OIG that he and OFMS Supervisor discussed the cancellation of the dining-room-furniture procurement after they saw media reports about it. According to OFMS Employee, OFMS Supervisor told him the Department cancelled the procurement because it ran afoul of the \$5,000 congressional limit on improvements made to the office suite of a presidentially-appointed official. OFMS Employee said he and OFMS Supervisor were surprised to learn that the procurement was impermissible, as they had previously believed this congressional limit applied only to the immediate office of a presidentially-appointed official, and not to any adjoining rooms in the official's suite.

OFMS Supervisor told the OIG that she learned the \$5,000 congressional limit applied to any improvements made throughout the secretarial suite during a departmental meeting she attended in the wake of media reports about the dining-room-furniture procurement. OFMS Supervisor said she believed this meeting took place sometime in March, and said that high-ranking members of both the Office of Administration and Office of the Chief Financial Officer (CFO) attended. OFMS Supervisor said she learned during this meeting that Secretary Carson had

<sup>&</sup>lt;sup>9</sup> The OIG notes that there is evidence of certain irregularities in how the finalization of the procurement took shape, and that certain participants in this process may not have fully adhered to the requirements of the Federal Acquisition Regulation or other laws. Because there is no evidence to suggest that these irregularities resulted from any direction, guidance, or requests on the part of either Secretary Carson, Mrs. Carson, or any member of Secretary Carson's staff, the OIG does not discuss them in this report.

directed the cancellation of the procurement and that HUD should put in place internal controls to ensure that departmental expenditures on the offices of any presidentially appointed-officials complied with the law.

#### The Department Takes Steps to Improve Its Procurement Processes

On June 6, 2018, HUD's Office of the CFO and Office of Administration issued a memorandum to "All Presidentially Appointed Officials" (PAOs) in the Department. The memorandum states:

Secretary Carson has directed the Chief Financial Officer to put in place a system of internal controls that will provide the Department with greater certainty that the dollars HUD spends satisfy all laws and regulations. In addition, consistent with the President's Management Agenda, the Office of Administration . . . is assessing its existing policies and procedures across the Department and will be creating new policies and procedures or updating existing requirements, as appropriate, on a number of administrative topics, including Department-wide policies and procedures with respect to all spending to furnish, redecorate, purchase furniture for, or make improvements to [PAOs'] offices.

The purpose of this memo is two-fold: (1) to establish an interim mandatory review and pre-approval process for all purchases that may fall within the jurisdiction of the government-wide limitation on the furnishing and redecoration of the office suites of PAOs; and (2) from the information gathered pursuant to this memo, a formal policy will be developed related to all spending to furnish, redecorate, purchase furniture for, or make improvements to PAO offices.

The memorandum imposes a "Mandatory Review and Pre-Approval Process," whereby HUD's Office of the CFO and Office of Administration must approve essentially any purchase of any item placed in the personal office of a presidentially-appointed official, as well as:

[T]he outer office space, the suite outside [his or her] office space, the primary and any adjoining conference rooms, and any other rooms where the use by other HUD employees or individuals requires the administrative approval of a person directly under the control of the PAO or where the PAO may "bump" scheduled users of the room.

The memorandum also requires Office of the CFO and Office of Administration approval for any "repainting of these [spaces], replacement of carpet or drapery, and other physical improvements made to the space."

The memorandum notes that "this interim process has been made overly inclusive on purpose to ensure compliance and to evaluate how best to establish a formal policy and procedure." Similarly, the memorandum states: "The fact that this interim procedure requires that certain proposed purchases be submitted for review and pre-approval does not necessarily mean that the purchase would be covered by the government-wide [\$5,000] limitation or that a notification to Congress would be required."

In addition to implementing a new approval process, the memorandum also requires certain staff members assigned to presidentially-appointed officials to coordinate with the Office of Administration to identify "all purchases previously made that would have fallen into the categories of 'covered purchases' and 'covered spaces' as defined above, including dates, amounts, and how procured."

#### The Department Addresses Antideficiency Act Inquiries

During the time HUD's Office of the CFO and Office of Administration were formulating the procedures outlined in the June 6, 2018 memorandum, HUD's Office of General Counsel (OGC) received a written inquiry from GAO regarding the dining-room-furniture procurement.

Specifically, on May 31, 2018, GAO sent OGC a letter stating that Congress had requested that it provide a legal opinion "regarding whether [HUD] obligated appropriated funds in a manner consistent with . . . the [ADA]." The letter also asked HUD to provide responses on eight topics related to the dining-room-furniture procurement, including (1) the Department's "legal views on the application of [the \$5,000 congressional limit] to the obligation of funds for the furniture for the Secretary's office," and (2) "any actual or probable violations of the [ADA] that may have occurred between fiscal years 2008-2018 relating to . . . funds obligated or expended in excess of \$5,000 to furnish" or make any improvements to "an agency head, officer, or employee's office."

HUD prepared a package of background information and supporting materials to accompany its written response to the May 31, 2018 inquiry, and on August 17, 2018, HUD's Appropriations Law Staff submitted the Department's response to GAO.<sup>10</sup>

On May 16, 2019, GAO issued an opinion regarding HUD's obligation of appropriated funds for several items in the secretarial suite. With regard to the dining room furniture, GAO found "that HUD did violate section 710 [of the Appropriations Act] when it obligated \$31,561.00 for the purchase of a dining set for the HUD Secretary's dining room." Further," GAO stated, "because HUD obligated appropriated funds in a manner specifically prohibited by law with regard to the dining set, . . . [GAO] conclude[d] that HUD violated the Antideficiency Act." Accordingly, GAO concluded, "HUD should report its Antideficiency Act violation as required by law."

GAO's May 16, 2019 opinion notes that, in its August 17, 2018 response, HUD acknowledged that the obligation of funds to purchase dining room furniture for the secretarial suite "required

OGC provides legal services to support HUD's mission and has authority to provide advice, counsel, and analysis on all legal matters, including issues of appropriations. However, pursuant to the Consolidated Appropriations Resolution, 2003, Pub. L. No. 108-7, 117 Stat. 11, the Office of the CFO has sole authority within HUD to investigate potential or actual violations of appropriations laws, including the ADA. The Office of the CFO maintains an Appropriations Law Staff who perform the function required under this law, which includes making determinations on whether violations exist and submitting final reports on violations to the Secretary, the President, the Office of Management and Budget, and Congress.

<sup>&</sup>lt;sup>11</sup> U.S. Dep't of Hous. and Urban Dev.—Compliance with Statutory Notification Requirement and the Antideficiency Act, B-329955 (Comp. Gen. May 16, 2019) (GAO Opinion).

<sup>&</sup>lt;sup>12</sup> GAO Opinion, at \*2.

 $<sup>^{13}</sup>$  *Id*.

<sup>&</sup>lt;sup>14</sup> GAO Opinion, at \*7-8.

notification [to Congress] under section 710."<sup>15</sup> And, because the Department did not provide advance notice to Congress, it "agreed that the [resulting ADA] violation should be reported."<sup>16</sup> HUD has informed the OIG that it will review the GAO opinion and prepare a report to the President (through the Office of Management and Budget), Congress, GAO, and the public in accordance with its reporting obligations under the ADA.

GAO's opinion also notes that the Department has identified "a lack of written policies with regard to section 710 and acknowledged that the gap in these internal controls [has] contributed to [departmental] noncompliance" with its legal obligations. In this regard, HUD's August 17, 2018 response to GAO (1) identifies problems in how the Department has historically handled procurements carried out to improve the physical spaces occupied by presidentially-appointed officials, including problems associated with the dining-room-furniture procurement; (2) describes steps the Department has taken and will take to address such problems; and (3) references several potential violations of the ADA that may have occurred at the Department prior to Secretary Carson's tenure.

With regard to this last aspect of the Department's response, the OIG did not investigate other potential violations of the ADA, but we too found indications that deficiencies in how the Department has historically handled procurements associated with the office spaces of presidentially-appointed officials may have resulted in similar violations. For example, one career employee told the OIG that Secretary Carson was the only HUD Secretary she could recall who kept the furniture in his office upon assuming his position at the Department, and that the Department may have spent more than \$5,000 on improvements to the suite prior to Secretary Carson's tenure.

# Analysis

The facts of this case plainly implicate the ADA. Simply put, (1) the ADA prohibits the Department from "mak[ing] or authoriz[ing] an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation;" (2) the Department's appropriation for the relevant fiscal period prohibited it from "obligat[ing] or expend[ing] in excess of \$5,000 to furnish or redecorate the office" assigned to "the head of . . . [the] [D]epartment," which includes "the entire suite of offices assigned to the individual," or "to purchase furniture or make improvements for any such office" without first notifying congressional appropriations committees; and (3) on December 21, 2017, HUD obligated \$31,561 in funds to purchase furniture and improve the office suite assigned to the Department's head without any notice to Congress. <sup>17</sup>

Accordingly, had the Department not already done so, the OIG would recommend that HUD refer this matter to GAO, which the ADA requires. <sup>18</sup> Now that GAO has issued its opinion

<sup>&</sup>lt;sup>15</sup> GAO Opinion, at \*7.

<sup>&</sup>lt;sup>16</sup> GAO Opinion, at \*8.

<sup>&</sup>lt;sup>17</sup> See 31 Û.S.C. § 1341(a)(1)(A); Appropriations Act, 2017, § 710, 131 Stat. at 379.

<sup>&</sup>lt;sup>18</sup> See 31 U.S.C. § 1351.

finding that the dining-room-furniture procurement amounted to an ADA violation, the Department should report this violation as the law requires.

The facts of this case also show that the Department has historically lacked adequate internal controls to ensure compliance with the \$5,000 congressional limit on expenditures for improvements to the offices of presidentially-appointed officials. There is no evidence that anyone in the Office of the Secretary, OFMS, the Office of the CFO, or the Office of Administration reviewed the December 21, 2017 obligation of funds for the secretarial suite furniture to ensure it complied with the \$5,000 limit. Instead, the evidence shows that (1) an OFMS official determined that the dining room furniture had exceeded its serviceable life and should be replaced, (2) told an official in the Office of the Secretary as much and said that departmental funds were available to do so, (3) officials in the Office of the Secretary did not consider whether using such funds would implicate the \$5,000 limit, and (4) the Office of Administration and Office of the CFO allowed the purchase to proceed, evidently without considering this question either.

The evidence indicates that the Department believed it had a good faith reason for purchasing new dining room furniture for the secretarial suite. Officials with responsibility for maintaining departmental property told the OIG that the existing furniture was several decades old, was in poor condition both cosmetically and structurally, was beyond repair, and that replacing the furniture was justified in their professional judgement.

However, given that the plain language of governing appropriations law expressly prohibits obligating in excess of \$5,000 to purchase "furniture" for use in the "suite of offices" controlled by a "the head of [the] [D]epartment," we believe that departmental officials involved in this process should have been aware that notification to Congress was required here. The fact that evidently no one involved in this procurement had such awareness indicates a systemic failure. Moreover, the evidence in this case indicates that this failure may not have been an isolated instance, and that the Department may have committed ADA violations when making improvements to the secretarial suite prior to Secretary Carson's tenure.

The evidence shows that the Department has undertaken a review of its existing procurement procedures, has implemented strict interim procedures while it formulates more effective internal controls, and appears committed to ensuring compliance with the \$5,000 limit going forward, all of which the OIG finds to be an appropriate response to the issues presented by this case.

With regard to Secretary Carson himself, there is insufficient evidence to substantiate allegations of misconduct against him. While Secretary Carson said during his OIG interview that it "seemed like" he was aware of the \$5,000 congressional limit, he also said he was under the impression that this limit applied only to purchases for improvements made to his immediate office. Further, the evidence shows that Secretary Carson's staff told him that the dining room furniture in the secretarial suite should be replaced, that there were departmental funds available to do this, and that if the funds were not spent by a certain date, they would be lost.

Ideally, Secretary Carson, his staff, and all departmental officials involved in this procurement would have been aware of and fully understood the applicability of the \$5,000 limitation on

furniture purchases so that the ADA violation that resulted here would not have happened. Nonetheless, the OIG found no evidence that Secretary Carson pressured any member of his staff or any other departmental employee to replace the dining room furniture, nor did we find evidence that Mrs. Carson did so either.

Instead, departmental employees told the OIG that (1) Secretary Carson seemed "perfectly happy" with the existing furniture in his office suite, (2) the procurement of new dining room furniture would have been "the last thing" he would have "cared about," and (3) Mrs. Carson limited her involvement to "guid[ing] the conversation" about the details of the furniture selection once the Department had already decided to go forward with it. In addition, the evidence indicates that, upon learning of the procurement's legal ramifications, Secretary Carson took action to halt it before the actual expenditure of any departmental funds, and directed that the Department put in place new internal controls to prevent such issues from arising in the future.

Given that HUD is taking action to remediate the ADA violation that occurred in this matter and is taking steps to prevent such violations going forward, the OIG is not making any recommendations to the Department as a result of the evidence gathered in this investigation.

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