



U.S. DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT
OFFICE OF INSPECTOR GENERAL

May 30, 2014

MEMORANDUM NO:
[2014-FW-0801]

Memorandum

TO: Helen Kanovsky
Acting Deputy Secretary, SD

David Sidari
Deputy Chief Financial Officer, F

//signed//

FROM: Gerald R. Kirkland
Regional Inspector General for Audit, 6AGA

SUBJECT: Potential Antideficiency Act Violations
Intergovernmental Personnel Act Agreements

INTRODUCTION

Based upon a complaint, we reviewed two Intergovernmental Personnel Act (IPA) agreements as part of a joint assignment with our Office of Investigation and Office of Legal Counsel. During the review, we identified potential Antideficiency Act (ADA) violations with one of the agreements. Specifically, the U. S. Department of Housing and Urban Development (HUD) incorrectly used more than \$620,000 in Office of Public and Indian Housing (PIH) and Office of Housing-Federal Housing Commissioner personnel compensation funds to pay the salary of a senior advisor to the HUD Secretary. Additionally, HUD paid more than the agreement allowed and made payments without an agreement in place. HUD did not have procedures in place to prevent these potential ADA violations. Our objective was to determine whether HUD violated the ADA when it obtained the services of two people through IPA agreements.

METHODOLOGY AND SCOPE

To accomplish our objective, we

- Reviewed relevant Federal law, regulations, and implementing guidance;
- Interviewed current and former HUD employees;
- Reviewed agreements and related obligations and expenditures;
- Reviewed emails pertaining to the agreements and its process; and

- Reviewed budgetary documentation.

Our scope was from October 2010 through March 2014. We performed work in Washington, DC, Fort Worth, TX, and Oklahoma City, OK, from July 2013 through March 2014.

BACKGROUND

While reviewing a complaint regarding a person under an IPA agreement, we became aware of a similar IPA agreement with another person which HUD approved around the same time. Under the agreement, this person would continue to be employed by Community Builders, Inc., but would assist HUD with an initiative that became the Rental Assistance Demonstration program.¹ The General Deputy Assistant Secretary for Public and Indian Housing approved funding availability for this person to start working at HUD under the agreement in February 2011, and she approved the payment for the invoices until March 2013. The Acting General Deputy Assistant Secretary for Housing approved payment of the invoices for services beginning in March 2013.

According to the Office of Personnel Management, the goal of the IPA program is to facilitate the movement of employees for short periods of time when this movement serves a sound public purpose. Each assignment should be made for purposes that the Federal agency head or his or her designee determines are of mutual concern and benefit to the Federal agency and to the non-Federal organization. Assignments arranged to meet the personal interests of employees, to circumvent personnel ceilings, or to avoid unpleasant personnel decisions are contrary to the spirit and intent of the mobility assignment program.²

Under the IPA, HUD enters into an agreement with the person's employer. Cost-sharing arrangements for the IPA are negotiated between the participating organizations. Non-Federal employees on detail to Federal agencies remain employees of their permanent organizations for most purposes. The employee is expected to return to the employer at the end of the agreement. The agreement details the scope, job duties, pay, leave, and other details.

The Constitution of the United States gives Congress the "power of the purse" and further provides that the executive branch will "faithfully execute" the laws that Congress passes. Article 1, Section 9, of the Constitution stipulates that no money shall be drawn from the U.S. Treasury, but in consequence of an appropriation made by law. Under the ADA, an officer or employee of the U.S. Government may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation.³

In fiscal year 2008, Congress began appropriating salaries and expenses for the HUD Secretary, Deputy Secretary, and Assistant Secretaries separately from the rest of HUD salaries in an

¹ According to HUD's Web site, "The Rental Assistance Demonstration allows proven financing tools to be applied to at-risk public and assisted housing." The Rental Assistance Demonstration program grew out of the Transforming Rental Assistance program.

² Office of Personnel Management Web site: <http://www.opm.gov/policy-data-oversight/hiring-authorities/intergovernment-personnel-act/#url=Provisions>

³ 31 U.S.C. (United States Code) 1341, popularly known as the Antideficiency Act, placed limitations on expending and obligating amounts.

executive direction account to increase the accountability of lead policy makers. As this structure was created to increase oversight, the House Committee on Appropriations directed HUD in 2010 to only fund senior policy makers from this account and wrote that all senior advisors to the Secretary should be funded directly through the Office of the Secretary.⁴ Further, the Committee directed HUD to limit the reprogramming of funds between programs and expected all offices within HUD to work with the budget office to provide timely and accurate information for submission to the Committee.⁵ Because Congress separately appropriated the funds, it may have been an ADA violation each time other program areas paid for salaries and expenses that were required to be paid from the Office of the Secretary's executive direction account.

Federal employees who violate the ADA are subject to two types of sanctions: administrative and penal. Employees may be subject to appropriate administrative discipline, including when circumstances warrant, suspension from duty without pay or removal from office.⁶ In addition, employees may be subject to fines, imprisonment, or both.⁷ If an employee becomes aware of a potential ADA violation, that employee must notify HUD's Office of the Chief Financial Officer, which is responsible for investigating potential violations, determining whether actual violations have occurred, reporting on any such violations, and ensuring that HUD takes corrective action. Once it is determined that there has been a violation of the ADA, the agency head "shall report immediately to the President and Congress all relevant facts and a statement of actions taken."⁸

RESULTS OF REVIEW

HUD May Have Spent More Than \$620,000 in Violation of ADA Requirements

From February 2011 through March 2014, PIH and the Office of Housing collectively reimbursed Community Builders, Inc., more than \$620,000 for a senior advisor to the Secretary. In February 2011, HUD entered into an agreement with Community Builders, Inc., for the services of one of its employees. The Community Builders, Inc. employee's primary job duties, according to the agreement, pertained to an initiative that became the Rental Assistance Demonstration program. Under the agreement, HUD would reimburse Community Builders, Inc., a maximum of \$205,000 annually⁹ for the employee's services, which was significantly less than his salary at Community Builders, Inc. The employee served as an advisor to the Secretary; therefore, HUD's reimbursements to Community Builders, Inc. should have been made from the Office of the Secretary's executive direction account. However, from February 2011 to March 2013, the reimbursements came from PIH's personnel compensation account. In March 2013, the Office of Housing began reimbursing the senior advisor's salary. Because HUD did not use the Office of the Secretary's executive direction account for these reimbursements, HUD may have violated the ADA.

⁴ House of Representatives Report 111-564, page 117

⁵ House of Representatives Report 111-564, pages 114-115

⁶ 31 U.S.C. 1518

⁷ 31 U.S.C. 1519

⁸ HUD Handbook 1830.2, REV-5

⁹ Comprised of \$155,000 in salary and \$50,000 in benefits

In a January 13, 2011 email,¹⁰ the Assistant Secretary for Public and Indian Housing stated, “[Community Builders, Inc. employee] is to be the Project Manager for HUD’s [Transforming Rental Assistance] initiative. He will coordinate all TRA activities and be part of PIH. He is to be paid by PIH and his physical office is within PIH as well.”¹¹ In an October 23, 2013 interview, the senior advisor stated that he “technically” reported to PIH, the Office of Housing, and the Office of the Secretary; however, he worked directly under the HUD Office of the Secretary. There was no evidence that the senior advisor reported to or was housed within PIH. According to several documents and videos, this person was a senior advisor to the Secretary. Further, another advisor to the Secretary announced in an email, dated December 20, 2010, that this person would be working within the Office of the Secretary, and according to the senior advisor, he was physically located within the Office of the Secretary. Therefore, any reimbursements paid to Community Builders, Inc., should have been made from the Office of the Secretary’s funds.

Congress had specifically addressed HUD’s salary funding for its Secretary’s senior advisors and previous ADA violations. According to a July 26, 2010 House of Representatives report,¹² “...all senior advisors to the Secretary should be funded directly through the Office of the Secretary.” In addition, a HUD appropriations attorney wrote in a January 13, 2011, email that a special advisor to the Office of the Secretary would need to be paid by that office and not another office within HUD.¹³ Despite the direction in the House report and guidance from its own appropriations attorney, HUD reimbursed Community Builders, Inc., for the senior advisor’s services from PIH and Office of Housing funds. Subsequently, in June 2012, Congress admonished HUD for the lack of staffing data it provided and had available internally. Congress wrote that “this lack of essential information led to multiple Anti-Deficiency Act violations in fiscal year 2011, in which HUD hired more people than it had resources to pay. To date, HUD has not even tried to address these problems and thus the Committee has no faith in HUD’s ability to appropriately staff its operations.”¹⁴ The Chief Financial Officer’s investigation determined that the IPA payments contributed to ADA violations in PIH in 2011. Yet HUD continued to fund reimbursements for the senior advisor’s salary and benefits from the PIH personnel account until March 2013, when the Office of Housing started making the reimbursements. Again, the Office of the Secretary was responsible for funding the senior advisor to the Secretary.

¹⁰ A HUD appropriations attorney, HUD’s Chief Operating Officer, and HUD’s Chief Financial Officer were among the recipients of this message.

¹¹ Transforming Rental Assistance was a precursor to the Rental Assistance Demonstration program. In July 2010, the House Committee on Appropriations recommended no funding for Transforming Rental Assistance. It wrote that “[t]he Committee understands that the Department has invested a great deal of time and effort into the TRA proposal. However, the attention granted to this proposal seems to have come at the cost of other HUD programs, also in need of reform. The Committee is disappointed the Department chose to spend such a large amount of time and resources on this new proposal instead of making the regulatory changes badly needed in existing programs....” (House of Representatives Report 111-564, page 124).

¹² House of Representatives Report 111-564, page 117

¹³ The Assistant Secretary for Public and Indian Housing, General Deputy Assistant Secretary for Public and Indian Housing, PIH Director of Budget and Financial Management, and Chief Operating Officer were among the recipients of this email.

¹⁴ House of Representatives Report 112-541, page 72

In addition, HUD reimbursed Community Builders, Inc., more than the maximum amount (\$205,000) under the agreement. Specifically, for the agreement in effect for the period February 13, 2012, through February 13, 2013, HUD’s reimbursements exceeded the maximum agreed-upon amount by \$2,365. Without an updated agreement, the \$2,365 was unsupported.

Based on the effective dates of the agreements, HUD also did not have an agreement with Community Builders, Inc., between February 14, 2013, and March 14, 2013. During this period, HUD reimbursed Community Builders, Inc., \$16,558. The table below shows the total amount of possible ADA violations and the reasons for the apparent violations. If the Office of the Secretary did not have the funds to pay for the senior advisor’s salary, multiple ADA violations may have occurred. HUD must follow its requirements to determine whether ADA violations occurred and report accordingly. Also, HUD needs to ensure that it charges costs to the correct appropriation account, does not exceed maximum agreement amounts, and has valid agreements in place.

Reimbursements to Community Builders, Inc.

Dates	Amount	Reason for apparent violation
Feb. 14, 2011 – Feb. 13, 2012	\$204,485	Paid by PIH instead of Secretary
Feb. 13, 2012 – Feb. 8, 2013	205,000	Paid by PIH instead of Secretary
Feb. 9, 2013 – Feb. 13, 2013	2,365	Paid by PIH instead of Secretary; payment in excess of agreement
Feb. 14, 2013 – Mar. 14, 2013	16,558	Paid by PIH instead of Secretary; payments after agreement lapsed
Mar. 15, 2013 – Feb. 27, 2014	193,961	Paid by Office of Housing instead of Secretary
Total	\$622,369	

CONCLUSION

The General Deputy Assistant Secretary for Public and Indian Housing and Acting General Deputy Assistant Secretary for Housing may have caused ADA violations totaling more than \$620,000 when they approved payment for invoices for a senior advisor to the Secretary. HUD did not follow the necessary guidance during the agreement process to ensure that it reimbursed the employer from the correct personnel services account and paid the allowed salary amount. As a result, HUD may have violated the ADA each time it paid amounts from the incorrect personnel compensation account, paid more than the maximum amount under the agreement, and did not always have an effective agreement in place.

RECOMMENDATIONS

We recommend that HUD's Office of the Chief Financial Officer

- 1A. Investigate whether ADA violations of as much as \$622,369 occurred and if so, report the violation(s) in accordance with Office of Management and Budget Circular A-11 and HUD Handbook 1830.2, REV-5.
- 1B. If it is determined that ADA violations occurred, take appropriate administrative and penal action against employee(s) responsible for causing the ADA violations in accordance with the Antideficiency Act, Office of Management and Budget Circular A-11, and HUD Handbook 1830.2, REV-5.

We recommend HUD's Acting Deputy Secretary and Office of the Chief Financial Officer

- 1C. Develop and implement procedures to ensure all people under an IPA agreement have an effective agreement and ensure payments do not exceed the amounts authorized and are paid from the appropriate account.

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF THE DEPUTY SECRETARY
WASHINGTON, DC 20410-0050

MAY 16 2014

MEMORANDUM FOR: Gerald R. Kirkland, Regional Inspector General for Audit, 6AGA

FROM: Helen Kanovsky, Acting Deputy Secretary, SD

David P. Sidari, Deputy Chief Financial Officer, F

SUBJECT: Response to OIG Recommendations on IPAs

We are writing in response to your Draft Memorandum—Potential Antideficiency Act Violations—Intergovernmental Personnel Act Agreements, dated May 2, 2014, that you submitted for our review and action. We have reviewed your recommendations and agree to implement such recommendations.

The Office of the Chief Financial Officer (OCFO) will investigate whether an Antideficiency Act (ADA) violation of as much as \$622,369 occurred and if so, report the violation(s) in accordance with the Department's FY 2003 Appropriation Act (P.L. 108-7), HUD Handbook 1830.2, REV-5, and Office of Management and Budget (OMB) Circular A-11. The OCFO ADA review team may consult with, or obtain the assistance of, the Office of General Counsel and such other officials as such team determines necessary to carry out its duties.

To expedite our review and conserve limited staff and financial resources and limit the added burden that would be imposed on all those that you have already interviewed, we request that we be able to review your investigation files. We would be happy to conduct our review in accordance with any procedures you establish to preserve the confidentiality, integrity, and security of such files as is done with OIG staff review of our ADA investigation files.

If it is determined that an ADA violation occurred, the Department would take any necessary and appropriate administrative and other actions with respect to any employee(s) responsible for the ADA violation in accordance with the ADA, OMB Circular A-11, and HUD Handbook 1830.2, REV-5. As with any potential or actual ADA violation, further training and guidance for individuals involved and others with similar responsibilities is often the best way to increase awareness and prevent future ADA violations.

Whether it is determined that an ADA violation occurred or not, the Department will develop and implement procedures to ensure that any person scheduled to work under an IPA will have an effective agreement in place before the person begins work under the IPA, and to ensure that sufficient funds in the appropriate account are available prior to and at all times

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during the period of performance under the IPA. Overall, the Department strives to continuously improve and strengthen our funds control procedures and our financial execution in accordance with such procedures.

Thank you for bringing this potential ADA violation to our attention. With your continued assistance, the Department will work expeditiously to determine whether an ADA violation has occurred, and to take all necessary and appropriate actions, including corrective actions to prevent future ADA violations.

Cc: Randy McGinnis

OIG Evaluation of Auditee Comments

Comment 1 We commend HUD for agreeing to resolve the potential ADA violations identified in this memorandum and implement the recommendations. We look forward to working with HUD on the resolution of these issues.