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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

CIVIL DIVISION

MAR 29 1971



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Dear Mr. Condon:

The General Accounting Office has made a review of the policies and practices followed by the Department of Housing and Urban Development (HUD) in its management and utilization of funds obtained through the collection of fees from the beneficiaries of eight loan and grant programs.

In fulfilling its responsibilities for the administration of its various programs, HUD makes project audits and inspections and provides representatives at project sites. For each of the eight programs included in our review, HUD has legal authority to collect fees to defray the costs of some or all of these activities--which are called "nonadministrative" activities.

The Housing and Urban Development Act of 1970--enacted December 31, 1970--contains a provision which permits HUD to account for these fee revenues on a consolidated basis and to use fees collected from the beneficiaries of one program to cover nonadministrative costs incurred in connection with other programs under which fees are assessed.

HUD's system of fee collections and expenditures does not operate on a pay-as-you-go basis. The nonadministrative funds available to HUD at any particular time represent, in effect, money in escrow to cover nonadministrative costs to be incurred throughout the durations of the projects for which fees have been collected.

For several years, the Department has had available for its use substantial amounts of funds--about \$34 million as of June 30, 1970--accumulated as a result of fee collections from the beneficiaries of the eight programs. Also, the Department has considerably broadened the scope of the activities financed by use of available nonadministrative funds.

Until fiscal year 1968, the Congress exercised control over HUD's use of nonadministrative funds through the imposition of annual limitations on the total amount of funds that could be expended in connection with the eight programs. At HUD's request, the legislatively imposed

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spending ceilings were removed in fiscal year 1968. In requesting removal of the spending limitations, HUD stated that its nonadministrative funds were self-limiting since they could not be used for any purposes other than those for which fees were collected, and if nonadministrative costs were not incurred, the accumulated fee collections could not be used.

We noted in our review, however, that as of June 30, 1970--prior to the new legislative authorizations for the administration of fee revenue

--HUD was using funds collected from the beneficiaries of one program to cover its costs of making inspections and audits under a separately enacted program for which the assessment of fees was not legislatively authorized and

--three of the eight programs under which nonadministrative activities are carried on were being operated at a "loss" in terms of expenses incurred as they related to fees collected.

Fee supported activities have been a source of concern to HUD officials as indicated in your January 1970 memorandum to the Under Secretary in which you stated that these activities "****have developed one by one over the years so that we have a complicated and inconsistent administrative monstrosity to work with." Subsequently, HUD formed a standing committee to provide for continual review of the adequacy of established fees and to make recommendations concerning the adjustment of fee rates which are affected by changes of nonadministrative activity carried on in connection with specific programs. In addition, HUD proposed the previously discussed provision which was enacted as part of the 1970 act.

On the basis of our review, we believe the Congress has not been fully informed of (1) the substantial amount of funds available to the Department for use in defraying certain expenses and (2) the manner in which available funds have been used by the Department. The enactment of the 1970 act apparently further removes HUD's nonadministrative activities from congressional review, and, at the same time, provides HUD with increased latitude in its administration of the activities.

The details of our examination are included as an enclosure to this letter.

Recognizing that portions of the accumulated balances in the nonadministrative accounts for several of the programs are available to finance future inspection and audit work at ongoing HUD-assisted projects, we recommend that HUD revise its budget presentation to clearly show the Congress--in addition to the information already

presented in the budget

- the amount of the accumulated funds available for use in financing nonadministrative activities;
- the Department's estimates of fee revenues, by source, to be received during the fiscal year covered by the budget;
- the amount of funds expected to be available at the end of the fiscal year; and
- the Department's plans for use of available funds in future fiscal years.

We believe also that HUD, in carrying out its nonadministrative activities under the provisions of the recent legislation, should establish its fee rates to ensure that the beneficiaries of one HUD program are not required to support nonadministrative activities carried on in connection with other programs. We suggest, therefore, that HUD continue to establish fee rates on a program-by-program basis and, through its committee on fees and charges, ensure that those activities to be financed with fee revenues are--for each program--wholly self-sustaining.

To assist in this effort, we suggest also that the committee on fees and charges be given the additional responsibility for

- defining specifically those types of departmental activities to be financed with fee revenue and
- standardizing, to the extent feasible, administration of fee supported activities under the various programs for which fee assessments are to be made in order that the assessments can be equitably established for each program.

We appreciate the cooperation and courtesies extended to our representatives during this review. We would also appreciate your comments and advice as to any action taken or planned on the matters discussed in this report.

Sincerely yours,

B. E. Birkle

B. E. Birkle
Assistant Director

Enclosure

The Honorable Lester P. Condon
Assistant Secretary for Administration
Department of Housing and
Urban Development

GENERAL ACCOUNTING OFFICE
REVIEW OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
ACTIVITIES FINANCED THROUGH THE ASSESSMENT OF FEES

INTRODUCTION

The Department of Housing and Urban Development (HUD) is the principal agency of the Federal Government that provides financial assistance to State and local public bodies and private institutions to carry out programs designed to provide suitable housing and living environments for Americans.

In fulfilling its responsibilities for administering these financial assistance programs, HUD makes project audits and inspections and provides representatives at project sites. These activities serve the purposes of protecting Federal interests in HUD-assisted projects and providing guidance to program participants.

Prior to enactment of the Housing and Urban Development Act of 1970, December 31, 1970, HUD assessed fees against participants of eight of its programs to cover the costs of these activities--called "nonadministrative" activities.^{1/} For each of the eight programs, HUD has legal authority to assess fees sufficient to cover nonadministrative costs incurred in connection with each of the programs.

In its legislative proposals for the 1970 act, HUD included a provision to authorize the Secretary to charge fees under all HUD programs rather than under only the eight programs. This provision was enacted as section 905(j) of the 1970 act. Section 905(j) provides also that additional types of costs may be covered with fee revenue and that the revenue may be accounted for on a consolidated basis. Thus, HUD may use fee revenue collected from the beneficiaries of one program to cover costs incurred in connection with other programs under which fees are assessed.

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These include HUD loan and/or grant programs for urban renewal, low-rent public housing, urban planning, open-space land projects, neighborhood facilities, basic water and sewer facilities, public facilities, and college housing. The Department also has legislative authority to assess fees under several guarantee and/or registration programs such as Federal Housing Administration programs, and the New Communities Development program. We limited our review to those departmental activities financed from fees collected in connection with HUD loan and grant programs.

The Department's system of fee collections and expenditures for nonadministrative activities does not operate on a pay-as-you-go basis. Rather, under each of the eight programs that we reviewed, HUD collects fees for projects on a one-time, lump-sum basis, whereas, the nonadministrative activities it performs in connection with those projects may be performed throughout the durations of the projects. Under this system, the nonadministrative funds available to HUD at any particular time represent, in effect, money in escrow to cover future nonadministrative costs.

The Department develops fee rates for each of the eight programs on the basis of expenses--both direct expenses and certain expenses for supporting services--expected to be incurred by the Department for carrying out the nonadministrative activities. Within each program, the fees to be assessed against the beneficiaries of individual projects are calculated on the basis of the comparative costs of the individual projects in that program.

The fee assessments are generally billed against the first funding which the beneficiaries of HUD's loan and grant programs receive. Fee receipts collected in this manner are recorded in accounts maintained in connection with the individual programs under which fees are assessed.

HUD accounts for its receipts, expenditures, and balances of funds applicable to fees through program control accounts and accounts maintained in connection with its Administrative Operations Fund (Fund). The Fund was established under section 502(c)(3) of the Housing Act of 1948 to provide for the efficient and orderly administration of funds--including receipts from appropriations and revolving funds, as well as fees--for the staff and operating expenses of the Department. All of HUD's expenditures for the administration of its various programs--including those for activities classified by HUD as nonadministrative--are financed through the Fund.

Money needed to cover the estimated costs of nonadministrative activities for each program is transferred from program accounts to the Fund. The estimates are periodically updated to more accurately reflect anticipated costs of the nonadministrative activities and appropriate adjustments are made in the accounts. HUD's financial records indicate that the Department's nonadministrative costs for the eight programs we reviewed have increased substantially in recent years, as shown below.

<u>Fiscal year</u>	<u>Nonadministrative costs</u> (in millions)
1967	\$ 5.5
1968	8.8
1969	9.9
1970	16.5

HUD officials estimated that the volume of fee-supported activities would continue to increase to about \$18.8 million in fiscal year 1971.

NEED FOR INCREASED CONGRESSIONAL
AWARENESS CONCERNING HUD'S
FEE RELATED ACTIVITIES

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The Department has, for several years, had available for its use substantial amounts of funds accumulated from fee collections from the beneficiaries of the eight programs for which the assessment of fees is authorized. Also, the Department has considerably broadened the scope of the activities which are funded from available nonadministrative funds. We believe that the Congress has not been fully informed of (1) the amount of funds which the Department has available in its nonadministrative accounts for use in defraying certain staff expenses, and (2) the manner in which the available reserves have been used by the Department.

The year-end balances of HUD's nonadministrative funds increased from about \$19 million as of June 30, 1964, to about \$36 million as of June 30, 1969, and totaled about \$34 million as of June 30, 1970. The balances of these funds represent the differences between accumulated fee collections from the participants of the programs we reviewed and cumulative expenditures for the nonadministrative activities performed by HUD in connection with these programs.

The \$34 million shown in HUD's financial records as being available at June 30, 1970, for performing nonadministrative activities was comprised primarily of substantial balances which existed in two programs--the Urban Renewal program (\$23.7 million), and the College Housing Loan program (\$7.2 million). Also, HUD's financial records show deficit balances for three of the six remaining programs.

Our review of HUD's recent budget justifications as well as its testimony before congressional appropriation committees indicated that HUD does not, in its budgetary process, disclose to the Congress the extent of the fee receipts available for HUD's use. In its budget justification, HUD provides the Congress with estimates of

anticipated nonadministrative expenses. However, unlike departmental staff expenses funded from sources other than fee collections--such as appropriated funds and certain revolving funds--there is no requirement that expenditures for nonadministrative activities be limited to the estimates presented to the Congress.

As previously mentioned, three of the eight programs we reviewed were, as of June 30, 1970, being operated at a "loss" in terms of expenses incurred as they related to fees collected. This situation appears questionable because a portion of the fee revenues collected under each program is required to be reserved by HUD to finance its nonadministrative activities throughout the durations of the projects for which the fees have been collected. HUD officials advised us that future fee revenues collected under the three programs will be earmarked to cover the deficits which currently appear in the nonadministrative funds for these programs.

Until fiscal year 1968, the Congress exercised control over HUD's use of nonadministrative funds through the imposition of limitations on the total amount of such funds that could be expended each year in connection with the programs for which assessment of fees was authorized. These limitations were increased from \$374,000 in 1952 to about \$5.5 million in 1967.

At HUD's request, the legislatively imposed spending ceilings were removed in fiscal year 1968. In presenting its position in favor of the removal of the spending limitations, HUD stated that the funds were self-limiting since (1) they could not be used for any purposes other than those for which the fees were collected and (2) if nonadministrative costs were not incurred, the money accumulated from fee collections could not be used.

HUD's position concerning the self-limiting nature of its non-administrative funds has apparently not been borne out by its subsequent actions regarding fee revenues accumulated in connection with the College Housing Loan program. Under this program, which was authorized by title IV of the Housing Act of 1950, as amended, HUD provides long-term direct loans to finance the costs of constructing student and faculty housing and related service facilities at colleges and at hospitals offering medical training.

The General Appropriation Act of 1951 provided that the expense of Federal inspections of college housing projects financed through loans should be borne by the beneficiary institutions. Similar language regarding college housing loan projects was included in each

subsequent year's appropriation act and last appeared in the Independent Offices Appropriation Act for fiscal year 1964 which permitted nonadministrative fees to be assessed for "***hereafter necessary expenses***."

Section 1705 of the Housing and Urban Development Act of 1968, enacted in August 1968, established a program providing for annual debt service grants to educational institutions to reduce their borrowing costs, and thereby encourage their use of private capital for the construction or purchase of college housing and related facilities. Because inspection services would be needed for those College Housing projects funded under the recently established debt service grant program, HUD officials requested the HUD General Counsel, Office of Housing Assistance, to express an opinion as to whether HUD could administratively impose a requirement to force grant recipients to pay a fixed fee for inspections of grant-assisted projects.

In December 1968, the Office of Housing Assistance Counsel advised that since the pertinent legislation authorizing the assessment of nonadministrative fees for college housing projects is directed specifically to those projects financed through loans, it would be inappropriate to administratively assess a fee against the beneficiaries of the "***separately enacted grant program***."

In view of this legal opinion, officials of the Office of Renewal and Housing Assistance (RHA), in September 1969, requested the Housing Assistance Counsel to render an opinion as to whether the balance in the College Housing nonadministrative fund--which amounted to about \$7.3 million as of June 1969--could be used to pay the costs of inspecting projects financed under the grant program. The Associate General Counsel, RHA, advised RHA program officials in November 1969, that, although HUD has no authority to assess non-administrative fees against College Housing grantees, it would be permissible to use surplus nonadministrative funds accumulated from fixed fees collected under the loan program to pay costs of inspection and audit of grant projects.

In support of his opinion, the Associate General Counsel, RHA, stated, in part, that for the purpose of administration and funding, the College Housing loan and grant programs are intended to represent a continuum rather than two separate and distinct operations. In this connection, the opinion noted that the grant program is in large measure designed to replace the loan program and, accordingly, HUD's use of the loan program's nonadministrative fund balances to service grant projects is justified.

As a result of the second opinion, the Acting Assistant Secretary, RHA, recommended in a December 1969 memorandum to the Assistant Secretary for Administration that expenses incident to inspection and audit services needed for the grant program be charged to the College Housing nonadministrative fund. Discussions with HUD officials indicated that this recommendation has been implemented. These officials were, however, unable to tell us the level of expense incurred exclusively for inspection and audit of debt service grant projects since these expenses are combined in a College Housing nonadministrative expense account with similar expenses incurred under the direct loan program.

As stated in the legal opinion of November 1969, the College Housing debt service grant program--because of its reduced impact on annual Federal budget outlays--is intended to replace the direct loan program. In this connection, the level of funding for the direct loan program has declined substantially in recent years---apparently as a result of the grant program. Although both programs have, to date, been conducted concurrently, we were advised that HUD plans to use direct loans only in those instances where institutions are unable to obtain private financing.

The actions taken by HUD to use nonadministrative funds accumulated under the College Housing loan program to finance services performed in connection with the debt service grant program appear to us to be questionable in that the legislation which established the debt service grant program made no provision for either (1) the assessment of any nonadministrative fees or (2) changes in the purposes for which fees derived from the previously established loan program could be used.

HUD's fee supported activities have been a source of concern to HUD officials. In a January 1970 memorandum to the Under Secretary of HUD, the Assistant Secretary for Administration stated that:

" *** Fee supported activities have developed one by one over the years so that we have a complicated and inconsistent administrative monstrosity to work with.

Some fees cover audit expense; others do not. Most cover inspection expense, but defined differently in different programs. ***Some are collected in advance; others are not. Some have accumulated surpluses sufficient to cover many years ahead; others are in deficit position. There are other differences. Worst of all, there are so many different offices involved that the subject cannot be given clear and effective attention. It needs a forum to provide unified top-level attention on a continuing basis."

Subsequently, HUD formed a standing committee to provide for continual review of the adequacy of established fees and to make recommendations concerning the adjustment of those fee rates which are affected by changes in the amounts of nonadministrative activity carried on in connection with specific programs.

CONCLUSIONS AND RECOMMENDATIONS

On the basis of our review, we believe that HUD's financing arrangements for and implementation of its nonadministrative activities have evolved in such a way that these activities--which involve substantial amounts of Federal funds--have become removed from effective congressional control. In addition, the Department itself, in our opinion, has little basis for reasonable assurance that its accumulated fee revenues will be sufficient to cover the costs of future nonadministrative services to be performed throughout the durations of those projects for which fees have been collected.

The enactment of the Housing and Urban Development Act of 1970 further removed HUD's nonadministrative activities from continuing congressional review, and, at the same time, provided HUD with increased latitude in its administration of the activities.

Although the accumulated balances in the nonadministrative accounts for several of the programs are reserved to finance future inspection and audit work at ongoing HUD-assisted projects, we believe that the Congress should be made aware of the extent of the resources available to HUD for its nonadministrative activities and HUD's specific plans for the use of those resources. Accordingly, we recommend that HUD revise its budget presentation to clearly show the Congress--in addition to the information already provided in the budget

- the amount of the accumulated funds available for use in financing nonadministrative activities;
- the Department's estimates of fee revenues, by source, expected to be received during the fiscal year covered by the budget;
- the amount of funds expected to be available at the end of the fiscal year; and
- the Department's plans for use of available funds in future fiscal years.

We believe also that HUD, in carrying out these activities under the provisions of the recent legislation, should--for those HUD-assisted programs under which fees are to be assessed--establish its fee rates to ensure that the beneficiaries of one program are not required to support nonadministrative activities carried on in connection with other programs. Accordingly, we suggest that HUD continue to establish fee rates on a program-by-program basis and, through its committee on fees and charges, ensure that those activities to be financed with fee revenues are--for each program--wholly self-sustaining. We suggest also that, to assist in this effort, the committee on fees and charges be given the additional responsibility for

--defining specifically those types of departmental activities to be financed with fee revenue and

--standardizing, to the extent feasible, administration of fee supported activities under the various programs for which fee assessments are to be made in order that the assessments can be equitably established for each program.