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United States General Accounting Office
Washington, DC 20548

June 30, 2003

The Honorable Paul S. Sarbanes
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

Subject: *Employment of OMHAR Staff at HUD Following Their Employment at OMHAR*

Dear Senator Sarbanes:

To reduce the estimated multibillion-dollar costs to the federal government of renewing rental subsidy contracts while helping preserve available and affordable low-income rental housing, Congress passed the Multifamily Assisted Housing Reform and Affordability Act of 1997 (Act), which established the “mark-to-market” program to restructure the contracts. The Act also created the Office of Multifamily Housing Assistance Restructuring (OMHAR) as a temporary organization within the Department of Housing and Urban Development (HUD) to administer the contract-restructuring program. With OMHAR scheduled to “sunset” (cease operations) on September 30, 2001, the Subcommittee on Housing and Transportation, Committee on Banking, Housing, and Urban Affairs, held a hearing in June 2001 to determine whether it would be more advantageous to the federal government to extend rather than end the program. Subsequently, Congress extended the sunset date to September 30, 2004, with restructuring work at HUD continuing until 2006. To ensure that OMHAR could attract and retain staff with requisite expertise in multifamily housing finance issues, the Act provided the Director of OMHAR authority to pay salaries comparable with the Federal Deposit Insurance Corporation.¹ As a result, OMHAR salaries are generally higher than those paid for most federal positions. OMHAR is staffed in part by former HUD employees, and also by former employees of other federal agencies and the private sector.

As you know, the Subcommittee on Housing and Transportation, Committee on Banking, Housing, and Urban Affairs has previously highlighted the importance of attracting and retaining the skilled staff necessary to carry out OMHAR functions. In addition, you have stated that a chief goal of the legislation extending the sunset date until 2004 ought to be the retention of OMHAR staff so that program implementation would move forward effectively. In light of these issues, in your December 4, 2002, request, you expressed concern that HUD might not be honoring pay commitments relating to the return of OMHAR staff to HUD after their employment at OMHAR

¹Public Law 105-65, Section 574 (b), 111 Stat. 1422, October 27, 1997.

ends. We agreed with your office to (1) describe what information HUD and OMHAR officials provided regarding OMHAR staff employment at HUD following their employment at OMHAR; (2) describe how HUD determined to which OMHAR employees it would offer employment and what their pay levels would be; and (3) determine, for eligible OMHAR employees, how accepting HUD's offer would affect their pay.

Background

OMHAR is responsible for administering the mark-to-market program, which was established to reduce rent levels for Federal Housing Administration (FHA)-insured multifamily properties that receive Section 8 assistance and have rents determined to be above prevailing market levels.² The goals of the mark-to-market program include preserving the affordability and the availability of low-income rental housing while reducing the long-term costs of Section 8 project-based assistance. Restructuring generally involves resetting rents to market levels and reducing mortgage debt, if necessary, to permit a positive cash flow for the project. To facilitate the restructurings, Congress provided OMHAR with certain tools, such as the ability to reduce an owner's mortgage payments by creating a new first mortgage and, where necessary, deferring some of the debt to a second mortgage that must be repaid only if sufficient cash flow is available.

As of June 1, 2003, OMHAR had a staff of 78, split among four field offices and its Washington, D.C., headquarters. Approximately two-thirds of the staff are devoted to "production" functions such as reviewing, underwriting, or restructuring mortgages and conducting closing and post-closing activities; the remaining staff perform administrative functions. HUD and OMHAR managers agreed during the start-up of OMHAR that HUD's human resource office would handle personnel processing functions, because establishing a separate personnel office at OMHAR or using other agencies would be difficult and might delay hiring.

In December 1998 and January 1999, HUD requested, and received from the Office of Personnel Management (OPM), the authority to appoint (hire) staff under Schedule A of the excepted schedules.³ Schedule A authority must be used by temporary organizations (such as OMHAR) that are established within continuing agencies to hire staff for positions for which it is not practical to hold competitive examinations.⁴ An appointment into a position under Schedule A is an appointment into the excepted service, or those positions in the executive branch specifically exempted from

²Under Section 8 of the Housing Assistance Act of 1937, tenants pay up to 30 percent of their family or individual income for rent. The federal government pays property owners the difference between the actual monthly rent and the family or individual's payment. This assistance can be project-based (attached to the unit) or tenant-based (in the form of a voucher held by the tenant). The mark-to-market program applies only to project-based Section 8 program contracts. Over 800,000 units in approximately 8,500 multifamily projects have been financed with mortgages insured by FHA and supported by project-based Section 8 housing assistance payment contracts.

³5 C.F.R. 213.3101. OPM is responsible for administering the Civil Service System, including personnel-related laws and executive orders, and for developing regulations to ensure that all agency personnel actions are in accordance with merit system principles. 5 U.S.C. §§1103 & 1104.

⁴5 C.F.R. 213.3199.

competitive service procedures. In contrast, competitive service positions are those to which competitive civil service laws and procedures do apply. An appointment to a competitive service position allows federal employees to earn competitive status, which in turn allows them to be promoted, transferred, reassigned, or reinstated without taking additional competitive examinations or undergoing competitive procedures, subject to the conditions prescribed by the civil service rules and regulations.⁵

The movement of federal employees among agencies or between positions is subject to certain limitations. In this letter, we discuss two such limitations; specifically, how reemployment rights and reinstatement eligibility apply to federal employees. Reemployment rights allow an employee to return to nontemporary employment following an assignment to other civilian employment.⁶ An employee with reemployment rights is entitled to, among other things, a position at the same grade or level and in the same geographic area as the position that the employee previously held.⁷ But, under OPM regulations, agencies may only offer reemployment in limited circumstances, such as movement of staff between executive agencies during emergencies. To grant reemployment rights in the case of an emergency, an agency must request that OPM provide it with a letter of authority.⁸

Reinstatement eligibility, on the other hand, is a broader concept; federal employees with competitive status are by definition eligible for reinstatement. Reinstatement eligibility allows an individual formerly employed in the competitive service, who had competitive status or was probationary when separated, to be considered for a federal position without undergoing competitive procedures.⁹ Agencies may still choose whom to hire; reinstatement eligibility does not guarantee a position, but rather offers the possibility for appointing an individual to a position.

According to OPM regulations, individuals who have reinstatement eligibility would, upon accepting reinstatement without competition, have their pay set at no higher than their last competitive grade held in the General Schedule (GS).¹⁰ For example, if an individual left the competitive service and the last competitive grade held was a GS-9, he or she would have to be reinstated to a GS-9 position. The hiring agency could then apply the maximum payable rate rule, which uses highest previous rate of

⁵Competitive status is acquired by completion of a probationary period.

⁶Other civilian employment may be with the Foreign Service, public international organizations, or other agencies in the executive branch.

⁷An agency may refuse to reemploy an employee with reemployment rights only when the employee was separated from the agency for serious cause (5 C.F.R. 352.208).

⁸5 C.F.R. 352.201-203.

⁹5 C.F.R. Part 315, Subpart D.

¹⁰The General Schedule (GS) is the graded pay system established under the Classification Act of 1949, as amended (5 U.S.C. Chapter 53, Subchapter III, and 5 C.F.R Part 531). GS grades range from GS-1 to GS-15, and there are 10 steps in each grade level.

pay to determine the appropriate step within this grade level.¹¹ Highest previous rate is the highest actual rate of basic pay previously received by an individual while employed in a federal government position, or the actual rate of basic pay for the highest grade and step previously held by an individual while employed in a position subject to the general schedule. To set pay, the hiring agency typically would review the individual's official personnel folder to determine the last nontemporary GS grade held in the competitive service. The agency then would have the discretion to set pay at any step within the grade without exceeding the last GS pay grade held.¹²

Results in Brief

Over a period of several years, HUD provided inaccurate information to OMHAR officials and staff regarding OMHAR staff members' potential employment and pay at HUD. To encourage HUD employees to apply for positions at OMHAR during start-up in 1999, HUD provided a memorandum to OMHAR managers stating that certain HUD employees who joined OMHAR would have "reemployment rights." However, HUD had neither requested nor received authority from OPM to grant reemployment rights. (HUD did have the authority to reinstate employees.) Also during 1999, HUD-prepared job announcements erroneously advertised some OMHAR positions as competitive service positions, when they were actually excepted service positions. In November 2000, HUD sent a memorandum to OMHAR managers, notifying them that it would correct erroneous OMHAR employee appointments made under incorrect announcements. However, in the same memorandum, HUD provided inaccurate information on pay levels that would apply to OMHAR employees eligible to return to HUD. Specifically, the memorandum stated that "upon the sunset of OMHAR," eligible employees would be moved into positions at HUD at their current OMHAR pay grades rather than, as is correct, their highest previously held grade in the competitive service.

HUD determined to which OMHAR employees it would offer employment and what their pay would be using OPM regulations regarding reinstatement eligibility. HUD laid the groundwork for these decisions in a July 2002 memorandum to OMHAR managers noting that previous information on employment and pay that it had provided was not consistent with OPM regulations. The memorandum clarified previous inaccuracies and explained which regulations applied to staff and how these would affect employment eligibility and pay for positions at HUD. HUD also stated that its earlier "reemployment commitment" to eligible staff would be honored. Shortly after the July 2002 memorandum, OMHAR and HUD officials worked together to identify OMHAR staff to whom HUD would offer positions, based on their prior competitive status, and what their pay would be, based on their highest grade level held in the competitive service. Because OMHAR is a temporary organization and its positions are excepted rather than competitive, only staff with prior competitive status have reinstatement eligibility. HUD is using its discretionary authority to offer positions to OMHAR employees with reinstatement eligibility in an attempt to honor its "reemployment commitment." HUD is also using its authority to offer staff pay at the highest appropriate step within the last competitive grade held. Based on HUD

¹¹5 C.F.R. 531.201-531.203.

¹²5 C.F.R. 531.203 (c) (1).

and OMHAR's analysis, as of March 7, 2003, there were 24 staff who had been identified as eligible for reinstatement at HUD.

By accepting HUD's offer of reinstatement without competition, all 24 eligible OMHAR staff would experience a reduction in pay. Based on HUD and OMHAR's analysis, as of March 7, 2003, the average decrease in pay for OMHAR staff would be 16.5 percent, or about \$17,000. Specifically, 10 staff would experience a decrease of more than 20 percent, 6 would experience a decrease of 10 to 20 percent, and 8 would experience a decrease of less than 10 percent. However, to more closely match their OMHAR salary, eligible OMHAR staff may apply for higher-grade positions at any federal agency through normal competitive procedures.

In commenting on a draft of this letter, HUD officials agreed with the letter's findings. Our evaluation of HUD's comments appears later in this letter; HUD's comments appear in the enclosure. We also requested, but did not receive, comments from OPM.

HUD Provided Inaccurate Information Regarding Future Employment and Pay of OMHAR Staff

From 1999 until 2002, HUD provided OMHAR staff with inaccurate information regarding employment and pay. The inaccurate information was contained in a variety of documents, including a series of memorandums and job announcements to OMHAR managers and staff. Prior to hiring staff, HUD mistakenly informed OMHAR managers that certain HUD employees who joined OMHAR had "reemployment rights," when in fact what they had was reinstatement eligibility, which is granted to all employees with prior competitive status in the federal service. HUD then incorrectly advertised some positions as competitive and therefore appointed some OMHAR staff to positions incorrectly designated as competitive when they were actually excepted positions. Later, HUD corrected OMHAR employee appointments to address initial mistakes, but presented inaccurate information regarding pay grades for OMHAR employees eligible to return to HUD; OMHAR's Director then communicated this inaccurate information on pay to OMHAR staff.

HUD Mistakenly Informed OMHAR Managers That Eligible Staff Would Have Reemployment Rights and Erroneously Appointed Many OMHAR Staff

On February 17, 1999, the Deputy Secretary of HUD sent a memorandum to the Director of OMHAR regarding the employment of HUD employees appointed to positions at OMHAR. The memorandum incorrectly stated that, under delegated agency authority granted by OPM, the Deputy Secretary was "granting reemployment rights to those eligible career and career-conditional HUD employees serving under a Schedule A excepted service or a career appointment with OMHAR."¹³

¹³A career employee has completed 3 substantially continuous, creditable years of federal service under a competitive service permanent appointment (5 C.F.R. 315.201). A career-conditional employee is serving in a competitive service appointment, but has not yet completed the 3-year service period.

The February 1999 memorandum's use of the term "reemployment rights" was inaccurate, because reemployment rights only apply in very specific circumstances. Although these OMHAR staff did not have reemployment rights, they did have reinstatement eligibility, which is offered to all federal employees with prior competitive status, allowing them to be considered for a federal position without undergoing competitive procedures. Based on our discussions with OPM officials and review of the regulations, HUD would have had to request a letter of authority from OPM to be able to offer reemployment rights.¹⁴ After interviews with HUD and OPM officials, and after review of internal files by these officials, they were unable to find any documentation that showed that HUD requested or received this authority from OPM. However, according to HUD and OMHAR officials, HUD believed at the time that it could offer reemployment rights and used this offer to increase the interest of prospective HUD employees in applying for positions at OMHAR. HUD and OMHAR officials also told us that shortly after the memorandum was released, the Director of OMHAR erroneously decided to extend reemployment rights to all federal employees to be hired by OMHAR, not just HUD employees, to further increase interest in the positions.

In 1999, as OMHAR started hiring staff, some HUD-prepared job announcements incorrectly labeled OMHAR positions as being in the competitive service. Because OMHAR is a temporary agency, all its appointments must be to excepted service positions. Consequently, some OMHAR employees were appointed to positions incorrectly characterized as competitive service positions, and these incorrect appointments were documented in personnel records such as the Standard Form 50 (SF 50).¹⁵

After OMHAR appointed staff, it also provided each employee with a memorandum explaining that the employee had either an excepted service appointment or (erroneously) an appointment with reemployment rights. For staff erroneously offered reemployment rights, these individual memorandums, in most cases, discussed the position and grade level staff would be placed in at HUD following OMHAR sunset or termination of their appointment.

HUD Presented Inaccurate Information on Pay Grades to OMHAR Managers, Who Disseminated the Information to OMHAR Staff

On November 7, 2000, the Director of the Office of Human Resources at HUD sent a memorandum to OMHAR's Administrative Officer regarding the appointment status and pay of OMHAR employees. This memorandum was a follow-up to a series of discussions between HUD's Office of Human Resources and OMHAR managers concerning appointment status and pay in light of the impending OMHAR sunset. OMHAR officials were concerned that there would be a problem retaining qualified staff and recruiting new staff in the year prior to sunset. As an incentive to reduce the potential loss of staff, HUD agreed to offer OMHAR employees retention of their

¹⁴5 C.F.R. 352.201-203.

¹⁵A Standard Form 50 (SF 50), Notification of Personnel Action, is a document used by federal agencies to inform employees of changes, such as reassignment, pay adjustments, promotions, or achievement of status. A copy of every SF 50 issued for an employee is included in the employee's official personnel folder.

OMHAR pay grades rather than use their last competitive grade held. The memorandum also noted that some appointments had been improperly documented as competitive, rather than excepted, and outlined the steps that would be taken to correct employee records. (HUD and OMHAR subsequently provided staff with corrected SF 50s.) However, the November memorandum continued to erroneously refer to staff as having reemployment rights.

While the memorandum notified OMHAR managers of the correction of one misunderstanding, it created another by incorrectly stating that employees with competitive status, following OMHAR sunset or termination of their appointment, would be moved into positions at HUD at their “current grades” rather than the grade last held in a competitive position. The memorandum stated that when this occurred, “salaries would be based on the GS pay schedule using highest previous rate rules.” The memorandum also stated that the maximum rate payable under this authority was step 10 of the GS equivalent to the current grade held. Based on our discussions with OPM and HUD officials, because OMHAR is a temporary organization with excepted positions, pay grades under this organization are also temporary, and cannot be used to set pay if an agency chooses to reinstate an employee without competition to a competitive position. (Reinstatement without competition would be to the grade last held in a competitive position.)¹⁶

Using the information provided in the November 2000 memorandum, the Director of OMHAR sent a memorandum to OMHAR staff on December 5, 2000, notifying them of the two issues. The discussion of pay retention in the December memorandum was almost identical to that of the November memorandum, but added that shortly before OMHAR sunset, employees would be notified of the positions to which they would be assigned and the grades and steps of these positions.

HUD Determined to Whom It Would Offer Employment and What Their Pay Would Be by Applying Federal Personnel Regulations

HUD determined to which employees it would offer positions and what their pay would be by applying relevant OPM regulations on reinstatement eligibility. Prior to the originally scheduled (2001) sunset of OMHAR, and after questions were raised by OMHAR staff, HUD officials began to research employment and pay issues. In so doing, HUD officials discovered that inaccurate information had been provided to OMHAR officials and staff from OMHAR’s inception. HUD then contacted OPM to discuss how HUD’s existing information compared with OPM regulations. OPM officials described OMHAR employee entitlements based on relevant regulations and explained specific provisions applying to employees of temporary agencies.

Based on this research, HUD developed a memorandum to clarify previous misinformation. On July 8, 2002, HUD’s Assistant Secretaries for Administration and Housing sent this memorandum to the Deputy Secretary of HUD requesting approval of a policy change on OMHAR employment. This policy change was requested in order to clarify eligibility of current and future competitive status employees at

¹⁶See 5 C.F.R. 335.103 (c) (1) (vi) and 5 C.F.R. 335.103 (c) (3) (v).

OMHAR for positions at HUD and to explain how pay would be set for those employees offered positions at HUD.¹⁷ More specifically, the memorandum explained that the information on “reemployment rights” and pay that employees had previously received was inconsistent with OPM regulations. The memorandum also referred to the December 2000 memorandum that inaccurately indicated that OMHAR employees could move to HUD at their current pay grades in OMHAR (not to exceed step 10 of that grade).

Based on discussions with OPM officials and review of the regulations, HUD determined that those OMHAR employees who had achieved competitive status—whether at HUD or another federal agency—prior to their appointment with OMHAR did not have reemployment rights, but rather reinstatement eligibility. Yet the memorandum also recommended that HUD “honor the commitment” made by the former Deputy Secretary in February 1999. The memorandum further explained that current OMHAR employees with competitive status would receive positions at HUD at a pay grade permissible under OPM regulations, meaning the last competitive grade held (because they could not be reinstated to a position at a higher grade than previously held without undergoing competitive procedures).¹⁸ Additionally, HUD stated that all staff hired after July 8, 2002, who had competitive status in a previous position, would be required to sign an acknowledgment indicating that they were leaving the competitive service to join the excepted service on a time-limited appointment and not entitled to permanent reemployment with HUD upon expiration of their OMHAR appointment.

After the July memorandum was approved, HUD and OMHAR officials began a process of identifying individuals to whom HUD would offer positions. In August 2002, OMHAR provided HUD with a list of employees who had been told they had reemployment rights when they were hired.¹⁹ HUD then examined official personnel folders to verify the accuracy of the list. Specifically, HUD determined whether an individual had prior competitive status and what his or her previous grade level was in the last competitive position held. Based on HUD and OMHAR’s analysis, as of March 7, 2003, 24 staff were identified as eligible for reinstatement at HUD.

According to HUD officials, they are trying to find positions at HUD for OMHAR staff with competitive status in an attempt to honor HUD’s “reemployment commitment.”

¹⁷The Deputy Secretary approved the memorandum on July 17, 2002.

¹⁸These employees are not entitled to their OMHAR salaries even though the Director of HUD’s Office of Human Resources and OMHAR’s Director explicitly promised that they would receive those salaries at HUD. Federal government employees serve by appointment, rather than by contract. See United States v. Hopkins, 427 U.S. 123 (1976). Appointing officials cannot exceed their authority in making appointments and by such conduct create a binding claim against the Government. See National Treasury Employees Union v. Reagan, 509 F. Supp. 1337 (1981). Courts have also determined that the appointment documents were not controlling on their face where the Government was able to show that employees did not have the employment status indicated on the form. See Grigsby v. United States Department of Commerce, 729 F.2d 772 (Fed. Cir. 1984). Payments of money from the federal treasury are limited to those authorized by law; the erroneous advice given by these officials does not supersede HUD’s limited authority to make payments to employees. See Office of Personnel Management v. Richmond, 496 U.S. 414 (1990), reh’g denied, 497 U.S. 1046 (1990).

¹⁹We discuss updates and changes to this list in the following section.

Based on our discussions with OPM officials, HUD's offer of employment to OMHAR staff with competitive status is not a guarantee; that is, these individuals do not have reemployment rights. HUD is using its discretionary authority to choose to hire staff with reinstatement eligibility. Additionally, HUD is using its discretion to offer pay up to step 10 of the reinstated employees' previous competitive grades. A federal agency has the authority to match, as closely as possible, prospective employees' current salary as long as the agency does not exceed the highest step within the last grade held in a competitive position.

Accepting HUD's Offer of Reinstatement Would Reduce the Pay of Eligible OMHAR Staff

Because of the difference between OMHAR and HUD pay schedules, and pay increases due to promotions that some employees received at OMHAR, all eligible OMHAR staff would see a reduction in pay if they chose to accept HUD's offer of reinstatement without competition. Based on HUD and OMHAR's analysis, as of March 7, 2003, 24 eligible OMHAR employees would experience an average pay decrease of 16.5 percent, or about \$17,000. Five staff would experience a decrease of 25 percent or more, 5 staff would experience a decrease of 20 to 25 percent, 6 would experience a decrease of 10 to 20 percent, and 8 would experience a decrease of less than 10 percent. In dollars, 4 staff would experience a reduction in pay of \$30,000 or more, 4 would experience a reduction of \$17,000 to \$30,000, 10 would experience a reduction of \$8,500 to \$17,000, and 6 staff would experience a reduction of less than \$8,500.

To verify the number of staff that would be affected and the pay reductions they would experience, we used the August 2002 HUD-verified list of 36 employees to whom HUD would offer positions. The list included the grade and step employees would receive at HUD, their current OMHAR grade and step, and the difference between the two in dollars. Additionally, on March 7, 2003, OMHAR provided us with 2003 OMHAR pay rates and updates regarding employee status, including retirements, transfers, and resignations. Based on these updates, the list of 36 was reduced to 28 employees because 4 staff were offered positions by HUD, 2 staff retired, 1 took a position with another federal agency, and 1 took a position in the private sector. As of March 7, 2003, HUD planned to offer positions to 24 employees with reinstatement eligibility.²⁰

If OMHAR staff wish to obtain or more closely match their OMHAR salary and grade levels, OPM regulations require that they apply for higher-grade positions through normal competitive procedures. If an agency then selected these staff into higher-grade positions, it could use the highest previous rate these staff earned at OMHAR to set pay up to the step 10 within this new grade. Through this process, OMHAR staff members could more closely match their OMHAR pay, if such positions were available.

²⁰One individual retired since the March 2003 update, changing the number to 23. In addition, four staff were also erroneously offered reemployment rights by OMHAR, but did not have prior competitive status. HUD and OMHAR officials are working to resolve these cases. HUD has hired one of these individuals since the March 2003 update.

Agency Comments

We provided a draft of this report to the Department of Housing and Urban Development (HUD) and the Office of Personnel Management (OPM) for their review and comment. We received written comments and technical suggestions on the draft report from HUD's Assistant Secretary for Housing, but did not receive a response from OPM. HUD agreed with the report's findings that the Department initially provided OMHAR management with incorrect personnel guidance regarding "reemployment rights" and "return pay" levels of OMHAR staff. Where appropriate, we also incorporated technical suggestions made by HUD.

Scope and Methodology

To describe what information HUD and OMHAR officials provided regarding OMHAR staff employment and pay following their employment at OMHAR, we obtained memorandums and interviewed officials from HUD, OMHAR, and OPM. To describe how HUD determined to which OMHAR employees it would offer employment and what their pay levels would be, we interviewed HUD and OMHAR officials and obtained relevant communications and data from HUD, OMHAR, and OPM. We also obtained and reviewed relevant personnel regulations. To address the impact of accepting HUD's offer of employment on eligible OMHAR employees' pay, we obtained data from OMHAR and HUD that listed those who were eligible and compared the current pay of OMHAR staff with the pay they would receive if they accepted employment with HUD. We then verified this information by reviewing official personnel folders of the listed staff. HUD was unable to locate one personnel folder; therefore, we were only able to verify the competitive status and the highest grade held for 23 of the 24 eligible staff. We conducted our work in Washington, D.C., from December 2002 until June 2003 in accordance with generally accepted government auditing standards.

We are sending copies of this report to the Secretary, Department of Housing and Urban Development; the Director, Office of Personnel Management; and the Director, Office of Management and Budget. The report is also available at no cost on GAO's home page at <http://www.gao.gov>. Major contributors to this report were John McGrail, Barbara Roesmann, Wendy Wierzbicki, and Chuck Wilson. If you or your staff have any questions, please contact me on (202) 512-8678 or at woodd@gao.gov.

Sincerely yours,



David G. Wood
Director, Financial Markets and
Community Investment

Enclosure

Comments from the Department of Housing and Urban Development



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

JUN 19 2003

Mr. David G. Wood
Director, Financial Markets and
Community Investment
United States General Accounting Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Wood:

Thank you for the opportunity to provide comments to the draft report, Employment of OMHAR Staff at HUD Following Their Employment at OMHAR (GAO-03-703R). We agree with the report's findings that the Department initially provided OMHAR management officials with incorrect personnel guidance regarding "reemployment rights" and "return pay" levels.

In 2001, various officials from the Department became aware of these issues and began the process of correcting the situation. In July of 2002, the Deputy Secretary approved a joint memorandum from myself and Vickers Meadows, the Assistant Secretary for Administration, which corrected prior inaccuracies. This memorandum, along with person specific information relating to salary, was provided to each OMHAR employee who had reinstatement eligibility. We recognized that most of the reinstatement-eligible employees at OMHAR would face a reduction in pay should they choose to return to the competitive service and, consequently, the maximum notice possible was an important factor to their financial planning. HUD recognizes and fully appreciates the contribution OMHAR employees have made to the Department, and we are confident that we have implemented equitable procedures which comply with all relevant personnel statutes and regulations for those employees who are eligible for reinstatement.

Thank you again for the opportunity to comment on this report.

Sincerely,

A handwritten signature in cursive script that reads "John C. Weicher".

John C. Weicher
Assistant Secretary for Housing-
Federal Housing Commissioner

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