

CHAPTER 5. RESPONDING TO ANTIDEFICIENCY ACT VIOLATIONS

PROHIBITIONS OF THE ACT. The Antideficiency Act (Revised Statute 3679, as amended) is now codified in 31 U.S.C., Chapters 13 and 15. The Act prohibits:

Making or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law;

Involving the government in any contract or other obligation for the payment of money for any purpose in advance of appropriations made for such purpose, unless the contract or obligation is authorized by law;

Accepting voluntary services that could give rise to claims against the United States Government or employing personal services in excess of that authorized by law, except in the cases of emergency involving the safety of human life or the protection of property; and

Making obligations or expenditures in excess of an apportionment, reapportionment, allotment or suballotment.

For credit programs, OMB Circular A-11 provides that the Department is required to report Antideficiency Act violations for the overobligation or over-expenditure of (a) the subsidy, (b) the credit level supportable by the enacted subsidy, (c) the amount appropriated for administrative expenses, (d) the expired unobligated balance of the subsidy, and (e) the apportioned borrowing authority in a financing account.

REPORTING REQUIREMENTS OF THE ANTIDEFICIENCY ACT AND OMB CIRCULAR A-11. The Antideficiency Act provides that if an officer or employee of an executive agency violates its key provisions the head of the agency shall report immediately to the President and congress all relevant facts and a statement of actions taken. [31 U.S.C. 1351.] OMB Circular A-11 section 145.7 states how. For special provisions on Antideficiency Act violations at HUD see section 5-4 of this Handbook, below.

PENALTIES FOR VIOLATION OF THE ACT. The criminal penalty for an officer or employee knowingly and willfully violating the Act is a fine of not more than \$5,000, imprisonment for not more than two years, or both. Penalties for violations of the Antideficiency Act, as noted in OMB Circular A-11, specifies that an employee shall be subject to appropriate administrative discipline, including, when circumstances warrant, a written reprimand, unsatisfactory performance rating, transfer to another position, suspension from duty without pay or removal from office. Corrective action and administrative discipline will also be taken, as needed for correction and prevention of other violations of administrative subdivision of funds that are not violations of the Antideficiency Act. This would include not adhering to the policies and procedures as noted within this funds control handbook and program funds control plans.

HUD HANDLING OF POSSIBLE VIOLATIONS. HUD's Fiscal Year (FY) 2003

Appropriations Act provided that notwithstanding any other provision of law, hereafter, HUD's CFO shall, in consultation with the Budget Officer, have sole authority to investigate potential or actual violations of the Antideficiency Act and all other statutes and regulations related to the obligation and expenditure of funds in this or any other Acts; shall determine whether violations exist; and shall submit final reports on violations to the Secretary, the President, the OMB, the Comptroller General, and the Congress in accordance with applicable statutes and OMB circulars. Recent HUD Appropriation Acts have also provided that the CFO shall: (a) appoint qualified personnel to conduct investigations of potential or actual violations; (b) establish minimum training requirements and other qualifications for personnel that may be appointed to conduct investigations; (c) establish guidelines and timeframes for the conduct and completion of investigations; (d) prescribe the content, format and other requirements for the submission of final reports on violations; and (e) prescribe such additional policies and procedures as may be required for conducting investigations of, and administering, processing, and reporting on, potential and actual violations of the Antideficiency Act and all other statutes and regulations governing the obligation and expenditure of funds made available in this or any other Act. Early reporting of any potential violation of the Antideficiency Act can help avoid or curtail an actual violation and is therefore an important element of the administrative control of funds. HUD's process for the disclosure, review, reporting and action on potential and actual violations is as follows:

Employee Notification of Possible Violations Any HUD employee having knowledge of a possible Antideficiency Act violation must immediately notify the OCFO about the activity in question. The employee should provide information and documents that support their belief that a possible Antideficiency Act violation exists. The OCFO will maintain a file on each alleged Antideficiency Act violation that will include reports documenting action taken to review and address the issue. If the Office of Inspector General, OMB, or GAO informs HUD that there may be a possible Antideficiency Act violation, the OCFO will consider the information as a referral that needs to be investigated, and if determined to be a violation, will explain why it had not previously discovered and reported the violation prior to the external notification. Upon notification or referral, the CFO will assign OCFO employees to a review team that will investigate the potential Antideficiency Act violation and will assist the OCFO and the CFO in carrying out their responsibilities throughout the review process. The review team should consist of staff that are independent of the activity in question. The review team may consult with, or obtain the assistance of, the Office of General Counsel and such other officials as the review team determines necessary to carry out its duties. All HUD employees are required to cooperate with the review team in their investigations of potential Antideficiency Act violations.

Preliminary Assessment of No Violation The OCFO will conduct a preliminary assessment of any alleged violation and determine whether a possible Antideficiency Act violation exists. Throughout the review process, the OCFO and the office of the allotment holder will make every effort to ensure that no funding or disbursement actions are taken that might continue or compound any violation. If the preliminary assessment clearly determines that there is no violation, the OCFO will document the file that an Antideficiency Act violation was alleged but a determination was made that there is no Antideficiency Act violation, with the basis for the

determination. However, whenever the OCFO's preliminary assessment identifies opportunities for improvements in funds control, the OCFO's findings will be forwarded to all program areas concerned.

Preliminary Assessment of Possible Violation After the OCFO completes a preliminary assessment and determines that there is a possible Antideficiency Act violation, the OCFO will notify the Secretary and Deputy Secretary of a possible violation in writing, advising them of the basis of the need for further review, with a copy sent to the allotment/suballotment holder and the General Counsel.

Review to Determine Whether an Antideficiency Act Violation Occurred. The OCFO will further review, gather additional information, and prepare a report that will serve as the Department's report under the Antideficiency Act. If the review determines no violation occurred, the CFO will issue a report to the Secretary, Deputy Secretary, allotment holder and General Counsel advising them of the finding and supporting facts. If the review determines that a violation did occur, then the OCFO will take three actions (may be concurrent) before the CFO issues a final report. First, the OCFO will provide due process for the named official or officials viewed as responsible for the violation of the Antideficiency Act, allowing them an opportunity to provide comments that may impact the final report of the investigation. Second, the supervisor(s) of the employee(s) responsible for a violation will be consulted on the violation to recommend disciplinary action to the OCFO. Third, the OCFO will provide a copy of the draft report to the offices of the Secretary, Deputy Secretary, and the General Counsel to allow them an opportunity to review and provide comments. The final report of a violation must advise of all pertinent facts of the Antideficiency Act violation, and the individual or individuals responsible (including any disciplinary action), and make recommendations on corrective actions that should be taken to preclude a recurrence. Even though subsequent actions were taken to correct the cause of a violation, it does not eliminate that violation and it must still be reported. If the review determines that a violation did occur and possible criminal activity is suspected, the CFO will refer such activity to the Inspector General for a criminal investigation and the CFO will proceed with the review and report process in coordination with the criminal investigation of the Inspector General.

Final Report. The FY2003 Appropriations Act states that, "notwithstanding any other provision of law, hereafter, the Chief Financial Officer of the Department of Housing and Urban Development... shall submit final reports on violations to the Secretary, the President, the Office of Management and Budget and the Congress in accordance with applicable statutes and Office of Management and Budget circulars." Hence, as provided in the FY 2003 Appropriations Act, the OCFO will submit a final report on a Antideficiency Act violation to the Secretary, the President, OMB, and the Congress in accordance with applicable statutes and OMB circulars. On the same date, the OCFO will provide GAO, the allotment holder, the Deputy Secretary, the General Counsel, and any other appropriate officials with a copy of the final report. Any recommended penalties will be imposed on the person(s) determined to be responsible for the violation and any other recommendations or corrective actions in the final report will be implemented by the Department.

As provided in the FY 2003 Appropriations Act, the OCFO will submit a report on an Antideficiency Act violation to the Secretary, the President (through OMB), and the Congress in accordance with applicable statutes and OMB circulars. A copy of each report will also be sent to the Comptroller General on the same date the report is transmitted to the President and the Congress, as required in the FY 2005 Consolidated Appropriations Act. After submission, the OCFO will provide the allotment holder and any other appropriate officials with a copy of the report. The Department will impose any recommended penalties on the person(s) determined to be responsible for the violation. Also, the Department will implement corrective actions to prevent the recurrence of this type violation.