

Administrative Control of Funds Policies and Procedures for the U.S. Department of Housing and Urban Development

Preface

The Constitution of the United States gives the Congress the “power of the purse” and further provides that the executive branch will “faithfully execute” the laws that the Congress passes. Article 1, Section 9 of the Constitution stipulates that no money shall be drawn from the Treasury, but in consequence of an appropriation made by law. A body of law prohibits executive branch agencies from operating at a level that is above and beyond what the Congress has authorized.

The Antideficiency Act of 1906, as codified in Title 31 of the United States Code (USC) serves as the primary foundation for the government’s administrative control of funds system. In its current form, the law 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, 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.

Other statutes applicable to establishing and controlling HUD’s authorized level of budgetary resources include the:

- Budget and Accounting Act of 1921, as amended;
- Supplemental Appropriations Act of 1950;
- Budget and Accounting Procedures Act of 1950;
- Budget and Impoundment Control Act of 1974; and
- Federal Credit Reform Act of 1990, as amended.

The Office of Management and Budget (OMB), the United States Government Accountability Office (GAO) and the Secretary of the Treasury issue instructions, procedures and guidelines for executive branch agencies to follow in properly controlling their budget authority, including:

- OMB Circular No. A-11, “Preparation, Submission and Execution of the Budget;”
- GAO’s Principles of Federal Appropriations Law; and
- The Treasury Financial Manual.

The processes by which an agency assures that its obligations and expenditures stay within its authorized budget limits, and otherwise comply with the Antideficiency Act, are collectively referred to as the “administrative control of funds.” In accordance with the above-cited authorities, this handbook presents HUD’s policies and procedures for the administrative control of funds, and as such:

- Prescribes a system for positive administrative control of funds designed to ensure that obligations and expenditures in each appropriation account or fund do not exceed the amount available, are made within the period for which funds are available, and are used for proper purposes;
- Provides requirements for the disclosure and review of possible violations of the Antideficiency Act; and
- Enables the Chief Financial Officer (CFO) to determine and affix responsibility in instances where obligations or expenditures have been incurred in violation of the Antideficiency Act, with appropriate corrective action, penalties and reporting to the Congress. Further, the CFO ensures that the Department takes appropriate corrective action and administrative discipline for violations of other administrative subdivision of funds that are not direct violations of the Antideficiency Act.

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CHAPTER 1. GENERAL INFORMATION

- 1-1. **BACKGROUND.** By law, the Congress sets a federal agency’s budget authority and the agency must limit its obligations and expenditures within that authority. The Antideficiency Act, Title 31 of the United States Code, defines the general limits on an agency’s obligation and expenditure authority and requires the reporting of violations of those limits, with provisions that appropriate administrative or criminal penalties be applied to agency officials responsible for the violations. The specific limits on an agency’s various budgetary resources are expressed in terms of the authorized purpose, time period, and amount. The Office of Management and Budget (OMB) issues guidelines to agencies on budget execution to assist agencies in complying with the requirements of the Antideficiency Act. The processes by which an agency assures that its obligations and expenditures stay within its authorized budget limits, and to otherwise comply with the Antideficiency Act, are collectively referred to as the “administrative control of funds.”
- 1-2. **PURPOSE.** This handbook outlines the U.S. Department of Housing and Urban Development’s (HUD’s) policies and procedures for the administrative control of funds. The purpose of this handbook is to prescribe requirements for:
1. Distributing HUD’s budget authority through an apportionment/allotment process that affixes personal responsibility and accountability for specific budgetary resources (Handbook Chapter 2);
 2. Establishing and maintaining internal controls that provide reasonable assurance that HUD’s obligations and expenditures are within the budget authority limits established by the Congress for specific budgetary resources (Handbook Chapters 3 and 4); and
 3. Reviewing, reporting and acting on possible and confirmed violations of the Antideficiency Act (Handbook Chapter 5).
- 1-3. **SCOPE.** All HUD organizations and budgetary resources are subject to the policies and procedures contained in this handbook, including the cost of credit programs and the loan guarantee limitations covered by the Federal Credit Reform Act of 1990. Any exceptions must first be approved by the Chief Financial Officer (CFO) and then by OMB.
- 1-4. **GENERAL POLICY.** It is the policy of the HUD Secretary that standard practices will be established and followed at HUD to ensure compliance with the Antideficiency Act, as prescribed in this handbook.
- 1-5. **AUTHORITY.** Appendix No. 1 provides a flowchart description of the legal basis for the formulation of HUD’s budget authority and administrative control of funds. The provisions of the Antideficiency Act are described in Chapter 5 of this handbook. The Federal Managers’ Financial Integrity Act of 1982 requires that [“internal accounting and administrative controls of each executive agency shall be established in accordance with

standards prescribed by the Comptroller General, and shall provide reasonable assurances that:

- i. obligations and costs are in compliance with applicable law;
- ii. funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation; and
- iii. revenues and expenditures applicable to agency operations are properly recorded and accounted for to permit the preparation of accounts and reliable financial and statistical reports and to maintain accountability over the assets.”]

Other authorities applicable to HUD’s administrative control of funds are listed in Appendix No. 2 of this handbook.

1-6. **RESPONSIBILITIES.** The Congress has vested overall responsibility for establishing an effective administrative control of funds process with the CFO. Each HUD allotment or suballotment holder is responsible for the proper management and control of all funds allotted to them. All employees of the Department who are involved in funds control are responsible for adhering to the Department’s policies for the administrative control of funds, as described in this handbook. It is the responsibility of any employee who has knowledge of circumstances that may lead to or constitute a possible violation of the Antideficiency Act to provide this information to the OCFO for consideration and appropriate action in accordance with this handbook. Individuals with direct involvement in the administrative control of funds have the additional responsibilities listed below.

1. Chief Financial Officer (CFO):

- a. Provides guidance and training on policies and procedures for the administrative control of funds;
- b. Requires and approves up-to-date funds control plans from all allotment holders, including Salaries and Expenses and Working Capital appropriations;
- c. Maintains an up-to-date inventory of apportionments, allotments, allotment holders, and points of legal obligation;
- d. Processes apportionment requests and the advice of allotments to allotment holders;
- e. Monitors the budget formulation and appropriations process to identify changes to HUD’s budget authority that would warrant changes to apportionments, allotments, or funds control plans;
- f. Designates certifying officers for oversight of payment controls and certification of payments processed by the Office of the CFO (OCFO);
- g. Monitors the overall budget execution process;
- h. Provides financial systems that support agency administrative control of funds that include recording financial transactions affecting: apportionments; reapportionments; allotments; agency restrictions; financial plans; program operating plans; commitments, obligations; and expenditures; as well as anticipated, earned, and collected reimbursements;

- i. Prepares and reconciles financial reports that display cumulative obligations and the remaining unobligated balance by appropriation and allotment and allotment and cumulative obligations by budget activity and object class;
 - j. Provides reporting on the status of amounts committed, obligated, unobligated, expended or withheld, for management information and decision making;
 - k. Performs cyclical reviews of compliance of funds control plans and assures the correction of any deficiencies found; and
 - l. Investigates potential violations of the Antideficiency Act, determines if actual violations have occurred, reports on any violations, and ensures the Department takes corrective action on any such violations, as well as violations of other administrative subdivision of funds that are not violations of the Antideficiency Act, per se.
2. Allotment Holder:
- a. Allotment holders, who are generally Assistant Secretaries or equivalent positions, submit apportionment requests to the CFO, as needed to carry-out responsibilities;
 - b. Bear overall responsibility for funds allotted to them;
 - c. Develop, maintain and enforce adequate funds control plans;
 - d. Plan and structure new programs or activities to provide for an administrative control of funds in accordance with this handbook;
 - e. Provide for training on implementation of funds control plans;
 - f. Designate Funds Control Officers;
 - g. Issue suballotments or assignments of funds, where needed to support program or administrative operations; and
 - h. Support the CFO in the review, resolution and reporting of possible Antideficiency Act violations regarding funds allotted to them.
3. Funds Control Officer:
- a. Support Allotment Holders and the CFO in the development, maintenance, implementation, and enforcement of funds control plans and underlying systems and processes;
 - b. Assure the maintenance of complete, accurate, and current records of all requests processed for the commitment, obligation, and expenditure of funds, as applicable, under their control;
 - c. Serve as or designate a Funds Verification Official to provide accurate certifications of the availability of funds for processing requests for commitments, obligations and payments;
 - d. Monitor budget execution and advise the Allotment Holder on funding use and needs;
 - e. As needed, develop more detailed policies and procedures for funds control in their organizations, consistent with the general requirements of this handbook; and
 - f. Support the Allotment Holder and CFO in the investigation, report, and follow-up actions of possible Antideficiency Act violations and violations of agency limitations that are not violations of the Antideficiency Act.

4. Federal Housing Administration (FHA) and Government National Mortgage Association (GNMA) Comptrollers:
 - a. Provide financial management systems support for the administrative control of funds processed in their organizations;
 - b. Designate certifying officers for oversight of payment controls and certification of payments processed by their organizations; and
 - c. Report on the status of amounts committed, obligated, unobligated, expended, or withheld--for funds accounted for by their organizations--for management information and decision-making.

5. Suballotment Holder and Assignment Holder:
 - a. Manage and control commitments, obligations, and expenditures in accordance with the limits of the Suballotment or Assignment of Funds; and
 - b. Adhere to the requirements of the applicable funds control plan and this handbook.

6. Program and Administrative Staff processing requests for commitments, obligations, and payments:
 - a. Identify the source, time period, and use of the budgetary resource associated with the funding action being requested;
 - b. Obtain required reviews and signatures to approve the requested funding action;
 - c. Obtain required verification of the availability of funds prior to making commitments, obligations, or payments;
 - d. Maintain documentation in support of all commitment, obligation, and payment events; and
 - e. Validate the system's processing of requests for commitments, obligations, and payments.

7. Questions of Law:
 - a. Appropriations Law Staff, Office of the Chief Financial Officer.
Legal questions should be referred to the Appropriations Law Staff that involve the law of appropriations, such as legal questions covering availability of amounts appropriated with respect to purpose, time or amount; or that arise from funding statutes such as the Antideficiency Act, the Impoundment Control Act of 1974, or guidance for them such as the GAO Redbook.
 - b. Office of the General Counsel (OGC).
All other legal questions should be referred to the Office of General Counsel.
 - c. Overlapping Questions.
Where there is uncertainty regarding the appropriate referral office, refer to both ALS and OGC. With respect to joint referrals and misdirected referrals, both groups of attorneys will work together procedurally and substantively as necessary and appropriate to respond to legal questions, giving careful consideration to provisions in specific appropriations laws as well as pertinent program authorization legislation.

- 1-7. **TRAINING REQUIREMENTS.** All HUD Allotment Holders will be briefed by the OCFO on the Antideficiency Act and the requirements of this handbook. Employees designated as Funds Control Officers, Funds Verification Officials, and Payment Certifying Officers must attend a basic course on appropriations law (e.g., the U.S. Government Accountability Office's (GAO's) Principles of Appropriations Law course or an equivalent) prior to assuming their responsibilities for funds control. In addition, all HUD staff involved in the processing of actions for the commitment, obligation or expenditure of HUD funds will attend annual briefings on the Antideficiency Act and HUD's administrative control of funds requirements, as presented by the OCFO. Systems user training on automated funds control systems (e.g., HUD Central Accounting System (HUDCAPS)), will be provided by systems sponsors, as needed. In addition, Funds Control Officers should assure that HUD officials designated in their funds control plans are familiar with the content of those plans, as well as this handbook.
- 1-8. **TERMS AND DEFINITIONS.** A listing of terms and definitions used in this handbook is provided in Appendix No. 3.

CHAPTER 2. APPORTIONMENT AND ALLOTMENT OF FUNDS

- 2-1. **PURPOSE.** This Chapter describes the process and procedures for apportioning appropriated budgetary resources to the Department and subsequently allotting those resources to designated HUD allotment holders for use.
- 2-2. **APPORTIONMENT OF FUNDS BY OMB.** Budgetary resources appropriated for HUD by the Congress are subject to “apportionment” to the Department by OMB. The following considerations and requirements are part of HUD’s administrative control of funds:
1. Apportionments are legally binding documents that specify amounts and purposes for which appropriated resources shall be used;
 2. Obligating funds in excess of amounts provided by an apportionment, allotment or suballotment is a violation of the Antideficiency Act;
 3. OMB apportions budgetary resources to the Assistant CFO (ACFO) for Budget, the official designated by the Secretary and the CFO to administer HUD’s apportionment/allotment processes;
 4. The Department has 10 calendar days from the date of enactment of an appropriation to submit an apportionment request to OMB;
 5. OMB has 30 calendar days from enactment to approve or disapprove the apportionment request; and
 6. Before HUD officials are authorized to use budgetary resources apportioned to the Department, the resources must be allotted to them in accordance with Sections 2-5 through 2-8 of this Chapter.
- 2-3. **PROCEDURES FOR REQUESTING INITIAL APPORTIONMENTS.** Standard Form No. 132 (SF-132), “Apportionment and Reapportionment Schedule,” is to be used by HUD allotment holders in requesting the apportionment of funds. A sample SF-132 is provided in Appendix No. 5. This form is to be used for requesting all budgetary resources of the Department, which are generally described in paragraph 2-4 below. HUD officials will abide by the following considerations and requirements in submitting and processing apportionment requests:
1. All apportionments and allotments expire at the end of each fiscal year;
 2. Before funds can be obligated in the following fiscal year, new apportionments and allotments must be requested, approved, and issued;

3. All allotment holders will submit the initial apportionment request for the upcoming fiscal year to the ACFO for Budget, by a time period to be specified by the ACFO for Budget;
4. The Office of Budget will prepare apportionment requests with multiple allotment holders (e.g., the Housing Certificate Fund) with input from the affected program offices, and will provide feedback to the allotment holders or their designees on the content and basis of the request before it goes forward to OMB;
5. The apportionment should include the amount of the new appropriation (if known) and a prudent estimate of prior year unobligated balances available for carryover in each account;
6. The ACFO for Budget will review and approve the apportionment request and submit it to OMB; and
7. HUD Principal Staff in Headquarters shall submit operating budget estimates for Salaries and Expenses funding in the form specified in the ACFO for Budget's "Annual Call for Operating Budgets."

2-4. BUDGETARY RESOURCES. Budgetary resources provide agencies with the authority to enter into obligations that will result in outlays. All of HUD's budgetary resources are subject to the apportionment and allotment process. HUD has different types of budgetary resources, as documented on the top portions of the SF-132, as follows:

Budget authority (Line 1 of SF-132)

- Appropriations realized
- Borrowing authority -- permanent indefinite
- Contract authority (distinct from procurement authority) -- and no longer used at HUD
- Net transfers
- Other

Unobligated balance from prior years (Line 2 of SF-132)

- Balance brought forward, October 1
- Net transfers of prior year balances
- Anticipated transfers

Spending authority from offsetting collections (Line 3 of SF-132)

- Earned (collections or receivables from federal sources)
- Change in unfilled customer orders
- Anticipated collections
- Transfers from trust funds

Recoveries of prior-year obligations (Line 4 of SF-132)

- Actual recoveries

- Anticipated recoveries

Some budgetary resources are temporarily or permanently unavailable and appear as negative amounts on the SF-132. Examples include:

Temporarily not available pursuant to Public Law (Line 5 of SF-132); and

Permanently not available (Line 6 of SF-132)

- Cancellations of expired and no-year accounts
- Enacted rescissions
- Capital transfers and redemption of debt
- Other authority withdrawn.

Budgetary resources apportioned to HUD must be allotted to HUD officials, in accordance with below Sections 2-5 through 2-8, to give them the authority to use the resources.

- 2-5. **HUD ALLOTMENT OF RESOURCES.** The approved budgetary resources provided in the OMB apportionment to HUD are allotted to responsible HUD officials under the following conditions:
1. Like the apportionment, the allotment is a legally binding document that specifies the amounts, purposes and time periods for which authorized funds can be obligated;
 2. While the apportionment provides specific guidance for the Department, the allotment provides specific direction to the allotment holder; and
 3. For funds control purposes the allotment holder cannot commit or obligate funding for amounts, purposes or periods other than those included on the allotment.
- 2-6. **OFFICIALS AUTHORIZED TO ISSUE ALLOTMENT OF FUNDS.** The CFO (or his/her designee, the ACFO for Budget) will issue allotments to the officials referred to in paragraph 2-7 below.
- 2-7. **OFFICIALS AUTHORIZED TO RECEIVE AN ALLOTMENT OF FUNDS.**
1. Allotments of program funds may be made only to the HUD officials listed in Appendix No. 4 (allotment holders). The list will be reviewed and updated annually, or as necessitated by turnover in positions, and copies of the updates will be provided to all allotment holders. The list of current allotment holders will be maintained at hud@work on the OCFO's web site.
 2. Allotments of Salaries and Expense (S&E) funding shall be made to each program Assistant Secretary or equivalent and to such other officials as may be designated in Appendix No. 4. The OCFO shall review the listing of allotment holders at least annually and make such changes or additions as may be appropriate.

2-8. ADVICE OF ALLOTMENT.

1. Form All allotments prepared by the ACFO for Budget shall be made on Form No. HUD-158, "Advice of Allotment." The HUD-158 includes the amount available, funding source, time period of availability, the position and title of the allotment holder responsible and other agency limitations. A sample of HUD-158 is provided in Appendix No. 6.
2. Prerequisite Before the ACFO for Budget can issue an Advice of Allotment to an allotment holder, he/she must provide:
 - a. Certification of knowledge and acceptance of responsibility Certify that they are aware of and responsible for adhering to the requirements of the Antideficiency Act and this handbook; and
 - b. Submission of an acceptable funds control plan Submit a funds control plan acceptable to the CFO, in accordance with Chapter 4 and Appendix No. 9 of this handbook. Funds control plans for S & E and Working Capital Funds (WCF) will adhere to CFO guidelines and Chapter 4 of this handbook. However, the format for S&E and WCF deviates from Appendix No. 9 of this handbook. Contact the OCFO for further guidance.
3. Manner in which Authority is Provided
 - a. Allotments will normally be made on at least the same basis as funds are apportioned (i.e., quarterly, by program, for a period of one fiscal year, etc.). This does not preclude the ACFO for Budget from issuing allotments in greater detail than the apportionment.
 - b. Where no appropriation act has been approved prior to October 1, a Continuing Resolution (CR) may be enacted to provide minimum funding until such time as the annual appropriation is enacted. In these instances, the Office of the ACFO for Budget will notify the allotment holders of the period of the CR, the amount of funds available to them during that period, and any special restriction placed on the use of the funds by the CR.
 - c. In the event that the Department is operating under a CR, interim allotments may be issued by memorandum and will govern all activities pending the completion of appropriations action.
 - d. Where quarterly subdivisions are shown on the allotment, unused balances available at the end of any of the first three quarters shall be available for use in the succeeding quarter unless withdrawn by an Advice of Allotment.

4. Availability of Allotments Allotted funds shall be available for use only during the fiscal year in which they are allotted. Allotments and changes in allotments for each program or allotment holder shall be sequentially numbered during that fiscal year.
5. Issuance of Advice of Allotments The ACFO for Budget will issue the Advice of Allotment forms to allot HUD's apportioned funds to designated allotment holders for use.
 - a. Based on approved OMB apportionments to HUD, the ACFO for Budget will sign original (hard copy) Advice of Allotment forms for issuance to allotment holders.
 - b. Once the ACFO for Budget signs the allotment forms and OCFO/Accounting enters the apportionment into HUDCAPS, allotted funds will be input into HUDCAPS by Office of Budget staff, with the exception of funds for accounts not currently controlled through HUDCAPS systems, including the GNMA and FHA accounts and other non-FHA loan guarantee accounts (which are subject to the Credit Reform Act), such as the Section 108 Loan Guarantee account administered by the Office of Community Planning and Development (CPD).
 - c. Copies of the signed allotment forms will then be delivered as follows: original to the Program Budget Officer and/or the Funds Control Officer with copies sent to the CFO Accounting and Monitoring and Analysis Division and the CFO Internal and External Reporting Division. Copies of the salaries and expense Advice of Allotments are no longer delivered to the CFO offices mentioned.
 - d. Both the Program Budget Officer and the Funds Control Officer, if different, will sign for receipt of their copy of the allotment form.
 - e. Delivery of the allotment does not serve as notice that the funds have been entered into the HUDCAPS system for use. The allotment will however, serve as a planning document for the program office. The funds will be entered into the HUDCAPS system within 24 hours of the signed allotment as long as it is practicable. FHA and GNMA are responsible for inputting their authorized funding limits into their systems for supporting the administrative control of funds.

2-9. CHANGES IN APPORTIONMENTS AND ALLOTMENTS DURING THE FISCAL YEAR.

1. Requests for changes in apportionments and allotments may be made whenever necessary. Initial apportionments and allotments of some budgetary resources are based on estimates or projections of resources, such as projected collection activity or estimated needs against a permanent indefinite authority. In those cases, it is incumbent on the allotment holder and their staff to closely monitor and manage those activities, and as needed, to either request an increase in their authorized

budgetary resources or to curtail or cease the obligation of funds to avoid a violation of the Antideficiency Act.

2. For program accounts, the allotment holder will initiate such requests by submitting a revised apportionment request to the ACFO for Budget. For program accounts with multiple allotment holders, the affected office should notify the ACFO for Budget that a change is needed so that the OCFO/Office of Budget can prepare a revised apportionment request. The ACFO for Budget will then initiate any revised apportionment requests for Salaries and Expense (S&E) funding, with input from S&E allotment holders, as needed. Upon approval of the apportionment request by OMB, the ACFO for Budget will issue a revised advice of allotment to increase the allotment holder's funding authority.

2-10. APPORTIONMENT ACTION RELATED TO DEFERRALS AND RESCISSIONS.

1. Definitions

- a. Deferral A deferral is any action or inaction by an officer of the United States Government that temporarily withholds, delays or effectively precludes the obligation or expenditure of budget authority. Deferrals must receive prior approval from OMB. For the purposes of this handbook, deferrals include those actions within the Department that result from policy decisions to obligate apportioned funds provided for a specific purpose or project at a pace slower than intended by the Congress. However, the Department is not required to report normal internal management actions that affect the timing of obligations for reasons related to the routine financial management of a program or project or to comply with procurement regulation or sound procurement practices.
- b. Rescission A rescission is enacted legislation canceling budget authority previously provided by the Congress, prior to the time when the authority would otherwise have expired.

2. Policy.

While deferrals have rarely been used in recent years, rescissions are very common in the Department. A general discussion of the highlights of the effects of deferrals and rescissions on the apportionment is provided below. Any questions concerning proper procedures to be followed for a deferral are to be directed to the Office of Budget.

a. Deferrals

- i. Budgetary resources may be withheld from obligation temporarily through the apportionment process with the intent of apportioning them for use later, before they lapse. A deferral must be reported to the Congress in a special message from the President. If the Congress takes no action to disapprove a

reported deferral, it may remain in effect until the end of the fiscal year unless a special message indicates that an earlier release is planned. For annual accounts and the last year of multiple-year accounts, however, funds may be deferred for only part of the year. HUD allotment holders and staff are not authorized to unilaterally defer action on allotted funds.

- ii. If a determination is made that such deferred amounts should not be used, a rescission will be proposed prior to the beginning of the fourth fiscal quarter. Only in exceptional cases will rescissions be proposed during the fourth quarter.
- iii. Whenever it is determined that a deferred amount will not be required to carry out the purposes of the appropriation or other authority, it will be proposed for rescission as required by law.

b. Rescissions

- i. Whenever the President determines that all or part of any budget authority will not be required to carry out the full objectives or scope of programs for which it is provided, the President will propose to the Congress that the funds be rescinded.
- ii. If all or part of any budget authority limited to a fiscal year (i.e., annual appropriations or budget authority for the last year of multiple-year accounts) is to be withheld for the entire fiscal year, a rescission will be proposed.
- iii. As a rule, amounts proposed for rescission will be withheld during the time the proposals are being considered by the Congress. When approved by OMB, funds may be proposed for rescission without being withheld.
- iv. Rescissions must be enacted into law. If the Congress does not complete action on a rescission proposed by the President within 45 calendar days of continuous session, any funds being withheld must be made available for obligation.

3. Procedures for the Release of Deferrals.

- a. In situations where Congress takes positive action (in the form of an impoundment resolution) to disapprove an Executive deferral, the Department must take prompt action to ensure the release of the affected amounts.
- b. In those cases where funds have been deferred through the apportionment process, a reapportionment form, reflecting release of amounts previously deferred, will be submitted to OMB not later than the day following passage of the resolution.

4. Procedures for Rescissions.

- a. **Presidentially Proposed Rescissions.** At the time that a rescission is proposed, apportionment forms will be submitted to OMB showing that those funds are being withheld pending rescission.
 - i. If Congress rescinds the exact amount proposed, reapportionment action is not required to reflect the reduction in budget authority since it is already being withheld.
 - ii. If Congress rescinds an amount different from that initially proposed, reapportionment requests will be submitted to OMB promptly upon completion of the Congressional action.
 - iii. If Congress takes no action on a rescission proposal within 45 days following the receipt of the proposed rescission message, reapportionment requests reflecting the release of the affected amounts must be submitted to OMB. The Office of Budget will keep appropriate offices informed of the status of rescission actions, and provide advice as to the exact timing for submission under these circumstances.
 - b. **The Congressionally Proposed Rescissions.**
 - i. Where initial apportionment action has not been completed before rescission action is taken and sufficient time exists to revise the apportionment request (i.e., within 30 days after the date of enactment of the appropriation bill), the Department or OMB will make appropriate changes to the SF-132.
 - ii. When there is insufficient time to adjust the initial SF-132, the Department will submit a reapportionment request within five calendar days after the date of enactment of the reconciliation or rescission bill, ensuring that the reduced appropriation is not exceeded.
- 2-11. **SUBALLOTMENT.** Allotment holders may, with the advance approval of the CFO, suballot authority made available to them to officials directly responsible to them, without authority for further reallotment. Approved suballotment holders will be formally designated in writing by the CFO and the suballotment carries the responsibility for compliance with the Antideficiency Act. Officials to whom authority has been suballotted could be determined to have violated the Antideficiency Act should they exceed the authority suballotted to them. Allotment holders shall not suballot authority to Field Offices or to officials of other organizations of the Department. There are currently no instances in the Department where funds are suballotted. Fund assignments, as they are currently used in accordance with Section 2-12 of this handbook, do not constitute a suballotment of funds. The conditions of the suballotment must be described in the allotment holder's funds control plan, with signed acceptance by the suballotment holder and approval by the CFO. It is the responsibility of the allotment holder and the OCFO

to ensure that funds are only suballotted to officials that have the proven capacity to properly administer and account for the funds they will manage.

2-12. SUBDIVISION OF PROGRAM FUNDS.

1. Headquarters.

Allotments and suballotments will be established at the highest practical level and each operating unit will be financed from no more than one subdivision for each appropriation or fund and are subject to the provisions of the Antideficiency Act. Such subdivisions or assignments should be coordinated within a central point in the allotment holder's organization. The system of management controls established by the allotment holder for such subdivisions or assignments must be described in the applicable funds control plan and approved in advance by the CFO. Funds control plans for each allotment must cover all program line items and any subcomponents thereof, broken down to the lowest distinct funding activity with applicable accounting codes used to roll-up the funding activity to the program line item and allotment (see Chapter 4).

b. 2. Field Offices.

Distribution of program funds to Field Office Directors will be in the form of fund assignments, using the form HUD-185 or an alternative format that provides the same information. Any fund assignments to the Field Office Directors shall be made by allotment holders of the program funds. The allotment holders should designate, to the extent practicable, a fixed point in their organization for the coordination and issuance of such fund assignments. Information on the distribution of fund assignments, and the basis on which they are made and controlled, should be contained in the applicable funds control plan for CFO approval.

Assignment holders may not commit, obligate, or expend more than the authority assigned to them. While an overobligation or overexpenditure of assigned funds does not constitute a violation of the Antideficiency Act unless it causes an overobligation or overexpenditure of the suballotment, allotment, apportionment, or appropriation from which it originated, assignment holders are subject to administrative action for exceeding their authority.

2-13. **STAFF EXPENSE FUNDS.** The ACFO for Budget allots S&E funds to the program Assistant Secretaries or equivalents for all object classes.

2-14. **APPORTIONMENT AND ALLOTMENT OF ADVANCES, REIMBURSEMENTS, AND OTHER RECEIPTS.** Advances of funds to the Department, reimbursements, and other anticipated receipts of funds are subject to apportionment and allotment. This includes advances, reimbursements, and other receipts that are the result of interagency agreements as well as those that may be generated from a continuing cycle of program operations. These anticipated funds must be apportioned and allotted to be available for

obligation. Any exceptions to this policy may be approved by the CFO as part of a proposed Funds Control Plan.

2-15 APPORTIONMENT AND ALLOTMENT OF RECOVERIES/RECAPTURES OF PRIOR YEAR OBLIGATIONS (UNEXPIRED FUNDS). These recoveries/recaptures must be apportioned and allotted to be available for obligation.

2-16 APPORTIONMENTS REQUIRING DEFICIENCY ESTIMATES.

1. Subject to the critical limitation explained in section 4, below, 31 U.S.C. 1515(a) allows an appropriation required to be apportioned under 31 U.S.C. [1512](#) to be apportioned on a basis that indicates the need for a deficiency or supplemental appropriation to the extent necessary to permit payment of pay increases that may be granted pursuant to law to officers and employees, including prevailing rate employees whose pay is fixed and adjusted under subchapter [IV](#) of chapter [53](#) of U.S.C. title [5](#).
2. Except as provided in 31 U.S.C. 1515(a), 31 U.S.C. 1515(b) authorizes, using SF-132, an official to make, and the head of an executive agency to request, an apportionment under section [1512](#) of this title that would indicate a necessity for a deficiency or supplemental appropriation only when the official or agency head decides that the action is required because of:
 - a. A law enacted after submission to Congress of the estimates for an appropriation that requires an expenditure beyond administrative control; or
 - b. An emergency involving the safety of human life, the protection of property, or the immediate welfare of individuals when an appropriation that would allow the United States Government to pay, or contribute to, amounts required to be paid to individuals in specific amounts fixed by law or under formulas prescribed by law, is insufficient.
3. If an official making an apportionment decides that an apportionment would indicate a necessity for a deficiency or supplemental appropriation, the official shall submit immediately a detailed report of the facts to Congress. The report shall be referred to in submitting a proposed deficiency or supplemental appropriation.
4. Please note that 31 U.S.C. 1515 in no way authorizes HUD to incur obligations in excess of the total amount of money appropriated for a period. It only provides an exception to the general apportionment rule set out in 31 U.S.C. 1512(a) that an appropriation be allowed so as to insure it is not exhausted prematurely. Section 1515 says nothing about increasing the total amount of the appropriation itself or authorizing the incurring of obligations in excess of the total appropriated. On the contrary, apportionment only involves the subdivision of appropriations already enacted by Congress. *The sum of the parts shall not exceed the total amount of the appropriation being apportioned.*

CHAPTER 3. PROCESSING COMMITMENTS, OBLIGATIONS AND EXPENDITURES

- 3-1. **PURPOSE.** This chapter establishes policy and prescribes requirements for the commitment, obligation, and expenditure phases of the Department’s overall administrative control of funds process, in accordance with statutory requirements, guidelines established by the OMB, GAO, and the Secretary of the Treasury. It is intended to accomplish the following:
1. Establish Departmental policy for a two-step funds control process that requires the verification of the availability of funds both prior to making any internal commitment of funds and prior to incurring any legal obligation to expend funds;
 2. Prescribe a process to restrict obligations and expenditures to the authorized amounts available, to prevent violations of the Antideficiency Act, as well as violations of other administrative subdivision of funds that are not violations of the Antideficiency Act, per se;
 3. Establish, in accordance with recent HUD appropriation Acts, that for purposes of funds control and determination of whether a violation exists under the Antideficiency Act (31 U.S.C. 1341), the point of obligation shall be the executed agreement or contract, except with respect to insurance and guarantee programs, certain types of S&E funding and incremental funding that is authorized under an executed agreement or contract and this point of obligation shall be designated in the approved funds control plans; and
 4. Enable the CFO to identify the person or persons responsible for any commitment, obligation or expenditure exceeding the amount available in the appropriation or fund account.
- 3-2. **DEFINITION OF COMMITMENT.** The “commitment” of funds sets aside funds for anticipated needs, to assure the availability of funds before entering into a legally binding obligation that will require an expenditure of funds. Essentially, a “commitment” is the earmarking of funds that will be used in the future for the purchase of goods or services, the award of grants or subsidies, or other authorized purposes. As pre-obligations, commitments are internal actions that are not legally binding. However, for administrative control of funds purposes, commitments are treated as reductions in available budgetary resources. Throughout this handbook, except as noted below, the term “commitment” is used to describe the pre-obligation of funds and includes, and replaces, the term “reservation” previously used in some HUD programs. The use of the term “commitment” in the administrative control of funds process is consistent with the U.S. Government Standard General Ledger.

NOTE: The term “commitment” is also used with reference to a loan guarantee commitment and a mortgage-backed securities commitment, which differ from an administrative control of funds commitment. A loan guarantee commitment is a legally binding agreement to make a loan guarantee when specified conditions are

fulfilled by the borrower, the lender, or any other party to the guarantee agreement and, as such, is recorded and reported against the guaranteed loan level apportionment in a guaranteed loan financing account. A mortgage-backed securities commitment commits GNMA to guarantee a certain dollar amount of mortgage-backed securities. GNMA mortgage-backed security commitment authority is recorded and reported against the amount authorized by statute.

- 3-3. **GENERAL POLICY ON COMMITMENTS.** HUD's administrative control of funds policy requires the processing and recording of commitments for all HUD funding activity, unless the CFO approves an exemption from this policy. The commitment of funds (previously called the reservation of funds in some HUD programs) is an internal administrative accounting procedure to validate and assure the availability of funds prior to entering into a legally binding obligation that requires an expenditure of HUD funds. All commitments of funds shall be for the purpose authorized by law, within amounts authorized, executed before the end of the period of availability of the appropriation, and supported by documentary evidence approved by a duly authorized official. Commitments will be processed and approved on standard forms established by the CFO. This process significantly reduces HUD's risk of an Antideficiency Act violation.
- 3-4. **COMMITMENT POLICY EXEMPTIONS.** An allotment holder may request the CFO to exempt an activity from the requirement for a commitment of funds stage in their funding process. The request must be in writing with a full justification, including an explanation of any other compensating controls over the funds. In deciding whether or not to exempt the activity, the CFO will consider: the nature of the activity and HUD's budgetary authority; the cost of establishing and maintaining the commitment control; and the risk of an Antideficiency Act violation in the applicable account without the commitment process. A blanket exemption to this commitment policy is made in accordance with procurement procedures that allow for simplified acquisitions and delivery orders against established government contracts (usually issued by the General Services Administration), up to \$100,000 in value, to be obligated in the Small Purchase System (SPS) without prior funds commitment.

NOTE: For a limited set of payment types, validation of the availability of funds is performed at the same time as obligation and expenditure (e.g., local travel, bankcard transactions, and telephone bills). Where such limited exceptions exist, they must be defined in the allotment holder's funds control plan and procedures must be set up to check for the availability of funds prior to payment. This is normally an automated systems control feature, but may be performed manually where necessary. In addition, prompt recording of the expenditure is required to avoid exceeding total available funds. The need and availability of funds for such activities must be closely monitored and managed to avoid over spending in the authorized account.

- 3-5. **PROCESSING COMMITMENTS.** The CFO will prescribe the standard form(s) to be used for committing funds. Unless otherwise approved by the CFO, the form HUD-718, "Funds Commitment," will be used for approving all commitments of funds (see Appendix No. 7). The commitment form must contain the authorized approval signatures

stipulated in the Allotment Holder's funds control plan before the requested funds can be committed. The commitment form must also include a funds availability certification. Staff must be sure to use the current 05/2004 version of the form HUD-718, which includes the verification certification in block 7. The commitment form will also cite the fund symbol, source of funds, budget fiscal year, program code, budget organization code, cost organization, budget object code, and unique sequentially numbered identifier for each commitment. When a machine readable file is used to request the commitment of funds for multiple actions at a time, a signed paper copy of the commitment form, with summary level information associated with the automated file, should be converted to electronic form and forwarded with the machine readable file to approve continued processing. Commitments shall be promptly recorded coincident with the occurrence of the events from which they originate. Commitments must be recorded against an approved and applicable allotment to allow for the proper future obligation of these funds. Any external communications referring to a commitment of funds or other pre-obligation processes should clearly distinguish these preliminary events from the intended actual point of obligation discussed in Sections 3-10 through 3-27, below.

- 3-6. **REVERSING COMMITMENTS AT FISCAL YEAR-END.** Commitments that are recorded and remained unobligated at fiscal year-end are automatically reversed prior to the fiscal year-end closing process and become part of the unobligated carryover balance that needs to be brought forward on the SF-132, "Apportionment/Reapportionment Schedule" requests for the new fiscal year. Valid commitments for unexpired multi-year and no-year funds must be reestablished against the new fiscal year apportionment. The OCFO will notify allotment holders of commitment levels reversed at year-end for inclusion in their apportionment requests. Upon receipt of sufficient apportionments to cover the carryover activity, the OCFO will automatically reestablish the commitments and notify the applicable allotment holder(s). If commitment amounts have not been obligated at the end of the FY and they are available for expiring annual or multi-year funds, they are no longer valid commitments and therefore, become part of the unobligated balance in the expired account. This unobligated balance is available only for upward adjustments of previously recorded obligations, where the correct amount of the valid obligation was not previously fully recognized. In this case, upward adjustments can be made in the respective expired accounts for a period of five years after the year of expiration.
- 3-7. **ROLES AND RESPONSIBILITIES.** Each allotment holder is responsible for designating the Funds Control Officer authorized to oversee the proper processing of requests for the commitment of funds. The Funds Control Officer will be identified in the allotment holder's funds control plan (see Chapter 4), along with the process for requesting, approving, recording and reporting on commitments. The Funds Control Officer will usually be the Budget Officer for the allotment holder's organization. The allotment holder's designated Funds Control Officer is responsible for assuring that current, complete and accurate records of available funds are maintained for all funding activities for which they are responsible. The funds control plan shall designate a Funds Verification Official who is responsible for determining the propriety of each requested commitment, and the availability of funds for each commitment, before the commitment

is approved and then recorded in the applicable funds control system or log. The Funds Verification Official should reject any commitment request that is not properly approved, or for which there is any question about compliance with the legal limits of HUD's budgetary authority. The Funds Control Officer will also assure that regular reports on the levels of committed and uncommitted authorized funds are disseminated to HUD managers with responsibility for the activity.

- 3-8. **COMMITMENT NUMBERING AND CONTROL.** For control purposes, a unique sequentially numbered identification number must be assigned to each commitment, and this commitment reference number should be associated with any subsequent obligation. Unless exempted by the CFO, the commitment coding structure should conform to the structure established for recording commitments and obligations in HUDCAPS or its subsidiary systems (e.g., Program Accounting System (PAS)), to provide consistency across the Department and foster further future systems integration efforts. For procurement actions, the HUD Procurement System (HPS) generates commitment numbers to be used for each commitment. For Simplified Acquisition actions, the Small Purchase System (SPS) generates commitment numbers for each action.
- 3-9. **MONITORING FUNDS AVAILABILITY AND NEED.** Any commitment made should be immediately captured in a central system or control log for each allotment or suballotment that provides current and accessible data for the use of responsible managers, to enable them to either curtail activity or request authorization of additional funds when commitment levels approach authorized funding limits. Close monitoring and management of commitment levels and authorized funding limits is required to ensure adequate funds control and avoid incurring an obligation that could result in an Antideficiency Act violation.
- 3-10. **DEFINITION OF OBLIGATION.** An obligation is a binding agreement that will require an outlay or expenditure of funds, immediately or in the future. Examples of HUD obligations generally include purchase orders, contracts, task orders, interagency agreements and grant awards. Modifications of these actions can also represent obligations requiring an expenditure of funds (see related section 3-12).
- 3-11. **GENERAL POLICY ON OBLIGATIONS.** All obligations of budgetary resources shall be for the purpose authorized by law, within amounts authorized, executed before the end of the period of availability of the appropriation, and supported by documentary evidence that is in writing and approved by a duly authorized official. Obligations should be limited to bona fide needs during a given period, and should comply with applicable laws and regulations. An obligation may not be authorized before enactment of the applicable appropriation and the issuance of an apportionment and an allotment, unless otherwise provided by law. Each obligation should be recorded in the appropriate accounts as it is incurred, in the appropriate source year accounts. Obligations should never exceed available funds, and should reference and be verified against a prior commitment of funds in order to assure that sufficient funds are available, unless exempted from the funds commitment stage by the CFO.

- 3-12. **INCURRING OBLIGATIONS.** Care must be taken to properly establish the legally binding point of obligation in a manner that protects the interests of the government and assures compliance with the limits of HUD's authority on its budgetary resources, including any requirements that may be specified in statute or regulation. Allotment holders should request the assistance of the Office of General Counsel and the OCFO's Appropriations Law Staff to review the legal sufficiency of the proposed point of obligation for funded activities, including the proper sequencing of signatures on the obligating documents. Recent HUD appropriation acts have provided that the point of obligation shall be the executed agreement or contract, except with respect to insurance and guarantee programs, certain types of salaries and expenses funding and incremental funding that is authorized under an executed agreement or contract and the point of obligation shall be designated in the applicable funds control plan. The Office of General Counsel and the OCFO's ALS should also be asked to review the form and content of any proposed pre-obligation communications on pending award processes, such as award notification letters prior to signing a grant agreement, to assure such communications will not prematurely obligate the government before all terms and conditions have been agreed to by HUD and the other party. Allotment holders and HUD staff are cautioned to avoid any communication that would improperly imply an obligation of funds prior to the intended point of obligation approved in the applicable funds control plan (see related sections 4-2, 4-3, and Appendix No. 9 of this handbook, as well as guidance within GAO's Principles of Federal Appropriations Law.) (see related section 3-10).
- 3-13. **POINT OF OBLIGATION LIST/MATRIX.** The Office of the Chief Financial Officer shall maintain a list called the Point of Obligation Matrix that identifies the point of obligation and the allotment holder for specified funded activities. The matrix is based on the point of obligation identified in each funds control plan. It is posted at hud@work on the OCFO web site. To the extent that program offices need to change a point of obligation for a program, the change must be submitted to OCFO for review and approval and, if approved, the change must be made to the funds control plan and the matrix simultaneously.
- 3-14. **RECORDING OBLIGATIONS.** All obligations must be promptly recorded in the applicable funds control system when incurred and must reference any previously recorded commitment of funds for the obligation. For procurement and simplified acquisition actions, the HPS and SPS generated Accounting and Appropriation Data Forms must be included as part of the procurement package to be submitted to the CFO Accounting Center in Fort Worth, Texas. Obligations must be recorded against an approved budget with required classification elements. Obligations should never exceed available funds. Anyone discovering that an obligation has incurred in excess of available funds shall inform the OCFO immediately, so that appropriate action may be taken to avoid or appropriately address a violation of the Antideficiency Act.

When the amount of an obligation is not known at the time it is incurred, the best possible estimate shall be used to record the obligation. Where an estimate is used, the basis for the estimate and the computation must be documented and approved by a duly authorized

official. Appropriate adjustments must be made when events permit a more accurate estimate of the amount of the obligation and when the actual obligation is determined.

The principles used in determining which fiscal year's appropriation is to be charged with obligations for any period within the fiscal year will also be used at the end of the fiscal year.

- 3-15. **OBLIGATING FUNDS FOR INDEFINITE QUANTITY CONTRACTS.** HUD must properly obligate the required minimum purchase amount upon execution of any indefinite quantity contract. It is not sufficient to obligate funds after the subsequent issuance of a task order, since the obligation occurred at the time an indefinite quantity contract was executed. Under current regulations, an indefinite quantity contract must include a minimum purchase requirement that must be more than nominal (48 C.F.R. 16.50(a)). According to the GAO appropriations law guidance, any required minimum purchase amount must be obligated when the contract is executed. Subsequent obligations occur as work orders or delivery orders are placed, and after the initial orders have fulfilled the minimum, are chargeable to the fiscal year in which the order is placed.
- 3-16. **OBLIGATIONAL PERIOD.** Section 1501(d) of the Supplemental Appropriation Act of 1955 (Title 31, United States Code (USC), Section 1107) provides that the nature of an appropriation or fund determines its period of obligational availability:
- One-year accounts are available for incurring obligations only during a specified fiscal year;
 - Multiple-year accounts are available for the specified multiple-year period;
 - No-year accounts are available indefinitely;
 - At the end of a fiscal year, unobligated balances in accounts carried forward may not be obligated in the following fiscal year without a new apportionment and allotment of funds;
 - HUD maintains separate obligated and unobligated balances within an expired account until that account is cancelled at the end of the fifth year; and
 - Expired funds that are five years old are cancelled at September 30. Prior to year-end, a detailed report of these funds is sent to program managers. This is to notify program managers that any unexpended amounts under an expired account at the end of the year will be cancelled.

Following the enactment of appropriations for HUD each fiscal year, the OCFO will prepare a chart that identifies the obligation periods applicable to HUD and HUD recipients that are imposed by statute or regulation on the obligation and expenditure of appropriated funds. The chart will be used to validate or update HUD's funds control plans, with notification of any required changes to applicable allotment holders.

3-17. **DETERMINATION OF NEED.** It is not a requisite that the delivery of goods or the rendering of services be completed within the fiscal year in which funds were obligated. However, obligations recorded should represent a bona fide need for the full period of the contract or for the fiscal year in which the contract is in effect. The determination of what constitutes a bona fide need for the full period of the contract or for the fiscal year depends in large measure upon the facts and circumstances of the particular case. The term “bona fide need” recognizes the necessity of providing for the orderly flow of goods or services and avoiding the unnecessary obligations of funds.

An obligation for a fiscal year relates to:

- Goods or services for which a contract or purchase order or other obligation document is issued in the current fiscal year and for which there is an actual need in that fiscal year; or
 - A contract entered into during the fiscal year when lead-time or an advance of funds is required in order to have the goods or services available when needed in a subsequent year.
1. Generally, contracts or purchase orders for goods and services shall be obligated in the fiscal year in which the bona fide need arises or for the replacement of stock used in that fiscal year. When materials or supplies are not obtainable on the open market for use at the time need is determined, a contract for such materials or supplies may be considered a bona fide need of the fiscal year in which the contract is made, provided that the time intervening between contracting and delivery is necessary for producing, processing, or fabricating the materials or supplies. The amount of the obligations under contracts of this type will vary under different conditions. If such a contract is for the needs of the current year only, the full amount of the contract shall be obligated at the time the contract is executed. If such a contract is entered into to provide a continuing supply needed by HUD for over a number of years, they should be obligated at the time the contract is executed and only for the needs of the current fiscal year: needs of each successive fiscal year for which the contract is renewed by execution of HUD’s option should be obligated against funds of each such fiscal year (20 C.G. 572, 20 C.G. 868, 33 C.G. 90, 37 C.G. 155). However, multiyear contracts may be authorized under special circumstances and in accordance with 41 U.S.C. § 254c. Comptroller General (C.G.) Decision B-277165 (January 10, 2000). Obligations for rent, utilities, materials, and supplies should generally not exceed one fiscal year in duration (37 C.G. 155, 159).
 2. Amounts for rent, travel, training and household moves scheduled to begin in the next fiscal year should normally not be obligated during the current fiscal year, nor should contracts for housekeeping and facility maintenance services of HUD operational facilities when the services are to be performed in the next fiscal year.

HUD’s year-end training obligation policy, as a general rule is:

Current Year funds may be used only for training that is scheduled to occur in the current year. The bona fide need for the training must exist in the current fiscal year for an obligation to occur with current year funds. For example, FY 2005 funds cannot be used for any FY 2006 training.

Exceptions to this general rule:

- Prepayment of tuition: Current year funds can be used for a course that starts during the current fiscal year and continues into next fiscal year. For example, a college level class where the semester begins in September and ends in December.
 - An obligation was made for a class that was scheduled during the current fiscal year and the vendor cancelled the class and rescheduled the class for the next fiscal year. Since the bona fide need existed during the current year and the obligation was valid, unforeseen delays, which cause delivery or performance to extend into the following fiscal year will not invalidate the obligation. The purpose and scope of the original obligation cannot change once the period of obligation has ended.
 - If a vendor requires payment not later than September 30 of the current year for essential training that begins in early October of the following year, current year funds can be used. The training must be critical to the performance of the employee's job and no similar training can be available within an acceptable timeframe within the next fiscal year. Any proposed training fitting this exception must be submitted to the OCFO Budget office for review and approval.
3. For program funds, obligations shall be recorded in the fiscal year in which the act that makes the contract or agreement binding takes place, as long as there is a bona fide intent that performance under the contract will commence in the near future without unnecessary delay, even though the first act of performance may not take place until the succeeding fiscal year. To be considered valid obligation documents, such contracts or agreements must not restrict the contractor or grantee from incurring expenses except where the expenses would violate requirements that funds be spent only to carry out purposes of the program, within budget restrictions, and not in excess of the contract amount.
 4. Grant and loan (program) funds, when obligated for a particular project, shall provide obligational authority to the grantee or borrower to cover the estimated costs of the authorized project. Such funds shall not be available for other projects nor for purposes other than those contemplated and agreed upon in the obligating document.
 5. If the scope of a contract, grant agreement, or loan agreement is expanded as to area of performance and/or total amount after the close of the year in which the contract or agreement was originally obligated, such added amounts must be obligated against

the current fiscal year appropriation (37 C.G. 861). However, overruns of estimated obligations without a change in scope may be obligated against the year in which the original contract was obligated. On expired appropriations, however, such overruns are limited to the amounts of appropriations previously withdrawn (or lapsed) to the Treasury. Any expansion of a grant agreement governing funds awarded competitively must be in compliance with the requirements of the Notice of Funding Availability (NOFA) under which the funds were awarded and the HUD Reform Act, as applicable. Any expansion of a contract must be in compliance with HUD's Acquisition Regulations and policies and procedures of HUD's Contract Management Review Board, as applicable.

6. Interest penalties for late payment of vouchers and invoices subject to the Prompt Payment Act (P.L. 97-177, as amended) shall be obligated against the current year of the appropriation or fund against which the goods or services giving rise to the voucher/invoice was initially obligated.
- 3-18. **DOCUMENTARY EVIDENCE FOR RECORDING OBLIGATIONS.** Amounts shall only be recorded as obligations against the applicable appropriation, fund, or statutory authority when supported by sufficient documentary evidence that a legally binding obligation has been established. Obligations should not be recorded until the obligating documents have been properly signed and dated in the correct sequence, as specified in the applicable funds control plan. All required actions to make the document a legally binding obligation must be completed within the period of availability for obligation of the funds being used. The recording of obligation process must be clearly identified in the applicable funds control plan. For example, if in the funds control plan, the process for recording obligations includes using a machine readable file, submitted to the CFO/Financial Systems Maintenance to record obligation of funds for multiple actions at a time, a signed paper copy of a certification for obligations letter, signed by the allotment holder or designee, as described in the funds control plan must be attached to the file of obligations to process before that file is processed. The program areas and the CFO will maintain current funds control plans. Any processing requests that deviate from the points of obligation and funds control plan must be approved through written authorization from both the allotment holder and the issuer of the allotment.
- 3-19. **PROMPT RECORDING.** Original obligations shall be recorded promptly after receipt of authorizing documents in the accounting office. Any changes in recorded obligations shall be recorded promptly upon receipt in the accounting office of a signed document that authorizes the change. Any change in the contract, purchase order, grant, cooperative agreement, or other obligating instrument, which will alter the scope and/or increase the amount of the obligation, shall not be made until the availability of funds is ascertained in the same manner as for an original obligation. Before processing requests to decrease or cancel existing obligations, the accounting office shall determine that the unliquidated amount remaining from the original obligation is equal to or greater than the amount to be deobligated.

It is essential that all obligating documents are promptly forwarded to the accounting office for recording, especially at yearly closeout so that these obligations can be processed in the accounting system no later than September 30.

- 3-20. **PROHIBITION AGAINST WITHHOLDING OBLIGATIONS.** No employee of the Department shall withhold the recording of a known obligation, even if such recording will cause the allotment or other budget limitation to be exceeded. All valid obligations shall be recorded and supported with the required documentation. However, when a recorded obligation exceeds budget authority, the CFO must be notified immediately to further assess and act on this occurrence. Estimated obligations are unavoidable in some cases. Some instances will be encountered where the amount of an obligation as established must later be changed and must be amended through the appropriate approval process. There may be some instances where valid obligations not recorded are uncovered after the period in which they should have been recorded and when such instances occur they must be reported to the CFO.
- 3-21. **ESTIMATING AMOUNTS OF OBLIGATIONS.** In those cases where the precise amounts of obligations are not known at the time they are incurred, the best available estimates of the amounts that will subsequently be paid shall be used. Such estimates shall be converted to actual amounts as soon as the precise information is known.
- 3-22. **CHANGES IN RECORDED AMOUNTS OF OBLIGATIONS.** Balances reported as of the close of a fiscal year shall contain all obligations that are properly chargeable to the appropriation, fund or statutory authority. For expiring appropriations, any increases made after the close of the fiscal year in the amount recorded for an obligation are reviewed for supporting documentary evidence as required by Section 1501 of the Supplemental Appropriations Act of 1950. If revisions to estimated obligations and changes to obligations have been made in a timely manner throughout the fiscal year, changes made after the end of the fiscal year should be relatively minor and should not result in cumulative obligations significantly in excess of the September 30 certified amounts. See Section 3-26 for procedures required when making year-end changes in recorded amounts of obligations.
- 3-23. **ADJUSTMENTS TO OBLIGATIONS.** Increases and decreases in obligations must be recorded as they occur, using the appropriate obligating document, in order to ensure that obligations do not exceed the authorized limitation and to ensure the validity of recorded obligations at the end of the fiscal year. In addition, the continuing need for obligations should be confirmed and, as necessary, made current during the annual review of obligations.
- 3-24. **ANNUAL REVIEW OF UNLIQUIDATED OBLIGATIONS.** The OCFO will coordinate a review and confirmation of unliquidated obligations for both program and administrative funds. The unliquidated obligation review will be conducted as of May 31 of each year.

1. Identification of unliquidated obligations for review. Particular attention must be given to unliquidated obligations whose status has not changed for six months or more, to ensure that they are still valid outstanding obligations. The OCFO will at that time identify such unchanged obligations to the designated Funds Control Officer for each allotment holder. The CFO will at that time also designate a threshold amount of obligations that must be examined in more detail.
2. Deadline for certification. The CFO will establish a date by which each allotment holder shall provide to the CFO a written certification of obligations that were open as of May 31. When responses are not received by the designated date, the OCFO shall notify the allotment holder not responding. If responses are still not provided, the Deputy Secretary shall contact the allotment holder whose responses remain delinquent.
3. Requirements for certification of obligations open as of May 31. Allotment holders must provide the CFO with written certification of obligations open as of May 31. (Appendix No. 9 contains a sample format of certification by program or administrative personnel to their allotment holder and sample formats of certifications by allotment holders to the CFO, for program obligations and for administrative obligations.) For those obligations in excess of the threshold established each year by the CFO, program or administrative personnel will certify to the allotment holder (generally their Assistant Secretary or equivalent) that his/her office has reviewed the underlying support to determine the validity of the obligations. The certifications to allotment holders must identify for deobligation all invalid obligations for Headquarters and for Field Offices as follows:
 - a. For program amounts to be deobligated, in full accordance with program requirements, attach the listings required to deobligate the amounts (showing code D); and
 - b. For administrative amounts to be deobligated, either process the deobligations or, in situations where the administrative personnel could not deobligate the invalid obligations, attach the listings (showing code D) required to deobligate the amounts.
4. Reduction and reinstatement of certain obligations. When obligations are reduced as of September 30 to meet Section 1501 requirements (e.g., bills of lading), it will be necessary to reinstate as of October 1, against the new appropriation or the reduced portion of the obligations, if the travel and transportation is still scheduled to take place.
5. Support for audits. The workpapers and records supporting annual reviews and any adjustments of unliquidated obligations for Section 1501 purposes shall be retained in such form as to facilitate an audit.
6. Other review efforts. Review of programs or activities not covered in the OCFO's annual review of unliquidated obligation balances should be accomplished and

recapture processes defined in the allotment holder's funds control plan to assure the continuing need for obligated funds. Such processes should also cover older and small balances.

- 3-25. **ADJUSTMENTS TO CONSTRUCTION PROGRAM COMMITMENTS.** Particular attention must be paid to the continuous review of the validity of commitments in HUD construction related programs (e.g., Public Housing, Section 202 and Section 811) that have not reached the contract/agreement stage. Such commitments in HUD's accounting records are for specific projects for which a contract has not been executed to obligate all or a part of those funds. Continuous review is needed to determine whether a project is still viable and whether the commitment should be modified or cancelled. The program staff, as part of their continuous routine program monitoring process, must furnish the proper documentation to the applicable accounting office so that commitments that have progressed to the contract/agreement stage are promptly and properly reflected as obligations on the accounting records.
- 3-26. **TERMINATION OF CONTRACTS AND AGREEMENTS.** When HUD terminates a contract or agreement (for convenience or for cause, i.e., "default"), the pertinent obligation shall be decreased to an amount sufficient to meet the settlement costs included under the terms of the termination. For procurement contracts, contracting officers shall comply with the requirements of Federal Acquisition Regulation 49.105-2 concerning timely release of excess funds. For grants, the closeout procedures set forth in Handbook 2210.17, "Discretionary Grant and Cooperative Agreement Policies and Procedures," should be followed. The office executing the termination (e.g., the Office of the Chief Procurement Officer or applicable program grant office) shall promptly notify the OCFO and provide supporting documentation for an adjustment to unliquidated obligations resulting from the closeout process. Upon the normal termination of a contract or agreement, the cognizant or responsible office shall provide the appropriate accounting office with supporting documentation for an adjustment to unliquidated obligations remaining after the contract or agreement is closed out.
- 3-27. **CUTOFF DATE FOR REVIEW AND ADJUSTMENT OF SEPTEMBER 30 OBLIGATIONS.** The GAO regulations provide that (1) agencies are not restricted, for liquidation purposes, to the amounts certified and reported as September 30 obligations, but that such amounts should be as firm as possible, and (2) in determining amounts to be reported, agencies may establish a reasonable cutoff date subsequent to September 30 for completing a final review of obligations for Section 1501 certification purposes. The regulations also provide that payments made and reports of costs received during the period between September 30 and the cutoff date should be considered in determining valid obligations as of September 30. Therefore, no later than the close of business October 15, each year, each accounting office shall complete a final review and inventory of its September 30 obligations to determine that all known obligations are recorded and correctly stated and that each meets the requirements of Section 1501(a), P.L. 97-258, for valid September 30 obligations for certification purposes. An obligation that is indefinite as to amount shall be adjusted in the course of such final review to the soundest available estimate of the amount obligated as of September 30. Adjustments based on data

received after October 15 will be reported as adjustments on the following year's reports. Material adjustments shall be properly noted. When obligations are reduced as of September 30 to meet Section 1501 requirements for supporting documentation (e.g., travel orders, change-of-station orders, training authorization, bills of lading), it will be necessary to reinstate as of October 1, against the new appropriation, the reduced portion of the obligations, if the travel and transportation is still scheduled to take place.

- 3-28. **DEFINITIONS OF EXPENDITURES AND ADVANCES.** For purposes of funds control, "expenditure" is the disbursement or payment of funds from an appropriation or other budgetary resource to liquidate an obligation. An "advance" is an amount paid prior to the receipt of goods or services and includes funds paid to a grant or other recipient prior to the incurrence or accrual of an actual expense that HUD is obligated to pay. Under HUD's grants payment policy, payments to grantees are not considered advances if the grantee requests the funds not more than three business days prior to the day on which HUD makes the disbursement.
- 3-29. **GENERAL POLICY ON EXPENDITURES.** HUD will not make or authorize expenditures in excess of an appropriation or apportionment in violation of the Antideficiency Act. Payment requests must properly reference a previously recorded obligation document to ensure payments do not exceed available authorized funds. The total of expenditures and advances under an agreement shall not exceed the total funds obligated under the agreement at any point in time. Advances must be reconciled to actual expenses, and any required adjustments to payments made prior to closing-out the agreement. The allotment holder and employees responsible for making payments must follow government-wide requirements governing payments and the guidelines and instructions issued for the applicable payment system. Those responsible for approvals of payments must ensure that payments do not exceed the unliquidated obligation balances of the specific appropriation involved. This requires that obligations be properly incurred and recorded before payments are made.

Electronic Funds Transfer (EFT) is the much preferred method of disbursement throughout the Department for all program and administrative offices.

It is also the policy of HUD that:

- Penalty interest payments pursuant to the Prompt Payment Act are charged, first, to the fiscal year, appropriation and apportionment (e.g., specific program) used when the obligation to pay interest was incurred, or, if undisbursed funds are not available for this purpose, to the current year funds available for the same appropriation and apportionment;
- Interest penalties required by the Cash Management Improvement Act (CMIA) are to be minimized to the extent possible;
- Reimbursements from other federal agencies for joint projects are considered to be earned, and eligible for collection, when the interagency agreement is signed and

approved by both parties. However, the funds are allotted by HUD for usage only after collection. The collected resource remains unavailable for allotment and use until made available on the SF-132, "Apportionment/Reapportionment Schedule," as reimbursement;

- Since payments made by credit card and third party draft payments are classified as outlays at the time the funds are paid from the Treasury, staff issuing the payments must insure that the proper appropriation fund account is charged and that the obligation establishing the need for the payment is expended or liquidated on a timely basis; and
- Payments and collections between federal agencies are made through the Intergovernmental Payment and Collection System (IPAC). The allotment holder is responsible for the obligation of a payment that is being made or collected, for the program for which a payment is made or collection is received through the IPAC system and for providing the necessary information to the OCFO to ensure that the appropriate appropriation, program, and project is charged or credited.

NOTE: For a limited set of transactions (e.g., local travel, telephone bills), validation of the availability of funds may be performed at the same time as obligation and expenditure, provided these exceptions are described and approved in the allotment holder's funds control plan, with procedures to monitor the availability of funds to avoid a violation of the Antideficiency Act. Monitoring the availability of funds is normally an automated systems control feature, but may be performed manually where necessary. In addition, prompt recording of the outlay, fully coded with accounting code information, is required to avoid exceeding available funds for these special types of transactions.

- 3-30. **ROLES AND RESPONSIBILITIES REGARDING EXPENDITURES.** The OCFO has overall responsibility for recording, monitoring, external reporting and estimating payments of funds as required by the Treasury Financial Manual and OMB Circulars. The OCFO is responsible for the specific monitoring and projections requirements of OMB Circular No. A-11, except for the separate identification, projection, and reporting of large amounts over \$50 million, which is the responsibility of the originating office. However, allotment holders, their Funds Control Officer and other officials approved in their funds control plans to process obligations and expenditure requests, are required to monitor the status of obligations and expenditures to report inconsistencies and variances from normal outlay patterns. Payments include outlays, disbursements and advances. While causing the over-disbursement of an appropriation account is a violation of the Antideficiency Act, making payments in excess of unliquidated fund balances in an appropriation account can be an Antideficiency Act or administrative violation. OCFO is responsible for reviewing any disbursement procedures developed by the Assistant Secretaries or equivalents. OCFO will also periodically review the disbursement systems to ensure that the most effective mechanisms are in use. The CFO is responsible for payments made within the Department, including processing the EFT enrollment forms, payment rejections, inquiries on payment status, and reconciliation of payment data.

1. Allotment holders have overall responsibility for implementation of the above expenditure policy for the funds allotted to them. This includes developing and implementing appropriate procedures and designating Headquarters and/or Field Office personnel to examine and approve requests for expenditures of funds as part of their funds control plans.

2. Payment certifying or disbursing officers in HUD's accounting operations--within the OCFO, FHA, or GNMA--are responsible for reviewing and accepting the allotment holder's prepayment examination and approval processes, and any necessary systems or other controls over the subsequent processing of such payment requests, as the basis for certifying the funds for payment.

- 3-31. **PREPAYMENT EXAMINATION, APPROVAL, AND CERTIFICATION OF PAYMENT DOCUMENTS.** All basic vouchers, voucher schedules and invoices or bills used as vouchers must be approved and certified as legal, proper, and correct for payment by an authorized certifying or disbursement officer. The certification of a document attests to all administrative determinations having been made as required of an approving official. The certification of a voucher applies to all individual vouchers listed on the schedule. The responsibilities and liabilities of accountable officers are discussed in more detail in Chapter 9 of GAO's Principles of Federal Appropriations Law Manual. The disbursements shall be supported by basic payment documents, either hard copy or machine readable source records, which include purchase orders, contracts, receiving reports, invoices, bills, statements of accounts, etc., showing sufficient information to adequately account for the disbursements. The documents should link all supporting records and enable audit of the transactions and settlement with the Certifying or Disbursing Officers, as required by law.

The examination of the voucher shall be done to ensure:

1. The payment is permitted by law and complies with the terms of the applicable obligating documents;
2. The required administrative authorizations and approvals are obtained;
3. The payment is supported by basic payment request documents and/or other acceptable forms of support;
4. The amount of the payment and the name of the payee are correct;
5. The goods received or the service performed complies with the agreement;
6. The quantities, prices and calculations are accurate;
7. All cash, trade, quantity, or other discounts are taken and, if not, that the reason therefore is shown on the appropriate document;

8. All applicable deductions are made and credited to the proper account in the correct amount;
9. Proper payment arrangements are followed;
10. Appropriated funds are available for the time period, purpose and amount of the proposed payment;
11. Special Certificates, if required, are furnished; and
12. Duplicate payments are prevented.

Effective control over disbursements ordinarily requires the prepayment examination and approval of vouchers before they are certified for payment. However, permissible exceptions have been allowed under plans that combine elements of fast pay and statistical sampling of vouchers under \$2500.

- 3-32. **PAYMENT PROCESSING.** Payment requests must reference a previously established obligation document. Payment request documents that do not reference previous obligations or commitments must be researched immediately to assure that the Antideficiency Act is not violated (see Section 3-37, below) and to establish the proper accounting classification information prior to payment. Requests for payment should be processed and approved in accordance with the requirements of the funds control plan for the applicable funding source. Activities related to payment processing may be supported by other systems that lead up to the payment stage, such as systems used to record obligations and expenditures and to establish payables. Some program and administrative systems provide machine-readable summary schedule data to payment systems for processing. The payment system processes the actual payment, followed by recording in the standard general ledger. Adequate controls must be established to assure the integrity of any machine-readable payment request data, and any movement of the data from one system to another through actual disbursement and posting to the general ledger.

1. Vendor and miscellaneous payments - per the authority granted under the Federal Acquisition Regulations, all contractors shall be paid by EFT, unless a determination is made that it is not in the best interest of the Department to do so; or that payment by EFT adversely impacts the vendor. Such determinations shall be made on a case-by-case basis.

To minimize cash outlays the Department requires maximum use of the Government Small Purchase Card. Additionally, payments to other government agencies shall be made via the IPAC. In those rare instances in which the payee agency does not have access to IPAC, the payment shall be made by using the SF-1081, "Voucher and Schedule of Withdrawals and Credits."

2. Grants, subsidies and loans - all grant, subsidy and loan program payments shall be made by EFT.
 3. Salary - direct deposit is the preferred method for salary and related payments (including bonuses and cash awards), and deductions (e.g., allotments, insurance, charitable contributions). Title IV of the Government Management Reform Act established that recipients of federal wage, salary, and retirement payments that begin to receive such payments on or after January 1, 1995, shall be paid by EFT.
 4. Travel - the Department requires maximum use of the Government Travel Card. While direct deposit is the preferred method for travel related payments, the Government Travel Card should be used for travel advances.
- 3-33. **PROMPT PAYMENT.** Specifies government policy for payments (5 CFR Part 1315) made to vendors against contracts. It states in part, that agencies must make payments on time, pay interest penalties when payments are late, and take discounts only when payments are made on or before the discount date and when it is advantageous to the government. Each head of an executive agency shall, under such regulations as the Secretary of the Treasury shall prescribe, provide for the timely disbursement of federal funds through cash, checks, electronic funds transfer, or any other means identified by the Secretary. Any charge assessed by the Secretary under this section, to the maximum extent practicable:
1. Shall be paid out of appropriations available for executive agency operations; and
 2. Shall not be paid from amounts available for funding programs of an executive agency.
- 3-34. **THE CASH MANAGEMENT IMPROVEMENT ACT (CMIA)** requires the Department to make timely payments to States for all programs covered under the Act. Regulations implementing CMIA are at 31 CFR Part 205.
- 3-35. **THE DEBT COLLECTION IMPROVEMENT ACT OF 1996 (DCIA)** provided for access to taxpayer identification numbers and enhanced administrative offset and salary-offset authorities. Other regulations affect payments made for travel, payroll, benefits, etc.
- 3-36. **PENALTY INTEREST PAYMENT.** Penalty interest payments pursuant to the Prompt Payment Act are charged first to the fiscal year appropriation and apportionment (i.e., specific program) used when the obligation to pay interest was incurred, or, if undisbursed funds are not available for the same appropriation and apportionment, penalty interest payments should be charged to the current year.

Section 3902(f) of the Prompt Payment Act states that the interest payment is charged to the fiscal year of the day after the invoice payment due date (which is the day the agency incurred the obligation to pay interest).

Interest penalties required by the CMIA are to be minimized to the extent possible. This requires particular attention to the timely obligation of all grants that are made to state entities so that states do not need to use their own funds to carry out programs while awaiting the obligation authorization allowing them to draw down federal funds.

- 3-37. **REIMBURSEMENTS FROM OTHER FEDERAL AGENCIES.** Reimbursements from other federal agencies for joint projects are considered to be earned, and eligible for collection, when the interagency agreement is signed and approved by both parties. Funds are apportioned and allotted only after collection. The resources will, therefore, be available for making jointly supported grant or contract award. Payments are collected between federal agencies and are made through IPAC. The program office responsible for the obligation for which a payment is being made or collected, or for the program for which a payment is made through the IPAC system, is responsible for providing the necessary information to the OCFO to ensure that the appropriate appropriation, program, and project is charged or credited.
- 3-38. **DOCUMENTARY EVIDENCE FOR MAKING PAYMENTS.** Obligations established and recorded against an appropriation, fund, or statutory authority shall be the basis for making payments, when payment requests are submitted in the form and content required by the terms and conditions of the applicable obligating documents and corresponding funds control plan.
- 3-39. **METHOD OF DISBURSEMENT.** Once expenditure request documents are approved and processed in the applicable HUD accounting system, payments are scheduled for disbursement by one of several disbursing models used to determine how the payments of funds actually occur. HUD's accounting systems support several Treasury disbursing models, through EFT using Automated Clearing House (ACH) transfers or the Treasury Financial Communication System (TFCS), or by printing and sending checks. Disbursement or payment is an expenditure using cash, check or electronic transfer. It also covers executed expenditure transfers to other federal agencies. Disbursements or payments include any advances and credit card and third party draft payments that have been made, as well as those expenditures that have been paid.

The Department's payment systems must provide for the efficient, effective, and timely transfer of funds. EFT is the much preferred method of disbursement throughout the Department and funds are to be disbursed by EFT, when cost-effective, practicable, and consistent with current statutory authority. Cash payments and printed checks are the least desirable method of payment, to be avoided whenever possible, applying to all program and administrative offices within HUD. Upon written request, recipients may request waivers to this policy on a case-by-case basis.

- 3-40. **AUTOMATED DISBURSEMENTS SUBSYSTEMS.** Such systems record, monitor, and control all activities associated with the disbursement of funds. These activities include:

- Disbursing funds by EFT or generating Treasury disbursement tapes;
- Generating General Ledger entries; and
- Reconciling all disbursements with Treasury's records.

Disbursement of funds occurs through the U.S. Department of Treasury. Automated disbursements create SF-1166 schedules and tapes that contain information about the amount of funds to be disbursed and who should receive the funds. The Department of Treasury uses the information on these schedules and tapes to disburse funds through EFT using ACH transfers or TFCS or by printing and sending checks.

- 3-41. **MANUAL DISBURSEMENT PROCESS.** The manual disbursement process is used when payments are processed outside of the Automated Payment System and later recorded. Electronic Certification System (ECS) and Federal Reserve FEDWIRE System payments are examples of manual disbursement processes. Responsible individuals must ensure that funds are available before making a manual payment and must enter the transaction into the appropriate accounting system immediately upon processing.
- 3-42. **DIRECT PAYMENT AND DISBURSEMENT DOCUMENTS.** Direct payment and disbursement documents are used for direct payment requests, which are entered directly into the accounting system without referencing a purchase order or obligation document. Direct payments may be manual payments or system generated payments. A local travel reimbursement request, SF 1164, or a Spot Award request is an example of a direct disbursement document.
- 3-43. **DIRECT DEPOSIT.** Notwithstanding any other provision of law, all Federal wage, salary, and retirement payments shall be paid to recipients of such payments by EFT, unless another method has been determined by the Secretary of the Treasury to be appropriate. The head of each agency shall waive the requirements for a recipient of federal wage, salary, or retirement payments authorized or certified by the agency upon written request by such recipient, based on the following:
- “Each recipient of federal wage, salary, or retirement payments shall designate one or more financial institutions or other authorized payment agents and provide the payment certifying or authorizing agency information necessary for the recipient to receive electronic funds transfer payments through each institution so designated. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by a payment recipient under this section shall constitute a full acquittance to the United States for the amount of the payment.”
- 3-44. **PAYMENT CONTROL PROCESS REVIEW.** On a monthly basis, the OCFO, along with the respective Program Offices, will review financial reports to ensure that no Antideficiency Act violation has occurred. If a potential violation is disclosed, refer to Chapter 5.

CHAPTER 4. FUNDS CONTROL PLANS

- 4-1. **POLICY ON FUNDS CONTROL PLANS.** All allotment holders shall be required to prepare a funds control plan describing the administrative control of funds allotted to them. The funds control plan shall be submitted annually for review until the CFO determines further submission and review are not needed. This determination shall be based on the funds control plans adhering to the guidelines in this handbook. Once the CFO has determined that further review of a funds control plan is unnecessary, then submission of the plan for annual review will not be required unless changes in law, policy or procedure have occurred that would be inconsistent with the existing plan. With respect to administrative changes, the allotment holder shall advise the CFO of any changes to the funds control plan during the course of the year, in writing, including the precise timing of any changes to the persons or positions authorized to initiate, approve, and process actions that commit, obligate, or expend funds.
- 4-2. **ROLES AND RESPONSIBILITIES FOR PLANS.** Each allotment holder is ultimately responsible for the preparation, submission and implementation of a funds control plan that provides for an effective administrative control of funds allotted to them. The allotment holder's designated Funds Control Officer is responsible for maintaining and assuring adherence to the funds control plan, and for providing orientation and training to HUD staff involved in carrying-out activities related to the administrative control of funds prescribed in the funds control plan. The allotment holder should request his/her Program Counsel in the Office of the General Counsel and the OCFO's Appropriations Law Staff to review and sign-off on any newly developed or revised funds control plan. This review should be made from the standpoint of legal sufficiency of the documents used as the intended point of legal obligation, as well as the legal sufficiency of any application, selection and announcement processes leading up to the intended legal point of obligation. Any problems or risks identified by the Program Counsel or Appropriations Law Staff should be discussed with the applicable Funds Control Officer, and the allotment holder, if warranted, for correction before approving the funds control plan or processing actions towards an obligation.
- 4-3. **FORM AND CONTENT OF PLANS.** Each funds control plan will contain a certification with original signatures from the allotment holder, any suballotment holders and their Funds Control Officers that they: (i) are aware of the requirements of HUD's Administrative Control of Funds Handbook; (ii) acknowledge their responsibility to administer funds allotted to their control in accordance with those requirements; and (iii) have established and will properly execute a funds control plan that provides reasonable assurance that obligations and expenditures will not exceed the authorized limits of the funds allotted to them. The general format for the required content of the funds control plan is provided in Appendix No. 9. The specific content of an allotment holder's funds control plan must meet the requirements of this handbook and include all relevant information requested in Appendix No. 9 for each program or activity for which funds are allotted.

- 4-4. **PROCESSING OF PLANS.** All Allotment holders shall be required to prepare a funds control plan describing the administrative control of funds allotted to them. The funds control plan shall be submitted annually for review until the CFO determines further submission and review are not needed. This determination shall be based on the funds control plans adhering to the guidelines in this handbook. Once the CFO has determined that further review of a funds control plan is unnecessary, then submission of the plan for annual review will not be required unless changes in law, policy or procedure have occurred that would be inconsistent with the existing plan. With respect to administrative changes, the allotment holder shall advise the CFO of any changes to the funds control plan during the course of the year, in writing, including the precise timing of any changes to the persons or positions authorized to initiate, approve, and process actions that commit, obligate, or expend funds.
- 4-5. **CHANGES TO PLANS.** The allotment holder must immediately advise the CFO of any changes to their funds control plan during the fiscal year. To assist the CFO in affixing responsibility for any violations of the Antideficiency Act during the year, it is important that the Funds Control Officer maintain a complete record of any changes to the designated positions or persons authorized to initiate, approve and process actions that commit, obligate or expend funds, including the precise timing of those changes.
- 4-6. **COMPLIANCE REVIEWS.** The OCFO will conduct periodic reviews of compliance with funds control plans (both conditionally approved and unconditionally approved) to assure adequate funds control is being applied in actual practice. Any deficiencies disclosed in the content or execution of funds control plans will be promptly communicated to the responsible Funds Control Officer and allotment holder for timely corrective action.

CHAPTER 5. RESPONDING TO ANTIDEFICIENCY ACT VIOLATIONS

5-1. **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.

5-2. **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.

5-3. **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.

5-4. 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:

1. 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.
2. 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.
3. 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.
 4. 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.
 5. 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.

6. 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.