

4 FAM 080

ADMINISTRATIVE CONTROL OF FUNDS

(CT:FIN-392; 04-30-2008)
(Office of Origin: RM/FPRA/FP)

4 FAM 081 PURPOSE, APPLICABILITY, AUTHORITY, AND DEFINITIONS

4 FAM 081.1 Purpose

(CT:FIN-392; 04-30-2008)

This section states the policy of the Secretary of State and assigns responsibility for the administrative control of funds available to the Department of State, as required by Section 3679 of the Revised Statutes, 31 U.S.C. 1301, 1341, 1342 and 1517, as amended (referred to as Section 3679 of the revised statutes throughout this section), and other statutes and regulations listed in 4 FAM 081.3 to do the following:

- (1) Establish policy with regard to administrative control over funds;
- (2) Prescribe a system for positive administrative control of funds, designed to restrict obligations and expenditures against each appropriation or fund to the amount available. (The term "expenditures" as used in this subchapter has the same definition as outlays);
- (3) Enable the Secretary to fix responsibility for overobligations and overdisbursements of appropriations, funds, apportionments, reapportionments, statutory limitations and allotments subject to the Anti-Deficiency Act, as well as violations of nonstatutory limitations, restrictions and requirements imposed by the Department; and
- (4) Provide procedures for dealing with violations of the Anti-Deficiency Act and other applicable statutes, as well as violations of limitations, restrictions and requirements imposed by the Department, including reporting requirements.

4 FAM 081.2 Applicability

(TL:FIN-356; 11-30-95)

The provisions of this policy apply to all Department of State programs, all allottees, and other personnel with responsibilities for administering, controlling, or otherwise overseeing the obligation and disbursement of funds entrusted to the Department of State.

4 FAM 081.3 Authorities

(CT:FIN-392; 04-30-2008)

This regulation is issued pursuant to the following laws and regulations:

- (1) Section 3679 of the Revised Statutes (31 U.S.C. 1301, 1341, 1342, 1349-1351, 1514, 1517-1519) (the Anti-Deficiency Act);
- (2) Section 1311 of the Supplemental Appropriations Act of 1955 (31 U.S.C. 1501 and 1502);
- (3) Congressional Budget and Impoundment Control Act of 1974 (31 U.S.C. 1512(c)(2));
- (4) OMB Circular No. A-11, Part 4: Instructions on Budget Execution;
- (5) Duties of the Secretary of State in the management of foreign affairs and authority to delegate functions, (22 U.S.C. 2651, 2656);
- (6) Federal Managers' Financial Integrity Act of 1982, Public Law 97-255 (31 U.S.C. 3512);
- (7) Section 1405 of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510 (31 U.S.C. 1552, 1553, 1555 and 1557);
- (8) Federal Credit Reform Act of 1990, Public Law 101-508 (2 U.S.C. 621 and 622); and
- (9) Chief Financial Officers Act of 1990, Public Law 101-453 (31 U.S.C. 901-903).

4 FAM 081.4 Definitions

(CT:FIN-392; 04-30-2008)

Apportionment—A form of budget authority making funds available to an agency to incur obligations and make expenditures from Treasury for specified purposes. Appropriations do not represent cash actually set aside in the Treasury. They represent legal authority granted by Congress to incur obligations and to make disbursements for the purposes, during the time periods, and up to the amount limitations specified in law.

Appropriation—A provision of law (not necessarily in an appropriations act) authorizing the expenditure of funds for a given purpose.

Canceled account—Also known as a “closed” account. An account that is available for a definite period (single or multi-year account) is canceled five fiscal years after its period of obligation ends. A no-year account is canceled if the head of the agency concerned or the President determines that the purposes for which the appropriation was made have been carried out and no disbursements have been made against the appropriation for two consecutive fiscal years. Once closed, any remaining unexpended balances, both obligated and unobligated, are canceled; returned to the general fund of the Treasury; and are thereafter no longer available for any purpose.

Deferrals—Any executive branch action or inaction that temporarily withholds, delays, or effectively precludes the obligation or expenditure of budgetary resources. Agencies may propose deferrals, but the President must communicate deferrals to Congress in a special message. They are not identified separately in the budget.

Expired account—An account for which the budget authority is no longer available for new obligations but is still available for disbursement. An expired account retains its fiscal-year identity for five years during which time obligations may be adjusted if otherwise proper and expenditures may be made.

Rescission—Legislation enacted by Congress canceling the availability of budgetary resources previously provided by law. The President may also propose rescissions whenever the President determines that all or part of any budget authority will not be needed to carry out the full objectives or scope of programs for which the authority was provided. Rescissions may also be proposed for fiscal policy or other reasons. Resources that are proposed by the President for rescission may be withheld from obligation

for up to 45 calendar days of continuous session of the Congress (excluding an adjournment of more than 3 days on which either house is not in session) pending congressional action on the proposal. Rescissions can either be temporary or permanent.

4 FAM 082 RESPONSIBILITIES

(TL:FIN-392; 04-30-2008)

Delegation of administrative responsibility for control of funds must be made at the highest practical level conformable to assigned program responsibilities for the purpose of assuring prudent financial management and full control over appropriations, apportionments, statutory limitations, allotments and Department imposed limitations.

4 FAM 082.1 Fund Control Responsibilities

(CT:FIN-392; 04-30-2008)

- a. The Under Secretary for Management (M) serves as a principal advisor to the Secretary on all matters that involve the allocation of the Department's resources. M develops and executes management policies; directs Department management programs involving relations with the Congress, OMB, and other foreign affairs agencies; and is responsible for the organization, operations, and assignment of functions within the Department.
- b. The Chief Financial Officer (CFO) and Assistant Secretary for Resource Management serves as the Management Control Officer for the Department. The CFO establishes, reviews, and enforces internal control policies, standards, and compliance guidelines throughout the Department:
 - (1) The Chief Financial Officer has designated the Deputy Chief Financial Officer as the officer responsible for issuing policy for directing the internal controls program for the Department;
 - (2) The Chief Financial Officer delegates to the:
 - (a) Deputy Assistant Secretary for State Programs, Operations and Budget, the responsibility for budget presentation; ascertaining the availability of funds; obtaining apportionment; and issuing allotment of authorities or advise of allotments to program offices;

- (b) Deputy Assistant Secretary for Global Financial Services the responsibility for financial management operations; and
 - (c) Deputy Chief Financial Officer the responsibility for the design, development, and documentation of financial systems.
- c. The Deputy Assistant Secretary for State Programs, Operations and Budget, and the Deputy Assistant Secretary for Global Financial Services and Deputy Chief Financial Officer, in coordination with allottees and other officials of the Department, must establish and maintain a system of accounts and records necessary to assure that obligations and disbursements do not exceed:
 - (1) Amounts appropriated, apportioned, allotted or otherwise limited by internal classifications or limitations;
 - (2) The balances in trust funds; and
 - (3) Reimbursements earned.

The financial management and budgetary systems must provide managers of funds timely status of funds information in order that they may prevent the obligation of funds in excess of allotments and limitations below the allotment level.

- d. The assistant secretaries of bureaus and office directors, i.e., financial coordinators, who receive allotment authorities or advice of allotments, are responsible for restricting allotments or operating allowances, if any, to amounts and purposes stated in the allotment authority and/or advice of allotment.
- e. The chiefs of missions or principal officers at posts are responsible for control of funds and assuring that the amounts provided to posts in allotments and any limitations below the allotment level (e.g., operating allowance, functions, etc.) are not exceeded and are used for the purposes stated in the document authorizing the funds availability. These responsibilities may be delegated in writing to the highest-ranking officials in the decisionmaking processes who have actual or constructive knowledge of what actions are taken in the obligation and expenditure of funds.

4 FAM 082.2 Prohibitions by Law

4 FAM 082.2-1 Prohibitions of the Anti-Deficiency Act

(TL:FIN-392; 04-30-2008)

As detailed in Section 3679 (31 U.S.C. 1341, 1342, 1517), no officer or employee of the United States shall:

- (1) Authorize or make an expenditure under any fund or appropriation in excess of the amount available therein;
- (2) Authorize or create an obligation under any fund or appropriation in excess of the amount available. An obligation is defined as "amounts of orders placed, contracts awarded, services received, and similar transactions during a given period requiring payment during the same or a future period";
- (3) Commit the U.S. Government to any contract or obligation for the payment of money for any purpose in advance of the appropriations made for such purpose, except as may be authorized by law;
- (4) Employ personal services in excess of those authorized by law, except in cases of emergency involving the safety of human life and the protection of property;
- (5) Accept any voluntary service, unless specifically authorized by law;
- (6) Authorize or create any obligation or make any disbursement in excess of an apportionment or reapportionment; and
- (7) Authorize or create any obligation or make any disbursement in excess of the amount permitted by regulations which have been established by the agency head, and approved by the Director, OMB.

4 FAM 082.2-2 Prohibitions of the National Defense Authorization Act for Fiscal Year 1991

(CT:FIN-392; 04-30-2008)

- a. The 31 U.S.C. sections 1552, 1553, and 1555 address the cancellation of appropriation accounts and the availability of appropriations to pay obligations for expired and canceled accounts based on Section 1405 of the National Defense Authorization Act for Fiscal Year 1991. In

accordance with these provisions, no officer or employee of the United States shall authorize or create an obligation or expenditure:

- (1) For an expired account in excess of the original appropriation or fund account;
- (2) For an expired account in excess of an apportionment or allotment to the original appropriation or fund account;
- (3) Charged to a closed account. Valid transactions pertaining to canceled accounts must be charged against the current appropriation and may not exceed one percent of any current appropriation account;
- (4) Charged to an expired account, if the obligation of funds during a fiscal year for contract changes for a program, project, or activity exceed \$4 million without prior approval by the Secretary or a designee; and
- (5) Charged to an expired account, if the obligation of funds during a fiscal year for contract changes for a program, project, or activity exceed \$25 million, unless reported in writing by the Secretary to the authorizing committees of Congress and to the Committees on Appropriations in both the House and Senate. The obligation may not be recorded until the report has been submitted and a period of 30 days has elapsed after the report is submitted.

4 FAM 082.2-3 Prohibitions of the Federal Credit Reform Act of 1990

(CT:FIN-392; 04-30-2008)

As prescribed by the Federal Credit Reform Act of 1990 (2 U.S.C. 661), no officer or employee of the United States shall authorize or create any obligation and expenditure from each program account, financing account, and liquidating account in excess of the lesser of:

- (1) The amounts available for administrative expenses, direct loan subsidies, direct loan levels, guaranteed loan levels, and any limitations specified in law; or
- (2) The amounts apportioned for the amounts specified above.

4 FAM 082.3 Penalties for Violations of Laws

(CT:FIN-392; 04-30-2008)

- a. In addition to any penalty or liability under any other law, an officer or employee of the United States who commits a Section 3679 violation is subject to administrative discipline. Administrative discipline may consist of:
 - (1) Letter of reprimand or censure for the official personnel record of the officer or employee;
 - (2) Unsatisfactory performance rating;
 - (3) Transfer to another position;
 - (4) Suspension from duty without pay; or
 - (5) Removal from the job.
- b. As provided in 31 U.S.C. 1350 and 1519, if the individual is convicted of knowingly and willfully violating Section 3679, that individual is subject to be fined up to \$5,000 or imprisoned up to 2 years or both.

4 FAM 082.4 Prohibitions by Regulations

(TL:FIN-356; 11-30-95)

No officer or employee of the Department of State shall authorize or create any obligation or disbursement in excess of limitations contained within apportionment and allotment levels (e.g., operating allowance or by function, object class, and/or budget resource/project code).

4 FAM 082.5 Penalties for Violations of Regulations

(TL:FIN-356; 11-30-95)

Any officer or employee of the Department of State who authorizes or creates an obligation or disbursement in excess of limitations below the apportionment and allotment level (e.g., operating allowance and/or function, object class, and/or budget resource/project code) is subject to administrative discipline, if the circumstances warrant such action. Administrative discipline may consist of:

- (1) Letter of reprimand or censure for the official personnel record of

- the officer or employee;
- (2) Unsatisfactory performance rating;
- (3) Transfer to another position;
- (4) Suspension from duty without pay; or
- (5) Removal from the job.

4 FAM 082.6 Documentary Evidence for Obligations

(CT:FIN-392; 04-30-2008)

The Supplemental Appropriations Act of 1955 (31 U.S.C. 1501) as amended, Section 1311, Public Law 83-663, provides that obligations of the Government of the United States be supported by documentary evidence of:

- (1) A binding agreement in writing between the parties, including Government agencies, in a manner and form and for a purpose authorized by law, executed before the expiration of the period of availability for obligation of the appropriation or fund concerned for specific goods to be delivered, real property to be purchased or leased, or work or services to be performed;
- (2) A valid loan agreement, showing the amount of the loan to be made and the terms of repayment;
- (3) An order required by law to be placed with a U.S. Government agency;
- (4) An order issued pursuant to a law authorizing purchases without advertising when necessitated by public exigency or for perishable subsistence supplies or within specific monetary limitations;
- (5) A grant or subsidy payable:
 - (a) From appropriations made for payment of, or contributions toward, sums required to be paid in specific amounts fixed by law or in accord with formula prescribed by law;
 - (b) Pursuant to an agreement authorized by law; or
 - (c) Under plans approved consistent with and authorized by law;
- (6) A liability that may result from pending litigation;

- (7) Employment or services of persons or expenses of travel in accord with law;
- (8) Services performed by public utilities; or
- (9) Any other legal liability of the United States against an appropriation or fund.

4 FAM 082.7 Other Provisions

(CT:FIN-392; 04-30-2008)

- a. In connection with the submission of all requests for proposed appropriations to the Office of Management and Budget, the head of each Federal agency must report that any statement of obligations furnished consists of valid obligations as defined in Section 1311, Public Law 83-663.
- b. You must support each report pursuant to 4 FAM 082.7, paragraph a, by certifications of the officials designated by the head of the agency. Support such certifications by records evidencing the amounts that are reported as having been obligated. You must retain agency certifications and records in such form as to facilitate audit and reconciliation for the necessary period. The officials designated by the head of the agency to make certifications may not redelegate the responsibility.
- c. No appropriation or fund that is limited for obligation purposes to a definite period of time shall be available for expenditure after the expiration of such period except for liquidation of amounts obligated. No such appropriation or fund shall remain available for expenditure for any period beyond that otherwise authorized by law.
- d. Any statements of obligations of funds furnished by any agency of the U.S. Government to the Congress or any Congressional committee must include only such amounts as may be valid obligations as defined in Section 1311, Public Law 83-663.

4 FAM 083 DEFERRALS AND RESCISSIONS

(CT:FIN-392; 04-30-2008)

- a. Budgetary resources may be deferred as reserves to provide for contingencies under provisions of the Anti-Deficiency Act (31 U.S.C. 1512(a)) or they may be deferred for other reasons under the Impoundment Control Act (31 U.S.C. 1512(c)(2)).

b. Resources to be withheld from obligation temporarily through the apportionment process (as initiated by OMB or the Department) will not be allotted, and a deferral report will be made to OMB. If the Congress takes no action to disapprove the deferral, it remains in effect until the earlier of:

- (1) The date specified in the deferral statement;
- (2) The end of the fiscal year if not expiring; or
- (3) In the third quarter, if an expiring appropriation, it should be reviewed to determine the release date or whether it should be made a rescission.

In the event Congress disapproves the deferral, submit an appropriate reapportionment request to OMB no later than the day following passage of the resolution. Resources held unallotted pending occurrences or events, justification of need, reprogramming notifications, and other actions of a managerial nature are excluded from the deferral process.

c. Whenever the President determines that any part of budget authority is not needed to carry out the full objectives or scope of programs for which it was provided:

- (1) A rescission report and apportionment request will be made to OMB;
- (2) Funds will be withheld from allotment; and
- (3) If both houses of Congress do not complete action on the rescission within 45 calendar days of continuous session following the President's proposal, apportionment may be obtained from OMB and funds may be allotted.

4 FAM 084 PRINCIPLES OF APPORTIONMENT

4 FAM 084.1 Apportionment

(CT:FIN-392; 04-30-2008)

a. The Deputy Assistant Secretary for State Programs, Operations, and Budget is responsible for requesting apportionment of funds. Make apportionments and reapportionments so as to prevent the obligation or expenditure of funds in a manner that would necessitate a deficiency or supplemental appropriation, and be within any legal limitations. You

must base the distribution of apportionments on a careful forecast of obligations to be incurred during the year. Apportionments are forwarded to OMB after detailed bureau financial plans supporting the desired apportionments have been analyzed and approved.

- b. All funding levels, including limitations below the allotment, are subject to apportionment control. The sum of all apportionments within each funding level may not exceed the apportionments for each succeeding funding level. Whenever funds are apportioned for time periods less than a fiscal year (e.g., calendar quarters), unobligated balances of apportioned funds at the end of a period are carried forward and are available for obligation in subsequent apportionment periods within the fiscal year.
- c. The term “transfer” is used to designate movement of funds from one appropriation or fund account to another. When funds are transferred, they assume the symbol and title of the appropriation into which they have been moved. By contrast, the authority to obligate and spend funds made available from another agency must be placed in an allocation account (also known as transfer appropriation account). These accounts have the same symbol and title as the parent account with a two-digit prefix code identifying the Department. Amounts are available for obligation only for the same period as the parent account from which the amounts have been transferred or allocated.
- d. Apportionments that anticipate a deficient appropriation or a supplemental under 31 U.S.C. 1515 will be specifically identified on the apportionment request. Such a deficiency apportionment advises Congress that funds appropriated to date are being obligated at a more rapid rate than previously anticipated.
 - (1) To qualify as a deficiency apportionment, the request must be required by:
 - (a) Laws enacted subsequent to the transmittal to Congress of the annual budget for the year; or
 - (b) Emergencies involving the safety of human life, the protection of property, or the immediate welfare of individuals.
 - (2) The approval of a deficiency apportionment by OMB and its transmittal to Congress does not guarantee that Congress will approve any part of any associated supplemental requests and does not authorize the use of any amounts not yet provided.

4 FAM 084.2 Fund Control Below the Apportionment Level

(CT:FIN-392; 04-30-2008)

Control of all funds subject to apportionment must be maintained in organizational components through the formal allotting of funds. Allotments will be made at the highest practicable level compatible with assignments of responsibility for performance of program and administrative functions and to provide for effective and efficient funds management in carrying out the intent of Congress. Issuing allotments in excess of amounts apportioned or reapportioned constitutes a violation of law.

4 FAM 084.3 Fund Control Below the Allotment Level

(TL:FIN-392; 04-30-2008)

- a. Allottees are authorized to establish limitations below the allotment control level. Such limitations, which may be in the form of an operating allowance, function, object class and budget resource/project code, must be specifically provided for in implementing regulations and procedures. Such limitations, within the amount and provisions of the allotment, must be fixed in amount and changed only when authorized by the allottee.
- b. An obligation or disbursement incurred in excess of such classification or limitation established below the allotment level, while being subject to administrative discipline, if the circumstances warrant, does not in itself constitute an Anti-Deficiency Act violation in accordance with Section 3679 of the Revised Statutes, as amended. Where an overobligation or overexpenditure at the limitation level causes the allotment to be exceeded, a violation of Section 3679 will have occurred.

4 FAM 084.4 Recording Transactions

(TL:FIN-392; 04-30-2008)

The system of accounts and reports prescribed under the regulations and procedures must provide for prompt and accurate recording of all financial transactions having an effect on apportionment and fund controls, including controls to conform with the Federal Credit Reform Act of 1990 and for prompt reporting on their status to each allottee and other administrative officials concerned.

4 FAM 085 FUNDS CONTROL

4 FAM 085.1 Apportioned and Unapportioned Funds

(TL:FIN-392; 04-30-2008)

Apportioned funds must be allotted and controlled within the amounts of and in the manner and characteristics of the apportionment. Funds or obligational authority not subject to apportionment must be controlled in such a manner as to insure conformance with the provisions of Section 3679 of the Revised Statutes, as amended.

4 FAM 085.2 Apportionment and Allotment of Anticipated Reimbursement

(TL:FIN-392; 04-30-2008)

- a. Responsibility for making these apportionments and allotments must be vested in the Chief Financial Officer or designee, who must through the use of prudent criteria, conservatively evaluate continuing servicing arrangements as well as new agreements for validity and collectibility before permitting such to be included in amounts allotted. Failure to do so does not relieve the designated official of the responsibility to reduce allotments and make such other funding adjustments including reapportionment, as may be necessary to bring these amounts within the total to be realized.
- b. Reimbursements will not be considered budgetary resources available for allotment unless:
 - (1) Valid orders have been received or there is a history of recurring reimbursable services that the Department, by law, must provide and which can reasonably be expected to continue and for which agencies have a continuing obligation to make reimbursement; or
 - (2) Goods or services have been furnished for which there is entitlement.
- c. Obligations may be incurred against anticipated reimbursements only after they have been allotted. Furthermore, an allottee must not obligate or make commitments against allotted reimbursement funds known to be uncollectible. Obligations will not be incurred for orders from the public unless advance payment has been received.

4 FAM 085.3 Allotment Restrictions

(TL:FIN-392; 04-30-2008)

Each allottee receiving an allotment of funds must be held responsible for restricting obligations and/or expenditures to the amounts available under the terms of the allotment. This is accomplished through the prevalidation of all obligations and/or expenditures to the amounts in the allotment and/or operating allowance records to determine whether sufficient funds are available.

4 FAM 085.4 Documentation

(TL:FIN-356; 11-30-95)

The allotment authority, advice of allotment, and documents providing funds availability below the allotment level, must identify at a minimum:

- (1) Amount available;
- (2) Funding source (e.g., appropriations, reimbursements, etc.);
- (3) Time period of availability;
- (4) Authorizing officer and title;
- (5) Justification; and
- (6) Statement of reportable violations as explained in the following section.

4 FAM 085.5 Statement of Reportable Violation on Funds Availability Documents

(CT:FIN-392; 04-30-2008)

- a. The allotment authority, advice of allotment, and documents providing funds availability below the allotment level will contain statements of the legal and administrative limitations and restrictions on the funds authorized. Example:

Advice of allotment. You are hereby authorized to incur obligations during the period beginning and ending within the amounts of this allotment, in accordance with the following prescribed conditions and limitations, and for the purposes stated.

- b. Where funds are authorized by limitations below the allotment level, the appropriate codes in 4 FAH-1 will be shown with the applicable amount for each.
- c. Further, the allotment authorities or advice of allotment will contain a statement below the authorized fund amounts regarding the reporting of violations in accordance with 4 FAM 088.1 and 4 FAM 088.2. Example:
 - (1) Any violation of Section 3679 of the Revised Statutes, as amended, must be reported immediately by the responsible officer in accordance with 4 FAM 088.1; and
 - (2) Any violation of limitations below the allotment level must be reported immediately in accordance with 4 FAM 088.2.
- d. Documents authorizing funds availability below the allotment level will contain a statement that any violation of the amount authorized must be reported immediately in accordance with 4 FAM 088.2.

4 FAM 086 RELATIONSHIP TO THE ACCOUNTING SYSTEM

(CT:FIN-392; 04-30-2008)

- a. The records of apportionment and allotments of appropriations, plus reports on status of funds and the status of obligations, are an integral part of the Department's accounting system. Control of all funds is maintained through the formal apportionment and allotment of funds. Allotments are made:
 - (1) At the highest practicable level compatible with assignments of responsibility for performance of program and administrative functions; and
 - (2) In numbers limited to those essential for effective and efficient funds management in carrying out the intent of Congress.
- b. Allotment records and records for funding limitations below the allotment levels are established for each allotment and limitation below the allotment to control obligations so that neither obligations, expenditures, nor disbursements may exceed the amounts appropriated, apportioned, allotted, or otherwise internally limited.
- c. Only the recipient of an allotment or operating allowance or persons designated by the allottee or allowance holder may authorize the

incurrence of an obligation against funds provided. When an obligation is incurred, the document is immediately recorded against the allotment or operating allowance (see 4 FAM 086, paragraph b). Each allottee and allowance holder is furnished status of funds and status of obligation reports at least monthly, showing obligations and expenditures incurred.

- d. To assure that recorded documents meet the requirements of Section 1311, Public Law 83-663 (31 U.S.C. 1501) and that no violations of Section 3679 of the Revised Statutes have occurred, both the documentation and the records must be verified on a monthly and continuing basis throughout the fiscal year. As part of the review and verification process, special attention is given prior to the close of each fiscal year:
- (1) All obligations must meet the criteria stated in Section 1311, Public Law 83-663 (31 U.S.C. 1501);
 - (2) A listing of all unliquidated obligations by obligation number is prepared and retained as a permanent record; and
 - (3) The Deputy Assistant Secretary for Global Financial Services certifies the year-end or other reports that all obligations meet Section 1311, Public Law 83-663 (31 U.S.C. 1501) requirements based on allottees' certifications.

4 FAM 087 CRITERIA FOR ESTABLISHING AND RECORDING OBLIGATIONS AND FOR DISBURSEMENTS

4 FAM 087.1 Definition of Obligations Incurred

(TL:FIN-356; 11-30-95)

Obligations incurred are defined as amounts of orders placed, contracts awarded, services rendered, and similar transactions during a given period that will require payments during the same or a future period. Such amounts include payments not preceded by recorded obligations and reflect adjustment for differences between obligations and actual payments. In those cases where the exact amount of an obligation is not known at the time it is incurred, the best estimate of the amount to be paid subsequently is used.

4 FAM 087.2 Obligation Validity Criteria

(CT:FIN-392; 04-30-2008)

- a. Uniform Foreign Affairs Regulations for Obligation Validity Criteria are published in 4 FAM 050. The detailed Department procedures and documents for complying with the legal requirements and for processing and recording of obligations and disbursements require the following:
 - (1) Obligations and disbursements are to be reported promptly and recorded at the earliest possible time;
 - (2) Obligations and disbursements must be identified with an appropriation or fund at the time incurred;
 - (3) Recording of an obligation already established is not to be delayed, even if it is discovered that there is a lack of funds;
 - (4) Performing periodic reviews not less frequently than monthly to insure that unliquidated obligation balances and disbursements are valid;
 - (5) Procedures specifying who is responsible for recording obligations and disbursements in the accounts; and
 - (6) Recording an obligation that exceeds funds available. Notify responsible officials promptly when an apparent violation of Section 3679 of the Revised Statutes has occurred and that further obligations should not be incurred.
- b. Data on proposed obligations (reservations, commitments, etc.) may be accumulated in the accounting records prior to their becoming valid obligations.

4 FAM 088 REPORTING VIOLATIONS

4 FAM 088.1 Responsibility for Reporting Violations of Laws

4 FAM 088.1-1 Internal Reporting

(CT:FIN-392; 04-30-2008)

- a. Any person with knowledge of a possible violation of Section 3679 of the Revised Statutes, as amended, must report it immediately to the allottee or the designee and to the Deputy Assistant Secretary for Global Financial

Services or designee.

- b. The allottee must prepare a report containing the information required by 4 FAM 088.1-5 and transmit it immediately to the Deputy Assistant Secretary for Global Financial Services or designee. Subsequent actions taken to correct the cause of a violation do not eliminate that violation. It is still required to be reported.
- c. The Deputy Assistant Secretary for Global Financial Services or designee prepares the reports of Anti-Deficiency Act violations for review, approval, and submission as outlined in 4 FAM 088.1-3, 4 FAM 088.1-5, and 4 FAM 088.1-6.

4 FAM 088.1-2 Report to the Inspector General

(CT:FIN-392; 04-30-2008)

When the allottee and/or the Deputy Assistant Secretary for Global Financial Services determine that a violation may be associated with criminal activity, the Deputy Assistant Secretary for Global Financial Services will provide the information supporting the determination to the Office of the Inspector General (OIG). If the OIG investigation supports the determination, the OIG will be responsible for recommending to M/DGHR that administrative action be taken.

4 FAM 088.1-3 External Reporting

(TL:FIN-392; 04-30-2008)

- a. The Chief Financial Officer is responsible for preparing and submitting reports of violations of the Anti-Deficiency Act, to the President, through the Director of OMB, and to the Congress in the prescribed manner.
- b. The Office of the Legal Adviser reviews each report to the President and Congress for compliance with all applicable laws and regulations.
- c. The Under Secretary for Management reviews and recommends approval and submission by the Secretary of the reports of the Anti-Deficiency Act violations.

4 FAM 088.1-4 Types of Violations to be Reported

(CT:FIN-392; 04-30-2008)

- a. **Anti-Deficiency Act violations**—Section 3679 of the Revised Statutes (31 U.S.C. 1341 and 1517), provides that the agency head furnish to the

President, through the Director of the Office of Management and Budget, and to the Congress, information on violations of the following types:

- (1) **Overobligation or overexpenditure of an appropriation or fund.** This is any case where an officer or employee of the United States has made or authorized an expenditure from or created or authorized an obligation against any appropriation or fund, including revolving funds, in excess of the amount available in the account.
- (2) **Contract or obligation in advance of an appropriation.** This is any case where an officer or employee of the United States has involved the Government in a contract or other obligation for the payment of money for any purpose in advance of appropriations made for such purpose, unless such contract or obligation is authorized by law.
- (3) **Acceptance of voluntary service.** This is any case where an officer or employee of the United State has accepted voluntary service for the United States or employed personal services in excess of that authorized by law, except in cases of emergency involving the safety of human life or the protection of property.
- (4) **Overobligation or overexpenditure of an apportionment or reapportionment.** This is any case where an officer or employee of the United States has authorized or created an obligation or made an expenditure in excess of an apportionment or reapportionment. This includes adjustments that cause obligations in expired accounts to exceed the apportionment for the year in which such obligations were incurred.
- (5) **Overobligation or overexpenditure of an allotment.** This is any case where an officer or employee of the United States has authorized or created an obligation or made an expenditure in excess of the amount permitted by the prescribed and approved administrative control system.

b. **National Defense Authorization Act for Fiscal Year 1991 violations**—The provisions of Section 1405 of the National Defense Authorization Act for Fiscal Year 1991 (31 U.S.C. 1551-1557) resulted in changes in determining whether there has been a violation of the Anti-Deficiency Act. Violations pertaining to expired and canceled accounts are required to be reported when the following conditions occur:

- (1) **New obligations and expenditures or adjustments to obligations and expenditures exceed the original**

appropriations (expired account). This is any case where an officer or employee of the United States has made or authorized an expenditure from or created or authorized an obligation against any appropriation or fund account in excess of the amount available in the original appropriation or fund account.

- (2) **New obligations and expenditures or adjustments to obligations and expenditures that exceed the amount apportioned or allotted** (expired account). This is any case where an officer or employee of the United States has made or authorized an expenditure from or created or authorized an obligation against any appropriation or fund account in excess of the amount apportioned or allotted to the original appropriation or fund account.
- (3) **New obligations or any expenditures in canceled accounts.** This is any case where an officer or employee of the United States has made or authorized an expenditure from or created or authorized an obligation against an account that was closed pursuant to sections 1552, 1555, or 1557 of Title 31, United States Code. Valid transactions must be charged against the current appropriation (see the following paragraph).
- (4) **New obligations or any expenditures to pay for closed obligations that exceed one percent of unexpired appropriations.** This is any case where an officer or employee of the United States has authorized or created an obligation or made an expenditure in excess of one percent of the unexpired appropriation to pay any combination of withdrawn and closed obligations.

c. **Federal Credit Reform Act of 1990 violations**—Provisions of the Federal Credit Reform Act of 1990 resulted in Anti-Deficiency Act violation reporting for all direct loan and financing accounts violations of the following nature:

- (1) **Overobligation or overexpenditure of the subsidy.** This is any case where an officer or employee of the United States has made or authorized an expenditure or created or authorized an obligation, including a commitment, that is in excess of the direct loan subsidy or the guaranteed loan subsidy. Modifications of direct loans or loan guarantees that result in obligations in excess of apportioned unobligated balances of subsidy amounts are violations.
- (2) **Overobligation or overexpenditure of the credit level supportable by the enacted subsidy.** This is any case where an

officer or employee of the United States has made or authorized an expenditure or created or authorized an obligation, including a commitment, that is in excess of the credit program level. This includes obligations or expenditures that are in excess of the direct loan level, the guaranteed loan level or any limitations on the loan level, or the Federal share of guaranteed loan levels. The credit program level must be supportable by the enacted subsidy, regardless of whether the subsidy is positive or negative.

- (3) **Overobligation or overexpenditure of the amount appropriated for administrative expenses.** This is any case where an officer or employee of the United States has made or authorized an expenditure or created or authorized an obligation, including a commitment, that is in excess of the amount appropriated for administrative expenses.
 - (4) **Obligation or expenditure of the lapsed unobligated balance of the subsidy (except to correct mathematical or data input errors in calculating subsidy amounts).** This is any case where an officer or employee of the United States has made or authorized an expenditure or created or authorized an obligation, including a commitment, against unobligated subsidy balances after the period of obligational authority has expired. Correction of mathematical or data input errors up to the amount of the lapsed unobligated balance of the subsidy are specifically exempted. Corrections of these errors in excess of the amount of the lapsed unobligated balance of the subsidy are violations.
- d. The agency that administers the allocation account reports violations involving subapportionments.
 - e. Violations of the above nature that are one-half dollar or less and that can be resolved through rounding need not be reported.

4 FAM 088.1-5 Report to the President

(CT:FIN-392; 04-30-2008)

The report to the President is in the form of a letter (original and three copies) to the President, forwarded through the Director of the Office of Management and Budget (OMB). The opening sentences of the letter will identify it as “. . . a report on a violation of Section 3679 of the Revised Statutes, as amended.” The letter sets forth the following data, preferably in the sequence outlined:

- (1) The title and symbol (including the fiscal year) of the appropriation

- or fund account; the amount involved for each violation; and the date on which the violation occurred;
- (2) The name and position of the officer(s) or employee(s) responsible for the violation;
 - (3) The type of violation (overobligation or overexpenditure of an allotment, apportionment, and/or appropriation); the primary reason or cause; and any statement of the responsible officer(s) or employee(s) with respect to any circumstances believed to be extenuating;
 - (4) A statement of the administrative discipline imposed and any further steps taken or to be taken with respect to the officer(s) or employee(s), or an explanation as to why no disciplinary action is considered necessary;
 - (5) All of the pertinent facts of the violation, including the type of violation (e.g., overobligation of allotment); statement of any additional action taken by, or at the direction of, the Secretary, including any new safeguards provided to prevent recurrence of the same type of violation;
 - (6) A statement regarding the adequacy of the system of administrative control prescribed by the Secretary and approved by OMB. If changes in the regulations are needed, in the judgment of the Secretary, submit proposals to OMB; and
 - (7) If another agency is concerned, a statement concerning the steps taken to coordinate the report with the other agency must be provided.

4 FAM 088.1-6 Report to the Congress

(CT:FIN-392; 04-30-2008)

The Chief Financial Officer will report to the Congress. The reports will be identical to the Presiding Officer of each House. One copy of the report to the Congress is submitted to OMB with the report to the President. If the reports to the Congress and to the President are substantially identical, include a statement to this effect in the report to the President.

4 FAM 088.1-7 Report to the Comptroller General of the United States

(CT:FIN-392; 04-30-2008)

The Chief Financial Officer will report to the Comptroller General of the United States. The reports will be identical to the President and the Congress and transmitted at the same time reports are submitted to the President and the Congress.

4 FAM 088.1-8 Reports on GAO Findings

(CT:FIN-392; 04-30-2008)

Reports are to be made on violations not previously reported that are included in findings of the Government Accountability Office (GAO) in connection with audits and investigations. In these cases, the report will contain an explanation as to why the violation was not discovered and previously reported by the Department. If the Department does not agree with the GAO that a violation has actually occurred, the report required by OMB Circular A-50, Audit Follow-up, will explain the reason for the Department's point of view.

4 FAM 088.2 Reporting Violations of Regulations

4 FAM 088.2-1 Initial Reporting

(CT:FIN-392; 04-30-2008)

- a. Any person who knows of an obligation or disbursement incurred in excess of an operating allowance or other limitations below the allotment level or for a purpose or time other than stated in the allotment or operating allowance document will report the circumstances immediately to the operating allowance holder, the allottee, and the Deputy Assistant Secretary for Global Financial Services.
- b. The allottee and the Deputy Assistant Secretary for Global Financial Services will determine, based on the information received, whether an additional investigation or review of the circumstances is required. If they determine that an investigation or review is required, a team of at least two individuals from the bureau/office or from another bureau, office, post, or the Bureau of Resource Management will be assigned to perform the investigation or review. Not more than one individual from the bureau/office involved may be a member of the team. The results of the investigation or review will be submitted in writing to the allottee of the bureau/office. A copy will be sent to the Deputy Assistant Secretary for Global Financial Services.
- c. If the allottee and Deputy Assistant Secretary for Global Financial Services determine that an investigation or review is not required, the

results of the determination will be documented and maintained by the allottee and the Deputy Assistant Secretary for Global Financial Services.

- d. Subsequent actions taken to correct the cause of a violation do not eliminate that violation. It is still required to be reported.
- e. The Deputy Assistant Secretary for Global Financial Services will submit to the Chief Financial Officer a summary report indicating the number and type of violations and action proposed or taken, at the end of each quarter.

4 FAM 088.2-2 Recommendation for Administrative Action

(CT:FIN-392; 04-30-2008)

The Deputy Assistant Secretary for Global Financial Services and the allottee will determine whether administrative action should be recommended. A determination not to recommend administrative action must be documented. When it is determined that administrative action should be recommended, the Deputy Assistant Secretary for Global Financial Services will recommend by memorandum to the Director General of Human Resources (M/DGHR) that administrative action should be taken. M/DGHR will determine whether administrative action should be taken and the type of action to be taken. (See 4 FAM 082.5 for types of penalties.)

4 FAM 088.2-3 Report to the Inspector General

(CT:FIN-392; 04-30-2008)

When the allottee and/or Deputy Assistant Secretary for Global Financial Services determine that a violation may be associated with criminal activity, the Deputy Assistant Secretary for Global Financial Services will provide the information supporting the determination to the Office of Inspector General (OIG). If the OIG investigation supports the determination, the OIG will be responsible for recommending to M/DGHR that administrative action be taken.

4 FAM 088.2-4 Reporting Format and Content

(TL:FIN-356; 11-30-95)

The format and content used to report violations of purpose and time as well as overobligations and overdisbursements will be the same as that required for reporting Anti-Deficiency Act violations to the President (4 FAM 088.1-5).

4 FAM 089 UNASSIGNED