

## CHAPTER 2

### ADMINISTRATIVE CONTROL OF FUNDS

#### 1. INTRODUCTION.

- a. **Background/Authority.** Title 31, section 1514, of the United States Code (31 U.S.C. 1514), Administrative Division of Apportionments, requires the Secretary of Energy to prescribe and carry out a system for administratively controlling funds. In compliance with this requirement, this chapter establishes the policy and general procedures for administrative control of funds within Department of Energy (DOE), and specifies the penalties that apply to persons who violate these procedures. Additional information regarding DOE's internal control requirements can be found in DOE O 413.1A, Management Control Program.
- b. **Applicability.** This chapter is applicable to all Departmental elements, including the National Nuclear Security Administration, and applies to all appropriated funds, revolving funds, trust funds, and any other funds subject to fiscal limitations. All exemptions from administrative control of funds functions are subject to the prior approval of the Director of the Office of Management and Budget (OMB). DOE fund control policies and procedures shall be in effect only to the extent approved by OMB. This chapter does not apply to DOE's contractors.
- c. **Policy (Objectives).** Program and budget officials shall perform administrative funds control by planning, programming, and using integrated budget and accounting systems to preclude violations of the Anti-Deficiency Act. If deemed appropriate, an office may use local systems to complement and enhance the control, recording, and reporting of accounting and budgetary activities and status of the budget. The administrative control of funds shall satisfy the requirements set forth in OMB Circular A-11, Preparation, Submission, and Execution of the Budget. At a minimum, the following requirements must be met:
  - (1) Funds are expended solely for the purposes for which they were appropriated, except as otherwise provided by law;
  - (2) Funds are certified as available and committed before obligation;
  - (3) Obligations or expenditures are not authorized or incurred in excess of available funds or in excess of any legal or administrative limitations;

- (4) Only valid obligations are recorded in the accounting records, and all obligations incurred are recorded accurately and promptly; and
- (5) Outstanding obligations are validated annually.

## 2. BUDGETARY RESOURCES AND DISTRIBUTION.

### a. Management of Budgetary Resources.

- (1) **Appropriations.** Appropriations are acts of Congress, signed into law by the President, that provide budget authority and permit a Federal agency to incur obligations and to spend public funds, including authority to obligate and expend offsetting receipts and collections that are provided in appropriations acts and other provisions (OMB Circular A-11).
- (2) **Apportionments.** An apportionment is a plan, approved by OMB, to spend resources provided by law. Apportionment requests are submitted to OMB on Standard Form (SF) 132, Apportionment and Reapportionment Schedule, and funds apportioned are made available to DOE for allotment, obligation, and expenditure. The apportionment process is detailed in DOE M 135.1-1A, Budget Execution, and in OMB Circular A-11.

Under a continuing resolution, OMB issues a bulletin to automatically apportion amounts made available by continuing resolutions that expire before the end of the fiscal year.

- (3) **Allotments.**
  - (a) On behalf of the Secretary and the Chief Financial Officer (CFO), the Director, Office of Budget, formally distributes and withdraws obligating authority through the use of allotments, suballotments where applicable, and the corresponding approved funding programs (AFP). Allotments and suballotments authorize recipients to incur obligations for a specified amount and purpose, record legal limits on the use of funds, and are made in accordance with OMB Circular A-11. As directed by 31 U.S.C. 1514, allotments will be issued at the highest level that is practical and consistent with effective and efficient management; accordingly, allottees shall not be financed from more than one allotment for each appropriation or fund account. Allotments are the formal mechanism by

which DOE assigns responsibility (31 USC 1514, the Anti-deficiency Act) for compliance with DOE administrative control of funds and the Anti-deficiency Act. Suballotments represent a formal subdivision of the total amount reflected on an allotment and, as such, establish separate legal limitations under the Anti-Deficiency Act. Allotments and suballotments, if used, ensure strict compliance with statutory limitations/restrictions (i.e., statutory) congressional items of interest imposed by Congress and OMB, as well as critical administrative limitations imposed by the Department. The Advice of Allotment form identifies the appropriation, the amounts available for obligation for both direct and reimbursable work, and any specific legal limitations or administrative remarks. Applicable suballotments will be identified in the instruction section on the Advice of Allotment Form; related dollar amounts will be specified either by direct citation on the form, or by explicit reference to a program, project, or activity contained in the associated AFP or other attendant documentation. For a complete description of the DOE allotment and AFP process, see DOE M 135.1-1A.

- (b) Appropriation laws are sometimes passed too late to allow the normal administrative lead time necessary to obtain apportionment and warrant documents. If DOE were then to wait for guidance from OMB and the Department of the Treasury (Treasury), request apportionments and warrants, and wait for their receipt, DOE would be forced into a no-funds situation, even though appropriation legislation had been signed into law. When the passage of such legislation clearly shows that Congress intended to continue Departmental operations, DOE shall proceed to allot sufficient funds on an interim basis, within the guidance of the law, to permit operations until the necessary apportionments and warrants are obtained, thus avoiding a possible no-funds situation. For information regarding automatic apportionment while under a continuing resolution, see section 2a(2).

**b. Types of Budgetary Resources.** The Office of Budget allots direct obligational and reimbursable obligational authority.

- (1) **Direct Obligational Authority.** Direct obligational authority consists of new budgetary authority, unobligated balances, recoveries of prior-year obligations, appropriation refunds, and restorations. Direct obligational authority allotments are legal

funding limitations. If the direct obligational allotments are either exceeded or used for a purpose other than that intended by Congress, a legal violation may occur.

**(a) New Budgetary Authority.**

- 1.** DOE receives its primary source of direct new budget authority and obligational authority through appropriations. An appropriation act specifies the amount of obligations that can be incurred and the period of obligational availability. The three most common periods are:
  - a.** *Annual Authority* – authority that is available for new obligations for only one specific fiscal year or less.
  - b.** *Multi-Year Authority* – authority that is available for new obligations for two or more fiscal years.
  - c.** *No-Year Authority*- authority that is available for new obligations for an indefinite period of time, usually until the objectives for which the authority was made available are attained.
- 2.** *Contract Authority.* Contract authority is specific statutory authorization to enter into contracts or other obligations in advance of appropriations. Contract authority requires a subsequent appropriation or the collection of revenues to liquidate (pay) the obligations incurred.
- 3.** *Borrowing Authority.* Borrowing authority is statutory authority to permit obligations to be incurred and to make payments for specified purposes out of borrowed funds. Normally, subsequent appropriations are sought, or revenues earned, to repay the amounts borrowed.

**(b) Unobligated Balances.** Unobligated balances from unexpired accounts carried forward to the new fiscal year must be reapportioned by OMB, and reallocated by the CFO before unobligated balances can become available for obligation.

- (c) **Recoveries of Prior-Year Obligations.** Canceling or downward-adjusting contract amounts may make obligation authority available. Prior-year recoveries are available for use only to the extent that amounts are reapportioned, approved for release by the Director of the Office of Budget, and reallocated.
  - (d) **Expired Accounts.** Expired accounts are appropriation or fund accounts in which the balances are no longer available for incurring new obligations. In certain circumstances, these accounts are available for recording, adjusting, and liquidating obligations. For further discussion of the types of expired accounts, the limitations placed on them, and the restoration of unobligated balances, see OMB Circular A-11, section 20.4. Also, see paragraph 6 below for funding controls for expired and closed time limited appropriations.
  - (e) **Donated Funds.** Any acceptance or use of donated funds requires statutory authority.
- (2) **Reimbursable Obligational Authority** provides DOE authority to perform work or services for a Federal or non-Federal customer. Before an obligation is incurred, there must be a budgetary resource and reimbursable obligation authority provided by an allotment. The reimbursable agreement/order placed and the cash advance provides the actual budgetary resources. OMB places limits on the amount of reimbursable work that DOE can perform in a fiscal year. These limits are explained below.
- (a) OMB apportions reimbursable obligation authority, which is subsequently allotted by DOE. Reimbursable obligation authority allotments reflect the amounts of reimbursable work that can be performed for non-Federal entities and for other Federal agencies. Exceeding the reimbursable obligation authority constitutes an administrative violation, as opposed to a legal violation. However, exceeding the reimbursable obligation authority may lead to a legal violation if the total allotment is exceeded. To obligate funds to perform reimbursable work, both an allotment providing reimbursable authority and a budgetary resource are necessary. Reimbursable budgetary resources arise from the following:
    - I. Reimbursable agreements received from other Federal Government accounts represent valid

obligations of the ordering account. DOE must adhere to the same fiscal limitations as the customer agency, as denoted on the reimbursable agreements.

2. Reimbursable agreements include orders received from the public and local and State governments. Unlike agreements received from other Federal agencies, these agreements must be accompanied by an advance.

- (b) Orders received or funds advanced and accepted in excess of the reimbursement authority do not provide additional reimbursable authority. The general policies and procedures on financial management of and accounting for reimbursable work are covered in Chapter 13, "Reimbursable Work, Revenues and Other Collections."

3. **WITHDRAWAL OF FUNDS.** As with the distribution of funds, withdrawals are accomplished by Advice of Allotments and AFPs.

- a. **Withdrawals of Funds.** Funds are withdrawn from allottees through a reduction in the allotment and the AFP. Detailed procedures for the withdrawal of funds are in DOE M 135.1-1A.
  - b. **Recovery of Prior-Year Obligations.** Detailed policy and guidance for determining the availability of appropriation and fund balances are covered in OMB Circular A-11, section 130. The procedures for reporting the recovery of funds from prior-year obligations are contained in Chapter 5, "Accounting for Obligations." Additional guidance is provided in DOE M 135.1-1A.
  - c. **Deferrals and Rescissions.** Funds may be withdrawn from a program due to a deferral or rescission. For a comprehensive discussion of deferrals and rescissions, see DOE M 135.1-1A.

4. **EXECUTION AND CONTROL OF ALLOTMENTS AND APPROVED FUNDING PROGRAMS.** Execution of allotments and AFPs is accomplished through commitments and obligations.

- a. **Commitment (synonymous with reservation).** A commitment occurs each time a program release document is signed by an authorizing official and transmitted to be acted upon. Commitments are recorded before or at the same time that an obligation is created. The commitment and the certification of fund availability apply only to the fiscal year in which they are accomplished. If no obligation is incurred in the fiscal year of

certification, the commitment is decommitted and the certification is withdrawn on September 30<sup>th</sup>.

- b. Obligation.** An obligation occurs when a legal responsibility arises for which the Department must expend funds (whether or not it is recorded in the accounting system). Obligations may only be incurred during the period of obligational availability as stated in the appropriation. Detailed policy and guidance covering appropriations are in Chapter 3, “Accounting for Appropriations and Other Funds.” All reported obligation amounts will be supported by documentary evidence of transactions authorized by law pursuant to 31 U.S.C. 1501(a) and as stated in GAO Title 7, Chapter 3. Additional guidance on obligations can be found in Chapter 5, “Accounting for Obligations.”
- 5. CONTROL OVER EXECUTION.** Controls over the commitments and obligations of obligational authority provided by the allotments and planned allocation in the AFPs include authorizations, certifications of funds availability, documents and procedures, and reconciliations and verifications.

    - a. Authorizations.**

      - (1) Designation of individuals selected as authorizing officials by allottees and AFP recipients must be in writing. If applicable, the designation should contain information on dollar limitations of the authorization or on use limitations. The authority may not be redelegated by an authorizing official unless specifically authorized by other DOE authority.
      - (2) The allottee or AFP recipient must provide written notification, which includes the particulars of the authorization, to all personnel who are authorized to approve program release documents. The notification shall stress that only authorized persons will sign program release documents, verbally make commitments, or incur obligations on behalf of the activity. The notification should also include a stern warning that disciplinary action will be taken for any violations. Renotification must be made at least annually or when authorizations and accounting classifications or senior officials change.
    - b. Certification of Funds Availability.**

      - (1) Program release documents must be certified for availability of funds before they are used to incur an obligation by the servicing personnel, travel, or procurement offices.

- (2) The allottee or AFP recipient may designate a certifying official(s) to certify that funds are available on program release documents.

**c. Documents and Procedures.**

- (1) **Documents.** The procurement, travel, and personnel offices shall prescribe in their publications and directives the proper forms to be used as program release documents and obligation documents.
- (2) **Procedures.** The allottee or AFP recipient, through the certifying official and in conjunction with the procurement, travel, and personnel offices, must establish standard procedures for processing program release documents and obligation documents. The procedures must be distributed to all affected authorizing officials, certifying officials, and contracting officers. The procedures must emphasize that officials/officers ensure authorization and certification of funds availability before an obligation may be incurred and prompt recording of incurred obligations in the accounting system.

**d. Reconciliations and Verifications.**

- (1) Each field CFO/Financial Manager must ensure that accounting reconciliations occur on yearend certification and that differences are resolved. This includes reconciliations between recorded obligations and expenditures and the appropriate source documents. Valid statistical sampling techniques may be used when appropriate.
- (2) By the 15<sup>th</sup> of the month following the end of the accounting period being reported, each AFP recipient shall review the monthly financial reports produced by the servicing field CFO/Financial Manager. Within 30 days, the recipient must perform whatever reconciliations are necessary to verify that the reports are complete and must immediately notify the finance and accounting office of any discrepancies.

**6. FUNDS CONTROLS FOR EXPIRED AND CLOSED TIME LIMITED APPROPRIATIONS**

- a. Obligated balances for expired appropriations will be retained by allottees and remain available for an additional 5 years only for valid upward adjustments; that is, to liquidate obligations properly incurred during the period of obligational availability. These balances are not legally available for incurring new obligations.

- b. DOE will maintain the integrity of all legal funding controls for expired and closed appropriation accounts. Legal funding controls are amounts established by appropriations, apportionments, and allotments and by statutory restrictions imposed on the use of funds, such as the Anti-Deficiency Act. Because these funding controls are derived from statute, they must remain in effect until all financial activity for expired or closed appropriation accounts is closed out.
  - c. To provide allottees flexibility to accommodate valid upward adjustments to previously recorded obligations (e.g., due to cost overruns, closeout audit adjustments, etc.), the obligational control levels (administrative controls) within each expired appropriation account(s) by allottee will be relaxed. Currently, an obligation that exceeds an obligational control level in an unexpired account will result in an administrative violation (i.e., a violation of CFO administrative controls). However, if it is determined that a vendor invoice is to be paid from an expired appropriation account, but the remaining obligated balance in the associated obligational control level is less than the amount of the invoice, even though payment will cause the obligational control level to be exceeded, it will not result in a reportable administrative violation. However, if this payment exceeds the remaining obligated balances within the overall allotment, then a violation will have been incurred and must be reported in accordance with procedures contained in paragraph 8. Accordingly, allottees initiating obligational adjustments to expired accounts that will exceed an obligational control level must coordinate this activity with the Director of the Office of Internal Review to preclude initiating a formal reporting process.
7. **PROHIBITED ACTIONS, PERSONAL RESPONSIBILITY, AND PENALTIES.** Employees shall not violate DOE administrative control of funds policies and procedures. Discussed below are the prohibited actions, the persons to be held liable and penalties for a violation of the Anti-Deficiency Act (legal limitations), and actions that violate DOE policy (administrative limitations).
- a. **Prohibited Actions.**
    - (1) **Violations of the Anti-Deficiency Act (Legal Limitations).**
      - (a) **New Obligations and Expenditures or Adjustments to Obligations and Expenditures That Exceed Original Appropriations** include 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. For revolving funds, a legal violation occurs when the balance in the revolving fund as a whole (including net accounts receivable, unfilled Federal customer orders, and advances from others) is insufficient to cover the total of all current liabilities (including accounts payable and the estimated amount of leave payments upon termination to be made to employees to be separated during the current month). For self-financed revolving funds, a legal violation occurs when obligations incurred in any fiscal year exceed the amount allotted for that year.

- (b) **Contract or Obligation in Advance of an Appropriation.** An officer or employee shall not involve the Government in a contract or other obligation to pay money for any purpose in advance of appropriations made for such purpose unless the contract or obligation is authorized by law. If authorized by law, but not financed by an appropriation, the budget authority to cover such transactions is known as contract authority. If the contract authority is provided in anticipation of receipts, obligations incurred against the contract authority should not be liquidated until the receipts are collected and credited to the account or an appropriation to liquidate has been enacted.
- (c) **New Obligations or Any Expenditures in Closed Accounts** include any case in which an officer or employee has made or authorized an expenditure from or created or authorized an obligation against an account that has been closed pursuant to 31 U.S.C. 1552, 1555, or 1557.
- (d) **Acceptance of Voluntary Service.** An officer or employee shall not accept voluntary service for the United States or employ personal service exceeding that authorized by law, except for an emergency involving the preservation of human life or property.
- (e) **New Obligations and Expenditures or Adjustments to Obligations and Expenditures That Exceed the Amount Apportioned or Reapportioned** include any case in which an officer or employee 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 reapportioned to the original appropriation or fund account. In no case may more than 1 percent of unexpired funds be used to pay for valid

obligational adjustments liquidating obligations for closed accounts. This authority also may not be used to exceed to the original appropriation.

- (f) **Overobligation or Overexpenditure of an Allotment or Suballotment.** An officer or employee shall not authorize or create an obligation or make an expenditure exceeding the amount permitted by an allotment or related suballotment.
  - (g) **Overobligation or Overexpenditure of a Credit Limitation.** An officer or employee shall not authorize or create an obligation or make an expenditure exceeding a credit limitation (apportionment for credit programs) contained in an appropriation act restricting the amount that can be obligated or commitment for a credit program.
  - (h) **Overobligation or Overexpenditure of Other Administrative Subdivisions of Funds.** An officer or employee shall not overobligate other administrative subdivisions of funds, such as AFPs. When such an action causes an overobligation or overexpenditure of an allotment, apportionment, or appropriation, a legal violation has occurred unless the apportionment or the DOE fund control system specifies otherwise.
  - (i) **Misuse of Funds.** An officer or employee shall not obligate or expend funds for a purpose other than that for which the funds were appropriated. Such an action is a violation of 31 U.S.C. 1301 and could potentially culminate in an anti-deficiency violation.
  - (j) **Failure or Delay in Recording an Obligation.** An officer or employee shall not fail to or delay in recording an obligation in anticipation of additional funding when such action would cause an overobligation or overexpenditure of an allotment, apportionment, or appropriation.
- (2) **DOE Administrative Violations.** The following actions do not necessarily violate the Anti-Deficiency Act, but they are violations of DOE policy for controlling appropriations and funds:
- (a) **Exceeding an Administrative Limitation.** An administrative limitation is an upper limit placed on the amount of obligations or expenditures that may be incurred. Exceeding an administrative limitation is subject to

Departmental, rather than statutory, rules and penalties. For example, administrative limitations can be imposed on DOE by Congress, through congressional conference reports; by OMB, through any executive branch directive containing an administrative limitation attached to an apportionment; or by internal DOE management (e.g., through ceilings on travel). Administrative limitations specified in AFP may not be exceeded. Although administrative limitations should not be exceeded; they differ from legal limitations because violations of administrative limitations are not necessarily violations of law. Violations of administrative limitations are violations of DOE policy and must be reported immediately to the CFO. Exceeding an administrative limitation may, however, result in a legal violation at the Department level. Any person causing an administrative limitation to be exceeded shall then be responsible for the resultant legal violation and shall be subject to the penalties for such violations.

- (b) **Exceeding Supplemental Approved Funding Programs.** DOE officers and employees shall adhere to supplemental AFPs in program execution. Exceeding limitations specified in supplemental AFPs does not constitute a legal violation if the consolidated AFP is not exceeded at the allottee level.
- (c) **Exceeding Budgetary Resources for a Reimbursable Agreement.** Incurring obligations or expenditures for a reimbursable order in excess of the budgetary resources for that order is an administrative violation.
- (d) **Exceptions.** Essential activities, such as the preservation of human life or property, may be obligated in excess of limitations for specified purposes. (See DOE O 137.1A, Plan for Operating in the Event of a Lapse in Appropriations.)

b. **Personal Responsibility for Violations.** The person who occupied the position at the time a violation occurred shall be charged with the violation, rather than the person who occupies the position at the time the violation is discovered.

- (1) If the person who caused the obligation to arise was not an authorizing official, the person to be held responsible will be one of the following:

- (a) The unauthorized person causing the obligation to arise;
  - (b) The program manager;
  - (c) The certifying official, unless bypassed, who was supposed to verify that program release documents had been signed only by authorized program managers;
  - (d) The contracting, personnel, or travel official, unless bypassed, who was supposed to verify that funds had been certified as available and that program release documents had been signed only by authorizing official; or
  - (e) The allottee.
- (2) If the obligation was based on an erroneous allotment or AFP, but was within the limitations stated on the allotment or AFP, the Director of the Office of Budget shall be held responsible.
  - (3) If the contracting, personnel, or travel official processed an obligation document without first ensuring that sufficient funds had been certified as available, that official shall be held responsible.
  - (4) If obligations exceeded the amount appropriated, apportioned, or allotted as a result of obligation adjustments to correct a violation resulting from funds being used for purposes other than those intended by Congress, the program manager shall be held responsible.
  - (5) If an expenditure was made or authorized or an obligation was created or authorized under any appropriation or fund, including any revolving fund, in excess of the amount available in the appropriation or fund, the person who made or authorized the expenditure or created or authorized the obligation shall be held responsible for the violation.
  - (6) If an obligation was authorized or created or an expenditure was made in excess of an apportionment or reapportionment, the person who authorized or created the obligation or made the expenditure shall be held responsible for the violation.
  - (7) If the Government was involved in a contract or other obligation for the payment of money for any purpose in advance of appropriations made for this purpose, unless the contract or

obligation was authorized by law, the person authorizing the obligation or payment under the contract shall be held responsible for the violation.

- (8) If voluntary service was accepted for the United States or if personal services were employed in excess of those authorized by law, except in emergencies involving the preservation of human life or property, the person who accepted the voluntary service or employed the personal services shall be held responsible for the violation.
- (9) If an obligation or expenditure was authorized or created in excess of the amount permitted by an allotment, the allottee and the person authorizing the obligation or expenditure shall be held responsible for the violation.

**c. Penalties.**

- (1) Severe penalties are provided for violating the Anti-Deficiency Act and DOE fund control limitations. In addition to any penalty or liability under law, a DOE officer or employee who authorizes or makes expenditures exceeding available funds is subject to administrative discipline, including suspension from duty without pay or dismissal. If convicted of knowingly and willfully violating legal limitations, the officer or employee is subject to fines or imprisonment, or both.

**(a) Anti-Deficiency Act Violations.**

- 1. *Criminal Penalty.* An officer or employee of the United States Government who knowingly or willfully authorizes or makes expenditures in excess of available funds shall be fined not more than \$5,000 or imprisoned for not more than 2 years, or both.
- 2. *Administrative Penalties.* The following disciplinary measures may be imposed for Anti-Deficiency Act violations in addition to or exclusive of any criminal penalty:
  - a. Counseling the violator.
  - b. Requiring additional training for the violator.

- c.* Filing a letter of reprimand in the personnel file of the violator for 1 year.
  - d.* Preparing an unsatisfactory performance appraisal.
  - e.* Suspending the violator from duty for up to 2 work weeks without pay.
  - f.* Reassigning or terminating the violator.
  - g.* Taking any other action considered necessary by the Under Secretary or the Secretary.
- (b) **Administrative Limitation Violations.** Any of the permissible disciplinary actions listed in paragraph 7c (1) (a) 2 may be imposed for violations of DOE administration limitations and funds control requirements that are not subject to Anti-Deficiency Act penalties.
- (2) The following offices are responsible for determining whether a violation has occurred and the appropriate disciplinary action to be taken:
- (a) The CFO shall review, in coordination with the Office of General Counsel (GC), all reports of violations or alleged violations of legal or administrative limitations and advise the Secretary or the Under Secretary as to whether a report shall be made to Congress and, through OMB, to the President; recommend disciplinary actions when appropriate; and promptly notify the DOE component of any disciplinary action taken.
  - (b) The Office of GC shall review any report of an apparent violation submitted by the CFO; issue a determination within 30 days as to whether the apparent violation is reportable to the President or Congress, or both; and either concur or decline to concur with the CFO's recommendation on disciplinary actions.
  - (c) The Deputy Secretary, upon notification that a violation(s) of fund control regulations has occurred, shall approve or disapprove disciplinary action recommendation by the CFO and ensure that appropriate disciplinary action is taken and

also provide concurrence or nonconcurrence on the report of any disciplinary action(s) related to funding violations within 10 workdays of notification by the CFO, in order to close the violation file.

- (d) In determining what, if any, disciplinary actions may be appropriate, the Under Secretary may consider any aggravating or mitigating circumstances surrounding the violation. The severity of the disciplinary action shall depend on consideration of all the facts and circumstances that caused the violation, including the following:
1. The seriousness of the violation;
  2. The failure to report or late reporting of the violation, or a previous pattern of such violations;
  3. The character of the violation (that is, whether the violation was made knowingly and intentionally, occurred through gross or simple negligence, or was justified to protect life or property under emergency conditions);
  4. The number of times the same violation or similar violations have occurred and the length of time between violations; and
  5. Past disciplinary actions that have proved ineffective.

## **8. REPORTING OF VIOLATIONS WITHIN THE DEPARTMENT**

### **a. Reporting Requirements.**

- (1) Any person who knows about a possible violation is responsible for forwarding a report on it to the cognizant Field CFO/Financial Manager. This report shall form the basis for allottee reports to the CFO on violations or apparent violations of legal or administrative control limitations
- (2) The Field CFO/Financial Manager shall prepare formal reports in memorandum form in the format prescribed in paragraph 8b (1) and make the distribution as follows:
  - (a) CFO (original);

- (b) Allottee (one copy);
  - (c) Office of Internal Review (one copy); and
  - (d) Any other person found responsible in whole or in part for the violation (one copy).
- (3) The allottee shall sign the report and forward it to the CFO within 45 days after the end of the reporting cycle during which the violation occurred.
- (4) Any potential violation detected by a reviewing, auditing, or examining authority, except for the Government Accountability Office (GAO), shall not be reported as a violation until either the field CFO/Financial Manager has concurred that a violation exists or the reviewing, auditing, or examining authority has received concurrence from the CFO. As soon as a potential violation is detected, it shall be reported by telephone to the Director of the Office of Internal Review. For reporting requirements related to GAO findings on potential violations, see paragraph 9d (1).

**b. Information to Be Reported.**

- (1) **Actual or Apparent Legal Violations.** The following information shall be included in the report, in the sequence listed:
- (a) Date of the alleged violation;
  - (b) Name and location of the office where the alleged violation occurred;
  - (c) Name and title of the allotment holder;
  - (d) Name and location of the certifying official responsible for the administrative control of funds;
  - (e) Accounting classification of the funds involved (that is, appropriation, fund, type, program codes);
  - (f) Amount of fund authorization or limitation believed to have been exceeded;
  - (g) Amount and nature (for example, overobligation, overexpenditure, or exceeding other legal limitations) of the alleged violation;

- (h) Name, grade, and position of the person responsible for the alleged violation (if the person is no longer employed by the office that is reporting, the report shall provide the date of departure and current address);
  - (i) Statement of what the person did or did not do that resulted in the alleged violation;
  - (j) Statement about whether the alleged violation was due to a willful act, careless disregard of instructions, emergency circumstances, or an error;
  - (k) Detailed statement of the cause of and circumstances surrounding the alleged violation (including all pertinent dates and copies of supporting documents, as appropriate);
  - (l) Description of specific action taken to correct the alleged violation and of new procedures or safeguards established to prevent its reoccurrence. (The report shall describe the specific action in sufficient detail to allow evaluation of its adequacy. If changes in directives, systems, or procedures are required that cannot be made except by Headquarters, submit proposals by separate correspondence to proper authority and refer to these proposals in the report of the alleged violation);
  - (m) A signed statement by the person determined to be responsible for the alleged violation. (Request assistance from the GC to ensure that the person's rights and the integrity of the investigation are preserved. The statement shall include detailed facts about the person accused of causing the alleged violation. If the responsible person either declines to make a statement or cannot be reached to obtain a statement, the report shall explain this clearly); and
  - (n) If another agency is involve in the allege violation, the report shall include a statement about the steps taken to coordinate the report with the other agency.
- (2) **Actual or Apparent Administrative Limitation Violations.** For administrative limitation violations, the information in paragraph 8b (1) (a) through (e), along with the following information, shall be reported in the sequence listed below:

- (a) Amount of the administrative limitation alleged to have been exceeded.
- (b) Amount and nature (for example, overobligation, overexpenditure, exceeding order level budget authority or advances for reimbursable work, or exceeding other administrative limitations) of the alleged violation.
- (c) For an order-level reimbursable work violation, the customer's name and the reimbursable order number.
- (d) Description of specific action taken to correct the alleged violation, as well as new procedures or safeguards established to prevent its recurrence. (The report shall describe the specific action in sufficient detail to allow evaluation of its adequacy.)

**c. Actions Required After Violations Are Reported.**

- (1) The responsibility of allottees concerning a reportable violation does not end when they report a violation. Allottees should take immediate action to lessen the impact of the violation. Such action may include the following measures:
  - (a) Canceling sufficient noncritical obligations to eliminate the deficit.
  - (b) Initiating contract modifications to reduce or terminate sufficient items not representing critical requirements.
  - (c) Requesting additional funding through the Office of Budget.
- (2) Subsequent actions taken to correct the cause of a violation do not eliminate that violation; it still must be reported.

**d. Apparent Violations Caused by Accounting Errors.** If (after reviewing the circumstances surrounding the apparent violation of a legal limitation or an administrative control level limitation and applying facts to applicable laws and directives) the finance and accounting office concludes that the apparent violation was the result of an accounting error, the field CFO/Financial Manager shall prepare a memorandum explaining the circumstances, the violation, and the corrective actions taken or planned. The memorandum shall also include the specific contract, purchase order, travel order, or other type of procurement instrument that

was obligated or paid incorrectly; the account (fund type, AFP, standard general ledger code, program code, and construction project number or all equipment not related to construction, when applicable) to which the obligation or payment was charged by the correction entry; the date and document references of both the erroneous and the correction entries; and the name and title of the approving official for the correction entry.

**e. Apparent Violations Caused by Inappropriate Withdrawal of Funds.**

An excessive or invalid reduction in an allotment or AFP (that is, an erroneous withdrawal of funds in excess of the allotted or unobligated balance) is not a violation if either of the following conditions is met:

- (1) Additional obligations have not been authorized or incurred against the funds.
- (2) The withdrawn funds have been immediately restored or made available, through deobligation, to the account from which they were withdrawn in sufficient amount to cover obligations previously authorized or incurred. Headquarters program offices are responsible for obtaining certification of funding availability with allottees prior to withdrawing funding through allotment and AFP process.

**9. REPORTING OF VIOLATIONS TO THE PRESIDENT AND CONGRESS**

- a. Reports to the President.** The Secretary shall furnish to the President, through the Director of OMB, and to Congress information on any actions prohibited by the Anti-Deficiency Act as presented in paragraph 8. A report to the President on an Anti-Deficiency Act violation shall be in the form of a letter (original and three copies) and shall include the information as presented in OMB Circular A-11, section 145, Requirements for Reporting Anti-Deficiency Act Violations.
- b. Reports to Congress.** The report to Congress shall be in the form of identical reports to the Speaker of the House of Representatives and the President Pro Tempore of the Senate. If this report is identical to the one to the President, the report to the President shall include a statement to that effect. If it is not identical, one copy of the report to Congress shall be submitted to OMB with the report to the President. The information required for reports to Congress is the same as that for reports to the President.
- c. Reports to the GAO.** The report to the GAO shall be in the form of a letter to the Comptroller General and shall be identical to the one to the Congress.

**d. Additional Reporting Requirements.**

- (1) Reports to the President and to Congress shall also be made on any violation not previously reported by the Department that is included in GAO findings in connection with an audit or an investigation. In such a case, the reports to the President and to Congress shall explain why the violation was not discovered and previously reported by DOE. If DOE does not agree that a violation has occurred, the reports to the President and Congress shall explain DOE's position.
- (2) When OMB determines that a violation of the Anti-Deficiency Act may have occurred, it may request that DOE undertake or conduct an investigation or audit. In such cases, a report describing the results of the investigation or audit shall be submitted to OMB through the Secretary. If the report shows that the Anti-Deficiency Act has not been violated, the Secretary shall so inform OMB and forward to OMB a copy of the report. If the report shows that the Anti-Deficiency Act has been violated, the Secretary shall report to the President and to Congress as soon as possible. If the Secretary does not agree that a violation has occurred, the reports to the President and to Congress shall explain DOE's position.

- e. Timing of Reports.** The required reports, signed by the Secretary, must be made to the President and to Congress as soon as possible as a violation is discovered.