U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-3000

CHIEF FINANCIAL OFFICER

December 31, 2008

The President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500-0001

Dear Mr. President:

This letter reports a violation of the Antideficiency Act, as required by section 1517(b) of Title 31 of the United States Code and by HUD's FY 2003 Appropriations Act (Salaries and Expenses Account; Public Law 108-7). The Antideficiency Act prohibits the obligation of funds in advance of an allotment (31 U.S.C. 1517(a)(2)).

A violation of section 1517(a)(2) occurred in connection with funding for the Public Housing Operating Fund in Account No. 8630163 in the amount of $250 million on March 12, 2003. Enclosed is the name of the individual who was in the position of responsibility for the violation.

In 2002, HUD and Congress discovered and discussed the causes of and resolution for a $250 million shortfall in HUD's allocation of the FY 2002 appropriation for the Public Housing Operating Fund to public housing agencies (PHAs). After considerable discussion, the House and Senate included a special $250 million set-aside in HUD's FY 2003 Appropriation Act to fund the FY 2002 shortfall. Additionally, to preclude future funding shortages, Congress revised the statutory provisions governing the Public Housing Operating Fund, including limiting the availability of funding to one year, and HUD implemented corresponding controls.

At the beginning of FY 2003, HUD was funded via continuing resolution (CR) until the Department's FY 2003 Appropriations Act was signed on February 20, 2003 (Pub. L. 108-7). During the CR period, program officials in the Office of Public and Indian Housing (PIH) were getting reports that some PHAs were experiencing increasingly grave financial hardships that could damage their programs due to the prior year funding shortfall. PHAs were not provided funding during this period, however, because HUD and Congress had not reached agreement on how to fund the shortfall.

The allotment for the FY 2003 appropriation for the Public Housing Operating Fund that the Office of Management and Budget apportioned on March 11, 2003 was delayed due to financial management discussions about the nature and impacts of the statutory changes on the funding, including the conversion of the availability of the funding from two years to one year. Rather than further delay the distribution of the special set-aside of $250 million, on March 12, 2003 the Office of Public and Indian Housing (PIH), through its Budget Office, obligated funds to the PHAs from

what the accounting system indicated was the still-available balance of CR funding. However, HUD's FY 2003 Appropriations Act was enacted on February 20, 2003, and, accordingly, the CR funding for HUD expired by operation of law on that date and was no longer available for obligation. At the time, however, since Congress had already appropriated and OMB had already apportioned the additional $250 million for the FY 2002 shortfall, the PIH Budget Officer thought, like funding obligated during the CR, that the obligations could later be adjusted and the appropriate FY 2003 funding charged after the Office of the Chief Financial Officer (OCFO) finished setting up the FY 2003 appropriations in HUD's financial management system. Unfortunately, an Antideficiency Act violation occurred on March 12, 2003 because CR funding was no longer available for obligation and the allotment of the set-aside funds from the FY 2003 Act was not issued until April 1, 2003. Obligation of funds in advance of the allotment, even though the money had been appropriated by Congress and apportioned by OMB, violated the Antideficiency Act (31 U.S.C. 1517(a)(2)). Fortunately, however, since Congress made the $250 million available for the FY 2002 shortfall in HUD's FY 2003 Appropriation Act, a deficiency appropriation was not needed to properly fund the shortfall.

The official responsible for processing these obligations did not willfully violate the Antideficiency Act since he believed that CR funding was still available for obligation and that the accounting could later be adjusted to charge the obligations against the $250 million set-aside. The official has been counseled on how the Antideficiency Act was violated, especially with respect to the lack of availability of CR funding at the time of the obligations, and accordingly, on the need for an allotment of the $250 million set-aside prior to obligation.

In an effort to address the weaknesses that led to this Antideficiency Act violation, PIH and OCFO staff have had several discussions about what actions were taken or not taken to contribute to this Antideficiency Act violation, and what actions should have been taken and will be taken in the future to properly obligate funds, and accordingly, avoid an Antideficiency Act violation. Additionally, PIH and OCFO financial staff have agreed that, in the future, if technical financial implementation issues need to be further discussed and resolved, but funds need to be obligated expeditiously, it may be necessary and appropriate to apportion, allot, and obligate the funds and then make any necessary adjustments when the final accounting and systems processing issues have been implemented. However, any deviation from approved funds control procedures must now be approved in advance in writing by senior PIH and OCFO officials to ensure that sufficient interim funds control procedures are established and followed to control any exigent funding need and avoid any violation of the Antideficiency Act.

Identical reports are being submitted to the presiding officer of each House of Congress and the Comptroller General.

Sincerely,

John W. Cox

John W. Cox

Enclosure

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-3000

CHIEF FINANCIAL OFFICER

December 31, 2008

The Honorable Richard B. Cheney
President of the Senate
Washington, DC 20510

Dear Mr. President:

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Identical reports are being submitted to the President, the presiding officer of the House of Representatives, and the Comptroller General.

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John W. Cox

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CHIEF FINANCIAL OFFICER

December 31, 2008

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

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