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 violations of the Antideficiency Act as required by section 1351 of Title 31 of the United States Code and by HUD's Fiscal Year (FY) 2003 Appropriations Act (Salaries and Expenses Account; Public Law 108-7). Issuing a loan guarantee commitment that exceeds a statutory loan guarantee commitment level violates the Antideficiency Act, as does issuing an apportionment or an allotment that exceeds that level (31 U.S.C. 1341(a)(1)(A)).[1]

Violations of section 1341(a)(1)(A) occurred in connection with Account Number 86x4077, Federal Housing Administration (FHA) General Insurance and Special Risk Insurance (GI/SRI) Guaranteed Loan Financing Account. Enclosed are names of individuals who were in positions of responsibility for the violations.

The FHA's GI/SRI Account includes several loan guarantee programs, only some of which require an explicit appropriation of credit subsidy. Along with the subsidy funding, HUD's Appropriations Act sets a loan commitment level based on the total loan principal, any part of which is to be guaranteed.

FY 2003 was a boom year in American housing markets and the mortgage markets that sustain them. HUD notified Congress in June 2003 that it had reached 75 percent of the existing commitment level for the GI/SRI Account and that it might need an increase to continue insuring loans throughout the rest of FY 2003. HUD received a record volume of single-family loan applications and multifamily refinancing requests in July and September. As HUD drew increasingly closer to the statutory commitment level, HUD issued mortgagee letters on September 13, advising the industry that it would suspend commitments for the programs in the GI/SRI Account on September 16. Congress expressed concern over the suspension, but was unable to enact a supplemental increase until September 29. The supplemental increase enabled HUD to reduce the backlog of loan applications it carried into the new fiscal year.

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[1] *See* Office of Management and Budget (OMB) Circular A-11, section 145.3, *cited in* Government Accountability Office, *Principles of Federal Appropriations Law*, Vol. II, ch. 11, page 11-22 (3d ed. 2006). *See* Apportionment of Budget Authority for America West Airlines, Comp. Gen. B-290600 (July 10, 2002).

To avoid suspending the program during the Continuing Resolution (CR) period and to accommodate the backlog, within the context of continuing high housing loan demand, HUD sought a special provision in the first FY 2004 CR to make the full-year $25 billion commitment level available at the outset, rather than the normal level that would be available under a CR. Instead, Congress enacted the specific commitment level of $3.8 billion. This amount was almost double the volume of a normal month and was sufficient for October and the remaining backlog. It was apportioned and allotted.

Although it appears that the Administration informally advised Congress during October that the $3.8 billion level was no longer needed and requested that it be deleted from the CR, this informal communication proved to be ineffective. The three CR extensions in November 2003 did not address the GI/SRI commitment level. The first CR's $3.8 billion level therefore remained in effect as a ceiling even though that level had been intended by the Administration and Congress to cover demand only through October. However, Administration staff mistakenly believed that the November CR extensions authorized them to apportion and allot increases in the GI/SRI commitment level under normal CR rules applicable when the level is not otherwise explicitly set. Hence, on November 14, a $5.2 billion commitment level was apportioned and subsequently allotted, $1.4 billion above the level set in the first CR. An apportionment of $10.5 billion was made on November 28 and allotted on December 2, $6.7 billion above the level set in the first CR.

On December 2, congressional staff expressed concern that the Department had exceeded the $3.8 billion commitment level established under the first CR. Upon further review, the Administration agreed that $3.8 billion was the applicable commitment level and actions were taken to bring the apportionment and allotment into line with this $3.8 billion level, and HUD stopped making commitments. By then, HUD commitments had already exceeded the $3.8 billion loan guarantee level by $1,529,229,523. In the December 16, 2003 CR, Congress increased the level to $7,667,000,000 and HUD resumed making GI/SRI commitments on December 19, 2003. The FY 2004 Omnibus Appropriations Act enacted on January 23, 2004 raised the GI/SRI commitment level to $25 billion for the entire fiscal year (Pub. L. 108-199). No deficiency appropriation was needed because all commitments made in FY 2004, including those commitments that exceeded the $3.8 billion level described above, were charged against the $25 billion level established for all of FY 2004. Also, HUD had sufficient credit subsidy allotted to cover the actual loan guarantee level at the time the violation occurred.

No formal disciplinary action is necessary or appropriate for HUD officials or staff in the Offices of Budget for the Office of Housing and for the Office of the Chief Financial Officer who were involved in requests for apportionments and issuance of allotments that led to commitments in excess of the $3.8 billion commitment level established in the initial FY 2004 CR. We reached this conclusion because the commitment levels apportioned and allotted were consistent with levels intended by the Administration and Congress, and when the unintended limit became clear to HUD officials they suspended program activity in the GI/SRI Account until the issue was resolved. None of the participants willfully intended to violate the Antideficiency Act. To prevent future violations, HUD staff has been directed to give particular attention to such special CR provisions as the loan guarantee level established in the first FY 2004 CR, to avoid the unintended consequences of not increasing or deleting such provisions as the CR continues to get extended.

Identical reports are being submitted to the presiding officer of each House of Congress and to 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:

This letter reports violations of the Antideficiency Act as required by section 1351 of Title 31 of the United States Code and by HUD's Fiscal Year (FY) 2003 Appropriations Act (Salaries and Expenses Account; Public Law 108-7). Issuing a loan guarantee commitment that exceeds a statutory loan guarantee commitment level violates the Antideficiency Act, as does issuing an apportionment or an allotment that exceeds that level (31 U.S.C. 1341(a)(1)(A)).[1]

Violations of section 1341(a)(1)(A) occurred in connection with Account Number 86x4077, Federal Housing Administration (FHA) General Insurance and Special Risk Insurance (GI/SRI) Guaranteed Loan Financing Account. Enclosed are names of individuals who were in positions of responsibility for the violations.

The FHA's GI/SRI Account includes several loan guarantee programs, only some of which require an explicit appropriation of credit subsidy. Along with the subsidy funding, HUD's Appropriations Act sets a loan commitment level based on the total loan principal, any part of which is to be guaranteed.

FY 2003 was a boom year in American housing markets and the mortgage markets that sustain them. HUD notified Congress in June 2003 that it had reached 75 percent of the existing commitment level for the GI/SRI Account and that it might need an increase to continue insuring loans throughout the rest of FY 2003. HUD received a record volume of single-family loan applications and multifamily refinancing requests in July and September. As HUD drew increasingly closer to the statutory commitment level, HUD issued mortgagee letters on September 13, advising the industry that it would suspend commitments for the programs in the GI/SRI Account on September 16. Congress expressed concern over the suspension, but was unable to enact a supplemental increase until September 29. The supplemental increase enabled HUD to reduce the backlog of loan applications it carried into the new fiscal year.

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To avoid suspending the program during the Continuing Resolution (CR) period and to accommodate the backlog, within the context of continuing high housing loan demand, HUD sought a special provision in the first FY 2004 CR to make the full-year $25 billion commitment level available at the outset, rather than the normal level that would be available under a CR. Instead, Congress enacted the specific commitment level of $3.8 billion. This amount was almost double the volume of a normal month and was sufficient for October and the remaining backlog. It was apportioned and allotted.

Although it appears that the Administration informally advised Congress during October that the $3.8 billion level was no longer needed and requested that it be deleted from the CR, this informal communication proved to be ineffective. The three CR extensions in November 2003 did not address the GI/SRI commitment level. The first CR's $3.8 billion level therefore remained in effect as a ceiling even though that level had been intended by the Administration and Congress to cover demand only through October. However, Administration staff mistakenly believed that the November CR extensions authorized them to apportion and allot increases in the GI/SRI commitment level under normal CR rules applicable when the level is not otherwise explicitly set. Hence, on November 14, a $5.2 billion commitment level was apportioned and subsequently allotted, $1.4 billion above the level set in the first CR. An apportionment of $10.5 billion was made on November 28 and allotted on December 2, $6.7 billion above the level set in the first CR.

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No formal disciplinary action is necessary or appropriate for HUD officials or staff in the Offices of Budget for the Office of Housing and for the Office of the Chief Financial Officer who were involved in requests for apportionments and issuance of allotments that led to commitments in excess of the $3.8 billion commitment level established in the initial FY 2004 CR. We reached this conclusion because the commitment levels apportioned and allotted were consistent with levels intended by the Administration and Congress, and when the unintended limit became clear to HUD officials they suspended program activity in the GI/SRI Account until the issue was resolved. None of the participants willfully intended to violate the Antideficiency Act. To prevent future violations, HUD staff has been directed to give particular attention to such special CR provisions as the loan guarantee level established in the first FY 2004 CR, to avoid the unintended consequences of not increasing or deleting such provisions as the CR continues to get extended.

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

Sincerely,

John W. Cox

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Enclosure

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

CHIEF FINANCIAL OFFICER

December 31, 2008

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

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