



Office of Administration, Washington, DC

Reimbursements Received Through Rent Credits From the General Services Administration

**Office of Audit, Region 3
Philadelphia, PA**

**Audit Report Number: 2021-PH-0002
March 29, 2021**





To: Nancy Corsiglia, Chief Administrative Officer, A1
George J. Tomchick III, Deputy Chief Financial Officer, F
//signed//

From: David E. Kasperowicz, Regional Inspector General for Audit, Philadelphia Region, 3AGA

Subject: HUD Improperly Accounted for and Managed Reimbursements It Received Through Rent Credits From the General Services Administration

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our review of reimbursements HUD received through rent credits from the U.S. General Services Administration (GSA) in exchange for HUD's financial contributions to building improvements.

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the audit.

The Inspector General Act, Title 5 United States Code, appendix 8M, requires that OIG post its reports on the OIG website. Accordingly, this report will be posted at <https://www.hudoig.gov>.

If you have any questions or comments about this report, please do not hesitate to call me at 215-430-6735.



Audit Report Number: 2021-PH-0002

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HUD Improperly Accounted for and Managed Reimbursements It Received Through Rent Credits From the General Services Administration

Highlights

What We Audited and Why

We audited rent credits that the U.S. Department of Housing and Urban Development (HUD) received from the U.S. General Services Administration (GSA) during fiscal years 2015 through 2018 in exchange for financial contributions for building improvements. We initiated this audit due to concerns we identified while completing a review of HUD's use of funds approved by Congress for building improvements.¹ Our objective was to determine whether HUD accounted for and managed rent credits, issued by GSA in exchange for HUD's financial contributions for building improvements, in accordance with applicable requirements.

What We Found

HUD did not properly account for and manage reimbursements totaling nearly \$7.8 million that it obtained through rent credits issued to it by GSA in 2017 in exchange for improvements that it made to its headquarters building in 2016. HUD's Office of Administration used these funds for expenses it incurred in 2017 instead of depositing the funds in the U.S. Treasury general account. This condition occurred because Office of Administration staff improperly considered all rent credits received, regardless of type, as a refund to its current appropriation. The Office of Administration also lacked controls to ensure that its staff complied with HUD's funds control policy. As a result, HUD exceeded its fiscal year 2017 appropriated funding level by nearly \$7.8 million and potentially violated the Antideficiency Act.²

What We Recommend

We recommend that HUD's Chief Financial Officer investigate the facts surrounding the potential Antideficiency Act violation involving nearly \$7.8 million in rent credits. If it is determined that a violation occurred, HUD should develop corrective action plans or internal process improvements, take appropriate disciplinary actions, and report violations to the appropriate oversight authorities, as required.

¹ HUD Used Funds for Building Improvements in Accordance With Its Plans and the Approval of the House and Senate Committees on Appropriations, Memorandum 2019-PH-0801, issued November 7, 2018

² HUD's Chief Financial Officer has the sole authority to investigate this potential violation and determine whether HUD was required to deposit the value of rent credits into the U.S. Treasury General Funds. HUD OIG can make a referral to the Chief Financial Officer to investigate the potential violation.

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Background and Objective

In 2018, we received a request from the Subcommittee on Transportation, Housing and Urban Development, and Related Agencies (Committee) regarding its concerns of whether the U.S. Department of Housing and Urban Development (HUD) used funds totaling \$18.3 million for Office of Administration projects that included building improvements at its headquarters, the Robert C. Weaver Building. The concerns alleged a mismanagement of resources within the Office of Administration; specifically, that it may have approved expenditures that were not in accordance with the approved fiscal years 2016 and 2017 congressional budgets. The Committee also stated that it was unclear whether additional funds, which it had approved to make specific Weaver Building improvements, were used to make the improvements or whether they were used for other purposes within the Office of Administration. We completed a review in response to the Committee's request and found that the Office of Administration spent or obligated the funds for the reasons approved by the Committee.³

HUD has an occupancy agreement with the U.S. General Services Administration (GSA), which states that GSA, as the owner, is responsible for the renewal and replacement of all building shell elements. HUD's headquarters, the Robert C. Weaver Building, is located at 451 7th Street SW, Washington DC.

In 2016 and 2017, in accordance with requirements, HUD sent requests for approval and notification letters to the Committee to use \$18.3 million of lapsed⁴ and repurposed⁵ funds for Office of Administration expenses, which included making the following improvements totaling \$9.2 million to the shell of the Weaver Building:

- In June 2016, HUD requested to repurpose \$7.4 million in lapsed 2015 funds for Office of Administration projects, including \$4.0 million for improvements to elevators and plumbing infrastructure.
- In September 2016, HUD notified the Committee of its intent to transfer \$4.0 million in 2016 funds, including \$3.7 million to update and replace the plumbing infrastructure. HUD stated that it would pursue rent abatement for the \$3.7 million from GSA.
- In June 2017, HUD requested to repurpose \$6.9 million in lapsed 2016 funds, including \$1.5 million for additional plumbing infrastructure improvements.

Each month, GSA submitted a billing statement to HUD for the amount of rent payment due. These statements included adjustments that GSA passed through to HUD, which included reasons, such as changes in real estate taxes and negotiated periods of free rent. We identified significant rent credits to HUD's billing when performing our review in response to the

³ HUD Used Funds for Building Improvements in Accordance With Its Plans and the Approval of the House and Senate Committees on Appropriations, Memorandum 2019-PH-0801, issued November 7, 2018

⁴ Uncommitted funds that remain in an appropriation account at the close of a fiscal year

⁵ Funds used for a purpose other than that for which they were intended originally

Committee's request.⁶ These credits totaled nearly \$7.8 million and were described in an ad hoc clause in GSA's occupancy agreement with HUD, reducing the amount of rent owed from January through September 2017 in exchange for the elevator and plumbing improvements HUD made (noted in the bullets above).

Our objective was to determine whether HUD accounted for and managed rent credits, issued by GSA in exchange for HUD's financial contributions for building improvements, in accordance with applicable requirements.

⁶ HUD Used Funds for Building Improvements in Accordance With Its Plans and the Approval of the House and Senate Committees on Appropriations, Memorandum 2019-PH-0801, issued November 7, 2018

Results of Audit

Finding: HUD Improperly Accounted for and Managed Reimbursements It Received Through Rent Credits

HUD's Office of Administration did not properly account for and manage reimbursements totaling nearly \$7.8 million that it obtained through rent credits issued to it by GSA in 2017 in exchange for improvements that it made to its headquarters building in 2016. HUD's Office of Administration improperly considered these credits as a refund of rent expenses to its current fiscal year 2017 appropriation instead of a reimbursement. In addition, HUD did not comply with its funds control policy when it did not account for the receipt of the credits as a reimbursement to an approved appropriation before spending the funds. These conditions occurred because Office of Administration staff considered all rent credits received, regardless of type, as a refund to its current appropriation and used these funds for expenses that it incurred. HUD also lacked controls to ensure that Office of Administration staff complied with its funds control policy. As a result, the Office of Administration obligated nearly \$7.8 million above its fiscal year 2017 appropriated funding level and potentially violated the Antideficiency Act.⁷

HUD Improperly Accounted for and Managed Reimbursements From Rent Credits

HUD did not properly account for and manage reimbursements totaling nearly \$7.8 million that it obtained through rent credits issued to it by GSA in 2017 in exchange for improvements that HUD made to its headquarters building. According to the U.S. Government Accountability Office's (GAO) Policy and Procedures Manual for Guidance of Federal Agencies, there are separate procedures for depositing refunds and reimbursements to the credit of appropriations and fund accounts.⁸ HUD's Office of Administration improperly considered these credits as a refund of rent expenses to its current fiscal year 2017 appropriation instead of a reimbursement for the building improvements it made in fiscal year 2016. This condition occurred because Office of Administration staff considered all rent credits received, regardless of type, as a refund to its current appropriation and used these funds for expenses that it incurred.

Unless an agency is authorized by law to credit reimbursements directly to a specific appropriation, reimbursements must generally be deposited to the U.S. Treasury as miscellaneous receipts.⁹ GAO's Principles of Federal Appropriations Law (known as the "Red book") defines a "reimbursement" as the sum received as a result of commodities sold or services furnished either to the public or another government account, which are authorized by

⁷ The Antideficiency Act prohibits Federal agencies from obligating or expending Federal funds in advance or in excess of an appropriation, and from accepting voluntary services. The Act prohibits Federal employees from: making or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law. Federal employees who violate the Antideficiency Act are subject to two types of sanctions: administrative and penal.

⁸ See appendix B, page 21, Section II - GAO Principles and Policies.

⁹ See appendix B, page 19, Section II - GAO Principles and Policies.

law to be credited directly to a specific appropriation. In contrast, the term “refund” is defined as a receipt directly related to and is a direct reduction of a previously recorded expenditure. Thus, the recovery of an erroneous payment or overpayment, which was erroneous at the time it was made, qualifies as a refund to the appropriation originally charged.¹⁰ In this case, the rent credits were a nonstatutory reimbursement because they were received as a result of services and commodities furnished to GSA, specifically capital improvements to GSA’s Weaver Building.

The miscellaneous receipts statute requires an agency to deposit funds it receives from any source as soon as practicable into the U.S. Treasury General Fund.¹¹ Generally, an agency improperly augments its appropriation when it retains and credits its own appropriation, funds which it should have deposited into the U.S. Treasury General Fund.¹² As explained in the Red book, the objective of the rule against augmentation is to prevent a government agency from undercutting the congressional power of the purse by indirectly exceeding the amount Congress has appropriated for that activity.¹³ The Red book states that receipts in the form of “monetary credits” are treated for deposit and augmentation purposes the same as cash unless there is legislation involved that requires different treatment, such as a statutory limitation. The Red book gives guidance and examples explaining the miscellaneous receipts concept.¹⁴

HUD made improvements to the shell of the Weaver Building in fiscal year 2016, that were GSA’s responsibility, as the landlord. In its notice to transfer funds from 2015 to 2016, HUD stated it would pursue rent abatement from GSA for the replacement of the plumbing infrastructure and explained that its needs were urgent and could not wait for GSA’s process to occur. HUD also stated that its contractors would do the work faster and for less cost than GSA. GSA and HUD modified the occupancy agreement to include a specific ad hoc clause stating that GSA was crediting HUD’s rent for the cost of elevator and plumbing infrastructure improvements in exchange for HUD’s financial contributions. GSA officials informed us that to prevent an augmentation of GSA’s budget and on the advice of their General Counsel, they were legally obligated to repay HUD. Financial considerations (in the form of rent credits) were provided to HUD for the cost of the improvements that were GSA’s responsibility. Through nine monthly installments, during January through September 2017, totaling nearly \$7.8 million, these credits reduced the amount of rent HUD owed to GSA and made additional funds available for use by HUD’s Office of Administration. The Office of Administration considered the credits as refunds to its current appropriation. However, the Office of Administration should have treated the credits as nonstatutory reimbursements rather than refunds.

HUD Potentially Violated the Antideficiency Act

A violation of the Antideficiency Act can occur in many ways, including when an agency supplements its appropriation from outside sources without specific statutory authority. This augmentation prohibition rule is derived from several enactments of Congress rather than a

¹⁰ See appendix B, page 20, Section II - GAO Principles and Policies.

¹¹ Miscellaneous Receipts Act, 31 U.S.C. § 3302(b). See appendix B, page 18, Section I - Statutory Law.

¹² See appendix B, page 19, Section II - GAO Principles and Policies.

¹³ See appendix B, page 19, Section II - GAO Principles and Policies.

¹⁴ See appendix B, page 19, Section II - GAO Principles and Policies.

specific statute.¹⁵ As explained in GAO’s Red Book, “the objective of the rule against augmentation is to prevent a government agency from undercutting the congressional power of the purse by circuitously exceeding the amount Congress has appropriated for that activity”. HUD may have violated the Act because, as noted previously, an agency improperly augments its appropriation when it retains and credits its own appropriation, funds which it should have deposited into the U.S. Treasury General Fund. While we are not HUD’s authority for determining whether an Antideficiency Act violation occurred, our audit showed that because HUD’s Office of Administration considered all rent credits received, regardless of type, as a refund to its fiscal year 2017 appropriation, it obligated nearly \$7.8 million more than its fiscal year 2017 appropriation for the items shown in the table below.

Use description	Amount
Weaver building 9 th floor construction and furniture ¹⁶	\$5,812,258
Offset rent debits on monthly billing statements	1,447,347
Motor pool services	147,990
Glass panels to cubicles for PIH ¹⁷ and CPD ¹⁸ space	141,725
Broadcasting equipment	121,667
Moving costs for Potomac Center	116,688
Total obligated by the Office of Administration	7,787,675

Because the Office of Administration exceeded its fiscal year 2017 appropriated funding level, HUD potentially violated the Antideficiency Act.

HUD’s Chief Financial Officer Needs To Conduct an Investigation

HUD OIG, like the Office of Management and Budget (OMB) and GAO, can make a referral to the Chief Financial Officer to investigate a potential Antideficiency Act violation. HUD’s Chief Financial Officer has the authority to investigate whether there was a potential Antideficiency Act violation.¹⁹ If in this case it is determined that a violation occurred, HUD would be required to deposit the value of the rent credits into the U.S. Treasury General Fund. The investigation will determine whether HUD had the authority to retain the reimbursements or whether they should have been deposited into the U.S. Treasury General Fund. At the end of its investigation, if no violations are found but opportunities for improvements in funds control are identified,

¹⁵ The Antideficiency Act is codified at 31 U.S.C. §1513, 1514 and 1517. See appendix B, page 17, Section I – Statutory Law.

¹⁶ The Office of Administration used more than \$4.5 million of these funds for construction on the 9th floor to enable HUD staff to move to the Weaver Building from leased space outside the building, although HUD’s 2017 appropriation made available no less than \$4.5 million for the same purpose. See appendix B, page 19, Section I – Statutory Law.

¹⁷ Office of Public and Indian Housing

¹⁸ Office of Community Planning and Development

¹⁹ Public Law 108-7, also known as the Consolidated Appropriations Resolution, 2003, states that HUD’s Chief Financial Officer, in consultation with HUD’s Budget Officer, has the authority to investigate a potential violation of the Antideficiency Act, determine whether a violation occurred, and determine corrective action regarding any such violation. See appendix B, page 18, Section I - Statutory Law.

recommendations will be forwarded to the Office of Administration for review, approval, and implementation. Further, for any violations of the Antideficiency Act identified, final reports must be submitted to the HUD Secretary, the President, OMB, Congress, and the Comptroller General in accordance with applicable statutes and OMB circulars.²⁰ This requirement is further specified by HUD's Administrative Control of Funds Policies,²¹ which outlines HUD's process for the disclosure, review, reporting, and action on potential and actual violations, including that Appropriation Law Staff is responsible for leading the Antideficiency Act investigation and maintaining documentation on the basis for the determination.

During the audit, the Office of the Chief Financial Officer opened an Antideficiency Act investigation.

The Office of Administration Did Not Comply With HUD's Administrative Funds Control Handbook

The Office of Administration did not comply with HUD's funds control policy for advances, reimbursements, and other receipts.²² The purpose of HUD's Administrative Control of Funds Policies²³ is to outline requirements for distributing HUD's appropriation and other budget authority through an apportionment and allotment process that affixes personal responsibility and accountability for specific budgetary resources. Further, it stated that "the Antideficiency Act prohibits making obligations or expenditures in excess of an apportionment or allotment."^{24 25} The policy stated that reimbursements and other anticipated funds were subject to apportionment and allotment requirements. This included receipts that were the result of interagency agreements as well as those that were generated from a continuing cycle of program operations, such as the occupancy agreement for the Weaver Building. The amount of anticipated funds resulting from the rent credits from Weaver Building improvements were known when the occupancy agreement was modified to include the ad hoc clause, and accordingly, HUD should have ensured that these rent credits were distributed through the apportionment and allotment process, to affix personal responsibility for the funds, before commitment and obligation.²⁶ Instead, Office of Administration personnel tracked the availability of rent credit funds using spreadsheets, circumventing the process that ensures accountability.

As a result of the credits, the Office of Administration had excess funds in its fiscal year 2017 Space and Management Division budget code, from which it pays rent. Office of Administration

²⁰ See appendix B, page 24, Section III - HUD Policies.

²¹ See appendix B, page 24, Section III - HUD Policies.

²² See appendix B, page 23, Section III - HUD Policies.

²³ See appendix B, page 23, Section III - HUD Policies.

²⁴ See appendix B, page 17, Section I - Statutory Law.

²⁵ Federal agencies receive funds from Congress, normally called "appropriations" that limit the agency's obligations and expenditures for a designated fiscal period. Appropriated funds are apportioned by OMB. The act of apportioning funds is the technical step that allows resources provided from Congress to officially be available for use from the Treasury. Apportionment is also a mechanism to prevent obligation or expenditure in excess of the appropriated amounts. Funds are apportioned by time periods such as months; activities, functions or project; or a combination of the two. An apportionment may be further subdivided into allotments by the agency or office utilizing the appropriated funding.

²⁶ See appendix B, page 23, Section III - HUD Policies.

officials in the front office instructed staff to move the funds from the Space and Management Division budget code to the front office “Chief” budget code. According to Office of Administration budget staff, funds in the “Chief” budget code can be used for any Office of Administration expense. The description on the budget realignment forms used to record the funds transfers was “rent credits.” This condition occurred because HUD lacked controls to ensure that Office of Administration staff complied with its funds control policy for advances, reimbursements, and other receipts resulting in a potential violation of the Antideficiency Act.

Conclusion

HUD did not properly account for and manage reimbursements totaling nearly \$7.8 million that it obtained through rent credits issued to it by GSA in 2017 in exchange for improvements that it made to the Weaver Building in 2016. By doing so, HUD may have violated the Antideficiency Act because, absent statutory authority to the contrary, the miscellaneous receipts statute required reimbursements to be deposited into the U.S. Treasury General Fund. HUD’s Chief Financial Officer has the sole authority to investigate potential violations of the Antideficiency Act. The investigation will determine whether HUD had the authority to retain the reimbursements or whether they should have been deposited into the U.S. Treasury General Fund. HUD also did not comply with its funds control policy for apportionment and allotment of advances, reimbursements, and other receipts. These conditions occurred because Office of Administration staff considered these credits as a refund of rent expense to its current appropriation in fiscal year 2017 instead of a reimbursement for building improvements to a GSA asset. It also lacked controls to ensure that Office of Administration staff complied with its funds control policy. Because HUD exceeded its fiscal year 2017 appropriated funding level by nearly \$7.8 million, it potentially violated the Antideficiency Act.

Recommendations

We recommend that HUD’s Chief Financial Officer

- 1A. Investigate the facts surrounding the potential Antideficiency Act violation involving the \$7,787,675 in rent credits and make a formal determination. If it is determined that a violation occurred, the Chief Financial Officer should develop corrective action plans or internal process improvements as necessary, take disciplinary actions as appropriate, and report the identified violations to the oversight authorities including the HUD Secretary, the President, OMB, Congress and the Comptroller General.

We recommend that HUD’s Chief Administrative Officer

- 1B. Implement the corrective actions and internal process improvements in internal control developed as a result of the Chief Financial Officer’s investigation addressed in recommendation 1A.
- 1C. Provide training to responsible staff and officials to ensure that those that may be involved with negotiating any GSA rent credits, like the credits addressed in this

report, identify such potential rent credit transactions and follow the corrective actions and process improvements implemented to resolve recommendation 1B.

Scope and Methodology

We conducted the audit from December 2018 through February 2021 at our offices located in Philadelphia and Pittsburgh, PA, and at HUD headquarters located at the Weaver Building in Washington, DC. Our review covered rent credits HUD received during the period October 2014 through September 2018.

To accomplish our objective, we

- Reviewed applicable laws and regulations pertaining to the Antideficiency Act.
- Reviewed prior audit reports.
- Reviewed applicable legislation, regulations, HUD handbooks, and guidance.
- Interviewed officials from HUD’s Office of Administration and Office of the Chief Financial Officer.
- Interviewed staff from GSA’s National Capital Region, Office of Chief Financial Officer, and Public Building Service – Pricing Policy and Tools Division.
- Consulted with the Federal Accounting Standards Advisory Board.
- Consulted with OMB’s Office of General Counsel.
- Reviewed GSA’s Rent on the Web billing statements and applicable occupancy agreements.

To determine the reasons why HUD received rent credits from GSA, we obtained monthly billing adjustment data and monthly billing statements for the period October 2014 through September 2018. We determined the total amount of billing adjustments per fiscal year and by occupancy agreement. For fiscal years 2015 and 2016, GSA increased the amount of rent to be paid by HUD, while in fiscal years 2017 and 2018, GSA reduced the amount of rent to be paid by HUD. During our audit period, HUD received billing adjustments that reduced its rent due by more than \$23.9 million and increased its rent due by more than \$12.2 million, a net reduction of nearly \$11.7 million. The table below shows the total billing adjustments per fiscal year.

Period	Net billing adjustments
Fiscal year 2015 (October 2014-September 2015)	\$685,828
Fiscal year 2016 (October 2015-September 2016)	778,432
Fiscal year 2017 (October 2016-September 2017)	(6,378,548)
Fiscal year 2018 (October 2017-September 2018)	(6,784,587)
Total	(11,698,875)

For our review of GSA’s billing adjustments provided to HUD, from our audit period of October 2014 through September 2018, we selected all 13 occupancy agreements with a credit balance of \$100,000 or more. Additionally, we selected 2 occupancy agreements, not already selected as part of the 13, in which GSA labeled the type of billing adjustment using a description related to

tenant improvement. From our review of 15 occupancy agreements, we reviewed \$21.4 million of the \$23.9 million (89.5 percent) of the total credits.²⁷ During the audit period, these occupancy agreements also received debit adjustments. Reviewing the debits was not the objective of this audit but was unavoidable because the debits and credits were comingled on the billing statements and data on GSA’s Rent on the Web system. The amount of rent debits included on our sample selection totaled more than \$5 million. Therefore, the billing adjustments for the 15 occupancy agreements we reviewed reflected net rent credits totaling nearly \$16.4 million, as shown in the table below. The rent credits HUD received in exchange for the building improvements approved by the Committee are highlighted in the table.

Billing adjustment description	Amount
Rent free periods	(\$8,250,845)
Agency funded shell credits	(7,787,675)
Other ²⁸	(5,113,438)
Broker contract commission credits	(255,707)
Total credits	(21,407,665)
Operating costs escalation ²⁹	4,008
Related to tenant improvement ³⁰	58,643
Tax escalation	1,591,108
Late activation	3,364,934
Total debits	5,018,693
Net total adjustments	(16,388,972)

To achieve our audit objective, we relied in part on computer-processed data from GSA’s Rent on the Web system, to include the billing adjustments for all HUD locations. Although we did not perform a detailed assessment of the reliability of the data, we did perform a minimal level of testing and found the data to be adequate for our purposes.

We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective(s). We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

²⁷ During the audit period, there were 93 occupancy agreements for HUD’s 65 locations, including its headquarters located at the Weaver Building and its regional and field offices. There are more occupancy agreements than HUD locations because some offices modified their occupancy agreement or a new occupancy agreement was created because the office relocated.

²⁸ The credits categorized as “other” on GSA’s billing statements include credit for periods of holdover tenancy, operating escalation adjustments, unused tenant improvement payments, and credit for rent charged on an expired occupancy agreement.

²⁹ For presentation purposes, we combined the net amounts for operating cost escalation (\$3,117) and REXUS lease payment (\$891) adjustments.

³⁰ For presentation purposes, we combined the net amounts for unamortized (\$26,768) and reconciliation of (\$31,875) tenant improvements.

Internal Controls

Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

- effectiveness and efficiency of operations,
- reliability of financial reporting, and
- compliance with applicable laws and regulations.

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

We determined that the following internal controls were relevant to our audit objective:

- compliance with applicable laws and regulations.

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

Significant Deficiency

Based on our review, we believe that the following item is a significant deficiency:

- HUD lacked controls to ensure that Office of Administration staff complied with its funds control policy for advances, reimbursements, and other receipts, resulting in a potential violation of the Antideficiency Act (finding).

Appendixes

Appendix A

Auditee Comments and OIG's Evaluation

Ref to OIG Evaluation

Auditee Comments

	U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT WASHINGTON, DC 20410-3000
OFFICE OF THE CHIEF FINANCIAL OFFICER	
HUD OCFO MEMO 21-20	
TO:	David Kasperowicz, Regional Inspector General for Audit, 3AGA George Tomchick <small>Digitally signed by: George Tomchick DN: cn = George Tomchick email = george.tomchick@hud.gov c = US O = HUD OU = OCFO Date: 2021.03.04 08:57:33 -0500</small>
FROM:	George J. Tomchick, III, Deputy Chief Financial Officer, F
SUBJECT:	Response to Draft Audit, entitled <i>HUD Improperly Accounted for and Management Reimbursements it Received through Rent Credits from the General Services Administration</i>
DATE:	March 4, 2021
<p>Thank you for the opportunity to review the draft discussion report related to the Office of Inspector General's audit entitled <i>HUD Improperly Accounted for and Management Reimbursements it Received through Rent Credits from the General Services Administration</i>. As we have discussed with your team previously, the Office of the Chief Financial Officer (OCFO) initiated an Antideficiency Act investigation into this matter upon your referral. Our investigation is still ongoing, but we have completed our initial legal review of this matter.</p> <p>We agree with OIG that HUD's treatment of the monetary credits received related to HUD's FY 2016 rent payments was improper, but we disagree that the funds should have been treated as miscellaneous receipts. We will provide our final legal assessment and recommend funds control and internal control improvements at the conclusion of our investigation.</p> <p>The Office of Administration's Office of the Chief Administrative Officer (OCAO) has been and will continue to coordinate closely with the OCFO as the Antideficiency Act investigation is concluded and corrective actions are identified, and will implement all such corrective actions to ensure this issue does not reoccur.</p> <p>CC: Dana Young, Assistant Regional Inspector General for Audit, 3FGA Nancy Corsiglia, Chief Administrative Officer, A1</p>	

Comment 1

OIG Evaluation of Auditee Comments

Comment 1 The Office of the Chief Financial Officer opened an Antideficiency Act investigation. It agreed that the treatment of rent credits was improper, but disagreed that the funds should have been treated as miscellaneous receipts. It stated that it will provide its final legal assessment and its recommended funds control and internal control improvements at the conclusion of the investigation. Although the investigation is ongoing and a final report is pending, we look forward to working with the Chief Financial Officer and the Chief Administrative Officer to resolve the recommendations.

Appendix B

Criteria

Section I - Statutory Law

Antideficiency Act Statutes

U.S. Code Title 31-MONEY AND FINANCE

SUBTITLE II-THE BUDGET PROCESS

CHAPTER 13-APPROPRIATIONS

SUBCHAPTER III-LIMITATIONS, EXCEPTIONS, AND PENALTIES

§1341. Limitations on expending and obligating amounts

(a)(1) Except as specified in this subchapter or any other provision of law, an officer or employee of the United States Government or of the District of Columbia government may not-

(A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation;

(B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law;

CHAPTER 15-APPROPRIATION ACCOUNTING

SUBCHAPTER II-APPORTIONMENT

§1512. Apportionment and reserves

(a) Except as provided in this subchapter, an appropriation available for obligation for a definite period shall be apportioned to prevent obligation or expenditure at a rate that would indicate a necessity for a deficiency or supplemental appropriation for the period. An appropriation for an indefinite period and authority to make obligations by contract before appropriations shall be apportioned to achieve the most effective and economical use. An apportionment may be reapportioned under this section.

(b)(1) An appropriation subject to apportionment is apportioned by-

(A) months, calendar quarters, operating seasons, or other time periods;

(B) activities, functions, projects, or objects; or

(C) a combination of the ways referred to in clauses (A) and (B) of this paragraph.

§1514. Administrative division of apportionments

(a) The official having administrative control of an appropriation available to the legislative branch, the judicial branch, the United States International Trade Commission, or the District of Columbia government, and, subject to the approval of the President, the head of each executive agency (except the Commission) shall prescribe by regulation a system of administrative control not inconsistent with accounting procedures prescribed under law. The system shall be designed to-

- (1) restrict obligations or expenditures from each appropriation to the amount of apportionments or reapportionments of the appropriation; and
- (2) enable the official or the head of the executive agency to fix responsibility for an obligation or expenditure exceeding an apportionment or reapportionment.

§1517. Prohibited obligations and expenditures

(a) An officer or employee of the United States Government or of the District of Columbia government may not make or authorize an expenditure or obligation exceeding-

- (1) an apportionment; or
- (2) the amount permitted by regulations prescribed under section 1514(a) of this title.

(b) If an officer or employee of an executive agency or of the District of Columbia government violates subsection (a) of this section, the head of the executive agency or the Mayor of the District of Columbia, as the case may be, shall report immediately to the President and Congress all relevant facts and a statement of actions taken. A copy of each report shall also be transmitted to the Comptroller General on the same date the report is transmitted to the President and Congress.

Miscellaneous Receipts

U.S. Code Title 31-MONEY AND FINANCE

SUBTITLE II-THE BUDGET PROCESS

CHAPTER 13-APPROPRIATIONS

SUBCHAPTER III-LIMITATIONS, EXCEPTIONS, AND PENALTIES

§3302. Custodians of money

(b) Except as provided in section 3718(b) of this title, an official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim.

HUD Appropriations Laws

Public Law 108-7, Consolidated Appropriations Resolution, 2003

Title II – Department of Housing and Urban Development Management and Administration, Salaries and Expenses

The Chief Financial Officer of the Department of Housing and Urban Development, shall in consultation with the Budget Officer, have sole authority to investigate potential or actual violations under the Anti-Deficiency Act (31 U.S.C. 1341 et seq) and all other statutes and regulations related to the obligation and expenditure of funds made available in this or any other Act; shall determine whether violations exist; and shall submit final reports on violations to the Secretary, the President, the Office of Management and Budget and the Congress in accordance with applicable statutes and Office of Management and Budget circulars.

Public Law 115-31, Consolidated Appropriations, 2017

**Division K – Transportation, Housing and Urban Development and Related Agencies
Appropriations Act, 2017, Title II Department of Housing and Urban Development,
Management and Administration, Administrative Support Offices**

\$206,500,000 was made available to the Office of Administration, and of which, no less than \$4,500,000 shall be available for the cost of consolidation and reconfiguration of space in the Weaver Building in accordance with the space consolidation plan which would bring employees back into such Building and reduce the amount of leased space for such employees outside of such Building.

Section II - GAO Principles and Policies

**Red Book: GAO-06-382SP, Principles of Federal Appropriations Law, Third Edition,
Volume II**

Chapter 6 – Availability of Appropriations

E. Augmentation of Appropriations

1. The Augmentation Concept

(6-162) As a general proposition, an agency may not augment its appropriations from outside sources without specific statutory authority. When Congress makes an appropriation, it also is establishing an authorized program level. In other words, it is telling the agency that it cannot operate beyond the level that it can finance under its appropriation. To permit an agency to operate beyond this level with funds derived from some other source without specific congressional sanction would amount to a usurpation of the congressional prerogative. Restated, the objective of the rule against augmentation of appropriations is to prevent a government agency from undercutting the congressional power of the purse by circuitously exceeding the amount Congress has appropriated for that activity.

2. Disposition of Moneys Received: Repayments and Miscellaneous Receipts

a. General Principles

(1) The “miscellaneous receipts” statute

(6-169) Receipts in the form of “monetary credits” are treated for deposit and augmentation purposes the same as cash. This will not apply, however, where it is clear that the appropriation or other legislation involved contemplates a different treatment. When an agency is entitled to retain a fund in its appropriations, it may accept the refund in the form of a credit against future payments due to the party owing the refund instead of requiring the party to issue a separate check.

(2) Exceptions

(6-170) Exceptions to the miscellaneous receipts requirement fall into two broad categories, statutory and non-statutory.

- An Agency may retain moneys it receives if it has statutory authority to do so. In other words, 31 U.S.C. 3302(b) will not apply if there is statutory authority for the agency to retain the funds.

- Receipts that qualify as “repayments” to an appropriation may be retained to the credit of that appropriation and are not required to be deposited to the General Fund.

Reimbursements falling within the above nonstatutory exception may be further defined in terms of two general classes, reimbursements and refunds, as follows:

- Reimbursements are sums received as a result of commodities sold or services furnished either to the public or to another government account, which are authorized by law to be credited directly to a specific appropriation.
- Refunds are repayments for excess payments and are to be credited to the appropriation or fund accounts from which the excess payments were made. They must be directly related to previously recorded expenditures and are reductions of those expenditures. Refunds to appropriations represent amounts collected from outside sources for payments made in error, overpayments, or adjustments for previous amounts disbursed.

(6-171) As used in the above definitions, the term “reimbursement” generally refers to situations in which retention by the agency is authorized by statute. The term “refund” embraces a category of mostly nonstatutory exceptions in which the receipt is directly related to, and is a direct reduction of, a previously recorded expenditure. Thus, the recovery of an erroneous payment or overpayment which was erroneous at the time it was made qualifies as a refund to the appropriation originally charged. Also, the return of an authorized advance, such as a travel advance, is a refund.

At this point, an important distinction must be made. Moneys collected to reimburse the government for expenditures previously made are not automatically the same as “adjustments for previous amounts disbursed.” Reimbursements must generally, absent statutory authority to the contrary, be deposited as miscellaneous receipts. The mere fact that the reimbursement is related to the prior expenditure – although this is an indispensable element of an authorized refund-is not in itself sufficient to remove the transaction from the scope of 31 U.S.C. §3302(b). The controlling principles were stated as follows in two early decisions:

- The question as to whether moneys collected to reimburse the Government for expenditures previously made should be used to reimburse the appropriations from which the expenditures were made or should be covered into the general fund of the Treasury has often been before the accounting officers of the Treasury and this office, and it has been uniformly held that in the absence of an express provision in the statute to the contrary, such funds should be covered in as miscellaneous receipts.”
- “On the other hand, if the collection involves a refund or a repayment of moneys paid from an appropriation in excess of what was actually due such refund has been held to be properly for credit to the appropriation originally charged...”

(6-172) The rationale for crediting refunds to an appropriation account is to enable the account to be made whole for the overpayment that gave rise to the refund.

(6-176) The fact that some particular reimbursement is authorized or even required by law is not, standing alone, sufficient to overcome 31 U.S.C. §3302(b). The accounting for that reimbursement, whether it may be retained by the agency and if so, how it is to be credited, will depend on the terms of the statute. Some statutes, for example, permit reimbursements to be credited to current appropriations, regardless of which appropriation “earned” the reimbursement. As a general proposition, however, this practice, as GAO has pointed out, diminishes congressional control.

As might be expected, there have been a great many decisions involving the miscellaneous receipts requirement. It is virtually impossible to draw further generalizations from the decisions other than to restate the basic rule: An agency must deposit into the General Fund of the Treasury any funds it receives from sources outside of the agency unless the receipt constitutes an authorized repayment or unless the agency has statutory authority to retain the funds for credit to its own appropriations.

4. Other Augmentation Principles and Cases

(6-235) Another way of stating the augmentation rule is that when Congress appropriates funds for an activity, the appropriation represents a limitation Congress has fixed for that activity, and all expenditures for that activity must come from the appropriation absent express authority to the contrary.

(6-236) The improper treatment of reimbursable transactions may result in an augmentation. Thus, if a given reimbursement must be credited to the appropriation that “earned” it (i.e. that financed the transaction), and that appropriation has expired, crediting the reimbursement to current funds is an improper augmentation.

GAO’s Policy and Procedures Manual for Guidance of Federal Agencies, Title 7 – Fiscal Guidance, Transmittal Sheet No. 7-43

5.4 Collections Credited to Appropriation and Fund Accounts

B. Crediting Collections to Appropriation and Fund Accounts

There are separate procedures for depositing refunds and reimbursements to the credit of appropriations and fund accounts.

- (1) Refunds. Refunds are not required to be deposited to the credit of miscellaneous receipts by 31 U.S.C. 3302(b). They are to be deposited to the credit of the appropriation or fund charged with the original expenditure unless other deposit procedures are expressly prescribed by statute.
- (2) Reimbursements. Reimbursements may be deposited to the credit of an appropriation or fund account only when authorized by law. Such reimbursements should be deposited to the credit of the appropriation in accordance with the requirements imposed by the authorizing legislation. For example, the law may authorize the credit

of deposits to current appropriations or it may direct that the credit be to the appropriation initially charged with the cost of reimbursable work.

The collection of refunds or reimbursements authorized to be deposited to the credit of the appropriation initially charged with the expenditure is to be deposited to the expired account if collected after the expiration of the appropriation. However, collections of refunds and reimbursements that would have been authorized to be deposited to the credit of appropriation or fund accounts prior to closing cannot be credited to accounts that have been closed in accordance with 31 U.S.C. 1552(a) or 1555. Collections for these closed accounts must be deposited as miscellaneous receipts in the Treasury (31 U.S.C. 1552(b))

Section III - HUD Policies

Administrative Control of Funds Policies, 1830.2 REV-6 for the U.S. Department of Housing and Urban Development

Preface

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

The Antideficiency Act of 1906 (Title 31, United States Code, sections 1341-1342, 1349-1351, 1511-1519) serves as the primary foundation for the Federal government’s administrative control of funds system. In its current form, the law prohibits:

- Making or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law, 31 U.S.C. 1341(a)(1)(A);
- Making obligations or expenditures in excess of an apportionment, reapportionment, allotment or suballotment, 31 U.S.C. 1517(a).

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

- Title 31, United States Code, sections 1101, 1104-1108, and 3324, part of the Budget and Accounting Act of 1921, as amended (establishing requirements for the presentation of the President’s budget request);
- Title 31, United States Code, sections 1501-1502, part of section 1311 of the Supplemental Appropriations Act of 1950 (establishing requirements for recording obligations and the period of availability of time-limited appropriations; for more

information, see Chapter 5, sections 5-8 and 5-11 of this handbook);

Section 1-1 – Background

By law, the Congress sets a Federal agency's budget authority (mostly through an appropriation) and the agency must limit its obligations and expenditures within that authority and those amounts. The Antideficiency Act, 31 U.S.C. 1341, defines the general limits on an agency's obligation and expenditure authority and amounts and requires the reporting of violations of those limits, with provisions that appropriate administrative or criminal penalties be applied to agency officials responsible for the violations. The specific limits on an agency's various budgetary resources are expressed in terms of the authorized purpose, time period, and amount. The Office of Management and Budget (OMB) issues guidelines to agencies on budget formulation and execution to assist agencies in complying with the requirements of the Antideficiency Act. The processes by which an agency assures that its obligations and expenditures stay within its authorized budget limits, and otherwise complies with the Antideficiency Act, are collectively referred to as the "administrative control of funds."

Section 1-2 – Purpose

This handbook outlines the U.S. Department of Housing and Urban Development's (HUD's) policies for the administrative control of funds. The purpose of this handbook is to prescribe requirements for:

1. Distributing HUD's appropriation and other budget authority through an apportionment and allotment process that affixes personal responsibility and accountability for specific budgetary resources (Chapter 2 of this handbook);
2. Establishing and maintaining internal controls that provide reasonable assurance that HUD's obligations and expenditures are within the appropriation and other budget authority limits established by the Congress for specific budgetary resources (Chapters 3 through 6 of this handbook); and
3. Reviewing, reporting, and acting on possible and confirmed violations of the Antideficiency Act (Chapter 12 of this handbook).

Section 2-17 – Apportionment and allotment of Advances, Reimbursements, and Other Receipts

Advances of funds to the Department, reimbursements, and other anticipated receipts of funds are subject to apportionment and allotment requirements. Thus, all anticipated funds coming into the Department must be apportioned and allotted before they will be available for commitment and obligation. This includes advances, reimbursements, and other receipts that are the result of interagency agreements as well as those that may be generated from a continuing cycle of program operations. Any exceptions to this policy must be approved by the Assistant Chief Financial Officer for Budget and reflected in the funds control matrix. In certain cases, apportionments may include estimated amounts of "anticipated" budgetary resources that are the result of laws already enacted to reduce routine reapportionments of such amounts as they actually become available.

Section 12-2 – Prohibitions of the Act

The Antideficiency Act prohibits:

1. Making or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law.
4. Making obligations or expenditures in excess of an apportionment, allotment, or suballotment (if the Department chooses to suballot).

Section 12-3 – Reporting Requirements of the Act

The Antideficiency Act provides that if an officer or employee of an executive agency violates its key provisions, the head of the agency shall report immediately to the President and the Congress all relevant facts and a statement of actions taken. (31 U.S.C. § 1351) OMB Circular A-11, Section 145.7 provides the requirements and methods the Agency shall utilize when providing this report. HUD's Fiscal Year 2003 Appropriations Act provided that, notwithstanding any other provision of law, hereafter, HUD's Chief Financial Officer shall, in consultation with the Budget Officer, have sole authority to investigate potential or actual violations of the Antideficiency Act and all other statutes and regulations related to the obligation and expenditure of funds in this or any other Acts; shall determine whether violations exist; and shall submit final reports on violations to the Secretary, the President, the OMB, and the Congress [and the Comptroller General] in accordance with applicable statutes and OMB circulars.

Section 12-5 – ADA Investigative Process

2. Maintenance of Records. Appropriation Law Staff will maintain a file containing appropriate Antideficiency Act [ADA] referrals that require investigation and will include an analysis of the potential ADA violation found, if any, and actions taken to address the issue.
4. ADA Investigations. Upon notifications or referral, the Office of Chief Financial Officer's Appropriation Law Staff will lead the ADA investigation, and will also assist the Office of Chief Financial Officer and Chief Financial Officer in carrying out their responsibilities throughout the review process. Appropriation Law Staff may consult with or otherwise obtain the assistance of other offices or officials as necessary, to complete the investigation. All HUD employees and offices are required to cooperate in the investigation of potential Antideficiency Act violations.
7. Review to Determine Whether an Antideficiency Act Violation Occurred. Appropriation Law Staff will review, gather additional information, and make an assessment regarding if an Antideficiency Act occurred.
8. Assessment of No Violation. If the assessment determines that no violation occurred, Appropriation Law Staff will document in the file that an Antideficiency Act violation was alleged but not found, along with the basis for the determination. However, when opportunities for improvements in funds control and internal control processes are identified, if appropriate, recommendations will be forwarded to applicable program areas for review and approval. Once approved, the necessary control improvements shall be implemented.

9. Assessment that a Violation Occurred. If the review determines that a violation did occur, Appropriation Law Staff will prepare a draft report from the Chief Financial Officer, based on requirements of OMB Circular A-11, Section 145.7. In addition, and in consultation and coordination with the Chief Financial Officer, Appropriation Law Staff will take the following actions:
 - a. The named offices and officials viewed as responsible for the violation will be provided with an opportunity to review the draft report and provide comments that may impact the final report of the investigation.
 - b. The allotment holder, program leadership and supervisors of those viewed as responsible for the violation will recommend appropriate disciplinary actions, if any, and provide such recommendation to Appropriation Law Staff for inclusion in the report. This recommendation will be considered by the Office of Chief Financial Officer in preparing the final report. If the review determines that a violation did occur and that possible criminal activity is suspected, the Office of Chief Financial Officer will refer such activity to the OIG [Office of Inspector General] for investigation. Appropriation Law Staff will carefully proceed with the actions described above, as appropriate and in coordination with the OIG.
 - c. A copy of the draft report will be provided to the offices of the Secretary, Deputy Secretary, and General Counsel, with a courtesy copy to the affected allotment holder(s), to allow them an opportunity to review and provide comments.
 - d. The draft report will be sent to OMB for review.
 - e. After OMB review, the report will be submitted to Departmental leadership for final review.
10. Final Report. As provided in the Fiscal Year 2003 Appropriations Act, the Chief Financial Officer will submit a final report on an Antideficiency Act violation to the Secretary, the President, the OMB, and the Congress in accordance with applicable statutes and OMB circulars. On the same date, the Office of Chief Financial Officer will provide GAO, the allotment holder, the Deputy Secretary, the General Counsel, and any other appropriate officials with a copy of the final report.