ADMINISTRATIVE COMMUNICATIONS SYSTEM
U.S. DEPARTMENT OF EDUCATION

DEPARTMENTAL DIRECTIVE

Distribution:
All Department of Education Employees

Approved by: ___________/s/_________________
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Principal Deputy Assistant Secretary for Management
Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary for Management

Upward Adjustments to Obligations in Expired Expenditure/Appropriation Accounts

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Supersedes OPEPD: 1-102, Upward Adjustments to Obligations in Expired Appropriation or Fund Accounts, dated 05/05/2008.

For technical questions regarding information in this Directive, please contact Trina Lawson via e-mail or on 202-401-1055.

I. Purpose

This Directive sets forth the policies and procedures for making **upward** adjustments to obligations in **expired** expenditure/appropriation accounts ("accounts"). See definition of an expired account in Section V.J.

II. Policy

It is the policy of the U.S. Department of Education (ED) to comply with the provisions of Chapter 15, "Appropriation Accounting" of Title 31 (Money and Finance) of the United States Code. In accordance with this policy, note particularly section 1501 of the US Code which sets out the documentary evidence requirements for government obligations and the 1990 amendments to sections 1551 through 1557 on closing accounts. Additionally, except as provided in Section IV.C. of this Directive, it is the policy of ED that offices obtain Budget Service approval to make upward adjustments to obligations in expired accounts before recording such adjustments in the financial system.

III. Authorization

A. Title 31 of the United States Code, particularly Chapters 13, "*Appropriations*", and 15, "*Appropriation Accounting*." Title 31, Chapters 13 and 15, can be found at:

   1. http://www.gpo.gov/fdsys/pkg/USCODE-2011-title31/pdf/USCODE-2011-title31-subtitleII-chap13.pdf

   2. http://www.gpo.gov/fdsys/pkg/USCODE-2011-title31/pdf/USCODE-2011-title31-subtitleII-chap15.pdf

B. Office of Management and Budget (OMB) Circular A-11, "*Preparation, Submission, and Execution of the Budget.*" This circular can be found at: www.whitehouse.gov/omb/circulars/index.html.

C. U.S. Department of Education, "*Administrative Control of Funds Instructions*," issued jointly by the Budget Service and the Office of the Chief Financial Officer in compliance with OMB Circular A-11. The Instructions are accessible via connectED, OCFO Procedures that Work: http://connected3/ed/proceduresthatwork/attachments/ft02_Instructions.doc

IV. Applicability

A. Except as described under paragraph C below, this Directive applies to all **upward** adjustments to obligations made in **expired** accounts, including those associated with grant reinstatements. All ED officers, employees, organizations, and accounts are subject to the policies and procedures described in this Directive. This includes Federal Student Aid (FSA) officers, employees, organizations, and accounts, as well as those of all independent boards and commissions funded by ED appropriations. This Directive's applicability to non-ED entities for which ED provides financial management services will be determined by the particular agreements made with those entities.

B. This Directive does NOT apply to:

1. Adjustments to obligations in **unexpired** accounts (see Section V.T.); or

2. **Downward** adjustments to obligations in expired or unexpired accounts; although the availability of funds to make upward adjustments in expired accounts often depends on the timely processing of downward adjustments of obligations to their final expenditure levels.

C. Exceptions: The requirement that offices obtain approval from the Budget Service before making upward adjustments to obligations in expired accounts does not apply to the adjustments described below, as long as there is sufficient funding available in the proper funding source. If sufficient unobligated funding is not available to make the adjustment, Principal Offices (POs) should contact the Budget Service analyst for help in determining the most appropriate alternative source of funds before making upward adjustments to obligations. POs are encouraged to establish internal review and approval procedures for these adjustments:

1. Adjustments to obligations for programs that award grant funds to institutions of higher education for distribution to individual students. This includes, but is not limited to, the FSA Pell Grants, Campus-Based, Academic Competitiveness Grants, SMART Grants, and Iraq/Afghanistan Service Grants programs;

2. Adjustments to obligations for Impact Aid formula grant programs;

3. Adjustments to obligations for Government Printing Office (GPO) printing;

4. Discretionary grant transfers made in accordance with the Handbook for the Discretionary Grants Process and processed using the Grant Transfer function in ED's Grants Administration and Payments System (G5);

5. Obligation increases that are $500 or less, cumulative, per award document; and

6. Penalty interest payments required by the Prompt Payment Act (Code of Federal Regulations (CFR), Title 5, Part 1315). Penalty interest payments are calculated automatically and posted along with the late payments that trigger them. They can exceed the allotment and limitation levels,

resulting in a negative limitation balance. When this occurs, POs should work with the Budget Service analyst to resolve the negative balances, possibly through an allotment adjustment or finding another appropriate funding source, even if it means using a current year source.

D. No adjustments of obligations are to be made, requested, or approved in closed accounts (where balances have been canceled pursuant to Chapter 15 of Title 31 of the United States Code). (See definition of a closed account in Section V. F. below.) If valid payment requests are received against orders from accounts that have been closed, the amount needed to make the payments must be obligated in, and paid from, current (unexpired) accounts, using the special limitations established for this purpose. Title 31 provides that up to 1 percent (1%) of the current appropriation may be used for such payments.

E. Contact the appropriate Budget Service analyst for guidance or if you are uncertain of the applicability of an activity. The Budget Service analyst will inform the PO of the applicability of this Directive to particular situations and will obtain advice from the Office of the General Counsel (OGC), Division of Business and Administrative Law (DBAL), if necessary.

V. Definitions

A. **Account.** An account is a separate financial reporting unit established by the Department of the Treasury ("Treasury") for budget, management, and/or accounting purposes that is used to record appropriations and other budgetary resources provided by law and financial transactions affecting the account. Each account represents an authorization by law that permits a Federal agency to incur obligations and make payments out of the Treasury for specific purposes. Separate accounts are established for each annual, multi-year, and no-year appropriation, which identify the fiscal year(s) for which the amounts are available for Federal obligation. Accounts are used to record outlays and income and are comprised of monies collected and spent by the Federal Government. These accounts are commonly referred to as expenditure/appropriation accounts or Treasury Appropriation Fund Symbols (TAFS). Accounts are classified with respect to their status and the availability of their balances:

1. Closed (all balances cancelled);

2. Expired (unobligated balances available only for allowable adjustments to existing obligations); and

3. Unexpired (balances available for new obligations).

B. **Adjustments to Expired Accounts.** Adjustments to expired accounts are increases or decreases to obligations or expenditures incurred in accounts that are no longer available for incurring new Federal obligations. Adjustments include the recording of obligations or expenditures that were made before the account expired but not recorded in the financial system. Adjustments are made for the difference between the original and revised amounts of the obligation. Examples of situations that may warrant upward adjustments include:

1. Final rent costs in excess of the amount obligated on the basis of estimates;

2. Grant re-instatements following a determination that a grant was prematurely closed;

3. Increases due to an allowable cost overrun of a contract award for an upward variance in indirect cost rates;

4. Authorized travel taken but not properly recorded; and

5. Increases due to shipment costs that were not included in the original contract estimates.

C. **Annual Account.** An expenditure/appropriation account with funds that are available for obligation during only one specific fiscal year and that expires at the end of that fiscal year.

D. **Appropriation.** A provision of law authorizing Federal agencies to incur obligations and to make payments from Treasury for specified purposes.

E. **Budget Authority.** Authority provided by law to enter into financial obligations that will result in immediate or future outlays of Federal funds. The basic forms of budget authority are appropriations, borrowing authority, contract authority, and authority to obligate and expend receipts and collections.

F. **Closed Account.** An account for which the fund balances have been canceled and returned to Treasury and the account is no longer available. Unless there is statutory authority precluding cancellation, pursuant to Chapter 15 of Title 31 of the United States Code:

1. An account available for a definite period is closed five fiscal years after its availability for new Federal obligations expires. To illustrate the timing:

    a. an annual account that expires for new obligations on September 30, 2011 is closed on September 30, 2016;

b. an annual account that expires for new obligations on September 30, 2012 is closed on September 30, 2017; and

c. a multi-year account (e.g., the Student Financial Assistance account 91 1/2 0200 available for new obligations in fiscal years 2011 and 2012 (as indicated by the 1/2 in the appropriation symbol)) that expires on September 30, 2012 is closed on September 30, 2017.

2. An account available for an indefinite period (i.e., a no-year or X account) is closed if:

   a. the head of the agency concerned or the President determines that the purposes for which the appropriation was made have been carried out; and

   b. no disbursement has been made against the appropriation for two consecutive fiscal years.

3. Once accounts are closed, the balances are cancelled and returned to Treasury and are not available for obligation or expenditure for any purpose.

G. **Contracting Officer.** A federal employee delegated authority pursuant to FAR 1.6 to award, administer, and terminate contracts, purchase orders, delivery orders, task orders and modifications; obligate Government funds; and make determinations and findings, all subject to the limitations of his or her Certificate of Appointment.

H. **Current [Unexpired] Account.** See definition of Unexpired Account.

I. **Executive Officer.** Executive Officers (and equivalent PO officers) have the day-to-day general responsibility for financial management of the programs and activities in their PO. These responsibilities normally include: coordinating the financial management activities of their PO, including the appropriate distribution of information and documents; determining the availability of allotments of funds for commitments and obligations; authorizing or recording commitments and obligations in appropriate financial systems; preparing operating plans for, and monitoring the budget and financial execution of, programs and activities; accepting goods and services; and reviewing (and certifying if necessary) financial documents and reports that show the status of funds allotted to their PO. For purposes of this Directive, references to the Executive Officer include other equivalent PO officers.

J. **Expired Account.** An account in which the fund balances are no longer available for incurring new Federal obligations because the time period for which the funds were available for incurring new obligations has ended.

Unless extended by statutory authority, expired accounts are maintained by fiscal year identity for only five years after their period of availability for new Federal obligations ends. During this period, the fund balance is available for legitimate adjustments to obligations properly chargeable to the expired accounts, recording obligations made but not properly recorded, and liquidating unpaid obligations.

K. **Fund [Code]**. For purposes of this Directive, the fund [code] represents the "fund" as commonly referred to in the Department's Financial Management System and is comprised of a nine character code that represents the account, period of availability, and funding fiscal year (e.g., 0800A2013).

L. **Liquidate [obligations].** For purposes of this Directive, to liquidate [obligations] means to make payments pursuant to obligations incurred.

M. **Multi-year Account**. An account with appropriated funds available for obligation for a specified period of time in excess of one fiscal year and that expires at the end of that specified period of time.

N. **No-year Account.** An account with appropriated funds that remains available for obligation for an indefinite period of time. The account does not expire.

O. **Obligated Balance/Unliquidated Obligation.** The amount of obligations incurred for which payment has not yet been made (i.e., total obligations in the account, less the paid obligations).

P. **Obligation.** Orders placed, grants or contracts awarded, goods or services received, and similar transactions that will require payments during the same or a future period. Obligations incurred also include outlays for which obligations have not previously been recorded and, for purposes of this Directive, adjustments to obligations. See Appendix A for a complete definition and the criteria for recording an obligation. Adjustments to obligations must meet the same criteria.

Note: A legal obligation may be incurred whether or not it is recorded in ED's financial systems. On the other hand, recording a transaction does not always mean that an obligation has been incurred.

Q. **Obligation Adjustments.** For purposes of this Directive, obligation adjustments have the same meaning as adjustments to expired accounts (see Section V.B.). This Directive does not cover obligation adjustments to unexpired accounts.

R. **Outlay**. In budgetary terms, the amount that is actually paid or disbursed (by cash, check, or electronic transfer of funds) to liquidate an obligation. Expenditure transfers to other Federal Government agencies and credit card payments are also outlays. Outlays are a measure of government spending.

S. **Principal Office (PO).** A major organizational unit of ED (usually headed by an Assistant Secretary or Assistant Deputy Secretary) that is responsible for administering certain activities and/or programs. For purposes of this Directive, the term includes FSA and independent boards and commissions that are funded by ED appropriations.

T. **Unexpired Account.** An account that is available for incurring new Federal obligations. This includes no-year accounts and unexpired annual and multi-year accounts.

U. **Unobligated Balances.** The portion of budget authority in an account that has not been obligated. Unobligated balances in expired accounts are not available for incurring new obligations and may only be used for legitimate adjustments to obligations properly chargeable to the expired accounts and recording obligations made but not properly recorded.

V. **Unrecorded Obligations.** Transactions that meet the criteria for valid obligations (see Appendix A) but have not been officially recorded in ED's financial system.

NOTE: See ED's Administrative Control of Funds Instructions for additional definitions that may be helpful in understanding the requirements of this Directive. (See Section III.C. above)

VI. Responsibilities

A. **The Principal Office Staff**:

1. Determines whether there is a valid need for an upward adjustment to an existing obligation in an expired account. When uncertain of valid adjustments, contacts OGC/DBAL or the Budget Service for help in making a determination;

2. Determines whether there are funds available that can properly be used for the upward adjustment. Contacts Budget Service for assistance in identifying available funding;

3. Prepares the request for use of expired funds package, including the BS-020 Form, documentation validating the prior year obligation, and a Status of Funds Report showing an available unobligated balance, and submits the request to the PO's Executive Officer; and

4. Records the obligation adjustment after Budget Service approval if delegated the authority to record obligations for the PO.

B. **The Executive Officer**:

1. Reviews the request for use of expired funds and verifies the need for an upward adjustment and the availability of the expired funds;

2. Signs and submits the request to the Budget Service; and

3. After receiving Budget Service approval, ensures that the obligation adjustment is recorded in the appropriate financial system (e.g., G5 or CPSS) following established PO and ED obligation procedures.

C. **Budget Service**:

1. Analysts review requests to use expired funds and assist in identifying valid adjustments and funds available for adjustments; and

2. Budget Execution Analysis Branch (BEAB) Chief approves or disapproves the use of expired funds based on the documentary evidence provided.

D. **Contracting Officer:** assists the PO staff as necessary when the obligations for a contract or a purchase order need to be adjusted.

E. **The Office of the Chief Financial Officer (OCFO):** Issues manuals, procedures, and guidelines for the processing of obligations in ED financial systems using funds in expired accounts.

F. **The Office of the General Counsel (OGC), Division of Business and Administrative Law (DBAL):** Provides a legal determination of the validity of using funds in expired accounts to make obligation adjustments.

VII. Procedures and Requirements

A. Principal Office staff determines when an upward adjustment to an existing obligation in an expired account is needed. This determination may be based on the office's routine account reviews or requests from, or information provided by, OCFO or Budget Service.

1. Consult OGC/DBAL or the Budget Service analyst if there is a question of whether the upward adjustment meets the legal criteria for valid prior year obligation adjustments.

2. If appropriate unobligated funding cannot be identified, consult the Budget Service policy analyst for help in determining the availability of alternative sources of funds in expired or current accounts. In most instances, funds must be available within the same fiscal year(s) covered by the account in which the original obligation was made. In some cases, the Budget Service can deallot unneeded unobligated funds from one office and

reallot them to another office, thus making them available to the office that needs them for an upward adjustment.

3. After confirming that the adjustment is valid and funding is available, the PO staff prepares the necessary documentation which, to the extent possible, should include:

   a. BS-020 Form (Request for Use of Expired Funds). The form is accessible on the MAX Community website: https://max.omb.gov/community/display/ED/Budget+Execution+Forms;

   b. copies of existing materials that indicate an obligation was incurred (e.g., travel authorizations, purchase orders (OF-347);

   c. for grant re-instatements, copies of the original grant award notification, any amendments to the original award, and the grantee's written request or justification;

   d. an up-to-date printout of a Status of Funds report (see Appendix B) showing that an available unobligated balance exists to make the upward adjustment; and

   e. a copy of any written advice provided by OGC/DBAL.

4. Submits the request for use of expired funds to the Executive Officer.

B. The Executive Officer verifies that an upward obligation adjustment is needed, it is legally chargeable to the requested account, and unobligated funds are available for the program or activity in that account. The Executive Officer signs the request and submits it to the Budget Service (LBJ, Room 5W251).

C. The Budget Service analyst(s)

1. Verifies that the upward adjustment is valid and legally chargeable to the account and program or activity indicated;

2. Verifies that unobligated funds are available within the OMB-apportioned level for the program or activity in the account to be charged; issues any allotment changes needed; and

3. Initials and forwards the request to the BEAB Chief.

D. The BEAB Chief reviews the request, including the material documenting the existence of a valid obligation and available funds, and either:

1. Approves the request and returns the documents to the Executive Officer for completion of the steps required to obligate the funds; or

2. Disapproves the request and returns the documents to the Executive Officer, suggesting alternative methods of funding the obligation adjustment, such as the use of funds from a current account.

E. If the request for the use of funds in an expired account is approved, the Executive Officer follows established PO and ED procedures to ensure the obligation of the funds in the appropriate financial system.

Appendix A

Documentary Evidence Requirement for Government Obligations

1. An amount shall be recorded as an obligation of the United States Government only when supported by documentary evidence of--

    a. A binding agreement between an agency and another person (including an agency) that is:

        1) In writing, in a way and form, and for a purpose authorized by law; and

        2) Executed before the end of the period of availability for obligation of the appropriation or fund used for specific goods to be delivered, real property to be bought or leased, or work or service to be provided;

    b. A loan agreement showing the amount and terms of repayment;

    c. An order required by law to be placed with an agency;

    d. An order issued under a law authorizing purchases without advertising--

        1) When necessary because of a public exigency;

        2) For perishable subsistence supplies; or

        3) Within specific monetary limits;

    e. A grant or subsidy payable--

        1) from appropriations made for payment of, or contributions to, amounts required to be paid in specific amounts fixed by law or under formulas prescribed by law;

        2) under agreement authorized by law; or

        3) under plans approved consistent with and authorized by law;

    f. A liability that may result from pending litigation;

    g. Employment or services of persons or expenses of travel under law;

    h. Services provided by public utilities; or

    i. Other legal liability of the Government against an available appropriation or fund.

2. A statement of obligations provided to Congress or a committee of Congress by an agency shall include only those amounts that are obligations consistent with subsection (a) of this section (31 U.S.C. 1501)

Appendix B

(Sample) Summary Status of Funds Report

U.S. Department of Education
Summary Status of Funds Report

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Fund: 0900M2006 Period From: Organization: ESYR0000 Report Type: Summary
Bfy: 2007 Period To:

FUND	FCL	ORG	LIM	ACT	Allot / Sub-Allot	Calc Budget Amt	Commitment	Obligation Unpaid	Obligation Paid	Available Balance
0900M2006	0	ES	P30		300,000.00	300,000.00	0.00	0.00	299,999.49	0.51
			P31		1,537,631,170.00	1,537,631,170.00	0.00	0.00	1,537,631,170.00	0.00
			P32		11,714,167.00	11,714,167.00	0.00	11,714,167.00	0.00	0.00
			P34		2,247,144,570.00	2,247,144,570.00	0.00	106,531,381.67	2,140,613,188.33	0.00
			P35		881,166.00	881,166.00	0.00	0.00	881,166.00	0.00
			P36		3,567,913.00	3,567,913.00	0.00	3,567,913.00	0.00	0.00
			P37		250,000.00	250,000.00	0.00	250,000.00	0.00	0.00
			P40		1,351,380,690.00	1,351,380,690.00	0.00	181,152,986.62	1,170,227,703.38	0.00
			P41		2,247,144,570.00	2,247,144,570.00	0.00	1,077,432,968.03	1,169,711,601.97	0.00
			P44		1,485,000.00	1,485,000.00	0.00	1,377,487.27	107,512.73	0.00
			P47		2,492,126.00	2,492,126.00	0.00	2,386,431.25	105,694.75	0.00
			P48		1,500.00	1,500.00	0.00	0.00	1,500.00	0.00
			P53		1,220,000.00	1,220,000.00	0.00	1,206,492.21	13,050.70	457.09
			P54		2,557,377.00	2,557,377.00	0.00	2,330,114.96	227,262.04	0.00
			P56		169,748.00	169,748.00	0.00	169,748.00	0.00	0.00
			P60		11,228,224.00	11,228,224.00	0.00	11,052,162.00	176,061.72	0.28
			P63		702,785.00	702,785.00	0.00	699,361.00	3,424.00	0.00
			P68		6,547,790.00	6,547,790.00	0.00	5,324,688.70	1,223,221.75	(120.45)
			P80		39,558,429.21	39,558,429.21	0.00	37,127,301.00	2,431,128.00	0.21
			P82		1,463,146.00	1,463,146.00	0.00	1,463,146.00	0.00	0.00
			P84		3,573,400.00	3,573,400.00	0.00	3,573,400.00	0.00	0.00
			P85		13,429,731.00	13,429,731.00	0.00	12,977,570.40	185,301.17	266,859.43
			P90		22,446,906.81	22,446,906.81	0.00	19,932,043.04	2,514,862.96	0.81
				TotORG	7,506,890,409.02	7,506,890,409.02	0.00	1,480,269,362.15	6,026,353,848.99	267,197.88
				TotFNI	7,506,890,409.02	7,506,890,409.02	0.00	1,480,269,362.15	6,026,353,848.99	267,197.88