DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

27 February 1997

CERM-B

MEMORANDUM FOR Commanders and Directors, All USACE Commands

SUBJECT: Availability of Family Housing Operation and Maintenance Appropriations

1. References:

a. Memorandum CERM-B, 23 October 1996, subject: Carryover S&A.

b. Memorandum CERM-B, 5 December 1996, subject: Carryover S&A.

2. Questions have arisen whether the "carryover S&A legislation" (see above references) can be applied to projects funded by family housing operation and maintenance (FHOM) appropriations. The direct answer is "no" because these appropriations are not included in Public Law 104-208.

3. Family housing funds, for both construction and operation and maintenance, are usually appropriated by military construction appropriations acts, Public Law 104-196 being the case for FY 1997. Commanders, however, are directed to Section 116 of that act. This provision, essentially replicated each year in the MILCON appropriation acts, states: "For military construction or family housing projects that are being completed with funds otherwise expired or lapsed for obligation, expired or lapsed funds may be used to pay the cost of associated supervision, inspection, overhead, engineering and design on those projects and on subsequent claims, if any."

4. Therefore, even though the referenced carryover S&A provisions do not apply to FHOM funds, by using Section 116 (or its equivalent in another MILCON appropriations act) you can achieve funding assurance at the start of a new fiscal year for S&A (sic) on FHOM projects awarded in years prior. The only difference would be the timing of the obligations for S&A and other in-house costs.

5. Under the procedures established by references 1a and 1b above, you must obligate all S&A and other in-house costs on projects at the point of award of the contract(s). For FHOM management, however, different procedures must be followed because these funds are subject to different legal constraints. Here you may only obligate FHOM in the amounts properly incurred during the fiscal year for which the FHOM funds were made available, e.g. contract, monthly labor. The unobligated FHOM balances, however, remain available for recording of the following years' obligations for S&A and other in-house efforts to complete FHOM projects for the purposes enumerated in Section 116.

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6. Moreover, expired funds are also available for costs associated with in-scope modifications and other adjustments to pre-existing obligations. [Accounting procedures for obligating USACE contingencies reflect this. See DFAS-IN 37-1, paragraph 9-6.]

7. Procedures established for orders placed under the Economy Act (31 USC 1535) require ordering agencies (our customers) to deobligate those amounts of the orders to the extent that the performing agencies (ourselves) have not incurred obligations before the end of the period of the availability of appropriations cited on the order. Given that you will require funds in the succeeding fiscal year to pay for the enumerated purposes cited in Section 116 to complete the FHOM project, and given that you may also require prior-year contingency funds in the succeeding year, you and the ordering customer may agree to retain a sufficient amount of unobligated funds in the order to cover these estimated obligations to be incurred in the new year. Thus, this procedure can eliminate the burden of writing down and writing up orders at fiscal year end. This memorandum, therefore, is your authority to return only that portion of the unobligated balance by fiscal year end that represents unneeded FHOM funding authority in the new fiscal year.

8. It is emphasized that this instruction only applies to FHOM appropriations and when Section 116 conditions exist. Further, you and your customer must agree on the estimated balance to be carried forward.

9. POC here is Dale G. Ringer, 202-761-0658.

FOR THE COMMANDER:

OTIS WILLIAMS
Colonel, Corps of Engineers
Chief of Staff