



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Department of the Treasury Request for
Opinion on Account Closing Provisions of the
Fiscal Year 1991 National Defense
Authorization Act

File: B-251287

Date: September 29, 1993

DIGEST

1. Under the fiscal year 1991 National Defense Authorization Act, canceled merged appropriation account balances may not be restored. 31 U.S.C. § 1551 note. However, if the Department of the Treasury is presented with convincing evidence that a reporting error has occurred as a result of an obvious clerical mistake, it may restore such balances to correct the mistake. We recommend that Treasury establish reasonable time limits within which agencies must submit requests for correction of errors.

2. Under the fiscal year 1991 National Defense Authorization Act, canceled appropriation account balances are not available for obligation or expenditure for any purpose. 31 U.S.C. §§ 1552(a), 1555. The Department of the Treasury, however, may record a disbursement made before cancellation as a payment. Recording the disbursement is neither a new obligation of, nor an expenditure from, a canceled account, but is merely an accounting entry to reflect the liquidation of an obligation before cancellation.

DECISION

The Department of the Treasury (Treasury) requests our opinion on questions raised by the Department of Defense (DOD) regarding the account closing provisions of section 1405(b) of the fiscal year 1991 National Defense Authorization Act (Act), Pub. L. No. 101-510, 104 Stat. 1675 (1990), codified at 31 U.S.C. § 1551 note. Treasury asks two specific questions. First, Treasury asks whether it may restore either unobligated or obligated appropriation account balances that were canceled due to reporting errors or clerical mistakes. We conclude that Treasury may do so.

Second, Treasury asks whether it may record as a payment from a canceled account a disbursement made prior to cancellation of the account. Treasury may do so. Since the

liquidation of the obligation eliminates the budget authority, leaving nothing to be canceled, recording the disbursement is neither a new obligation of, nor an expenditure from, a closed account. It is merely an accounting entry to reflect the liquidation of an obligation validly incurred and liquidated prior to cancellation.

BACKGROUND

Treasury's questions arise from two different situations. In the first situation, the Department of the Army (Army) submitted to Treasury a year-end statement (S.F. 2108) for fiscal year 1991, certifying its balances to be withdrawn and canceled. The Army advises that it mistakenly included approximately \$130 million in valid, unliquidated obligations in its listing of unobligated merged surplus authority balances that were canceled under section 1405(b)(3) of the Act. This mistake involves Army procurement appropriations for fiscal years 1983, 1984, 1985, and 1986. The Army has asked the Treasury to restore the \$130 million to its "M" account.

The second situation involves delays in year-end reporting with respect to "cross-disbursing" transactions, that is, transactions where one DOD component makes payments for another. Many DOD disbursing officers make payments on obligations of other DOD components as well as of their own component. Inherent in this practice is a time delay between the date of payment and the date on which the activity holding the obligation receives notification of payment. The time delay is exacerbated when the disbursing activity makes an accounting error, for example, by charging the payment to the wrong appropriation account.¹ These cross-disbursing payment issues take on added significance when payments are associated with "M" or expired account balances nearing cancellation dates.

DOD and Treasury note that if the disbursing activity fails to notify the activity holding the obligation in due course, the budget authority supporting the paid obligation may be canceled by operation of law, 31 U.S.C. §§ 1551 note,

¹We have reported that the Navy's Standard Accounting and Reporting System which annually accounts for nearly \$57 billion, or 57 percent, of the Navy's overall budget, contained \$12.3 billion in unmatched disbursements as of February 19, 1992. In that report, we stated that unmatched disbursements were largely caused by lax compliance with existing guidance, procedural requirements, and internal controls. GAO Report to the Acting Secretary of the Navy, "FINANCIAL MANAGEMENT - Navy Records Contain Billions in Unmatched Disbursements," GAO/AFMD-93-21 (June 1993).

1552(a), leaving only current appropriations available to cover obligations and adjustments to obligations of canceled appropriation accounts. 31 U.S.C. §§ 1551 note, 1553.

Under prior law, obligated balances of an appropriation account, 2 years after expiration of the account for purposes of obligation, were merged with the obligations of like appropriation accounts from prior fiscal years into what came to be called merged or "M" accounts. 31 U.S.C. § 1552 (1988), amended by section 1405(a) of National Defense Authorization Act for 1991, Pub. L. No. 101-510, 104 Stat. 1675. Similarly, the unobligated balances of expired accounts were combined with the unobligated balances of like accounts for prior fiscal years in merged surplus authority accounts. Id. To the extent an agency needed additional authority to cover adjustments to obligations or previously unrecorded obligations in the "M" accounts, the agency could restore unobligated amounts from the merged surplus authority accounts to the "M" accounts. Id. The merged accounts were available to adjust obligations without fiscal year limitations.

In 1990, Congress determined that the controls over the use of appropriations were not effective and that DOD, in particular, was expending funds from these accounts without sufficient assurance that authority for such expenditures existed or in ways that the Congress did not intend.² To correct these defects, Congress enacted the account closing provisions in the fiscal year 1991 National Defense Authorization Act.³

The Act eliminates merged accounts and extends an expired appropriation account's fiscal year identity to 5 years, after which time the account closes. 31 U.S.C. §§ 1551 note, 1552(a). Section 1405(b)(3) of the Act canceled merged surplus authority accounts on December 5, 1990. Section 1405(b)(6) of the Act canceled, on March 6, 1991, merged obligated balances of budget authority that had been in "M" accounts more than 5 years. Under section 1405(b)(4), any remaining "M" account balances are to be canceled by September 30, 1993.

²GAO Report to Congressional Committees, "FINANCIAL MANAGEMENT - Agencies' Actions to Eliminate "M" Accounts and Merged Surplus Authority," GAO/AFMD-93-7 (April 1993).

³H.R. Rep. No. 665, 101st Cong., 2d Sess. 2962-63 (1990).

DISCUSSION

As a general rule, Treasury may not restore balances canceled under sections 1405(b)(3), 1405(b)(4), and 1405(b)(6). This proposition flows naturally from Congress's decision to "cancel," that is, to nullify or invalidate, the unobligated balances in the merged surplus authority (section 1405(b)(3)) and the obligated balances in the "M" accounts (sections 1405(b)(4) and (6)). Although the operative language of section 1405(b)(6), entitled "Cancellation of oldest obligated balances," does not use the verb "cancel" to achieve the stated result, it achieves the same result by specifying that "[a]mounts so deobligated and withdrawn may not be restored." Thus, the restoration of canceled unobligated balances would be inconsistent with the Act.

This does not mean that Treasury cannot restore amounts so as to correct obvious reporting and clerical errors. We have long held, for example, that Treasury may transfer from the general fund to the correct appropriation account amounts improperly deposited into the general fund. See, e.g., 45 Comp. Gen. 724, 730 (1966); 3 Comp. Gen. 762 (1924); 2 Comp. Gen. 599, 601 (1923); 12 Comp. Dec. 733, 735-36 (1906). The Comptroller of the Treasury explained the rationale underlying this principle: "Taking [the improperly deposited amount] from the Treasury and placing it to the credit in the Treasury of the appropriation to which it belongs violates neither the Constitution nor any other law, but simply corrects an error by which it was placed to the unappropriated surplus instead of to the appropriation to which it belongs." 12 Comp. Dec. at 735. We think the same principle applies here.

In this sense, the Treasury adjustment of the accounting records does no more than place the funds back into the account where they otherwise belong. As the Supreme Court observed in a related situation, it "would be unrealistic . . . to require congressional authorization before a data processor who misplaces a decimal can 'undo' an inaccurate transfer of Treasury funds." Republic National Bank of Miami v. United States, ___ U.S. ___, 113 S. Ct. 554, 561 (1992).

We wish to emphasize, however, that Treasury's authority to correct the accounts relates only to obvious clerical errors such as misplaced decimals, transposed digits, or transcribing errors that result in inadvertent cancellations of budget authority, and is not meant to serve as a palliative for deficiencies in DOD's accounting systems. The current record does not provide any indication of the type of mistake at issue here. Only if the Army is able to provide Treasury with convincing evidence that the mistake

here falls within the coverage of the above decisions may Treasury adjust Army's accounting records to restore budget authority needed to correct the mistake. One of the very reasons for the new account closing procedures was the inadequacy of DOD's past accounting of "M" account obligations. See, e.g., H.R. Rep. No. 665, 101st Cong., 2d Sess, 2962 ("not all claims against the M accounts are valid"). We have recently reported on a number of accounting problems in the Army and Air Force which indicate that DOD's accounting for current appropriations is also inadequate. For example, in a report examining the Army's financial statement for fiscal years 1992 and 1991, we were unable to express an opinion on the reliability of the financial statements for those fiscal years because of the Army's accounting systems inadequacies and failure to adhere to DOD and Army financial policies.⁴ In another report, we found that five Air Force Air Logistics Centers had inaccurate account balances totalling \$512 million due to, among other things, paying a contractor too much, charging the wrong appropriation account, or processing information on obligation, payment, or collection transactions inaccurately or incompletely.⁵

In our view, the type of clerical errors that Treasury can correct should typically manifest themselves soon after an account is closed. The passage of time only magnifies the difficulty inherent in reconstructing the facts needed to establish the error. Therefore, we recommend that Treasury establish reasonable time limits within which agencies must submit requests for correction of reporting errors resulting from obvious clerical mistakes.⁶

Turning to the second question, Treasury may adjust canceled appropriation account balances to record disbursements made before cancellation of expired accounts. The restriction in section 1552(a) of title 31, United States Code, codifying section 1405(a)(1) of the Act, does not apply because recording the disbursement results in neither a new

⁴GAO Report to the Congress, "FINANCIAL AUDIT - Examination of the Army's Financial Statements for Fiscal Years 1992 and 1991," GAO/AIMD-93-1 (June 1993).

⁵GAG Report to the Chairman, Subcommittee on Defense, Committee on Appropriations, House of Representatives, "FINANCIAL MANAGEMENT - Air Force Records Contain \$512 Million in Negative Unliquidated Obligations," GAO/AFMD-89-78 (June 1989).

⁶Pursuant to section 4230.60 of the Treasury Financial Manual (TFM), Treasury requires the submission of year-end closing reports by deadlines specified in TFM Bulletins.

obligation of, nor an expenditure from, the canceled appropriation account. The liquidation of the obligation eliminates the underlying budget authority, leaving nothing to be canceled. It completes the transaction and discharges the government's liability. The recording of the disbursement made prior to cancellation of the expired account is simply an accounting entry to reflect the completion of the transaction before cancellation of the expired account. We see no reason why DOD and Treasury should not record these disbursements for canceled "M" account or expired account balances.⁷

Accordingly, if DOD is able to establish to the satisfaction of the Treasury that a validly recorded obligation in a canceled appropriation account was liquidated before cancellation, then Treasury may adjust the canceled appropriation account balance to reflect the disbursement. If a disbursement that was made before cancellation of an appropriation account cannot be matched with a recorded obligation of a canceled account, but DOD can establish to the satisfaction of Treasury that the disbursement represents payment of a valid unrecorded obligation otherwise properly chargeable against the canceled appropriation account, then Treasury may adjust the canceled account balance to reflect the disbursement. Of course, if there is insufficient budget authority available in the canceled account to cover the disbursement, DOD should determine whether there was a reportable violation of the Antideficiency Act, 31 U.S.C. § 1341.

⁷The alternative of using current appropriations, provided by sections 1405(a)(1) and 1405(b)(7) of the Act, 31 U.S.C. §§ 1551 note, 1553(b)(1), would not be appropriate here because under those sections current appropriations are only available for obligations and adjustments to obligations that would have been chargeable to canceled balances. Obligations that were liquidated by disbursements made prior to cancellation are no longer obligations of the canceled account. The use of current appropriations to liquidate paid obligations would result in a double charge to budget authority.

We recommend that if the Secretary of Defense cannot match disbursements with obligations of canceled appropriation accounts within time limits established by Treasury,⁶ the Secretary determine the reason for DOD's inability to do so, and take appropriate action to correct the problem.

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⁶With available technology, DOD should have no difficulty reconciling its year-end expenditures with obligations in time for inclusion in year-end closing reports required by Treasury.