



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Adjustment of Expired and Closed Accounts

**File:** B-253623

**Date:** September 28, 1994

### DIGEST

1. The United States Arms Control and Disarmament Agency may not avoid adjusting an appropriation account and reporting any resulting Antideficiency Act violation on the basis that (1) the account has expired, (2) adjusting the account will result in overobligations, or (3) the overobligations were unintentional.
2. Under the circumstances presented, GAO will not object should the United States Arms Control and Disarmament Agency (ACDA) reasonably determine not to adjust the accounting records for a closed "M" account comprised of salary and expense funds. To the extent that Antideficiency Act violations may have occurred in years covered by the closed account, ACDA should so report.
3. The authority to initiate disciplinary actions for Antideficiency Act violations is vested in the agency and is not within GAO's jurisdiction under 31 U.S.C. § 3528(b).

### DECISION

The General Counsel, United States Arms Control and Disarmament Agency (ACDA), asks whether ACDA must adjust its accounts for fiscal years 1990 and earlier to charge certain personnel expenses to representation funds, when such adjustments will disclose unintentional violations of the Antideficiency Act. For the reasons discussed below, we conclude that ACDA must adjust expired accounts for fiscal years 1989 and 1990 and report the applicable Antideficiency Act violations. ACDA need not adjust the accounting records for its closed "M" accounts for fiscal years prior to 1989. ACDA should nevertheless disclose the likelihood that Antideficiency Act violations occurred before fiscal year 1989 in its Antideficiency Act report on violations for fiscal years 1989 and 1990.

ACDA also asks us to exempt it from disciplining any responsible employees pursuant to 31 U.S.C. § 3528(b) (1983). The authority to initiate disciplinary actions for Antideficiency Act violations is vested in the agency and is not a matter within the jurisdiction of this Office under 31 U.S.C. § 3528(b).

## Background

ACDA receives an annual appropriation for necessary expenses "[f]or arms control and disarmament activities." See, e.g., Pub. L. No. 102-395, 106 Stat. 1869 (1992). Beginning with fiscal year 1976, this appropriation has authorized an amount for official reception and representation (R&R) expenses.

The Department of State, Office of Inspector General (IG), conducted an audit of ACDA operations in Geneva, Switzerland, where ACDA conducts a number of arms control negotiations. ACDA employs in Geneva a number of Foreign Service nationals as maids and drivers, who on occasion are paid overtime to serve as waiters, waitresses, bartenders, and cooks during R&R events. In reviewing accounting records during the audit, the IG found that ACDA charged overtime for R&R functions to salary and expense funds, causing the cost of R&R functions to be understated.

The IG found that ACDA did not, but should have, charged the cost of employee overtime that occurred solely for R&R events to R&R funds.<sup>1</sup> Accordingly, the IG recommended that ACDA adjust its fiscal year 1990 records by deobligating an estimated \$35,000 in overtime charged to salary and expense funds and obligating it against R&R funds and that ACDA report a violation of the Antideficiency Act if the limit on R&R expenses contained in its fiscal year 1990 appropriation was exceeded.

The General Counsel states that the long-standing ACDA policy was to charge overtime paid to the maids and drivers for R&R functions to salary and expense funds, rather than to R&R funds. ACDA suspended this policy on April 30, 1991, and revised it on June 14, 1991, following review of a draft of the IG's report. In this regard, ACDA has directed its administrative staff to charge labor costs for future R&R functions to R&R funds.

ACDA does not take issue with the IG's substantive conclusion. Rather, ACDA questions whether it must adjust accounts for fiscal years prior to fiscal year 1991 (the first year that ACDA could timely correct the problem identified in the IG report). Such adjustments to salary and expense funds and R&R funds would disclose an overobligation of R&R funds for fiscal year 1990 (and presumably prior years) and a reportable violation under the Antideficiency Act.<sup>2</sup> ACDA asserts that it based its actions in prior years on well-established agency policy and any overobligation of R&R funds provided in its annual

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<sup>1</sup>Inspector General Department of State, Overseas Resource Management, Rep. No. ACDA-2-FM-001, December 1991.

<sup>2</sup>The Antideficiency Act precludes an officer or employee of the government from making or authorizing an expenditure or obligation in excess of the amount available in an appropriation or fund. 31 U.S.C. § 1341(a)(1)(A). The head of an agency must report all relevant facts and actions taken to the President and the Congress. 31 U.S.C. § 1351.

appropriations acts was purely unintentional. Further, ACDA, by letter dated June 3, 1991, asked the House Appropriations Committee to increase the appropriation limitation on official R&R expenses beginning in fiscal year 1992, explaining that its request resulted from its compliance with the IG's recommendation regarding labor cost allocations. The Congress acted favorably on ACDA's request.

As noted above, ACDA does not dispute the substantive proposition underlying the IG's conclusion and recommendation.<sup>3</sup> The IG's Report relied on the applicable State Department Standardized Regulations that provide that allowable items of expenditure from representation allowances included expenditures for "hiring extra waiters, busboys or other temporary help to serve at official functions" (§ 320f (TL-SR-396, November 10, 1985)).<sup>4</sup>

In our opinion, ACDA has not provided a sufficient basis to support only a prospective implementation of the accounting change necessary to properly charge the accounts in question, *i.e.*, to adjust its accounts only from the time it agreed to change its practice in response to the IG's report. As the IG report concludes, ACDA's practice was inconsistent with the requirements of the Standardized Regulations,<sup>5</sup> and this is not a case where ACDA was following an existing State Department practice. Neither the submission nor our informal inquiry of the State Department OIG supports a conclusion that the State Department in similar circumstances was allocating overtime which was paid maids or drivers when working as waiters, waitresses, bartenders, or cooks during R&R functions, to the "Administration of Foreign Affairs-Salaries and Expenses" (AFA-S&E) appropriations rather than to "Administration of Foreign Affairs-Representation

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<sup>3</sup>See 64 Comp. Gen. 138 (1964), where we held that the State Department's "Administration of Foreign Affairs - Representation Allowances" appropriation (and not State's "Administration of Foreign Affairs - Salaries and Expenses" (AFA-S&E) appropriation) should cover the costs of hiring extra waiters and busboys to serve at representational functions. In addition, we determined that under State's Standardized Regulations, funds administratively allotted for official residence expenses from the AFA-S&E appropriation were not available for such purpose. Standardized Regulations § 454a (TL:SR-374 March 4, 1984).

<sup>4</sup>State subsequently amended section 454a of the Standardized Regulations to prohibit the use of official residence expense funds for "expenditures which are properly borne by representation allowance funds (such as extra waiters for official functions or other allowable items under Section 320)" (TL:SR-465 February 24, 1991)).

<sup>5</sup>ACDA has not presented a reasonable basis for distinguishing between payments to extra waiters, busboys, or other temporary help hired to furnish meals at a representation function which are required to be charged to representation funds under the Standardized Regulations, and overtime payments to employees providing the same services. For purposes of this decision, given ACDA's concession with respect to this point, we need not consider it further.

Allowances" appropriations. State's OIG has advised us that "principal representatives" designated by the Secretary of State may defray unusual expenses incident to the operation of the official residence from official residence expense funds (administratively allotted from the AFA-S&E appropriation), including the wages of household servants who may furnish services at representation functions hosted by the "principal representative." However, ACDA's Geneva Mission employees were not designated "principal representatives" authorized to use official residence expense funds. Thus, the issue is whether or to what extent ACDA must adjust expired and closed "M" accounts.<sup>6</sup>

#### Account Closing Law

The 1990 amendments to the account closing law make clear that current accounts and expired accounts are subject to the same legal requirements and should be given the same agency oversight. 71 Comp. Gen. 502, 506 (1992) (quoting H.R. Rep. No. 101-898, 7-8 (1990)). Under the former account closing law, Antideficiency Act violations could be avoided altogether by delaying recognition of the overobligation until the obligation had reached the "M" accounts where it could be obligated against the merged surplus authority. 71 Comp. Gen. at 510.<sup>7</sup>

Section 1405(a) of Pub. L. No. 101-510, 104 Stat. 1675 (1990), 31 U.S.C. §§ 1551-1558 (Supp. IV 1992), revised the procedure for closing accounts that had not closed prior to Nov. 5, 1990.<sup>8</sup> Under the revised procedure, an appropriation account available for obligation for a fixed period of time (e.g., 1 fiscal year) is closed 5 years after the expiration of availability for incurring new obligations and any remaining balance in the account (whether obligated or unobligated) is canceled. 31 U.S.C. § 1552(a) (Supp. IV

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<sup>6</sup>The question presented does not raise the issue of whether the agency should adjust an expired account based on a retroactive application of a law enacted, or regulation adopted, subsequent to the initial otherwise proper recordation of an obligation. Nor does it involve the question of whether an opinion of this Office establishing a new position or departing from established precedent should be retroactively applied.

<sup>7</sup>Prior to the 1990 amendments, appropriation accounts were closed 2 years after their period of availability for incurring new obligations expired. Obligated balances were transferred to what was commonly referred to as "M" accounts, which were merged balances of previously transferred obligated balances of closed accounts available for the same purpose. "M" accounts were not subject to fiscal year limitations on amounts available for obligation. Unobligated balances of closed accounts available for the same purpose (commonly referred to as the merged surplus authority) were available for restoration to adjust "M" account obligations. 31 U.S.C. §§ 1552, 1554 (1988).

<sup>8</sup>Under section 1405(b)(1) of the 1990 amendments, 31 U.S.C. § 1551 note (Supp. III 1991), section 1405(a) applies to fiscal year appropriations expiring September 30, 1989, and thereafter.

1992). Finally, 31 U.S.C. § 1553(b) (Supp. IV 1992) authorizes payment of valid obligations properly chargeable to closed accounts from current appropriations subject to certain limitations.

During the 5 years between account expiration and closing, the account retains its fiscal year identity and is available for recording, adjusting, and liquidating obligations properly chargeable to that account. 31 U.S.C. § 1553(a) (Supp. IV 1992). In addition, 31 U.S.C. § 1554(a) (Supp. IV 1992) provides that any audit requirement, limitation on obligations, or reporting requirement that is applicable to an appropriation account shall remain applicable to that account during the 5-year expired period.

The 1990 amendments revitalized the application of a number of laws, including the Antideficiency Act, to the expired accounts. Thus, agencies are required to record obligations previously incurred that were not properly recorded in the expired account when the obligation was incurred and to adjust amounts obligated in expired accounts to reflect the amount properly chargeable to the accounts. 71 Comp. Gen. at 505-507. The agencies must report an overobligation of an expired account resulting from such adjustments to the President and Congress and when necessary request additional funding to cover the overobligation or obtain authority to charge the overobligation to the agency's current appropriation. *Id.*

#### Adjustment of Accounting Records for Closed Accounts

An account maintained by the Treasury ceases to exist once it is closed under the 1990 amendments.<sup>9</sup> Therefore, any needed adjustments are not to the amount of obligations recorded against an appropriation account, but rather to the agency's accounting records that relate to the closed account. These records are used to determine the propriety of paying from current appropriations obligations that would have been properly chargeable to the closed account both as to purpose and amount. See 31 U.S.C. § 1553(b) (Supp. IV 1992). Agencies may not pay from current appropriations obligations that exceed amounts that were available for that purpose in closed accounts. With respect to accounts that expired on September 30, 1989, or thereafter (and therefore close on September 30, 1994, or thereafter), agencies must adjust their accounting records in order to properly apply the limitation. Further, any violation of the Antideficiency Act caused by such adjustments after the accounts are closed should be reported.

It may be more difficult for agencies to make accounting changes to records relating to closed "M" accounts (containing the balances of closed fixed period appropriation

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<sup>9</sup>Section 1405(b)(4) of the 1990 amendments, 31 U.S.C. § 1551 note (Supp. III 1991) canceled the "M" account balances on September 30, 1993. Section 1405(b)(3) of the 1990 amendments canceled the merged surplus accounts on December 5, 1990. Appropriations that expired on September 30, 1989, will be the first appropriations closed under 31 U.S.C. § 1552(a).

accounts) since once an appropriation account merged, it lost its fiscal year identity for accounting purposes. Further, there is little practical value in requiring agencies to adjust records relating to some closed "M" accounts, such as annual salary and expense appropriations, where given the age and nature of transactions typically covered by such accounts, it is highly unlikely that obligations chargeable to such accounts will remain unpaid after the accounts were closed.<sup>10</sup> For these reasons, and because no actual payments are involved in this case, ACDA need not adjust accounting records related to their closed "M" account so long as ACDA reasonably determines that there will be no need to know the precise balance of the "M" account for purposes of the 1990 amendments. Should ACDA, consistent with this decision, decide not to adjust its accounting records for fiscal years before fiscal year 1989, ACDA should nevertheless disclose, to the extent applicable, the likelihood that violations may have occurred before 1989 in its Antideficiency Act report on violations fiscal years 1989 and 1990.

#### Waiver of Antideficiency Act

ACDA asks that we exempt it from imposing disciplinary actions authorized by the Antideficiency Act against any officers or employees who complied with ACDA's policy on charging overtime payments to its salary and expense funds pursuant to our authority under 31 U.S.C. § 3528(b)(1) (1988). Our authority under 31 U.S.C. § 3528(b)(1) (1988) extends to the relief of certifying officers but does not extend to determinations whether administrative discipline should be imposed for violations of the Antideficiency Act. The question whether administrative discipline should be imposed is in any given case a matter for consideration of the employing agency in light of all the facts and circumstances surrounding the alleged violation.

for James F. Hinchman  
Comptroller General  
of the United States

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<sup>10</sup>Of course, to the extent that it is a practical possibility for an agency to make adjustments to the accounting records relating to a "M" account and doing so is necessary in order to determine the propriety of charging a payment to current appropriations that relates to an obligation properly chargeable against a closed "M" account, any resulting adjustment of records that indicates a previous Antideficiency Act violation should be reported.