
Memorandum

Date: September 12, 1986

To: Associate Director, GGD/Civilian Personnel -
Rosslyn Kleeman

From: Associate General Counsel - Rollee H. Efros

Subject: Office of Personnel Management Revolving Fund,
5 U.S.C. § 1304--B-206231-O.M.

This is in response to a memorandum from Joseph M. Kelly, Group Director, GGD/Civilian Personnel dated July 30, 1986, concerning the Office of Personnel Management's (OPM) operation of its revolving fund and asking, in effect:

1. Whether OPM may include items of indirect cost (overhead) in its determination of "actual costs" which it is authorized to recover by way of reimbursement from recipients of services financed by the revolving fund established by 5 U.S.C. § 1304(e) (1982).
2. Whether OPM may reduce retained earnings in the fund by freezing or reducing fees paid, or by increasing expenditures for equipment rather than by depositing the retained earnings in the Treasury as miscellaneous receipts.

For the reasons given below, we answer both of these questions in the affirmative.

The Third Supplemental Appropriation Act of 1952,^{1/} authorized the Civil Service Commission (CSC) (now OPM) to operate a revolving fund to finance certain background investigations of Federal employees and persons who were being considered for sensitive positions. The agency on whose behalf an investigation was made was required to reimburse the fund at rates estimated by the CSC to be adequate to recover expenses of operations, including provision for accrued annual leave and depreciation of equipment purchased by the fund.

^{1/} Act of June 5, 1952, Ch. 369, § 701, 66 Stat. 107, 5 U.S.C. § 657 (1952).

The law controlling the operation of the fund was extensively amended in 1969^{2/} to, among other things, increase the scope of reimbursable functions for which the fund might be used to include those functions identified in the annual budget estimates submitted to the Congress for that fiscal year.^{3/} The law was also amended to require that:

"To the maximum extent feasible, each individual activity shall be conducted generally on an actual cost basis over a reasonable period of time."^{4/}

Mr. Kelly's memorandum expresses the concern that "actual costs" as used in the above quoted provision of law may not permit an allocation to the fund for indirect costs (such as OPM's library, Office of Inspector General, Office of General Counsel and other similar overhead items) when determining fees to be charged agencies requesting reimbursable services. This concern is predicated upon comments made by this Office in our letter B-110497, May 10, 1978, to the Chairman of the House Committee on Post Office and Civil Service on H.R. 16558, 90th Cong., 2d Sess.^{5/}

As initially proposed H.R. 16558 would have expanded the use of the fund to finance (1) all reimbursable activities performed by CSC for other agencies and (2) in-house activities such as ADP services and printing and reproduction services

^{2/} Pub. L. No. 91-189, § 1, December 30, 1969, 83 Stat. 851, 5 U.S.C. § 1304(e) (1982).

^{3/} 5 U.S.C. § 1304(e)(1)(i). For example, training courses, examinations and seminars.

^{4/} Id.

^{5/} H.R. 16558 was based upon the official recommendation of the Chairman of the CSC in 1968. Hearings on this bill were held before the Subcommittee on Manpower and Civil Service of the House Post Office and Civil Service Committee and it was reported with amendments and passed by the House. Similar provisions were made a part of S. 3672 passed by the Senate. Adjournment prevented any further action being taken. The bill was reintroduced as H.R. 9233, 91st Cong., 1st Sess., with a few minor technical changes and this bill was adopted as Pub. L. No. 91-189. See H.R. Rep. No. 91-188, accompanying H.R. 9233, pp. 1-2 (1969) and S. Rep. No. 581, 91st Cong., 1st Sess. 2 (1969).

(which at that time were financed by three separate funds).^{6/} In commenting upon this proposal we stated:

"The proposed revolving fund may be used for financing both interagency and in-house activities. In the event such proposal is favorably received, we believe it is important that safeguards be instituted to provide that each individual activity financed through the revolving fund be conducted generally at a break-even point over a reasonable period of time. Such a requirement would tend to preclude the situation where other agencies' funds might be used to defray the cost of the Commission's in-house operations financed under the revolving fund. This could be accomplished by substituting a comma for a period on line 14, page 2, of the draft bill, and adding the words: 'and to the maximum extent feasible, each individual activity shall be conducted generally on an actual cost basis over a reasonable period of time.'"

It is clear that this recommendation (which was agreed to by CSC and included as a Committee amendment to H.R. 16558) was intended to assure that all distinct activities (whether inter-agency or intra-agency) financed through the fund were separately accounted for in a manner that assured that each activity's actual cost was recovered from that activity's user, and not another activity's users. Otherwise, there would be nothing to preclude CSC from charging in-house service users minimal or nominal rates and making up the difference by charges assessed for inter-agency services. However, this in no way served to limit what could be included as an item of actual cost for each activity whether in-house or inter-agency. Additionally, while our recommendation on actual cost recovery for each activity financed through the fund was adopted, the Committee amended the bill further to delete authority to finance in-house services through the fund since in its opinion such an extension of the use of the revolving fund was not necessary at that time.^{7/}

^{6/} See CSC justification for H.R. 16558 reprinted in H.R. Rep. No. 1573, 90th Cong., 2d Sess. 5 (1968).

^{7/} H.R. Rep. No. 1573, accompanying H.R. 16558, 90th Cong., 2d Sess. 2 (1968).

9 We have held that when agencies provide reimbursable services to another agency under 31 U.S.C. §§ 1535 and 1536 (popularly referred to as the Economy Act) charges which are to be based upon "actual cost" should include allocations for indirect costs, including administrative overhead. See 56 Comp. Gen. 275 (1977) as modified by 57 Comp. Gen. 675 (1978) and B-211853, Dec. 7, 1984. We see no reason why actual cost recovery for an activity financed through the fund should not also include indirect costs for administrative overhead as described in these decisions and we see nothing inconsistent with these decisions in OPM's action in this regard. Your first question is answered accordingly.

Regarding the second question, it is within the discretion of OPM to determine whether it will reduce retained earnings in the fund by freezing or reducing fees, by purchasing equipment, or by depositing surplus to the Treasury as miscellaneous receipts, since all three methods are sanctioned by the law.

Prior to the adoption of Pub. L. No. 91-189, the CSC was required to deposit any surplus accruing to the fund in any fiscal year to the Treasury as miscellaneous receipts during the ensuing fiscal year. However, prior to deposit to Treasury as miscellaneous receipts, the surplus could be used to restore any impairment^{8/} of the capital of the fund caused by variations between rates charged for work or service and the amounts subsequently determined by the CSC to be the cost of performing the work.

In 1969, this was changed and 5 U.S.C. § 1304(e) was amended to read:

"(4) Any unobligated and unexpended balances in the fund which the Commission determines to be in excess of amounts needed for activities financed by the fund shall be deposited in the Treasury of the United States as miscellaneous receipts."

This removed from the law the requirement that deposit to miscellaneous receipts take place in the fiscal year immediately following the year in which the surplus accrued. Also omitted was the limitation on the use of the surplus solely to restore any impairment of the fund's capital.

^{8/} See 58 Comp. Gen. 9 (1978) for discussion of "impairment" to revolving funds capital.

The advantages to the fund's operation caused by this change were explained by the CSC in its justification of its legislative proposal presented during the hearings held in H.R. 16558, and included:

- (1) Availability of capital for equipment purchases with depreciation as a part of recoverable costs over a period of years.
- (2) Amortization of lead-time costs over a reasonable period of time.
- (3) Carry over of work-in-process costs into a subsequent fiscal year.
- (4) Improvements in internal accounting and administration of programs including the relating of costs of operation to income.^{9/}

The reasons for this change and the resulting advantages were explored in detail in the testimony of CSC Chairman John Macy, assisted by David Williams and William Speck, in responses to questions from the Committee's Vice Chairman, David Henderson, and Representatives Gross and Hamilton:

"Mr. HENDERSON. As I understand it, the current statute requires that any surplus remaining in the revolving fund be paid into the Treasury as miscellaneous receipts during the following year.

"The proposed substitution only requires that any surplus that you determine is in excess of the amounts needed for your operations would be deposited with the Treasury. Would you comment on that?

"Mr. WILLIAMS. Yes, sir. This is to meet a problem which we continually face, and that is to be able to shut off as of June 30, the end of a fiscal year, completely in balance or with a black balance the problem of operating without running into a deficit. Under our current system, of course, we are bound by annual appropriations; we are subject to being cited to the House and the Senate for over obligations.

^{9/} Hearing before the Subcommittee on Manpower and Civil Service of the House Committee on Post Office and Civil Service, on H.R. 16558, 90th Cong., 2d Sess. 3 (1968).

"If we take the training situation, for example, we do in the neighborhood of \$3 1/2 million to \$4 million of reimbursable training. This training is conducted in 11 different places, 10 regional offices and the central office, made up of a great variety of training programs.

"In advance we speculate as to how many people will be participating in these courses. We set a price which we think is going to be reasonable in terms of what it is going to cost us. It is difficult to estimate.

"Toward the end of the year it gets to be extremely difficult to be sure that we are maintaining a balance between the amount that we are expending for the conduct of these training courses and the amount of revenue that we are going to acquire from them in terms of the number of people attending and paying the tuition charge that has been established. It gets to be an extremely difficult thing, to a point where almost on a day-to-day basis we have to be aware of the number of people who are attending on-going programs and the amount of money we are spending for the salary of our people as well as for the instructors we bring in to conduct these training courses. At times we have just run a day-to-day accounting system for this purpose so that we do not run into a red balance and thereby have to cite our operating program officials, who, you know, on a completely unintentional basis have spent more than the amount of income ultimately realized.

"Mr. HENDERSON. The Chairman testified that it is your intention to make the cost of the services as near to their actual cost as you can. Let's assume that you overcharged in one instance and acquired, as a result of that, a surplus. You, then would reduce your prices in the future to balance off that overcharge rather than pay it into miscellaneous receipts of the Treasury?

"Mr. WILLIAMS. This is exactly the point.

"Mr. HENDERSON. So, in order for us to have the proper oversight on exactly what you are doing, we would need to look at it over a period of 2 or 3 years?

"Mr. WILLIAMS. I would say so. There is no purpose in retaining an excessive amount of money because it can't be used for any other purpose.

"Mr. HENDERSON. We don't want as an objective that you charge other Government agencies an amount that would in a sense make a profit, which profit would be turned into the Treasury.

"Mr. WILLIAMS. There is no purpose to this.

* * * * *

"Mr. GROSS. You speak of purchases of furniture or equipment. What would this be for?

"Mr. MACY. This would be furniture and equipment for an operation such as Kings Point and Berkeley. When such an institution is established, it is necessary to purchase capital items of that nature, and under the present reimbursable arrangement to recover that full cost during the fiscal year of acquisition rather than do as a business would do, namely, amortize that cost over the life of the equipment.

"Mr. GROSS. On page 5 of your statement, Mr. Macy, you say it will be managed on an actual cost basis with a break-even concept over a reasonable period of time. Who determines that, the Civil Service Commission?

"Mr. MACY. The Civil Service Commission will determine that. Of course, this will be audited by the Comptroller General as are other accounts of the Commission.

"Mr. HAMILTON. Thank you.

"The other question I have pertains to the language right at the end of the bill on

page 3. It states that 'Any unobligated and unexpended balances in the fund which the Commission determines to be in excess of amounts needed for operations financed by the fund shall be deposited in the Treasury of the United States to miscellaneous receipts.'

"Wherein is that different from what the law now is?

"Mr. WILLIAMS. As it is now, we must attempt to break even, in effect, as of June 30. At that point in time--

"Mr. HAMILTON. If you have an excess, what do you do?

"Mr. WILLIAMS. We turn it over to the Treasury Department miscellaneous receipts. We cannot carry a surplus.

"What we find in many of our work items, and we are experiencing this right now in the investigations program, is that the work comes in peaks and valleys. We have recently been in a valley, which was predictable because we know from experience this is the way cases come in. The Peace Corps, for example, gives us about a third of our total workload for full field investigations. But the work is highly seasonal. For the last 2 months we have been in a low period, but because we have to break even on money at the end of the year we have been forced to raise case costs to agencies for a 2-month--3-month period so that our expenses and our income meet. This really doesn't make sense because the agencies have to budget for the amount of money they expect to reimburse us each year for full field investigations.

"On the other hand we are right now experiencing, as we knew we would, an increase in cases. Within 2 months, as the cycle of processing cases completes itself, our case costs will be going down. We will be in a position then of reducing our billing rate to agencies. What we are trying to accomplish here, you see, is an elimination of the June 30 break-even proposition and be able to level these case costs off for the benefit of

the agencies and for the benefit of good intelligent business management to a point where we don't have to raise costs or decrease costs on short notice. This will keep the agencies in a better sense of balance.

"Mr. SPECK. It is a matter of timing.

"Mr. HAMILTON. By having this extra authority you will not have to raise your costs at the end of the year to break even?

"Mr. WILLIAMS. That is correct.

"Mr. HAMILTON. This extra authority will permit you to save a little money, right?

"Mr. WILLIAMS. It may; yes, sir. It may actually produce efficiencies by having the flexibility to do this."^{10/}

While our recommendation that individual activities be required to break even over a reasonable period of time was included in the Committee's amendment to H.R. 16558, it is clear that the overall authority and flexibility vested in CSC on how to manage and reduce retained earnings either by purchase, reducing charges, or deposit to Treasury as miscellaneous receipts was left unaffected upon adoption of the bill. Furthermore, as to what constitutes a reasonable period of time, this determination was also to be made by CSC.

We note that this Office previously has recommended that:

"* * * the Director, OPM, clearly define the terms 'actual cost basis' and 'reasonable

^{10/} Id. 11-13, 18-19. Furthermore see B-110497, May 10, 1968 wherein in commenting on this provision we stated:

"It would appear, on the basis of the proposed provision in the draft and bill relating to the deposit of excess funds in the general fund of the Treasury as miscellaneous receipts, that the balances in the fund which the Commission determines to be needed for its operations could be retained in the revolving fund, at the discretion of the Commission, and used for any authorized purpose, such as purchases of additional equipment, without specific congressional approval."

(Emphasis supplied.)

period of time.' The clarification should (1) state the period of time over which actual costs must be recovered, (2) require activities to account for and recover their full costs, and (3) prohibit using appropriated funds to pay for revolving fund expenses."^{11/}

However, the extent OPM has complied with this recommendation does not serve to limit its discretion under the law to change its definition of "reasonable period of time" if it feels it is necessary to do so in order to properly assess fees for an activity.

Of course, any determination by OPM would be subject to our scrutiny and comment based upon the methods employed by OPM to arrive at its determinations, the relevancy of the factors considered in arriving at its determination, the degree to which it relied upon any particular factor or excluded others, and the general pervasiveness and thoroughness of its analysis.

^{11/} OPM's Revolving Fund Policy Should Be Clarified And Management Controls Strengthened, GAO/GGD 84-23, page 8, (October 13, 1983).

September 12, 1986

DIGESTS

1. The Office of Personnel Management may include items of indirect cost (overhead) in its determinations of actual costs which it is authorized to recover by way of reimbursement from recipients of services financed by the revolving fund established by 5 U.S.C. § 1304(e) (1982). See 56 Comp. Gen. 275 (1977) as modified by 57 Comp. Gen. 675 (1978) and B-211853, December 7, 1984).

2. The Office of Personnel Management (OPM) may reduce retained earnings in the fund by freezing or reducing fees paid, or by increasing expenditures for equipment rather than by depositing the retained earnings in the Treasury as miscellaneous receipts since such discretion is vested in OPM by 5 U.S.C. § 1304 (1982).