

UNITED STATES GOVERNMENT

GENERAL ACCOUNTING OFFICE

Memorandum

B-179708-O.M.

June 24, 1975

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TO : General Counsel

FROM : Director, FGMS Division - D. L. Scantlebury

SUBJECT: Request for Opinion on the Legality of Additional
Other Matters Relating to Congressman Mahon's
Request of May 31, 1974 (B-179708)

Reference is made to Mr. Kensky's letter of July 23, 1974, which transmitted a request from the Chairman of the House Appropriations Committee asking that you rule on the legality of applying collected reimbursements to the current year. Reference is also made to my letter of October 2, 1974, which requested legal opinions on additional issues relating to the Chairman's request.

Members of my staff have periodically met with Mr. Henry Wray of your office to discuss various issues relating to the Chairman's request. In accordance with agreements reached with Mr. Wray, we are requesting a legal opinion on the following additional issue:

Recording of New Obligations in the "M" Account. On page xiii of the Surveys and Investigations (S&I) staff of the House Appropriations Committee report on M and related Surplus Fund Accounts (Mr. Wray has a copy), one agency official is quoted as saying that what bothered his agency the most is that the Surplus Fund, through restorations, is used to pay what might be termed new obligations. In his opinion, M accounts and related Surplus Fund accounts should only be available to pay unliquidated obligations that have been properly recorded in the course of the normal appropriation and funding process. This official believed that new claims in excess of some designated amount should not be paid from expired appropriations or from M accounts but should be sent to the Treasury and paid from some special fund. Other agency officials are quoted as saying that there is a need for clarification of present procedures with respect to the purpose and intent of M account activities and Surplus Fund restorations.

We found that the Navy handles "new" obligations (meaning obligations which though properly chargeable against an appropriation year or years in the M account were not recorded prior to lapse)

somewhat differently than obligation adjustments. NAVCOMPT Notice 7301, paragraph 1b(2)(b) provides that:

"Where an obligation or expenditure is identified as having been actually incurred against an appropriation or any subdivision thereof prior to the date of lapse, but was not recorded to the proper account until after lapse, and where such obligation or expenditure if recorded prior to lapse would have shown an overobligation/overexpenditure at the date of lapse, a violation report will be submitted. Where such violation occurs at the appropriation level, such account shall be withdrawn from the "M" account and re-established as a fiscal year account."

We noted that during the congressional hearings and in committee reports leading up to the passage of PL 84-798 (M account legislation) that reference to restoration of lapsed appropriations generally applied to monies needed to pay upward adjustments to previously recorded obligations. The matter of recording new obligations, not charged before the appropriation lapsed into the M account, was not clearly addressed.

We would like to know whether the recording of new obligations against an M account (again meaning obligations properly chargeable against a year or years in the M account but not recorded prior to appropriation lapse) can be handled in the same manner, with respect to restorations, as upward adjustments to recorded obligations.

Specifically, is the Navy's contention that a violation report must be submitted where an obligation or expenditure, not previously recorded, would have shown an overobligation/overexpenditure at the date of lapse legally valid?

We have reviewed a draft of this submission with Mr. Wray who stated that adequate information is provided to resolve the legal questions posed.

cc: Mr. Kensky, FGMSD
Mr. Lowe, FGMSD
Mr. Wray, OGC

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Indorsement

Director, FGMS, Division

Returned. The procedures governing treatment of appropriation balances after expiration of their availability for obligation are set forth in 31 U.S.C. §§ 701-708^{*/}(1970), which derive largely from the Act approved July 25, 1956, ch. 727, 70 Stat. 647 (Pub. L. No. 84-798). See B-179708-O.M., November 20, 1973, for a discussion of the background of these provisions.

Subsections 701(a)(1)^{*/} and (b)(1)^{*/} provide that, after 2 years following expiration of the availability period, the obligated balance of a fixed-year appropriation shall be transferred to the account "responsible for the liquidation of the obligation, in which shall be merged the amounts so transferred from all appropriations for the same general purpose," i.e., the applicable "M" account. Subsections 701(a)(2)^{*/} and (b)(2)^{*/} provide that, within 2 months (or 45 days effective after fiscal year 1976) following expiration of the availability period, the unobligated balance of a fixed-year appropriation shall be withdrawn and shall revert to the general fund of the Treasury (sometimes referred to as the "surplus fund") unless the appropriation derived from another source. Subsection 701(a)(2)^{*/} further provides that--

"* * * when it is determined necessary by the head of the agency concerned that a portion of the unobligated balance withdrawn is required to liquidate obligations and effect adjustments, such portion of the unobligated balance may be restored to the appropriation accounts."

Section 706 provides for withdrawal and reversion of unobligated balances of no-year appropriations, under certain circumstances, in a manner similar to subsection 701(a)(2).^{*/} Section 702^{*/} provides, quoting from the Code:

"Each appropriation account established pursuant to sections 701-708 of this title shall be accounted for as one fund and shall be available without fiscal year limitation for payment of obligations chargeable

^{*/} 31 U.S.C. § 701 was recently amended by section 501 of the Congressional Budget Act of 1974, 88 Stat. 321, to conform the timing of appropriation balance transfers and withdrawals to the fiscal year changes made in that Act. See 31 U.S.C.A. § 701^{*/}(Pocket pt. 1975).

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against any of the appropriations from which such account was derived. Subject to regulations to be prescribed by the Comptroller General of the United States, payment of such obligations may be made without prior action by the General Accounting Office, but nothing contained in sections 701-708 of this title shall be construed to relieve the Comptroller General of the United States of his duty to render decisions upon requests made pursuant to law or to abridge the existing authority of the General Accounting Office to settle and adjust claims, demands, and accounts."

Closely related to the operation of the foregoing provisions is section 1311 of the Supplemental Appropriation Act, 1955, as amended, 31 U.S.C. § 200 (1970). Subsection (a) of this section establishes documentary evidence requirements for the recording of obligations of the United States Government. Subsection (d) thereof provides:

"No appropriation or fund which is limited for obligation purposes to a definite period of time shall be available for expenditure after the expiration of such period except for liquidation of amounts obligated in accord with subsection (a) of this section; but no such appropriation or fund shall remain available for expenditure for any period beyond that otherwise authorized by law."

As noted previously, 31 U.S.C. § 701(a)(2) authorizes the restoration of withdrawn unobligated balances in order to "liquidate obligations and effect adjustments * * *." Obviously this authority may be used to adjust obligations recorded pursuant to 31 U.S.C. § 200(a) where the amount so recorded proves to be less than the actual amount obligated. In fact, such authority was provided on the recommendation of the Department of Defense to cover situations in which "it may be asought short, because of low estimates * * *." H.R. Rep. No. 2015, 84th Cong., 2d Sess., 5 (1956).

It is our opinion that the restoration authority of 31 U.S.C. § 701(a)(2) may also be used to liquidate what you refer to as "new obligations" which were not formally recorded prior to expiration, provided that such obligations meet any one of the criteria specified in 31 U.S.C. § 200(a) and are otherwise valid. The legislative history of the 1956 statute does seem to emphasize the use of restorations to adjust the amounts of previously recorded obligations. However, neither the legislative history nor the language of the statute itself so limits

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the restoration authority. The Senate Government Operations Committee's report on the 1956 legislation, S. Rep. No. 2266, 84th Cong., 2d Sess., 5 (1956), describes such authority as a vehicle "to meet obligations against prior years' appropriations * * *." Likewise, 31 U.S.C. § 702, supra, states that "M" accounts, among other accounts, shall be available without fiscal year limitation "for payment of obligations chargeable against any of the appropriations from which such account was derived."

While 31 U.S.C. § 200(a) establishes criteria prerequisite to the recording of obligations and thereby delimits generally the concept of Federal obligations, neither subsection 200(a), nor subsection (d) of that section, supra, necessarily precludes the payment of unrecorded transactions which meet the substantive criteria for "obligations" under subsection 200(a). Finally, there appears to be no basis in terms of the purposes of 31 U.S.C. §§ 701 et seq. to differentiate between adjustments to obligation amounts previously recorded and adjustments involving otherwise valid obligations which, for some reason (probably administrative oversight in most cases), were never formally recorded. This seems particularly true since the 1956 legislation represented one major step in a series of statutory changes designed in large measure to facilitate and expedite the payment of valid charges against the Government. Cf. S. Rep. No. 2266, supra, 3-7; B-179708-O.M., supra, 2-4.

Therefore, in response to your first question, we consider it proper to handle unrecorded but otherwise valid obligations by restoration in the same manner as upward adjustments to previously recorded obligations.

Concerning the Navy practice to which you refer, it has previously been noted that under 31 U.S.C. § 701 the unobligated balance of fixed-year appropriations is withdrawn shortly after expiration of the availability period. The obligated balance is retained for 2 years before it passes into the "M" account. Under 31 U.S.C. § 702, as also noted, an "M" account is available for payment of any obligation attributable to any of the appropriations from which it is derived. Thus payments from an "M" account need not be related to specific balances of appropriations transferred to it. H.R. Rep. No. 2015, supra, 6. One result of this approach is that, once an appropriation balance reaches the "M" account, it is, as a practical matter, no longer susceptible to violations of the Antideficiency Act, 31 U.S.C. § 665(a) (1970).

However, the same is not true prior to transfer to the "M" account. The version of the 1956 legislation reported from the House Committee on Government Operations had provided for transfer of obligated appropriation balances to "M" accounts within 2 months following lapse. See H.R. Rep. No. 2015, supra, 1 (subsection (b)(1) of the first section of

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the reported bill set out therein). However, objections were raised to "M" account transfer so soon because of the effect of the "M" account approach upon potential Antideficiency Act violations. Accordingly, the bill was amended prior to House passage in order to establish a 2-year period between expiration and transfer to "M" accounts. See the Comptroller General's letter to the Chairman of the House Committee on Government Operations dated May 16, 1956, B-52215, 55311, 119094, explaining enclosed draft amendments, which were substantially adopted. Thus, since obligations against an appropriation can only be paid from that account before transfer to the "M" account, the potential for violation of the Antideficiency Act does exist during the 2-year period between expiration and transfer to the "M" account.

During the 2-year period referred to above, amounts identified as valid obligations against an appropriation account (whether they represent adjustments to previously recorded obligations or unrecorded ("new") obligations) which cause obligations to exceed the undisbursed balance may be paid by restoration from the withdrawn unobligated balance, but only up to the maximum amount of such withdrawn balance. Thus 31 U.S.C. § 703(a) provides in part:

"Appropriation accounts established pursuant to sections 701-708 of this title shall be reviewed periodically, but at least once each fiscal year, by each agency concerned. If the undisbursed balance in any account exceeds the obligated balance pertaining thereto, the amount of the excess shall be withdrawn in the manner provided by section 701(a)(2) of this title; but if the obligated balance exceeds the undisbursed balance, the amount in excess, not to exceed the remaining unobligated balances of the appropriations available for the same general purposes, may be restored to such account.
* * *." (Underscoring supplied.)

Accordingly, where identifiable obligations during the 2-year period exceed the entire undisbursed appropriation balance--both obligated and unobligated--such excess constitutes an Antideficiency Act violation and can only be liquidated pursuant to a deficiency appropriation.

The effect of the Navy Comptroller notice to which you refer is not entirely clear. As noted above, if actual obligations (whether recorded or not) in excess of a total appropriation amount are not identified until after the obligated balance has been transferred to the "M" account, they may nonetheless be paid from the "M" account without violation of the Antideficiency Act (provided, of course, that the amount does not exceed

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the entire "M" account balance). In fact, it is immaterial whether or not such obligations exceed the amount of the particular appropriation to which they were originally attributable. On the other hand, if obligations exceeding the full appropriation amount are identified before transfer to the "M" account, an Antideficiency Act violation must be reported. Moreover, a deficiency appropriation must be requested. Obviously the consequences thus described are operative as soon as obligations are identified. For example, a previously unrecorded obligation identified before transfer to an "M" account could not be ignored until after the time of transfer.

PAUL G. DEMBLING

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General Counsel

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