

B-151204-O.M., Dec. 9, 1971

UNITED STATES GOVERNMENT

GENERAL ACCOUNTING OFFICE

Memorandum

October 1, 1971

TO : The Comptroller General

B-151204

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



SUBJECT: Request for legal instructions on proposed regulation governing the Automatic Data Processing (ADP) Revolving Fund

There is attached a copy of a memorandum addressed to Richard W. Maycock, Deputy Director of this Division, by Dwight A. Ink, Assistant Director, Office of Management and Budget (OMB), with an appended set of guidelines concerning the above subject. These papers outline, among other things, certain proposed changes in the methods heretofore applied in accordance with the provisions of H. R. 89-306 in establishing the rates to be charged agencies to recover approximate costs of equipment and in securing the net proceeds of disposals of excess property.

The matters included in the memorandum, and, to some extent, those in the guidelines, were discussed at length with representatives of the Office of Management and Budget (OMB). Mr. John Moore of the Office of the General Counsel and representatives of our site audit staff at the General Services Administration (GSA) participated in the discussion which revolved largely around the question of legality of at least two of the proposed actions.

The first basic proposal is to permit General Services Administration (GSA) to establish a current fair market residual value for equipment turned in by an original using agency after the agency has paid the ADP fund the full cost of the equipment, and to set the rental rate to a second using agency on the basis of such fair value plus an allowance for administrative and other costs. This, we believe, is sound from the standpoint of accounting and management principles as applied to the ADP fund and to both the original and secondary using agencies. That treatment of fully paid for turned-in equipment would seem to be authorized by the second clause of subsection 111(d) of P. L. 89-306 regarding determination by the Administrator of the value of supplies and equipment transferred to the Administrator. If the equipment is

retained and continued in use by the original user after the cost is fully paid, our principles provide for establishment of the residual (fully depreciated still in use) value on the books of that user.

The second basic proposal would provide for including in current charges to users of data processing centers a rate factor for the financing of more costly replacement ADP equipment in addition to the factors needed to recover "approximate costs." Although it is evident that P. L. 89-306 contemplates continuing operations and equipment replacement under subsection 111(c), we doubt that charging for increased equipment replacement costs is permissible in view of the further provisions of that subsection regarding appropriation act controls and of subsection (d) regarding the appropriation of such sums as may be required.

We have the same doubt expressed in the paragraph next above as to the propriety of items (2), (5), and (6) listed under paragraph 3a of the guidelines appended to the basic letter. Further, we question the evidently permissible use under item (2) of fair market value, in lieu of acquisition cost, in charges to the original user of equipment. Comments above regarding the appropriation processes also pertain to the remaining parts of paragraph 3 and to paragraph 4.

Subparagraph 3b of the guidelines should be amended, we believe, by inserting the word "only" after the word "include" in the fourth line.

In view of the questionable aspects of the basic proposals and the guidelines, the entire package is submitted for instructions regarding their legal propriety.

Attachment

Indorsement

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Director, FGMS Division

Returned. Relative to the automatic data processing fund, section 111(d) of the Federal Property and Administrative Services Act of 1949, as added by Pub. L. 89-306, approved October 30, 1965, 40 U.S.C. 759(d) provides as follows:

"(d) There are authorized to be appropriated to said fund such sums as may be required which, together with the value, as determined by the Administrator, of supplies and equipment from time to time transferred to the Administrator, shall constitute the capital of the fund: Provided, That said fund shall be credited with (1) advances and reimbursements from available appropriations and funds of any agency (including the General Services Administration), organization, or contractor utilizing such equipment and services rendered them, at rates determined by the Administrator to approximate the costs thereof met by the fund (including depreciation of equipment, provision for accrued leave, and for amortization of installation costs, but excluding, in the determination of rates prior to the fiscal year 1967, such direct operating expenses as may be directly appropriated for, which expenses may be charged to the fund and covered by advances or reimbursements from such direct appropriations) and (2) refunds or recoveries resulting from operations of the fund, including the net proceeds of disposal of excess or surplus personal property and receipts from carriers and others for loss of or damage to property: Provided further, That following the close of each fiscal year any net income, after provisions for prior year losses, if any, shall be transferred to the Treasury of the United States as miscellaneous receipts."

As to the first basic proposal concerning the rates to be charged a second agency where the original using agency has paid the ADP fund the full cost of the equipment, we see no objection to the proposal to establish such new rates on the basis of the fair market value of the equipment. We understand this to be the common commercial practice.

However, we see no proper basis whereby the funds generated by such revaluation may be used to augment the capital of the fund. To the extent that those funds may exceed costs it is our view that they represent net income and to the extent not needed for prior year losses, are required by the last proviso of section 111(d) to be transferred to miscellaneous receipts.

As to the second basic proposal and the remaining items discussed in your memorandum, it is noted that section 111(d) provides that rental rates for equipment shall be determined by the Administrator so as to "approximate the costs thereof." While the term "costs" is not defined in the act, House Report No. 802, 89th Congress, 1st Session, issued by the House Committee on Government Operations, at page 40, contains the following statement:

"Rates for use of the equipment or for services received therefrom are to be fixed by the Administrator so as to approximate the cost charged to the fund, including depreciation and accrued leave, the amortization of installation costs, direct costs of operating service centers, as well as other items of expense recognized and acceptable from the standpoint of sound accounting practices."

An identical statement appears in related Senate Report No. 938.

We think that the term "cost thereof met by the fund" refers to historical costs as distinguished from replacement costs there being nothing in the act or its legislative history to indicate otherwise. See B-61937-O.M., February 4, 1952. The inclusion of losses (Sec. 3a(5)), however is a matter primarily for your consideration and resolution under generally accepted accounting practices. In this connection we stated in B-61937-O.M., May 11, 1951, concerning losses in the operation of DOD working capital funds for stocks of materials, etc., under section 405 of the National Security Act Amendments of 1949, that:

"[The establishment of] prices to be used in effecting reimbursements of the stock funds, is primarily a problem of accounting, since the word "cost" as used in section 405(b) of Public Law 216 is not defined in that act, but it does not appear that possible unforeseeable losses due to acts of God as well as destruction by fire should be considered in determining such prices."

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Also, it may be noted that current DOD regulations governing stock fund operations, DOD Directive No. 7420.1, provides in paragraph VIII B.6 as follows:

- "6. The surcharges included in the standard prices for losses and authorized expenses are for the purpose of recovering estimated net stock losses on current procurement such as pilferage, damage, deterioration, physical inventory shortages, and excess arising from obsolescence and other causes. Such losses do not include changes in the inventory valuations due to revisions of standard prices or purchase price variances (which do not affect holdings in terms of physical quantities of material). The surcharge will not be expected to recover losses caused by major disaster or enemy action."

The attachments forwarded with your memorandum are retained in our file for ready reference if needed.

PAUL G. DEMBLING
Paul G. Deabling
General Counsel.