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# Memorandum

March 29, 1984

TO : Director, GS&C - Richard L. Brown

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FROM : Acting General Counsel - *Harry R. Van Cleve*  
*Harry R. Van Cleve*

SUBJECT: Fiscal year to be charged for training of GAO employees  
(B-213141-O.M.)

This is in response to inquiries by members of your staff concerning the application in specific instances of the advice we set forth in our September 23, 1983 memorandum regarding the training of GAO employees "in times of budget uncertainty." We have now been asked whether our answers in the September 23 memorandum would be any different if an appropriation for the next fiscal year had already been enacted prior to the start of that fiscal year. This was what happened toward the end of fiscal year 1983.

A determination as to which fiscal year appropriation should be charged for training approved near the end of the fiscal year involves the application of the Antideficiency Act, 31 U.S.C. § 1341 and the "bona fide need" rule. 31 U.S.C. § 1502(a). The Antideficiency Act provides, in part, that a Government official may not involve the Government "in a contract or obligation for the payment of money before an appropriation is made unless authorized by law." 31 U.S.C. § 1341(a)(1)(B). The Act requires that a contracting officer wait until the enactment of an appropriation by Congress before obligating any of those appropriated funds. See 42 Comp. Gen. 272, 276, (1942). This Office has held, however, that if an appropriation act has been enacted prior to the start of the fiscal year, contracts may be entered into obligating the newly appropriated funds for needs of the new fiscal year, before the start of that fiscal year, provided no payments are made under those contracts until the start of the new fiscal year. See 20 Comp. Gen. 868, 870 (1941). It is advisable that these contracts make it clear that payments will not be made until the start of the new fiscal year. See, e.g., B-20670, October 18, 1941.

The "bona fide need" rule requires that a fiscal year appropriation be obligated only to meet a legitimate need arising in the fiscal year or years for which the appropriation was made. See 58 Comp. Gen. 471, 473 (1979). A contract for training represents a nonseverable "entire" services contract, because the training amounts to a single undertaking, the cost and scope of which are determinable at the time the contract is entered into. See 23 Comp. Gen. 370 (1943). Therefore, each training contract must be charged to a single fiscal year, as indicated below, despite the fact that performance of the contract may extend over two fiscal years. See 59 Comp. Gen. 386, 387 (1980). (No "advance payment")

problem is presented, because the Government Employees Training Act specifically exempts tuition payments from the advance payment prohibition of 31 U.S.C. § 1324(a). (5 U.S.C. § 4109 (1982).)

To avoid any further confusion in this area, I have set forth below three situations which can occur when training is approved near the end of a fiscal year, with an explanation in each case as to the appropriate fiscal year to be charged.

The first situation occurs when approval is given near the end of a fiscal year for training which begins in that fiscal year. Our cases generally hold that when a nonseverable services contract is entered into during one fiscal year, and performance of the contract also begins in that fiscal year, the contract fulfills a bona fide need of that fiscal year only. See, e.g., 23 Comp. Gen. 370 (1943). Accordingly, in this situation, the training must be charged to the fiscal year in which the training is approved and begins.

The second situation occurs when approval is given near the end of a fiscal year for training which begins in the succeeding fiscal year, but the appropriation for the succeeding fiscal year has not been enacted. In that case the training may be charged to the appropriation for the expiring fiscal year only if registration for the course is required before the end of that fiscal year. See 60 Comp. Gen. 452, 455 (1981). Otherwise, we conclude that the course could not be deemed a bona fide need of the expiring fiscal year and, accordingly, funds of that fiscal year could not be used nor payment. Further, due to the Antideficiency Act, discussed above, the contract may not be charged to the succeeding fiscal year, because Congress has not yet enacted an appropriation for that year. See, e.g., 42 Comp. Gen. 272, 277 (1962).

The third situation occurs when approval is given near the end of a fiscal year for training which begins in the succeeding fiscal year, and the appropriation for the succeeding fiscal year has been enacted. It is our understanding, based on discussions with members of your staff, that this situation occurred in several cases of training approved at GAO in late fiscal year 1983. In this situation, the agency may properly charge the training to appropriations for the expiring fiscal year if, as indicated above, registration is required before the end of that fiscal year. Alternatively, if registration is not required until after the start of the new fiscal year, (whether or not the student actually registers before the new fiscal year,) the training is a bona fide need of the new fiscal year only and may be charged only to appropriations of that year. We note, however, that in the latter situation, the student could register prior to the new fiscal year without violating the Antideficiency Act, because funds have already been appropriated for the succeeding fiscal year. This succeeding fiscal year appropriation may be obligated upon its enactment to meet bona fide needs of the succeeding fiscal year. 20 Comp. Gen. 868 (1941). However, should the training be

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charged to the succeeding fiscal year, no payments may be made under the training contract until the funds actually become available at the beginning of the new fiscal year.

## APPROPRIATIONS

Fiscal year  
Availability beyond  
Contracts  
Service contracts

## APPROPRIATIONS

Fiscal year :  
Bona fide needs for obligation

## APPROPRIATIONS

Fiscal year  
Expenditures prior to appropriation  
availability

## 2. APPROPRIATIONS

Deficiencies  
Anti-Deficiency Act  
Violations

## APPROPRIATIONS

Fiscal year  
Availability beyond  
Contracts  
Service contracts

## APPROPRIATIONS

Fiscal year  
Availability beyond  
Current fiscal year  
obligation

## APPROPRIATIONS

Fiscal year  
Availability beyond  
Contracts  
Service contracts

## APPROPRIATIONS

Fiscal year  
Bona fide needs for obligation

## APPROPRIATIONS

Deficiencies  
Anti-Deficiency Act  
Obligations authorized by law

## APPROPRIATIONS

Fiscal year  
Availability beyond  
Current fiscal year obligation

**END**