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Paul G. DemblingLegality of crediting reimbursements to appropriations
current at the time of collection. B-179708-O.M.

This responds to Mr. Kensky's memorandum of July 23, 1974, transmitting a copy of a May 31, 1974, letter from the Chairman of the House Committee on Appropriations which requests a ruling on the legality of crediting collected reimbursements to the appropriation account current at the time of collection. Mr. Kensky's memorandum also transmitted a copy of a May 1974 report by the Surveys and Investigations Staff of the House Appropriations Committee on the management of "M" and "Surplus Fund" accounts in the Federal Government, which provides background concerning the Chairman's request.

The staff report, at pages 36-45, discusses several areas concerning the treatment of reimbursements, with particular reference to the practices of the Department of Defense (DOD). The report, at pages 41-47, addresses DOD's practice of exercising an option to credit reimbursements either to the appropriation which "earned" them or to the appropriation current at the time of collection. The report points out the potential for augmentations as a result of this option approach, as well as some potential for avoiding what might otherwise be violations of the Anti-deficiency Act, 31 U.S.C. § 665(a)(1970).

An October 13, 1972, memorandum from the Assistant Comptroller of the Army Department to the Army Audit Agency explains the option approach as follows:

"The provision [DOD Instruction] in question permits earned but uncollected reimbursements to be credited either to the year in which earned or to the year in which collected. The basis for crediting earned reimbursements to the year in which the services were performed or the supplies furnished is Section 601 of the Economy Act (31 USC 686). Subparagraph (b) of that statute provides that amounts paid in reimbursement will be credited to the appropriation or fund against which

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charges have been made pursuant to such order. Obviously charges against the appropriation of the agency receiving an order would be made in the year in which the work is actually performed, or the supplies furnished. The basis for crediting reimbursements to the appropriation for the year in which the collection is received is Section 2205 of Title 10, U. S. Code. That statute provides that reimbursements may be credited to authorized accounts and when so credited are available for obligation for the same period as the funds in the account so credited. This statute has been interpreted by legal counsel in OSD as authorizing the crediting of reimbursements to current appropriations in the case of annual accounts, on the premise that only a current annual account would be available for obligation, as indicated in the statute.

"Since there are two statutes, as outlined above, governing the crediting of reimbursements, one to the year in which the work was performed, and the other to the year in which the collection is received, an option exists as to which method to follow. Thus, when a receivable is set up in the year of work performance, and it is later found that the reimbursements will not be needed in that year, the receivable may be moved forward to the appropriation for the succeeding fiscal year, in the manner outlined in the cited DODI in anticipation of the receipt of the collection in that fiscal year."

The reimbursements referred to in the Comptroller memorandum are payments for the furnishing of goods or services by DOD or a component thereof to another DOD component or another Federal agency. Section 601(a) of the so-called "Economy Act," as amended, 31 U.S.C. § 686(a) (1970), referred to in the memorandum, constitutes general authority for inter- or intra-agency transactions involving the furnishing of materials, work, or services on a reimbursable basis. Subsection (b) of 31 U.S.C. § 686 provides:

"Amounts paid as provided in subsection (a) of this section shall be credited, (1) in the case of advance payments, to special working funds, or (2) in the case of payments other than advance payments, to the appropriations or funds against which charges have been made pursuant to any such order, except as hereinafter provided. The Secretary of the Treasury shall establish such special working funds as may be necessary to carry out the provisions of this subsection. Such amounts paid shall be

available for expenditure in furnishing the materials, supplies, or equipment, or in performing the work or services, or for the objects specified in such appropriations or funds. Where materials, supplies, or equipment are furnished from stocks on hand, the amounts received in payment therefor shall be credited to appropriations or funds, as may be authorized by other law, or, if not so authorized, so as to be available to replace the materials, supplies, or equipment, except that where the head of any such department, establishment, bureau, or office determines that such replacement is not necessary the amounts paid shall be covered into the Treasury as miscellaneous receipts."

By the terms of subsection 686(h), reimbursements are to be credited to the appropriation which financed the transaction and thus "earned" the reimbursement, except as further provided in subsection (b). It is further provided in subsection (b) that reimbursements in payment for materials, supplies or equipment furnished from stocks on hand shall be credited to appropriations or funds authorized by other law, or if not so authorized, to be available for replacement (to the extent that replacement is necessary). Our long-standing construction of subsection 686(b) is that reimbursements for stocks on hand may be credited only to accounts currently available for replacement of such stocks at the time that they were furnished. See B-132469-O.M., August 2, 1957, and decisions cited therein.

In view of the foregoing, the basic rule with respect to transactions governed solely by the provisions of 31 U.S.C. § 686 is that reimbursements for work, services, or materials (including stocks on hand) must be credited to the account which earned them, irrespective of when the reimbursements are collected. If the appropriation which earned the reimbursement remains available at the time of collection, there is, of course, no distinction between a credit to the year earned or to the year collected. But if the appropriation which earned the reimbursement has expired for obligation purposes at the time of collection, such reimbursement can only be credited to the expired account or to the appropriate "M" account, as the case may be. See 31 U.S.C. § 701(e) (1970).

There are, however, many transactions, particularly in the case of DOD, subject to specific statutory provisions which either supplement or wholly supersede 31 U.S.C. § 686.

The most notable example of a statute superseding 31 U.S.C. § 686 is section 2208 of title 10, United States Code (1970), pursuant to

B-179708-O.H.

which working capital (revolving) funds have been established within DOD to finance transactions among DOD components involving the exchange of common goods and services on a reimbursable basis. Since such transactions are independently authorized and governed by the title 10 provision, they are not subject at all to 31 U.S.C. § 686. CF, 31 Comp. Gen. 83, 87 (1950). Moreover, since these transactions are financed by revolving funds, the timing of collections vis-a-vis the furnishing of goods or services is immaterial.]

With reference to statutes supplementing 31 U.S.C. § 686, as already pointed out, subsection 686(b) itself provides that reimbursements for materials, supplies or equipment furnished from stock "shall be credited to appropriations or funds as may be authorized by other law * * *." In this regard, 10 U.S.C. § 2210(a) (1970) provides:

"Current applicable appropriations of the Department of Defense may be credited with proceeds of the disposals of supplies [that] are not financed by stock funds established under section 2208 of this title."

This provision was enacted originally as part of section 645 of the Department of Defense Appropriation Act, 1954, approved August 1, 1953, ch. 305, 67 Stat. 336, 357. Section 645 also repealed a number of so-called "replacing accounts" which had theretofore served as a device for applying reimbursements to replace stocks and materials. The "replacing accounts" generally provided that monies arising from the disposal of various materials would be available for the same purposes as the appropriation from which they were furnished during the fiscal year in which the disposal occurred and through the following year. See H.R. Rep. No. 680, 83d Cong., 1st sess., 56-57 (1953), for the language of the replacing accounts repealed by section 645. *Sub. 179*

Under the language of 10 U.S.C. § 2210(a) quoted above, it seems clear that the "current applicable appropriations" to be "credited with proceeds of the disposals of supplies" are meant to be applicable appropriations current at the time proceeds are received. This construction is reinforced by the fact that, as noted, the replacing accounts superseded by what is now 10 U.S.C. § 2210(a) were apparently designed in effect to preserve the obligational availability of reimbursements for a full year after expiration of the appropriations which "earned" them.

In view of the foregoing, we believe that, by virtue of 10 U.S.C. § 2210(a), reimbursements for supplies may clearly be credited to the appropriation current at the time of collection. Moreover, since the]

language of section 2210(a) is permissive, it does not preclude the option of crediting such reimbursements instead to the appropriation which earned them. Finally, it might be noted that, inasmuch as section 2210(a) refers generally to "proceeds of the disposals of supplies" (excluding only those financed by stock funds), its application is not limited to Economy Act transactions.

A related statute concerning the crediting of reimbursements is 10 U.S.C. § 2205(1970), which provides:

"Reimbursements made to appropriations of the Department of Defense or a department or agency thereof under section 686 of title 31, or other amounts paid by or on behalf of a department or agency of the Department of Defense to another department or agency of the Department of Defense, or by or on behalf of personnel of any department or organization, for services rendered or supplies furnished, may be credited to authorized accounts. Funds so credited are available for obligation for the same period as the funds in the account so credited. Such an account shall be accounted for as one fund on the books of the Department of the Treasury."

This provision derives originally from section 408 of the National Security Act Amendments of 1949, approved August 10, 1949, ch. 412, 63 Stat. 578, 590.

To the extent that reimbursements relate to the furnishing of supplies, 10 U.S.C. § 2205 appears to overlap with 10 U.S.C. § 2210(a) discussed above. Thus it is clear that the "current applicable appropriations" referred to in section 2210(a) are "authorized accounts" within the contemplation of section 2205. In fact, the original version of section 2205 (i.e., section 408 of the 1949 statute, *supra*) used the language "authorize[d] replacing or other accounts." (Underscoring supplied.)

Therefore, sections 2205 and 2210(a) are mutually reinforcing with respect to crediting reimbursements for stocks and materials to the appropriation year in which collected. However, while section 2210(a) applies only to reimbursements for stocks and materials, section 2205 applies as well to reimbursements for services furnished. Thus it remains to consider the treatment of the latter under section 2205.

The purpose of section 408 of the 1949 statute was explained in the House Armed Services Committee report on that legislation, H.R. Rep. No. 1064, 81st Cong., 1st sess., 14 (1949), as follows:

"Availability of reimbursements (section 408)

"This section is intended to simplify procedures presently required under the Economy Act. Based upon the theory that the National Military Establishment should, where advantageous, have an integrated operation despite the fact that it is composed of three departments separately administered, it permits the crediting of reimbursements and sums paid by a department or organization for supplies furnished or for services rendered to authorized replacing or other accounts. The need for continuing use of existing replacing accounts which are now available to the Department of the Army and to a limited extent to the Department of the Air Force, will diminish as the working-capital inventory accounts are implemented-- a further step in the clarification of the appropriation and accounting structure. Funds so credited will remain available for obligation for the period for which the funds in the receiving account are available and such accounts will appear as one fund on the books of the Treasury Department. Also, the effect of this section will be to eliminate some of the procedures necessary under the Economy Act in that it permits the direct charging of appropriations of the Department which orders certain work or services from another department. It eliminates the necessity of establishing working-fund advance accounts between the military departments.

"Inasmuch as the armed services have available the facilities of general accounts of advances, interdepartmental settlements can, therefore, be made at the end of a month without the necessity of advance of funds."

The legislative history of the Act approved September 7, 1962, Pub. L. No. 87-651, 76 Stat. 506, 520, which codified section 408 of the 1949 statute as 10 U.S.C. § 2205, also emphasized the purpose of this section "to authorize the Department of Defense to operate as an integrated department * * *." H.R. Rep. No. 1401, 87th Cong., 2d sess., All (1962); S. Rep. No. 1876, 87th Cong., 2d sess., 19 (1962).

In contrast to 10 U.S.C. § 2210(a) discussed hereinabove, the legislative history of 10 U.S.C. § 2205 does not seem to be of direct assistance in considering whether reimbursements for services may be

credited to appropriations current at the time of collection. While section 2205 permits reimbursements to be credited to "authorized accounts," we are not aware of any provision comparable to 10 U.S.C. § 2210(a) which specifically deals with authorized accounts for services reimbursements.

As noted at the outset of this memorandum, DOD maintains that the "authorized accounts" referred to in section 2205 must mean appropriations current at the time reimbursements are collected since section 2205 also provides that funds so credited remain available for the same period as the receiving account and only the appropriation current at the time of collection would be available for obligation. In our view, this rationale has some logic and seems consistent with the language of section 2205. Inclusion of the second sentence of section 2205, referring to the obligational availability of reimbursements, is apparently designed to do more than merely describe earning accounts. Moreover, it would seem somewhat anomalous to construe section 2205 as contemplating a different treatment for services reimbursements than for reimbursements for supplies.

Accordingly, in the absence of any legislative history or other authority to the contrary, we would concur in DOD's position that 10 U.S.C. § 2205 does generally allow the crediting of reimbursements covered thereunder to the appropriation current at the time of collection. As in the case of 10 U.S.C. § 2210(a), the authority so conferred is permissive and therefore does not exclude the alternative of crediting such reimbursements to the year earned. Thus we would also agree that DOD's option approach is legally valid.

In terms of scope, it should be emphasized that 10 U.S.C. § 2205 deals with reimbursements arising from transactions within DOD or between DOD (and its components) and other Federal agencies. As noted previously, 10 U.S.C. § 2210(a) by its terms deals generally with proceeds from disposals of supplies (other than stock fund transactions). There exist other isolated statutory provisions which govern reimbursements for particular transactions which are, in effect, independent of either section 2205 or 2210(a). See, e.g., 10 U.S.C. § 2211(1970); 22 U.S.C. §§ 2355(a), 2390(2), 2392(d) (1970). Such provisions would have to be addressed on a case-by-case basis in terms of the appropriation year to which reimbursements should be credited.

To summarize the foregoing, whether reimbursements may be credited to the appropriation current at the time of collection (assuming such

appropriation is not the same one that "earned" the reimbursement) depends upon the statutory authority under which the reimbursable transaction occurred. With respect to inter- or intra-agency transactions operating solely under the Economy Act, 31 U.S.C. § 6864(i.e., where 10 U.S.C. § 2205 (or other law is not applicable), reimbursements may only be credited to the appropriation account which earned them, irrespective of when such reimbursements are actually collected. However, many DOD reimbursable transactions are subject to specific statutory provisions which wholly or partially supplant the Economy Act, as follows:

- Transactions financed by working capital funds under 10 U.S.C. § 2208 operate independently of any other statute including the Economy Act. Since these are revolving funds, the timing of reimbursement collections is immaterial.
- Under 10 U.S.C. §§ 2205 and 2210(a), we believe that DOD has authority to credit collections representing proceeds from disposals of supplies, i.e., materials, to appropriations current at the time of collection. Since 10 U.S.C. § 2210(a) refers generally to "disposals of supplies," this provision is apparently not limited in its application to transactions between DOD components.
- 10 U.S.C. § 2205 deals generally with reimbursements for materials and services in inter- and intra-agency transactions. We believe that this section permits the crediting of reimbursements for materials and services to the appropriation current at the time of collection (although, in view of 10 U.S.C. § 2210(a), it is somewhat redundant in the case of reimbursements for materials).

Thus in response to the Chairman's May 31 letter, we believe that DOD's practice of crediting reimbursements to either the year earned or the year collected is generally legal. The Chairman's letter also requests a determination concerning whether the DOD practice, if legal, should be continued. We believe that such a determination is primarily an audit matter. However, we would offer several general comments. First, the Appropriations Committee's staff report is obviously correct in concluding that DOD's practice carries great potential for augmentation and might also be used as a device to avoid potential Antideficiency Act violations. The latter possibility is particularly significant in view of the option aspect of the practice.

Second, we do not believe that the DOD practice serves any necessary purpose which might outweigh these potential problems. The only legitimate justification for the DOD practice which we perceive is to assure that an activity which furnishes goods or services will retain the full availability of its appropriations for its own needs, i.e., to prevent it from losing any obligational authority through support furnished to other activities. However, it seems to us that this objective is already accomplished since DOD now derives obligational authority on the basis of anticipated reimbursements, as apportioned by the Office of Management and Budget. Apparently such apportioned anticipated reimbursement amounts are in addition to apportionments of direct funds (appropriations), and are treated as an additional source of obligational authority as reimbursable orders are received and accepted. See generally DOD 7220.9 Handbook, section 230 (August 1, 1972); cf., 51 Comp. Gen. 598, 605 (1972); OMB Circular No. A-34, ¶ 31.3 (July 1971), now superseded but retained in substance in Federal Management Circular (FMC) No. 74-9, ¶ 6b (November 22, 1974).

Thus, with respect to the Chairman's second question, we perceive no need for continuing DOD's option of crediting reimbursements to appropriations current at the time of collection. We believe this option could be removed by amending 10 U.S.C. § 2205 as follows:

"Reimbursements made to appropriations of the Department of Defense or a department or agency thereof under section 686 of title 31, or other amounts paid by or on behalf of a department or agency of the Department of Defense to another department or agency of the Department of Defense, or by or on behalf of personnel of any department or organization, for services rendered or supplies furnished, [may be credited to authorized accounts. Funds so credited are available for obligation for the same period as the funds in the account so credited. Such an account shall be accounted for as one fund on the books of the Department of the Treasury.] shall be credited to the appropriation accounts which financed such furnishings of supplies or services, subject to the provisions of section 701(c) of title 31.

At the same time, 10 U.S.C. § 2210(a) might be amended to read:

"(a) Current applicable appropriations of the Department of Defense may be credited with proceeds of the disposals of supplies that are not either financed by stock funds established under section 2205 of this title or subject to the provisions of section 2205 of this title.

The latter amendment suggested above is designed to affect only reimbursements from transactions within DOD which are subject to 10 U.S.C. § 2205. Thus they would leave undisturbed the treatment of proceeds from disposals of supplies other than those subject to section 2205.

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