

DIGESTS OF
APPROPRIATIONS
LAW DECISIONS AND
OPINIONS

(January 1 to
December 31, 2010)

List of Appropriations Law Decisions and Opinions

(January 1 to December 31, 2010)

B-318897

Engineer Research and Development Center, USACE—Use of Plant Replacement and Improvement Program Account to Replace Headquarters Building

March 18, 2010

B-319075

Department of Health and Human Services—Use of Appropriated Funds for *HealthReform.gov* Web site and *State Your Support* Web page

April 23, 2010

B-319009

U.S. Secret Service—Statutory Restriction on Availability of Funds Involving Presidential Candidate Nominee Protection

April 27, 2010

B-318831

Election Assistance Commission—Obligation of Fiscal Year 2004 Requirements Payments Appropriation

April 28, 2010

B-318835

Election Assistance Commission—Obligation of Requirements Payments under Continuing Resolutions in Fiscal Years 2009 and 2005

May 14, 2010

B-319084

Updated Rescission Statistics, Fiscal Years 1974–2009

May 14, 2010

B-319488

National Aeronautics and Space Administration—Constellation Program and Appropriations Restriction, Part I

May 21, 2010

B-319349

United States Capitol Police—Advances to Volpe Center Working Capital Fund

June 4, 2010

B-319414

**Amtrak—Permanence of the 2010 Consolidated Appropriations Act
Provision on Firearm Storage and Carriage on Trains**

June 9, 2010

B-318724

**Department of the Army—The Fiscal Year 2008 Military Personnel,
Army Appropriation and the Antideficiency Act**

June 22, 2010

B-320091

**National Aeronautics and Space Administration—Constellation
Program and Appropriations Restrictions, Part II**

July 23, 2010

B-319734

**Consumer Product Safety Commission—Period of Availability and
Permissible Uses of Grant Program Appropriations**

July 26, 2010

B-319246

Denali Commission—Authority to Receive State Grants

September 1, 2010

B-319834

**Department of Health and Human Services—Use of Appropriated
Funds for Medicare Brochure**

September 9, 2010

B-320116

**Architect of the Capitol—Availability of Funds for Battery
Recharging Stations for Privately Owned Vehicles**

September 15, 2010

B-320329

**NeighborWorks America—Availability for Grants to Affordable
Housing Centers of America**

September 29, 2010

B-319556

**Use of Appropriated Funds to Pay for the D.C. Water Impervious
Surface Area Fee**

September 29, 2010

B-320795

**Use of GAO's Appropriations to Pay the District of Columbia
Stormwater Fee**

September 29, 2010

B-320868

**Use of GAO's Appropriations to Pay D.C. Water's Impervious
Surface Area Charge and the District of Columbia Stormwater Fee**

September 29, 2010

B-320482

**Department of Health and Human Services—Use of Appropriated
Funds for Technical Assistance and Television Advertisements**

October 19, 2010

B-319189

**Denali Commission—Transfer of Funds Made Available through the
Federal Transit Administration's Appropriations**

November 12, 2010

B-320543

**Harry S. Truman Scholarship Foundation—Availability of Trust
Fund's Interest and Earnings**

November 12, 2010

B-318274

**Bureau of Land Management and General Services
Administration—Selected Land Transactions**

December 23, 2010

Digests of Appropriations Law

Decisions and Opinions

(January 1 to December 31, 2010)

Matter of: Engineer Research and Development Center, USACE—Use of Plant Replacement and Improvement Program Account to Replace Headquarters Building

File: B-318897

Date: March 18, 2010

Funds in the U.S. Army Corps of Engineers' (USACE) Plant Replacement and Improvement Program account in the USACE Revolving Fund are not available to pay for the cost of replacing the existing Engineer Research and Development Center (ERDC) headquarters building without specific congressional authorization. Building a new ERDC headquarters building is a military construction project which must be accomplished in accordance with title 10 of the United States Code, which requires that military departments may only carry out such projects "as are authorized by law." 10 U.S.C. § 2801(a). Therefore, since the Revolving Fund provision in 33 U.S.C. § 576 does not provide the necessary authority, construction of a new ERDC headquarters using the revolving funds requires specific congressional authorization.

Matter of: Department of Health and Human Services—Use of Appropriated Funds for *HealthReform.gov* Web site and *State Your Support* Web page

File: B-319075

Date: April 23, 2010

Department of Health and Human Services (HHS) did not violate grassroots lobbying prohibitions when it used appropriated funds to create and operate a Web site and Web page that provided the public an opportunity to sign electronic form letters addressed to the President in support of health care reform. To constitute a violation, an agency communication must constitute a clear, direct appeal to the public to contact Members of Congress in support of the agency's position on

pending legislation. Because nothing in the Web site or Web page constituted a clear, direct appeal to the public, HHS did not violate the grassroots lobbying prohibitions.

Also, HHS did not violate the prohibitions on the use of appropriations for publicity or propaganda. GAO did not find any communication on the Web site or Web page that could be characterized as self-aggrandizement or covert propaganda. Although the Web site and Web page contained statements that may be characterized as having political content, GAO found no statements that were purely partisan.

Matter of: U.S. Secret Service—Statutory Restriction on Availability of Funds Involving Presidential Candidate Nominee Protection

File: B-319009

Date: April 27, 2010

The Department of Homeland Security (DHS) and the United States Secret Service (USSS) violated section 503(b) of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, and the Antideficiency Act when USSS obligated \$5.1 million of reprogrammed funds for Presidential Candidate Nominee Protection expenses prior to notifying the House and Senate Appropriations Committees of the reprogramming. Section 503(b) provides that no funds are available through a reprogramming in excess of \$5 million unless House and Senate Appropriations Committees are notified 15 days in advance of the reprogramming. USSS experienced a \$5.1 million shortfall in Presidential Candidate Nominee Protection, a program, project or activity (PPA) in USSS's appropriation, prior to January 20, 2009, and used amounts from another PPA, National Security Events, to cover the shortfall. However, DHS did not notify Congress of the reprogramming until June 30, 2009, at least 5 months after the reprogrammed funds were obligated by USSS. Because the reprogrammed amounts were not legally available for obligation until DHS had notified the committees, USSS incurred

obligations in excess of available appropriations, violating the Antideficiency Act.

Matter of: Election Assistance Commission—Obligation of Fiscal Year 2004 Requirements Payments Appropriation

File: B-318831

Date: April 28, 2010

The Election Assistance Commission (EAC) violated the purpose statute, 31 U.S.C. § 1301(a), when it obligated certain grant programs to its fiscal year 2004 requirements payments appropriation. Under the Help America Vote Act of 2002, EAC is authorized to distribute payments to states for enumerated purposes (*i.e.*, “requirements payments”), for which EAC receives a specific appropriation. EAC used its requirements payments appropriation for items not on the statutory list of enumerated purposes because of language in a conference report and the Office of Management and Budget apportionment. The plain language of the appropriation, however, was clear that the appropriation was legally available only for requirements payments. To correct its purpose violation, EAC should adjust its accounts and charge its grant obligations to its salaries and expenses appropriation, which is available “for necessary expenses to carry out [HAVA].” Given the passage of time, however, EAC commissioners may wish to seek and obtain congressional ratification of its improper grant expenditures.

Matter of: Election Assistance Commission—Obligation of Requirements
Payments under Continuing Resolutions in Fiscal Years 2009
and 2005

File: B-318835

Date: May 14, 2010

In determining amounts available for obligation under continuing resolutions, agencies must consider the operations of their programs and relevant provisions of the continuing resolutions. The U.S. Election Assistance Commission (EAC) makes payments to the states once a year for requirements payments. When EAC was operating under continuing resolutions at the beginning of fiscal years 2009 and 2005, it delayed obligations until it received its regular appropriation. Funds appropriated for requirements payments under both continuing resolutions were subject to the so-called “entitlements provision” enacted in those continuing resolutions, which required activities to continue at the rate to maintain program levels under current law. Since states receive their entire requirements payment for the year in a single distribution, generally late in the fiscal year, EAC could wait to obligate funds until it had its regular appropriations for the year and still maintain its program levels. This is consistent with other provisions of the continuing resolutions, such as implementing only the most limited funding action. Thus we do not object to EAC’s actions.

Matter of: Updated Rescission Statistics, Fiscal Years 1974–2009

File: B-319084

Date: May 14, 2010

This letter transmits GAO’s update of statistical data concerning rescissions proposed and enacted since the passage of the Impoundment Control Act of 1974. The attached statistics contain proposed and enacted rescissions through fiscal year 2009.

Matter of: National Aeronautics and Space Administration—Constellation Program and Appropriations Restriction, Part I

File: B-319488

Date: May 21, 2010

The National Aeronautics and Space Administration's (NASA) planning activities did not violate an appropriations provision barring it from using the appropriation to create or initiate a new program, project, or activity. NASA staff developed preliminary plans, budget levels, and prepared and delivered presentations to the Office of Management and Budget and the Office of Science and Technology Policy. Staff activities focused on planning and did not create any new programs, set up new program offices, or hire or permanently reassign any staff. Staff activities also did not award any contracts or bind NASA to taking any future course of action. Agencies must engage in various planning activities in order to provide timely, useful, and accurate information as part of the appropriations process. The appropriations provision did not preclude NASA's use of the funds to conduct planning activities.

Matter of: United States Capitol Police—Advances to Volpe Center Working Capital Fund

File: B-319349

Date: June 4, 2010

Amounts advanced in fiscal year 2007 by the United States Capitol Police (USCP) from its fiscal year 2003 appropriation were available to cover obligations incurred by the Department of Transportation's Volpe Center until September 30, 2008. At that point, USCP's fiscal year 2003 appropriation (both obligated and unobligated balances) was canceled by operation of law. 2 U.S.C. § 1907(d). The funds were not available to cover Volpe's November 2008 obligation for its interagency agreement with the Naval Air Systems Command (NAVAIR). USCP should adjust its accounts accordingly. To the extent USCP is unable to transfer fiscal year 2009 or no-year funds to Volpe to cover the obligation, it will have violated the

Antideficiency Act by obligating in excess of available appropriations. If insufficient balances are available, USCP may wish to seek legislative ratification of its use of the fiscal year 2003 appropriation.

Matter of: Amtrak—Permanence of the 2010 Consolidated Appropriations Act Provision on Firearm Storage and Carriage on Trains

File: B-319414

Date: June 9, 2010

A provision in the 2010 Consolidated Appropriations Act requiring Amtrak to develop and implement a checked firearms program for travelers on Amtrak trains is permanent law. Provisions in appropriations acts are presumed effective only for the covered fiscal year unless Congress makes clear that they are permanent. Here, the provision contained prospective language requiring an agency action “not later than one year” after enactment of the appropriations act, which would occur after the end of the fiscal year. This prospective language indicates that Congress intended the provision to be effective beyond the end of the fiscal year. Other factors indicating congressional intent that the provision be permanent include the fact that the provision is of a general nature, bearing no relation to the object of the appropriation; the provision is not a restriction on the use of appropriations but rather a substantive provision standing alone; considering the provision not permanent would render it ineffective and produce an absurd result; and the codifiers included the provision in the United States Code.

Matter of: Department of the Army—The Fiscal Year 2008 Military Personnel, Army Appropriation and the Antideficiency Act

File: B-318724

Date: June 22, 2010

The Army violated the Antideficiency Act in its fiscal year 2008 Military Personnel, Army appropriation by incurring obligations in excess of the total amount available. The Army records estimated obligations for certain expenses and then adjusts the estimates based on actual disbursement data that it receives weeks or months later. The Army identified a \$200 million shortfall in its fiscal year 2008 Military Personnel, Army appropriation when the disbursement data exceeded the estimated obligations. The Army explained that it relied on estimated obligations, despite the availability of actual data from program managers that could be used to record the initial obligation or adjust the estimated obligations, because of inadequate financial management systems. The Army's decision to rely on estimated obligations, despite the availability of actual obligation data, does not relieve the Army of responsibility for complying with the Antideficiency Act.

Matter of: National Aeronautics and Space Administration—Constellation Program and Appropriations Restrictions, Part II

File: B-320091

Date: July 23, 2010

This opinion is GAO's second in response to a March 12, 2010 letter requesting GAO's views on several matters related to the National Aeronautics and Space Administration (NASA) and its Constellation program. GAO's earlier opinion, B-319488, May 21, 2010, found that NASA has not violated a restriction in NASA's fiscal year 2010 Exploration appropriation on the use of Exploration funds to "create or initiate a new program, project or activity." In this opinion, GAO responded to questions regarding whether NASA has obligated Exploration appropriations in a manner consistent with the Impoundment Control Act and whether NASA

complied with a restriction in the fiscal year 2010 Exploration appropriation that bars NASA from using the Exploration appropriation for the “termination or elimination of any program, project or activity” of the Constellation program. GAO found that NASA has not violated the Impoundment Control Act or the provision in the Exploration appropriation concerning termination or elimination of a Constellation program, project, or activity.

Under the Impoundment Control Act, government officers must make budget authority available for obligation and expenditure unless the President follows procedures set forth in the act. GAO found that, to date, NASA has not withheld Exploration funds from obligation and has obligated the funds at rates comparable to the rates of obligations in years in which NASA obligated nearly all available Exploration funds. GAO also found that NASA has not violated the provision in the Exploration appropriation that bars NASA from using the Exploration appropriation for the “termination or elimination of any program, project or activity” of the Constellation program. A “Program, Project, or Activity (PPA)” is an element within a budget account. For annually appropriated accounts, the Office of Management and Budget and agencies identify PPAs by reference to committee reports and budget justifications. NASA’s fiscal year 2010 budget request lists five PPAs with the “Constellation Systems” category. NASA has continued to obligate Exploration funds to all five PPAs in amounts consistent with the allocations given in congressional committee reports and NASA’s public budget documents.

Matter of: Consumer Product Safety Commission—Period of Availability and Permissible Uses of Grant Program Appropriations

File: B-319734

Date: July 26, 2010

The fiscal year 2009 salaries and expenses appropriation for the Consumer Product Safety Commission (CPSC) made \$2 million available until the end of fiscal year 2010 specifically for a grant program established by the Virginia Graeme Baker Pool and Spa Safety Act (Safety Act). The Safety Act authorized appropriations for the program to remain available until expended. In this case, the appropriation act, enacted subsequent to the

Safety Act, expressly provided that the \$2 million appropriation was available for obligation for the expenses of this program only “until September 30, 2010,” so the funds do not remain available beyond that point despite the provision in the Safety Act. In addition, the appropriation act requires that these funds be used solely for the Safety Act grant program, and thus funds are not available for any other CPSC programs or activities.

Matter of: Denali Commission—Authority to Receive State Grants

File: B-319246

Date: September 1, 2010

The Denali Commission does not have authority to accept grant funds from the state of Alaska that the state has designated for use for a particular purpose. The state grant constitutes a conditional gift because, as a condition of receipt, the Commission was required to award the grant to a particular organization for a particular project and then monitor it, thereby placing an obligation or duty on the Commission. Federal agencies may not accept conditional gifts unless specifically authorized by statute to do so. While the Denali Commission has authority to accept gifts, its gift acceptance authority does not extend to conditional gifts.

Matter of: Department of Health and Human Services—Use of Appropriated Funds for Medicare Brochure

File: B-319834

Date: September 9, 2010

This opinion responds to a request for GAO’s views on whether the Department of Health and Human Services’ (HHS) use of funds to prepare and distribute a brochure to Medicare beneficiaries violated the publicity or propaganda prohibition in the Consolidated Appropriations Act, 2010. The brochure was intended to inform Medicare beneficiaries about

changes in Medicare resulting from the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (referred to jointly as PPACA). The appropriations act prohibition states that “[n]o part of any appropriation contained in this or any other Act shall be used directly or indirectly, including by private contractor, for publicity or propaganda purposes within the United States not heretofore authorized by the Congress.” The prohibition bans the use of appropriations for communications that are covert, self-aggrandizing, or purely partisan in nature. GAO concluded that HHS did not violate the prohibition.

Although the HHS brochure contains instances in which HHS presented abbreviated information and a positive view of PPACA that is not universally shared, nothing in the brochure constitutes communications that are purely partisan, self-aggrandizing, or covert. In addition, GAO points out some overstatements in the brochure of PPACA’s benefits, such as where the brochure suggests that PPACA increases the number of primary care providers, when PPACA only provides incentives for such increases. In this opinion, GAO does not examine nor express a view on the overall economy, efficiency, or effectiveness of the brochure.

Matter of: Architect of the Capitol—Availability of Funds for Battery Recharging Stations for Privately Owned Vehicles

File: B-320116

Date: September 15, 2010

Without statutory authority, the Architect of the Capitol (AOC) may not use appropriated funds to install battery recharging stations for the privately owned hybrid or electric vehicles of employees or Members of Congress on the Capitol grounds nor establish a program where such employees reimburse AOC for costs related to the use of recharging stations for employees’ personal vehicles. Recharging stations would facilitate commuting between home and work, which is a personal expense. Personal expenses are not payable from appropriations without specific statutory authority. Also, the authority given to agencies in 5 U.S.C. § 7905 to establish certain programs to improve air quality and reduce traffic congestion does not permit an agency to install and operate recharging stations for employees’ privately owned hybrid vehicles. The use of

appropriations for recharging personal vehicles of employees is a matter for Congress to address through legislation.

Matter of: NeighborWorks America—Availability for Grants to Affordable Housing Centers of America

File: B-320329

Date: September 29, 2010

NeighborWorks may use its appropriations to make grants to Affordable Housing Centers of America (AHCOA). Section 418 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2010, prohibits the distribution of federal funds to “affiliates, subsidiaries, or allied organizations” of the Association of Community Organizations for Reform Now (ACORN). GAO concluded that AHCOA is not presently an affiliate, subsidiary, or allied organization of ACORN because the two entities are not currently financially or organizationally related. NeighborWorks should continue to monitor any changes that might implicate the prohibition or GAO’s conclusion.

Matter of: Use of Appropriated Funds to Pay for the D.C. Water Impervious Surface Area Fee

File: B-319556

Date: September 29, 2010

The District of Columbia Water and Sewer Authority (D.C. Water), a public utility and independent municipal corporation, is responsible for the operation and maintenance of water distribution and sewage collection, treatment, and disposal systems within the District of Columbia. In April 2008, D.C. Water notified the U.S. Office of Management and Budget of a newly implemented impervious area billing program to be assessed against federal customers, including GAO’s headquarters building, in October 2010. Under the program, D.C. Water reduced the metered sewer service rate and

added a “special charge for properties that include surfaces water can’t penetrate,” known as impervious surface areas (ISA). Funds collected under the impervious area billing program are used to “recover the costs of the . . . Combined Sewer Overflow Long-Term Control Plan.” The purpose of the Control Plan is to reduce the number of combined sewer overflows that result in the discharge of untreated sewage directly into local waterways when D.C. Water’s facilities are overwhelmed because of stormwater runoff during heavy rain events.

GAO determined that D.C. Water’s ISA charge is a component of the utility rate a customer must pay to obtain water and sewer services. The Supremacy Clause of the U.S. Constitution establishes that the United States and its instrumentalities are immune from direct taxation by state and local governments. However, a state or political subdivision may charge for services rendered or conveniences provided, and such charge is not considered a tax. The computation of such charges must bear a relationship to the service rendered. The ISA charge is designed specifically to cover costs associated with the Control Plan, which is composed of construction projects such as the building of underground storage tunnels and the rehabilitation of aging pumping stations. The cost of Control Plan capital improvements is necessitated by stormwater runoff collected by the combined sewer system during heavy rain events which overburdens D.C. Water’s treatment facility. The stormwater runoff from the GAO’s impervious surface areas combines with wastewater from the GAO building, and is treated at D.C. Water’s Blue Plains treatment facility before release into local waterways. D.C. Water’s method for calculating the charge based on impervious surface area represents a reasonable approximation of GAO’s fair share of the capital costs and a fair approximation of the sewer services provided to GAO. Therefore, GAO did not object to the use of GAO’s appropriations to pay the ISA charge.

Matter of: Use of GAO's Appropriations to Pay the District of Columbia Stormwater Fee

File: B-320795

Date: September 29, 2010

Appropriated funds are not available to pay the District of Columbia's (District) stormwater fee. The stormwater fee is a tax for which Congress has not legislated a waiver of sovereign immunity. Pursuant to the Supremacy Clause of the U.S. Constitution, the United States and its instrumentalities are immune from direct taxation by state and local governments. U.S. Const. art VI, cl. 2.

The stormwater fee arises, not upon the provision of a service or the granting of a privilege, but as a result of property ownership in order to raise revenue to defray the costs of the District government in carrying out the District's stormwater management activities, such as efforts to encourage the use of low-impact development practices and functional landscaping, enhanced street cleaning, retrofitting catch basins, expanding the tree canopy within the District, installing green roofs on District-owned properties, installing cameras to record illegal dumping activities, and instituting public education and outreach programs. These activities do not provide a particularized benefit or service to the United States.

While section 313(a) of the Clean Water Act, 33 U.S.C. § 1323(a), waives sovereign immunity from many state and local environmental requirements, it does not waive the federal government's sovereign immunity from taxation by state and local governments. Such a waiver must clearly and expressly confer the privilege of taxing the federal government.

Matter of: Use of GAO's Appropriations to Pay D.C. Water's Impervious Surface Area Charge and the District of Columbia Stormwater Fee

File: B-320868

Date: September 29, 2010

GAO advised the Department of Treasury that GAO's appropriations are not available to pay the District of Columbia's stormwater fee. The stormwater fee is a tax for which Congress has not yet legislated a waiver of sovereign immunity. *See* B-320795, Sept. 29, 2010. GAO instructed Treasury not to make a payment from GAO's appropriations for the District's stormwater fee itemized on the District of Columbia Water and Sewer Authority's (D.C. Water) fiscal year 2011 water and sewer bill. GAO also advised Treasury that the impervious surface area charge assessed by D.C. Water is a valid sewer rate payable from GAO's appropriation. *See* B-319556, Sept. 29, 2010.

Matter of: Department of Health and Human Services—Use of Appropriated Funds for Technical Assistance and Television Advertisements

File: B-320482

Date: October 19, 2010

The Department of Health and Human Services (HHS) did not violate the statutory prohibition against using appropriated funds for publicity or propaganda when it awarded contracts for technical assistance and when it aired television advertisements. Prior to the enactment of the Patient Protection and Affordable Care Act (PPACA), HHS contracted with an economist to provide technical memorandums estimating various changes that would result from proposed health care legislation. Although the economist independently made public statements about health care policy and testified before Congress, these actions did not violate the publicity or

propaganda prohibition because HHS did not contract with the economist for this purpose.

After enactment of PPACA, HHS contracted for the production and airing of three television advertisements featuring a well-known actor. The advertisements did not violate the prohibition because they were not a purely partisan activity. The advertisements, though brief, provided beneficiaries with some information regarding changes resulting from PPACA, while directing beneficiaries to additional sources of information. However, two of the advertisements overstated one of PPACA's benefits when they stated that beneficiaries will "have [their] guaranteed benefits." Although beneficiaries who participate in Medicare Advantage are guaranteed original Medicare benefits, the other benefits offered by Medicare Advantage plans could change at a plan's discretion. In this legal opinion, GAO does not examine nor express a view on the overall economy, efficiency, or effectiveness of the advertisements.

Matter of: Denali Commission—Transfer of Funds Made Available
through the Federal Transit Administration's Appropriations

File: B-319189

Date: November 12, 2010

Agencies are prohibited from transferring funds absent statutory authority. 31 U.S.C. § 1532. The Secretary of Transportation has specific statutory direction to transfer to the Denali Commission (Commission) funds appropriated to the Federal Transit Administration (FTA) for capital projects. These transfers should not be made using Economy Act agreements, which permit an agency to place an order for goods or services with another agency. Delays in the transfer of the funds from FTA to the Commission did not constitute deferrals under the Impoundment Control Act of 1974. Funds made available to the Commission from funds appropriated to FTA become available for obligation by the Commission when the Department of the Treasury transfers the funds to the Commission's appropriation account.

Matter of: Harry S. Truman Scholarship Foundation—Availability of Trust Fund’s Interest and Earnings

File: B-320543

Date: November 12, 2010

The Harry S. Truman Scholarship Foundation may obligate and expend the accumulated interest and earnings in its Scholarship Trust Fund in fiscal years subsequent to the fiscal year in which earned. The Harry S. Truman Memorial Scholarship Act authorizes the Secretary of the Treasury to pay to the Foundation from the interest and earnings of the Fund such sums as the Foundation’s Board of Trustees determines are necessary and appropriate to enable the Foundation to carry out its purposes. 20 U.S.C. § 2010(a). Nothing in the Act limits the availability of these funds to the fiscal year earned.

Matter of: Bureau of Land Management and General Services Administration—Selected Land Transactions

File: B-318274

Date: December 23, 2010

This opinion concerned the Bureau of Land Management’s (BLM) use of its land exchange authority under the Federal Land Policy and Management Act of 1976 (FLPMA) and the California Desert Protection Act (CDPA). The opinion arose out of a GAO report, *Federal Land Management: BLM and the Forest Service Have Improved Oversight of the Land Exchange Process, but Additional Actions Are Needed*, GAO-09-611 (Washington, D.C.: June 12, 2009), which identified questionable land exchange practices by BLM.

BLM violated the Miscellaneous Receipts Statute when it sold and purchased land relying on the land exchange authority contained in the Federal Land Policy and Management Act of 1976 (FLPMA) and the California Desert Protection Act (CDPA). GAO concluded that transactions in which BLM sold and purchased land were not authorized

under the land exchange provisions of the applicable statutes. The General Services Administration (GSA) also violated the Miscellaneous Receipts Statute when it acted on BLM's behalf in certain transactions in the state of California under CDPA.

The proceeds of the land sales, under applicable statutes, are to be deposited into the appropriate funds in the Treasury, "without deduction for any charge or claim." 33 U.S.C. § 3302(b). This BLM and GSA did not do. Instead, after selling public lands and surplus federal real property, BLM and GSA, on BLM's behalf, used some of the proceeds to purchase land. These actions violated the Miscellaneous Receipts Statute. To rectify this situation, BLM should transfer funds from the augmented appropriations to the appropriate accounts in the Treasury. If BLM finds that it lacks sufficient budget authority to cover the adjustments, it should report a violation of the Antideficiency Act in accordance with 31 U.S.C. § 1351.

GSA improperly deposited the proceeds from surplus federal real property sales into a deposit fund account in the Treasury. These accounts are intended to hold amounts that do not belong to the government. The proceeds of the California sales are funds of the United States and, therefore, must be deposited into the appropriate fund in the Treasury. GSA should deposit the balance remaining in the deposit fund account into the appropriate fund in the Treasury.
