



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Appropriation Accounting—Refunds and Uncollectibles

File: B-257905

Date: December 26, 1995

DIGEST

1. Recoveries of amounts paid under a fraudulent contract constitute "refunds" that may be deposited to the credit of the appropriation charged with the payments until the appropriation account is closed. Once the account is closed, recoveries should be deposited to the general fund of the Treasury to the credit of the appropriate receipt account. 31 U.S.C. § 1552(b) (1994).
2. A loss in an accountable official's account should be adjusted in accordance with the requirements of the laws governing the adjustments of their accounts. Thus the appropriation current at the time relief is granted to the accountable official, or if relief is not granted, current at the time the debt is determined to be uncollectible, should be charged with the loss.

DECISION

This decision is in response to questions from the Central Intelligence Agency's (CIA) Office of General Counsel about (1) whether the CIA may deposit the amounts recovered from an embezzler to the credit of the appropriation against which the improper payments were initially charged under a fraudulent contract, and (2) whether the CIA is required to charge the amount of any unrecovered payments against current appropriations at the time it writes off the debt. The debt arose as a result of payments to a former employee on a fraudulent contract that was obligated against a prior year appropriation. After discovering the fraud, the CIA sought to recover the payments from the former employee. It may not be possible to recover the entire debt and some portion of the receivable may have to be written off as uncollectible. The CIA has also advised this Office that the fraudulent contract payments remain a charge against the prior year appropriation.

For the reasons given below, the CIA may deposit recoveries of fraudulent payments to the credit of the appropriation charged with the payments unless that appropriation account has been closed. If the appropriation has been closed, any recoveries should be deposited to the general fund of the Treasury to the credit of the appropriate receipt account. 31 U.S.C. § 1552(b) (1994). To the extent the debt

is written off as uncollectible and an adjustment is made to restore the account from which the fraudulent payment was made, an appropriation current at the time of the adjustment should be charged. 31 U.S.C. § 3527(d) (1994).

Background

Article 1, sec. 9, cl. 7 of the Constitution provides that "No Money shall be drawn from the Treasury, But in Consequence of Appropriations made by law. . . ." This provision was intended as a restriction on the disbursing authority of the executive branch, Cincinnati Soap Co. v. United States, 301 U.S. 321 (1936), that is, to preclude expenditures of funds from the Treasury except as authorized by the Congress. This authorization is provided through various legislative enactments denoted as "appropriations". Once an appropriation is enacted, it is usually made available to the agency to spend through the apportionment and allotment process.¹

Generally, accounting for the use of appropriations occurs in a sequential order. Apportionments authorized by the Office of Management and Budget (for executive branch agencies) are charged to related appropriations. Authorized allotments are charged to the apportionment and obligations are charged to the related allotments.² Obligations, such as purchase orders tendered or contracts entered into, constitute a formal charge for which an agency expects to expend funds. Recording the obligation reduces the unobligated portion of the allotment that is available for incurring obligations. As a contract is performed and payments made, the obligation is liquidated without effecting the charges to the allotment. Payments are generally intended to equal the related obligation. However, when payments total either more or less than the amount obligated, the allotment is adjusted. The allotment balance is increased if the total payment is less than the amount obligated and is reduced if the total payment is more than amount obligated.³ The allotment balance should reflect the actual amount of payments charged to the allotment, and thus also charged to the appropriation. These budgetary accounting procedures are intended to ensure that government agencies and officials comply with the limits on

¹31 U.S.C. §§ 1512, 1514, 1517 (1994). See also Office of Management and Budget Circular No. A-34, Revised, August 1985.

²31 U.S.C. § 1501 (1994) sets forth the criteria for recording obligations against appropriations.

³Allotments are also adjusted to reflect upward or downward adjustments to obligations prior to payment when the amount of changes are known prior to payment.

their authority to spend funds as set forth in appropriation acts.⁴

Appropriations are available only for the objects or purposes for which they are made, 31 U.S.C. § 1301(a) (1994), which means that they are available for all expenses reasonably necessary to accomplish those objects or purposes. (58 Comp. Gen. 667 (1979)). The fact that money is paid out of the Treasury does not mean that the expenditure is a proper charge against an appropriation. When it is discovered that improper payments are made under a recorded obligation, agencies will institute actions to recover the improper payments from the recipient. The questions presented here concern the proper accounting for amounts recovered, or determined to be uncollectible, by the agency.

Deposit Requirements

As a general rule all funds received for the use of the United States must be deposited in the general fund of the Treasury to the credit of the appropriate receipt account,⁵ unless deposit to the credit of an appropriation or other fund account is authorized by law. 31 U.S.C. § 3302 (1994). One exception to this rule is that an agency may retain receipts that qualify as "refunds". Refunds may be deposited to the credit of the appropriation against which the payment was charged rather than to a general fund receipt account. If the appropriation account charged with the payment has expired, but has not yet closed, the refund is deposited to the credit of the expired account where it is available for recording or adjusting obligations properly incurred before the appropriation expired. 71 Comp. Gen. 502, 504-507 (1992); B-217913.2, Feb. 19, 1993.⁶ Once the appropriation account has been

⁴The discussion in this decision focuses primarily on the budgetary aspects of accounting. Agencies are required to record all transactions in the United States Government Standard General Ledger (SGL). See GAO, Policy and Procedures Manual for Guidance of Federal Agencies, Title 2 , Appendix III, chapter 2 (TS 2-25, August 1987) and Office of Management And Budget Circular No. A-127 (Revised), (July 23, 1993). The SGL contains two complete and separate, but integrated, self-balancing sets of accounts—budgetary and proprietary. Budgetary accounts are used to recognize and track budget approval and execution, whereas proprietary accounts are used to recognize and track assets, liabilities, revenues, and expenses.

⁵See Volume I Treasury Financial Manual (TFM) 2-1500 and the supplement to I TFM entitled "Federal Account Symbols and Titles", Part I-Receipt Account Symbols and Titles, for a listing of various general fund receipt accounts for accounting purposes.

⁶Of course, should the agency for reasons of economy choose not to deposit the refund to the credit of the appropriation, then it must be deposited to the general
(continued...)

closed, refunds should be deposited to the general fund of the Treasury to the credit of the appropriate miscellaneous receipt account. 31 U.S.C. § 1552(b) (1994).⁷ Thus, in theory, the unobligated balance of the appropriation account after the refund should be what it would have been had the amount of the obligation covered by the refund not been improperly paid.

"Refunds" are returns of advances, collections for over payment made, adjustments for previous amounts disbursed, or recovery of erroneous disbursements from appropriation or fund accounts that are directly related to, and are reductions of, previously recorded payments from the accounts. See, GAO, Policy and Procedures Manual for Guidance of Federal Agencies (GAO-PPM), title 7, § 5.4, (TS 7-43, May 18, 1993), 31 U.S.C. § 1552(b).⁸ Recoveries of payments made under a fraudulent contract that have been, and remain, charged to an allotment/appropriation account under the CIA's accounting records, constitute "refunds." The recovered payments may be deposited to the credit of the allotment/appropriation against which the payments previously were charged since they are recoveries of improper disbursements that are directly related to a previously recorded payment from the allotment/appropriation account.

Accounting for Receivable Write Off

If recovery cannot be made from an individual who has received an "overpayment," the responsible certifying, disbursing or other accountable official of the government is personally liable for repayment unless relieved of liability under one

⁶(...continued)

fund of the Treasury to the credit of the appropriate receipt account. 73 Comp. Gen. 210 (1994).

⁷See 73 Comp. Gen. 338 (1994); 72 Comp. Gen. 343, 346-347 (1993), regarding the adjustment of records relating to closed accounts.

⁸7 GAO-PPM § 5.4 is based on the Treasury Department—General Accounting Office Joint Regulation No. 1, September 22, 1950 that is set forth in Appendix II of 7 GAO-PPM. Examples of excess payments that qualify as "refunds" set forth in earlier versions of title 7 include collections for (1) payments in error, (2) over payment, (3) recoveries on suspension or disallowances made as a result of audits, and (4) any amounts collected in excess of what is actually due under contracts as adjusted for final settlement. See, 7 GAO-PPM § 3050.30b. (TS 7-7, October 15, 1958).

of several provisions of law. See, e.g., 31 U.S.C. §§ 3527, 3528 (1994).⁹ If relief is granted, adjustments are made to restore any shortage in an account or fund by charging appropriations current at the time the adjustment is made and not the fiscal year in which the loss occurred. 31 U.S.C. § 3527(d), 10 U.S.C. § 2777(b) (1994).¹⁰ However, if relief is inappropriate because the loss is the result of the fault or negligence of the accountable official or agent, and the head of the agency determines that the debt is uncollectible, the appropriation or fund currently available for the expense of the accountable function is charged with the amount necessary to adjust the account. 31 U.S.C. § 3530(a) (1994).¹¹ Thus, regardless of when the debts are written off as uncollectible, an adjustment to restore a shortage in an account or fund should be made by charging an appropriation current at the time of the adjustment.

/s/Robert P. Murphy
for Comptroller General
of the United States

⁹Relief from liability for the physical loss or deficiency in the account of an accountable official or agent are authorized under 31 U.S.C. § 3527(a). We note that cases of fraud or embezzlement are normally treated as physical losses for purpose of the relief statutes. B-202074, July 21, 1983.

¹⁰In cases where agencies are authorized to grant relief without the involvement of this Office, they may exercise the restoration authority without our involvement. 7 GAO-PPM § 8.14.C.

¹¹Assuming the statutory conditions are met, adjustments under 31 U.S.C. § 3530 are made directly by the agency with no need for specific authorization or concurrence from GAO. 7 GAO-PPM § 8.14.D.