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DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-211373 **DATE:** March 20, 1985

MATTER OF: Department of Health and Human Services detail of Office of Community Services employees

DIGEST:

1. The Department of Health and Human Services did not act improperly in fiscal year 1983 in terminating the functions of the regional offices of the Office of Community Services (OCS). There was no statutory requirement that the offices remain open, and the managers of the Department and the OCS had broad discretion to determine how they would carry out the OCS block grants program and how they would spend the money in the fiscal year 1983 appropriation to the OCS, Pub. L. No. 97-377, 96 Stat. 1830, 1892 (1982).

2. Expenditure by the Department of Health and Human Services of $1.776 million from funds appropriated to the Office of Community Services (OCS) for Community Services Block Grants, Pub. L. No. 97-377, 96 Stat. 1830, 1892 (1982), on the detail of some 78 OCS employees did not constitute a de facto impoundment. The expenditures constituted neither a failure to obligate or expend funds nor a withholding or a delaying of the obligation or expenditure of funds but rather reflected a management decision about how appropriated funds were to be expended.

3. Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297, 332, applies to appropriations covering salaries and expenses. There is nothing in the Act specifically differentiating between "program" appropriations and "salaries and expense" appropriations.

4. Except under limited circumstances, nonreimbursable details of employees from one agency to another violates the law that appropriations

be spent only for the purposes for which appropriated, (31 U.S.C. § 1301(a)), and unlawfully augments the appropriations of the agencies making use of the detailed employees. The appropriations of a loaning agency may not be used in support of programs for which its funds have not been appropriated.

5. Nonreimbursable details of employees from one agency to another or between separately funded components of the same agency continue to be permissible where the details pertain to a matter similar or related to those ordinarily handled by the loaning agency, and will aid the loaning agency in accomplishing a purpose for which its appropriations are provided or when the fiscal impact on the appropriation supporting the detail is negligible.

6. To the extent that they are inconsistent with this decision, 13 Comp. Gen. 234 (1934), 59 Comp. Gen. 366 (1980), and all similar decisions, will no longer be followed. Since this decision represents a change in our views on nonreimbursable details, it only will apply prospectively.

The American Federation of Government Employees (AFGE) has asked whether it was lawful for the Department of Health and Human Services (HHS) to detail on a nonreimbursable basis some 63 Office of Community Services (OCS) employees to other parts of HHS and 15 employees to a number of other Federal agencies. The details involved a cost of $1.776 million, and were paid for from fiscal year 1983 funds appropriated to the OCS for Community Services Block Grants. Pub. L. No. 97-377, 96 Stat. 1830, 1892 (1982). The AFGE contends that the details constituted an unauthorized use of funds and a de facto impoundment of the funds spent on the details. The AFGE also contends that HHS failed to carry out congressional intent regarding the closing down of OCS regional offices.

For the reasons given below, we conclude (1) that HHS did not act improperly in closing down its regional offices; and (2) that expenditure of the $1.776 million on the details did not constitute a de facto impoundment of OCS appropriations. On the other hand, although we do not find unlawful the nonreimbursable details of the 78 OCS

employees, we have reconsidered our previous decisions on inter and intra-agency details in general, and conclude that they should no longer be followed. We now hold that these details may not be made on a nonreimbursable basis except under the circumstances described later in this opinion.

A. BACKGROUND

The Community Services Block Grant Act, Pub. L. No. 97-35, Title VI, Subtitle B, 95 Stat. 511 (1981), repealed the Economic Opportunity Act of 1964 and established the Office of Community Services to carry out a new program of block grant funding of local anti-poverty agencies by providing Federal funds to state governments.

We have been advised by an HHS Assistant General Counsel that from the beginning of this new program, HHS decided to administer it from its headquarters office. However, on October 6, 1981, HHS published in the Federal Register (46 Fed. Reg. 49211) a Statement of Organization, Functions and Delegations of Authority for OCS ("functional statement") which stated that the regional offices of OCS would carry out activities with respect to both the new and old grant programs. This division of responsibilities was never implemented by HHS. In fact, the only functions assigned to the regional offices by OCS were the monitoring and closing out of the old Economic Opportunity Act grants, and this work was completed in March 1983.

For fiscal year 1983, $360,500,000 was appropriated to the OCS for Community Services Block Grants. Pub. L. No. 97-377, 96 Stat. 1830, 1892 (1982). This figure was an increase of $257 million over the budget request, and, according to the committee reports, it was an amount sufficient to continue the block grants program at fiscal year 1982 levels. H.R. Rep. No. 894, 97th Cong., 2d Sess. 6, 92 (1982). In this regard, the Senate report directed that funds be expended during fiscal year 1983 "to staff the Office [of] Community Services at a level not lower than the number of on-board staff as of October 1, 1982." S. Rep.

No. 680, 97th Cong., 2d Sess. 99 (1982).[1] Thus, the lump-sum included both monies for the block grants and for the salaries and expenses of OCS employees.

In March 1983, HHS informally arranged placements of regional office employees on unreimbursed details in other parts of HHS, and, in some cases, in other Federal agencies. The Department told us that some 78 employees were detailed in fiscal year 1983--63 within the Department and 15 outside. The 15 detailed outside the agency went to the Departments of Labor (1), Agriculture (1), Energy (2), and Housing and Urban Development (2), and to the Federal Emergency Management Agency (4), ACTION (2), the Veterans Administration (2), and the Nuclear Regulatory Commission (1). The functions performed by the detailed employees varied. Many had nothing to do with their work at the OCS. The estimated costs for the salaries and expenses of all the detailed employees was $1.776 million.[2] At the end of fiscal year 1983, eight of those detailed were permanently reassigned to other Federal positions; 40 were retired, primarily because of a reduction-in-force (RIF); and all who remained received RIF notices. After the reduction-in-force, 24 were placed in other positions and eight were separated with severance pay.

The AFGE contends that HHS failed to carry out congressional intent to "fully staff the OCS, which necessarily includes the existing regional offices." It maintains that by limiting and then terminating the functions of the regional offices and detailing their employees elsewhere, thereby failing to carry out the terms of the HHS functional

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[1] For fiscal year 1984, $352,300,000 was appropriated for Community Services Block Grants. Pub. L. No. 98-139, 97 Stat. 871, 885. This amount represented an increase of some $349 million over the amount requested by the Administration. H.R. Rep. No. 357, 98th Cong., 1st Sess. 7 (1983). The conference report shows that for Federal administration of Community Services Block Grants, the Congress intended to provide for "70 full-time equivalent positions in the national office." H.R. Rep. No. 422, 98th Cong., 1st Sess. 19 (1983).

[2] HHS did not provide us with a breakdown on how much of this money was spent on the interagency details and how much on the intra-agency details.

statement, the agency did not follow congressional intent to "keep OCS intact." The AFGE also maintains that detailing of the OCS employees constituted a de facto impoundment of OCS appropriations. Thus, its submission states: "If, rather than detailing the employees, OCS had furloughed or RIF'd them, thereby not spending money that would otherwise go for their salaries, there would be a traditional impoundment * * *. Here, OCS is failing to spend its appropriations on its own programs. That is precisely the nature of an impoundment." Furthermore, the Union argues that detailing the OCS employees to other parts of HHS and to other agencies and continuing to pay them out of OCS appropriations is a violation of 31 U.S.C. § 1301(a) which requires that appropriations be spent only on the objects for which they have been appropriated.

HHS advises us that the Community Services Block Grants Program for fiscal year 1983 was fully funded and was carried out completely. All fiscal year 1983 funds allocated were obligated.3/ It argues that OCS managers had broad discretion in determining what work OCS was to perform and that the head of OCS had discretion in granting to the regional offices only the functions of monitoring and closing out former grants. As regards impoundment, HHS contends that "[t]here is nothing in either the Impoundment Act, its legislative history, or the case law * * * which would lead to a conclusion that an impoundment occurs when the personnel of one agency are made available to assist another agency," and that "Congress did not intend the Impoundment Act to apply to funds appropriated solely for salaries and expenses."

Furthermore, HHS argues that the details were undertaken to avoid a reduction-in-force, particularly in light of committee report language evidencing a congressional intent that OCS maintain its staffing through fiscal year 1983 at the number of employees in place at the beginning of that fiscal year. See "Explanation of the Recommendations of the Senate Committee on Appropriations on the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriation Bill, 1983 (H.R. 7205)," 128 Cong. Rec. S14133, 14161-62 (daily ed. December 8, 1982).

3/ Nonetheless, the agency has informed us that some $6 million of $20 million carried over from fiscal year 1982 for financing a contemplated reduction-in-force remained unobligated.

HHS contends that the interagency details are justified on the basis of decisions by the GAO that in the absence of a written agreement providing specifically for the reimbursement by one agency for personal services provided by another, "the loan of personnel will be regarded as having been made as an accommodation for which no reimbursement or transfer of appropriations will be made * * *." 13 Comp. Gen. 234, 237 (1934). According to HHS, the intra-agency details were carried out in conformity with the requirements of section 3341 of title 5 of the United States Code. From the documents provided by HHS, it appears that these details were for 6 months.

B. LEGAL DISCUSSION

1. Congressional Intent

We agree with HHS that it was authorized to close down the OCS regional offices. As recognized by AFGE in its submission to us, "the functions of OCS, provided in the 1981 Act, are general in terms of what must be done to administer and monitor the state block grants * * *. Thus, the managers of HHS and OCS have broad discretion to determine exactly how much work they are going to have the agency do." We think this discretion extends to agency determinations of what functions will be carried out by various units within the agency. The HHS functional statement suggesting a regional office role does not bind the Secretary of HHS to carry out its provisions, nor does it limit the Secretary's statutory discretion in administering the program. Similarly, the functional statement does not create a legal obligation of the Government to the employees working in the regional offices. Cf. Schweiker v. Hanson, 450 U.S. 785, 789 (1981) (an internal claims manual for the use of Social Security Administration employees is not a regulation; it has no legal force and is not binding on the agency).

Further, in our reading of the relevant legislative history, we find no congressional intent to include the existing or proposed regional office structure or functions in committee recommendations that OCS expend funds sufficient to remain staffed at a level "not lower than the number of on-board staff as of October 1, 1982." S. Rep. No. 680, 97th Cong., 2d Sess. 99 (1982). Nothing in this statement directs the retention of a particular administrative structure, or suggests that regional office employees continue to work in the regional offices. The AFGE argues that the use of the appropriated moneys to pay salaries of employees who will not be doing the work of the entity for

which the appropriation was made is an unauthorized use of the appropriation. The Department counters by pointing out that by March 1983, the work of the OCS with respect to the block grants was completed and there was no further work for OCS staff to do even at headquarters. Since it felt obliged, because of the Committee directives, to maintain the specified staffing level, it detailed staff on a non-reimbursable basis to other intra and inter departmental units.

2. Impoundment

The Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297, 332, codified at 2 U.S.C. §§ 681 and following, was intended to tighten congressional control over impoundments, and to establish procedures that would provide a means for the Congress to pass upon executive branch proposals to impound budget authority. 54 Comp. Gen. 453, 454 (1974). The Act covers both rescissions and deferrals. A rescission exists when the President determines that "all or part of any budget authority will not be required to carry out the full objectives or scope of programs for which it is provided or * * * should be rescinded for fiscal policy or other reasons * * *." 2 U.S.C. § 683(a). A deferral is a withholding or delaying of the obligation or expenditure of budget authority provided for projects or activities, or any other type of executive action or inaction that effectively precludes obligation or expenditure of budget authority.[4/] Id. § 682(1).

Consistent with the Act, expenditure of the $1.776 million on the nonreimbursable details did not constitute a de facto impoundment. The expenditures constituted neither a failure to obligate or expend funds nor a withholding or a delaying of the obligation or expenditure of funds, but rather reflected a management decision about how appropriated funds were to be expended. In this regard, we have held that the Act does not apply to program implementation decisions, as such, irrespective of their impact on budget authority. B-200685, December 23, 1980. (Where a program decision does not preclude obligation or expenditure of funds, impoundment would not result.)

4/ The Act calls for the executive branch to submit proposed rescissions and deferrals for consideration by Congress. 2 U.S.C. §§ 683-84.

As an auxiliary matter we should point out that we disagree with HHS' contention that "Congress did not intend the Impoundment Act to apply to funds appropriated solely for salaries and expenses." First, it would appear that HHS is characterizing incorrectly the 1983 appropriations to OCS for block grants. The appropriation is a lump sum that covers both the grants and the salaries and expenses of the Federal employees implementing the grant program; there is no specific appropriation for salaries and expenses. In any event, we find nothing in the Impoundment Control Act specifically differentiating between "program" appropriations and "salary and expense" appropriations. See B-115398.32, November 20, 1974 (to the extent the plan for reductions in Federal positions will result in net savings of salaries and expenses, the plan would require special messages under the Impoundment Control Act).

Although the Act and its legislative history do indicate that the Act was aimed at failures of the executive branch to carry out congressional "programs", it seems evident that, in most instances, Government programs require Government employees to carry them out. Therefore, reducing the number of Federal employees working on a program could very well affect the extent to which a program can be implemented. In this regard, it makes no difference whether the appropriation is one that provides lump sums that include monies both for program activities and the salaries and expenses of the employees involved, or one appropriating monies strictly for salaries and expenses covering employees whose activities could pertain to several or many programs.

3. Nonreimbursable Details

The record shows that HHS detailed some 78 OCS employees to various Government agencies outside of HHS and to other divisions within HHS, as we understand it to perform work that, for the most part, had nothing to do with the fiscal year 1983 appropriations to OCS for community services block grants. HHS maintains that the details were necessary to avoid a reduction-in-force and to carry out Congress' intention to staff OCS in fiscal 1983 at the number of employees in place on October 1, 1982, S. Rep. No. 680, 97th Cong., 2d Sess. 99 (1982). Although we are not convinced that a reduction-in-force was HHS' only

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alternative,[5]/ at this time, some two years after they were carried out, we will not object to the details. Nevertheless, as the size of details far exceeds those we have permitted in the past, we think this case provides an appropriate opportunity to reconsider our general position on their propriety.

A "detail" is the temporary assignment of an employee to a different position for a specified period, with the employee returning to regular duties at the end of the detail. Federal Personnel Manual, ch. 300, § 8-1 (Inst. 262, May 7, 1981). The detailing of Federal employees from one agency to another on a nonreimbursable basis already had been a Government practice for a number of years prior to the Treasury Comptroller discussing the issue in 14 Comp. Dec. 294 (1907). In that case, the Comptroller stated that the practice originated in instances in which the head of one department had available an officer, clerk, or employee who could perform a service for another department and whose services were not needed for the time engaged on the detail. It was therefore in the interest of good Government and economy to utilize the employee's services. Id. at 296.

The legal question raised by nonreimbursable details was whether they were consistent with the law requiring that appropriations be spent only for the purposes for which appropriated, 31 U.S.C. § 1301(a), and the rule prohibiting unlawful augmentations of agency appropriations.

5/ For example, HHS could have continued the regional office structure, provided work at its headquarters for the 78 employees, attempted to arrange reimbursable details under section 601 of the Economy Act, 31 U.S.C. § 1535, or, consistent with our views below, attempted to arrange nonreimbursable details involving work which would have aided HHS in accomplishing a purpose for which its OCS appropriations were provided. We point out as well that the legislative history shows there was a conflict between the executive and legislative branches about the extent to which the OCS grant program was to be carried out. The Congress intended the fiscal year 1983 grant program to be funded at the same level as that for fiscal year 1982. H.R. Rep. No. 894. 97th Cong., 2d Sess. 6 (1982). The represented some $257 million more than the amount proposed by the executive department.

In past GAO decisions analyzing the relationship of details to the purpose law and the augmentation question, we said that appropriations of a loaning agency need not be reimbursed by those of a receiving agency when the work entails no additional expenses since the agencies of the Government fundamentally are branches of one whole system. The performance of services at no increased cost is a matter of comity in the interest of Government service generally, and is not to be treated on the same basis as a commercial arrangement between two unrelated business organizations. A-31040, May 6, 1930, cited in 10 Comp. Gen. 275, 278 (1930). Thus, we held that appropriations of the loaning agency normally should pay the salaries of the detailed employees. Reimbursement from the receiving agency to the loaning agency would be authorized only when the loaning of services to, or the doing of work for, another department or establishment resulted in expenditures additional to regular salaries and expenses. 10 Comp. Gen. 193, 196 (1930). Accordingly, we reasoned that nonreimbursable details did not violate the purpose law or the augmentation rule.

Nevertheless, the detailing of Federal employees from one agency to another on a nonreimbursable basis was of concern to the Congress. In 1932 the Congress passed the Economy Act, section 601 of which authorized the departments of the Federal Government, or units of a single department, operating under separate appropriations to enter into written agreements for the performance of services by the personnel of one department for the other or, one unit of a department for another, for which reimbursement or transfer of appropriations might be made. 31 U.S.C. § 1535. Section 601 was enacted partly in response to our nonreimbursable detail rule. 57 Comp. Gen. 674, 677 (1978).

The bill on which section 601 of the Economy Act was based, H.R. 10199, 71st Cong., 2d Sess., authorized among other things, interagency procurement of work with reimbursement to be based on "actual cost". During hearings on the bill, Congressman French, the bill's sponsor, stated that the Comptroller General's decisions permitting nonreimbursable details prevented "the free use by the Government of its own facilities for the reason that no department can afford to neglect its own work and use the time of its employees on work for another department." Hearings on H.R. 10199 before the House Committee on Expenditures in the Executive Departments, 71st Cong., 2d Sess. 5. He also said that if the department obtaining the services did not reimburse the loaning agency, the purpose law and augmentation rule would be violated. Id. at 4. Moreover, the House Reports accompanying both H.R. 10199 and an almost identical

provision that was included as section 801 of H.R. 11597, 72d Cong., 1st Sess., stated that it was unfair for the loaning department to have to pay the cost from its appropriations and that "work done should be paid for by the department requiring such * * * services."6/ H.R. Rep. No. 2201, 71st Cong., 2d Sess. 2-3 (1931); H.R. Rep. No. 1126, 72d Cong., 1st Sess. 15-16 (1932). Thereafter H.R. 11597 was incorporated as Part II of H.R. 11267, 72d Cong., 1st Sess., which became the Legislative Branch Appropriation Act for fiscal year 1933, Pub. L. No. 72-212, 47 Stat. 382, 417-18. That law contained the Economy Act. See generally 57 Comp. Gen. 647, 677-80 (1978).

Notwithstanding the legislative history of the Economy Act, we have continued to permit nonreimbursable details. Nearly all cases involving nonreimbursable details considered since passage of the Economy Act have involved limited numbers of employees for limited periods of time.7/ Thus, in 13 Comp. Gen. 234 (1934), we sustained a nonreimbursable detail of one employee from the Interstate Commerce Commission to the United States Shipping Board at a cost of $200.8/ We said that in the absence of an Economy Act Agreement, the loan of personnel should be regarded as an accommodation for which no reimbursement or transfer of appropriations for salaries should be made.

6/ The Chief Coordinator of the Bureau of the Budget, who prepared the bill, maintained that the Comptroller General's ruling in effect "penalizes the performing department's appropriation * * * and makes it loath to perform services for other departments and establishments for fear that its own work might be crippled thereby * * *." Hearings on H.R. 10199 before the House Committee on Expenditures in the Executive Departments, 71st Cong., 2d Sess. 13-14.

7/ Congressman French suggested that even Economy Act transfers should be limited in scope. Thus, he did not think "any legislation ought to authorize one bureau or department to transfer its work in a large way, to another department. * * *" Hearings on H.R. 10199 before the House Committee on Expenditures in Executive Departments, 71st Cong., 2d Sess. at 6.

8/ In 59 Comp. Gen. 366, 367-68 (1980) we reaffirmed the position we took in 13 Comp. Gen. 234 (1934).

More recently, we permitted details of eight employees from numerous agencies to the National Commission on the Observance of International Women's Year and the State Department at a cost of approximately $220,000 over a 2-year period. We said that, under our prior decisions, nonreimbursable details of personnel were not prohibited by the law requiring that appropriations only be spent on the objects for which they were appropriated, provided that (1) the employees detailed were not required by law to be engaged exclusively on work for which their salaries were appropriated, and (2) the employees' services could be spared for the details. B-182398, March 29, 1976.

In two analagous decisions, we held on the basis of the purpose law that an agency could make nonreimbursable details to congressional investigating committees only in instances where (1) the committee's investigation involved matters similar or related to those ordinarily handled by the agency, thus furthering the purpose for which the agency's appropriations were made, and (2) the services of the employee could be spared without detriment to the agency's work and without necessitating employment of an additional employee. 21 Comp. Gen. 954, 956-57 (1942); 21 Comp. Gen. 1055, 1057-58 (1942). Moreover, in 21 Comp. Gen. at 1057-58, we said that it was not enough that there was a mutuality of interest between the work of the congressional investigating committee and the executive agency, or that the knowledge or information gained by a congressional investigating committee might be of interest or even helpful to an executive agency, "but it must appear that the work of the committee to which the detail or loan of the employee is made will actually aid the agency in the accomplishment of a purpose for which its appropriation was made such as by obviating the necessity for the performance by such agency of the same or similar work." Although both these cases involved details of employees by executive branch agencies to congressional committees, the interpretation of the purpose law seems equally applicable to details between agencies.

The discussion above shows that the purpose law has been used both to support and to criticize nonreimbursable details. In reviewing our cases, we conclude that the latter position is correct. We no longer accept the view that because the agencies of the Government fundamentally are branches of one whole system, these details are consistent with the purpose law and thus the appropriations of the loaning agency should not be increased at the expense

of those of the receiving agency when the detail involves no additional expense. Although Federal agencies may be part of a whole system of Government, appropriations to an agency are limited to the purposes for which appropriated, generally to the execution of particular agency functions. Absent statutory authority, those purposes would not include expenditures for programs of another agency. Since the receiving agency is gaining the benefit of work for programs for which funds have been appropriated to it, those appropriations should be used to pay for that work. Thus, a violation of the purpose law does occur when an agency spends money on salaries of employees detailed to another agency for work essentially unrelated to the loaning agency's functions. Moreover, it follows that the appropriations of the receiving agency are unlawfully augmented by the amount the loaning agency pays for the salaries and expenses of the loaned employees. The legislative history of section 601 of the Economy Act, discussed earlier, shows that the Congress recognized this problem and enacted section 601 partly as a remedy.

Nonreimbursable details raise additional problems. To the extent that agencies detail employees on a nonreimbursable basis instead of through Economy Act agreements, which require reimbursement, they may be avoiding congressional limitations on the amount of moneys appropriated to the receiving agency for particular programs. Similarly, agencies could circumvent personnel ceilings by receiving detailed employees.

Congressional concern with nonreimbursable details was expressed during the process of enacting amendments clarifying the authority for employing personnel in the White House Office and the President's authority to employ personnel to meet unanticipated needs. Pub. L. No. 95-570, 92 Stat. 2445, 2449-50. Prior to those amendments the law allowed details of "[e]mployees of the executive departments and independents establishment * * * from time to time to the White House Office for temporary assistance." See Pub. L. No. 80-771, 62 Stat. 672, 679. As amended, the law currently requires reimbursement to the loaning agency "for any period occurring during any fiscal year after 180 calendar days after the employee is detailed in such year", and the President to report to the Congress for each fiscal year, among other things, the number of individuals detailed

to the White House for more than 30 days, the number of days in excess of 30 each individual is detailed and the aggregate amount of reimbursement made. 3 U.S.C. §§ 112, 113. The committee reports and floor debate accompanying the amendments show that the Congress intended to place restrictions on nonreimbursable details to the White House. S. Rep. No. 868, 95th Cong., 2d Sess. 1, 4, 11 (1978); H.R. Rep. No. 979, 95th Cong., 2d Sess. 10-11 (1978); 124 Cong. Rec. 20806-08 (1978) (Comments of Senators Sasser and Percy); 124 Cong. Rec. 10109-11 (1978) (Comments of Representatives Schroeder and Harris).

Although we conclude that nonreimbursable interagency details generally are improper, there are limited circumstances in which they still may be allowed. Consistent with our decisions in 21 Comp. Gen. 954, 956-57 (1942) and 21 Comp. Gen. 1055, 1057-58 (1942), pertaining to details to congressional committees, details between executive branch agencies are permissible where they involve a matter similar or related to matters ordinarily handled by the loaning agency and will aid the loaning agency in accomplishing a purpose for which its appropriations are provided.

In addition, we adopt the guidance provided in the Federal Personnel Manual (Ch. 300, subchapter 8, Inst. 262, May 7, (1981) for intra-agency details and apply it to interagency details as well. The FPR permits such details for brief periods when necessary services cannot be obtained, as a practical matter, by other means and the numbers of persons and costs involved are minimal. Id. § 8-3. While the purpose restriction technically applies even in such cases, we would not feel obliged to object when the fiscal impact on the appropriation is negligible. We also leave open the question whether nonreimbursable details may be permitted when an agency is faced only with the choice of implementing those details or carrying out a reduction in force.

The analysis of the statutory appropriation restriction which led us to conclude that nonreimbursable interagency details are improper applies equally to intra-agency details. Congressional control over the funding levels of various programs can be thwarted just as effectively when their respective appropriations are swelled by an unreimbursed detail within the same department.

Moreover, congressional disquiet with GAO-sanctioned past practices which regarded unreimbursed details as an "accommodation" and which led to enactment of the "Economy Act" (see earlier discussion) applied equally to intra-agency and interagency details. All Economy Act transactions must be made pursuant to a written agreement on a reimbursable basis.

We recognize that not all inter or intra-agency provisions of goods or services are made pursuant to the Economy Act. (The Economy Act was enacted to provide authority for such exchanges in the absence of some other specific statutory authority.) However, it does not follow that because a service or procurement is authorized, that it is necessarily authorized to be provided on a nonreimbursable basis, unless the statutory authority so states. In the instant case, we note that intra-agency details are specifically authorized by 5 U.S.C. § 3341. However, section 3341 is silent on the matter of reimbursement.

The intra-agency detail authority first was provided for in the Act of March 3, 1853, 10 Stat. 189, 211, and, subsequently, became section 166 of the Revised Statutes. It was amended by the Act of May 28, 1896, 29 Stat. 140, 179 and was codified, as it presently appears, by Pub. L. No. 89-554, 80 Stat. 378, 424. In 1894, the United States Attorney General was asked whether clerks drawing salaries from a lump-sum appropriation for a specific purpose legally could be detailed to perform work in other divisions of the same department funded by separate appropriations. In reliance on section 166 of the Revised Statutes, the Attorney General found that the clerks could be so detailed; however, they could not be paid from appropriations of the detailing division, unless such payment specifically was authorized by law. 20 Op. Atty. Gen. 750, 751-52 (1894).

Consistent with the Attorney General's opinion, we think it the better view that section 166, as amended, did not intend nonreimbursable details but merely provided authority to make the details. In this regard, we point out that there are other statutes authorizing details which specifically provide that the details may be done on a non-reimbursable basis. Thus, for example, section 3343 of title 5, which authorizes details to international organizations, states that the details may be made "without reimbursement to the United States by the international organization * * *."

To the extent that this decision prohibits nonreimbursable details except under the limited circumstances described, we recognize it could have a widespread effect on current agency practice. Accordingly, since our decision represents a change in our views, it will only apply prospectively. To the extent that they are inconsistent with this decision, 13 Comp. Gen. 234 (1934), 59 Comp. Gen. 366 (1980), and all similar decisions, will no longer be followed.

Milton J. Socolar
for Comptroller General
of the United States