



B-328065

October 27, 2016

The Honorable Shelley Moore Capito  
Chairman  
Subcommittee on the Legislative Branch  
Committee on Appropriations  
United States Senate

The Honorable Brian Schatz  
Ranking Member  
Subcommittee on the Legislative Branch  
Committee on Appropriations  
United States Senate

Subject: *Architect of the Capitol—Proposal for Establishment of a Working Capital Fund*

This letter is in response to your April 21 request that GAO: (1) review the process used by the Construction Division of the Architect of the Capitol (AOC) to allocate costs of construction projects for individual areas of Capitol Hill that receive separate appropriations; and (2) provide legal views on the statutory authorities currently available to AOC to manage the allocation of those costs and whether establishment of a working capital fund would provide AOC with any new legal flexibilities. Additionally, the Senate Committee on Appropriations directed GAO to provide it with alternative options for AOC's management of the Construction Division that would not require the establishment of a working capital fund.<sup>1</sup>

At issue is the allocation of costs among various appropriations in compliance with the purpose statute, 31 U.S.C. § 1301—that is, assuring that no appropriation is charged with costs in violation of that appropriation's purpose scope of availability. As discussed below, AOC reports that it finds it difficult to accurately allocate its indirect costs, such as employee leave and training, and as a result, requested that Congress establish a working capital fund "to streamline the administration of [the Construction Division's] operations, particularly the funding source for [the

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<sup>1</sup> S. Rep. No. 114-258, at 28 (2016).

Construction Division's] indirect operational costs.”<sup>2</sup> AOC's current method for allocating indirect costs, although cumbersome, would not violate the purpose statute, as long as it is based upon a reasonable methodology.

AOC already has the authority to use 31 U.S.C. § 1534, referred to as the “account adjustment statute,” to manage its allocation of indirect costs among appropriations. AOC also has had statutory transfer authority since fiscal year 1997 that would permit AOC to pool its appropriations to manage indirect costs. 2 U.S.C. § 1862. AOC's allocation of indirect costs pursuant to either the account adjustment statute or AOC's transfer authority would comply with the requirements of the purpose statute, as long as AOC uses a reasonable methodology to determine the allocation. Notwithstanding AOC's struggles to properly allocate the indirect costs, the establishment of a working capital fund, as proposed by AOC would not streamline operations in this regard. As we explain below, establishment of a typical working capital fund would not obviate the legal requirement under the purpose statute that AOC properly allocate its indirect costs using a reasonable methodology.

Consistent with our practice for legal opinions, we contacted AOC to obtain additional factual information and its legal views on this matter. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at [www.gao.gov/products/GAO-06-1064SP](http://www.gao.gov/products/GAO-06-1064SP). AOC provided us with information and its legal views. Letter from General Counsel, AOC, to Managing Associate General Counsel, GAO, *Re: Architect of the Capitol (AOC)—Obligation of Indirect Costs (B-328065)* (July 25, 2016) (AOC Letter). We also conducted meetings with AOC officials, requesting and receiving financial data, policy and procedure documents, and copies of relevant internal correspondence, and studies. This information, together with the AOC Letter, underlies our statement of facts below.

## BACKGROUND

AOC is responsible to the United States Congress and the Supreme Court for the maintenance, operation, preservation, renovation, and new construction of buildings and grounds on Capitol Grounds.<sup>3</sup> The Construction Division is a division within the AOC Planning and Project Management organization that provides internal AOC construction and facility management support. For fiscal year 2017, AOC requested

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<sup>2</sup> Architect of the Capitol, *Congressional Budget Justification for FY 2017, Working Capital Fund*, at 1 (AOC WCF Request).

<sup>3</sup> The legal description of Capitol Grounds is found at 40 U.S.C. § 5102.

legislation to establish a working capital fund to manage its annual costs for its Construction Division.<sup>4</sup>

AOC receives an appropriation for Capital Construction and Operations (formerly General Administration),<sup>5</sup> as well as separate appropriations for what AOC refers to as the “jurisdictions” that it is responsible for maintaining.<sup>6</sup> AOC receives appropriations for 10 specific jurisdictions: Capitol Building; Capitol Grounds; Senate Office Buildings; House Office Buildings; Capitol Power Plant; Library Buildings and Grounds; Capitol Police Buildings, Grounds, and Security; Botanic Garden; Capitol Visitor Center; and Supreme Court Building and Grounds.<sup>7</sup> At any given point, a jurisdiction may have one-year, five-year, and/or no-year amounts available for obligation that were appropriated in the current fiscal year as well as prior fiscal years.<sup>8</sup> For example, in fiscal year 2016, the House Office Buildings jurisdiction was appropriated \$174.962 million, of which \$48.885 million is available for five years and \$62 million is no-year funding specifically for the restoration and renovation of the Cannon House Office Building.<sup>9</sup>

Each jurisdiction is managed by an AOC superintendent (or equivalent) who supervises the operation and maintenance of the jurisdiction and considers the options available to meet the jurisdiction’s construction and facility management

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<sup>4</sup> AOC estimated that its costs for Construction Division projects for fiscal year 2015 were \$26.5 million.

<sup>5</sup> See, e.g., Consolidated and Further Continuing Appropriations Act, 2015, Pub L. No. 113-235, div. H, title I, 128 Stat. 2130, 2530 (Dec. 16, 2014).

<sup>6</sup> See, e.g., Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, div. I, title I, 129 Stat. 2242, 2664–65 (Dec. 18, 2015).

<sup>7</sup> Amounts for the Supreme Court Building and Grounds jurisdiction are generally appropriated in the Judiciary Appropriations Act. *Id.*, 129 Stat. at 2440. Pursuant to 40 U.S.C. § 6111, the Architect has charge of the care of the Supreme Court building and grounds. Amounts appropriated are available for a variety of purposes set forth in that section.

<sup>8</sup> One-year appropriations are only available for new obligations for one fiscal year. Five-year appropriations are available for new obligations for five fiscal years. No-year appropriations remain available for obligation for an indefinite period of time. A no-year appropriation is usually identified by language such as “to remain available until expended.” GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Washington, D.C.: Sept. 2005), at 22.

<sup>9</sup> Pub. L. No. 114-113, 129 Stat. at 2664.

needs. Superintendents have the option to: use their own employees, enter into a contract with an outside firm, or use the Construction Division. The Construction Division consists of 12 core permanent staff who carry out executive management and administrative functions. In addition, the Construction Division has approximately 200 temporary employees comprised of approximately 160 tradesmen and approximately 40 construction support employees.<sup>10</sup> The Construction Division's tradesmen consist of plumbers, electricians, painters, sheet metal workers, wood crafters, stone masons, insulators, hazardous material laborers, and general laborers. Construction support employees consist of general supervisors, front-line tradesmen supervisors and certain support personnel who perform activities such as procurement and timekeeping.

Only the salaries and expenses of the Construction Division's 12 core permanent staff are provided for in the appropriation for Capital Construction and Operations; that appropriation does not provide for the salaries and expenses for the Construction Division's tradesmen and construction support employees. Salaries and expenses for the tradesmen and construction support employees are provided for through the appropriations for the various jurisdictions for which they perform work. See, e.g., Pub. L. No. 114-113, 129 Stat. at 2664 (making appropriations "[f]or all necessary expenses for the maintenance, care and operation of the Botanic Garden and the nurseries, buildings, grounds, and collections").<sup>11</sup>

After a jurisdiction superintendent has selected the Construction Division to perform work, the Construction Division operations manager works with the superintendent to develop a cost estimate for the project. After the cost estimates are developed, the jurisdiction works with the Construction Division to allocate the estimated project cost to a specific jurisdiction appropriation and project code. The estimated project costs include both direct costs and indirect costs. Direct costs are costs that can be identified as specifically benefitting one project, whereas indirect costs are costs that have been incurred for a joint objective across multiple jurisdictions and cannot be identified as benefitting a specific project.

The Construction Division's direct costs include tradesmen labor, which consists of the wage and benefit costs associated with labor hours that support a specific project, as well as the costs of direct materials. Indirect costs, which are included in the project cost estimate based on a percentage (currently 71 percent) of the project's estimated direct labor, are tracked separately from the project direct costs

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<sup>10</sup> AOC follows a practice of hiring certain employees on a temporary basis. B-303961, Dec. 6, 2004.

<sup>11</sup> AOC receives further instructions in the committee reports accompanying the appropriations bills. See, e.g., S. Rep. No. 114-64, at 36 (2015) (recommending \$2,100,000 for "Minor Construction" for the Botanic Garden).

and charged across the various jurisdiction appropriations when incurred. Indirect costs include tradesmen leave, training, administrative time, and all hours of the approximately 40 construction support employees.<sup>12</sup>

Construction Division officials explained that they calculate and allocate indirect costs to all of the jurisdiction appropriations on a biweekly basis. This calculation and allocation function is the primary responsibility of one employee. This employee accumulates data each pay period that is the cumulative amount each tradesman employee worked in each jurisdiction for the previous 12-month period, and then compares the data to the amounts already charged to the jurisdictions to determine which jurisdictions to allocate current pay-period indirect costs. This is not an automated process and the Construction Division employee exercises a certain level of judgment with regard to the final allocation each pay period.

Labor costs of construction support employees (front-line tradesmen supervisors and certain support personnel) are all classified as indirect costs by AOC and are allocated each pay period as follows. Front-line tradesmen supervisors' hours are allocated based on the direct labor hours of the tradesmen they supervise. For example, the hours of the supervisor of painters would be charged to a jurisdiction appropriation based on the distribution of direct hours of all painters between jurisdictions. Support personnel hours are allocated based on the total direct labor hours of all the Construction Division's tradesmen.

#### AOC Proposal for a Working Capital Fund

A working capital fund is a form of intragovernmental revolving fund that operates as a self-supporting entity and conducts a regular cycle of businesslike activities.<sup>13</sup> AOC submitted language to Congress in its fiscal year 2017 budget request that would establish a working capital fund for AOC. AOC's legislative proposal was included in H.R. 5325, which was the House bill for fiscal year 2017 appropriations for the legislative branch and which passed the House of Representatives on June 10, 2016.<sup>14</sup>

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<sup>12</sup> Indirect costs, generally, are "items which commonly are recognized as elements of cost, notwithstanding such items may not have resulted in direct expenditures." 56 Comp. Gen. 275 (1977). Examples of indirect costs include administrative overhead applicable to supervision (56 Comp. Gen. 275) and billable time not chargeable to any particular customer (B-257823, Jan. 22, 1998).

<sup>13</sup> *Glossary*, at 101.

<sup>14</sup> H.R. 5325 was subsequently amended by deleting the legislative branch appropriations language and substituting language that was enacted into law as the Continuing Appropriations and Military Construction, Veterans Affairs, and Related (continued...)

AOC explains that its proposed working capital fund would “enable the AOC to streamline the administration of [Construction Division] operations, particularly the funding source for [Construction Division’s] indirect operational costs.”<sup>15</sup> Furthermore, AOC emphasized that it currently “attempts to match the indirect costs to an applicable AOC appropriations account” which AOC considers “an imperfect solution and administratively burdensome.”<sup>16</sup>

## DISCUSSION

With this background in mind, we consider AOC’s current method for allocating indirect costs, and we also outline existing statutory authorities available to AOC to manage its allocation process. We also address whether the establishment of a working capital fund would provide AOC with administrative flexibilities in allocating its indirect costs.

### AOC’s Current Method for Allocating Indirect Costs among Appropriations

The purpose statute requires AOC to obligate funds “only to the objects for which the appropriations were made except as otherwise provided by law.” See 31 U.S.C. § 1301(a). AOC receives an appropriation for Capital Construction and Operations, as well as separate appropriations for what AOC refers to as the “jurisdictions” that it is responsible for maintaining. AOC must determine which jurisdiction appropriation to charge for costs, including those associated with the salaries and expenses for the tradesmen and construction support employees. AOC allocates direct costs, such as direct labor, to the various jurisdictions by charging the benefitting appropriation on a pay period basis.<sup>17</sup>

However, AOC asserts that it is difficult to allocate appropriations for indirect costs. AOC asserts that “[e]ach time a [Construction Division] employee takes leave (or incurs any other indirect expense that is not clearly traceable to one of his customer

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Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act, Pub. L. No. 114-223, 130 Stat. 857 (Sept. 29, 2016).

<sup>15</sup> AOC WCF Request, at 1.

<sup>16</sup> *Id.*

<sup>17</sup> The Defense Homes Corporation took a similar approach in 1948 when it allocated the salaries of its employees in accordance with the time spent by them in performing administrative work, project inventory, and sales work, respectively. We did not object to allocating direct costs in that manner. B-70247, Jan. 19, 1948.

jurisdictions), the AOC has to determine which directly appropriated jurisdiction(s) to charge for that expense.” AOC Letter, at 2. AOC is concerned that its inability to accurately link the Construction Division’s indirect costs to any particular project could result in the impermissible “pooling” of the jurisdictions’ funds to finance AOC’s indirect costs, and thus result in a violation of the purpose statute. *Id.*

AOC appears to misunderstand the nature of an indirect cost. If an expense, such as timekeeper activities, is not traceable directly to a specific jurisdiction, then this type of overhead cost should be allocated across all of the jurisdictions based upon a supportable methodology developed by AOC.<sup>18</sup> Although we do not take a position on the methodology that AOC should adopt for this purpose, we have previously concluded that when confronted with the complexity in tracking and allocating myriad indirect costs to individual customers, it is not unreasonable for an agency to use standard hourly rates that would account for the recovery of indirect costs. See B--257823, Jan. 22, 1998 (assessing an agency’s recovery of “actual costs,” including indirect costs, for interagency agreements entered into under the Economy Act).

For example, AOC has raised concerns about how to allocate the costs of Construction Division employees’ leave. The purpose availability of the appropriation available at the time the employee *earned* the leave is irrelevant.<sup>19</sup> In fact, transfers of funds to cover the accrued leave liability of an employee transferred from one agency to another are unauthorized. 16 Comp. Gen. 1122 (1937). If a federal employee takes a job at a new federal agency, her leave and accrued leave liability will transfer with her. The use of leave, not the earning of it, is an obligating event, and is thus within the purpose scope of availability of the new agency’s appropriation. So, when she uses that leave, the purpose statute does not require the new agency to trace the leave to the date earned and request the old agency to transfer amounts to cover the cost of that leave when the employee uses it at the new agency. The new agency must obligate its own appropriations to pay for the transferred employee’s leave. Similarly, the Construction Division does not need to determine which jurisdiction the employee worked for when he or she earned the

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<sup>18</sup> AOC has developed an overhead rate of 71 percent that it uses when estimating the total cost of a project. However, this overhead rate appears to be used solely for estimating the total cost of a project at the outset; direct and indirect costs are then subsequently obligated against the jurisdictions’ appropriations depending on the pay period by pay period accumulation of direct labor hours for the various projects.

<sup>19</sup> In this regard, obligational accounting, which is necessary to ensure ongoing compliance with fiscal laws, differs from financial accounting, which accumulates data for agencies’ financial statements. For financial statement purposes, AOC must continue to track and report earned leave as an accrued liability even though AOC does not record an obligation for the leave until the employee takes the leave.

leave now being taken in order to absolve itself of a violation of the purpose statute. Such leave is an indirect cost that is not traceable to any particular jurisdiction.

AOC's practice of executing the allocations every pay period is not legally objectionable. AOC could also allocate these indirect costs using reasonable standard rates, consistent with our 1998 decision. Of course, however, as we explain below, there are statutory flexibilities available to AOC that may ameliorate some of the administrative burden of its current practice.

### AOC Can Use Existing Statutory Authorities to Allocate its Indirect Costs

We have previously considered joint financing arrangements in which an agency drew on multiple appropriations of a department or agency component to support projects benefitting a department or agency component as a whole. See, e.g., B-308762, Sept. 17, 2007; 70 Comp. Gen. 592 (1991); 60 Comp. Gen. 686 (1981); B-195775, Sept. 10, 1979. Those decisions recognized that such "pooling" arrangements, as they were referred to, require statutory authority to overcome the limitation on transfers between appropriation accounts.<sup>20</sup>

Congress has established some general transfer authority to promote economy and efficiency. As an alternative to its pay period by pay period allocation of indirect costs, AOC could use existing authority found in the "account adjustment" statute, 31 U.S.C. § 1534, or AOC's own transfer authority, 2 U.S.C. § 1862.

#### a. AOC Could Use the Account Adjustment Statute to Pool its Obligations for Indirect Costs

The "account adjustment" statute, 31 U.S.C. § 1534, was intended to facilitate "common service" activities. B-308762. The account adjustment statute facilitates these common service type of activities by permitting an agency to temporarily charge one appropriation for an expenditure benefitting other appropriations within the same agency, or "pool" the obligations for indirect costs, as long as (1) amounts are available in both appropriations and (2) "[a]mounts paid under this section are charged on a final basis during, or as of the close of, the fiscal year to the appropriation benefitted." 31 U.S.C. § 1534.

As the statute requires, when relying on the account adjustment statute, an agency must ultimately adjust its accounts to charge the benefitting appropriations an amount that is commensurate with the value received. B-308762; 70 Comp.

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<sup>20</sup> A transfer is the movement of funds between separate appropriations. *Glossary*, at 95. Pooling funds across appropriations is a form of transfer, and, unless otherwise authorized by law, transfers of funds between agency appropriation accounts are prohibited by 31 U.S.C. § 1532. 70 Comp. Gen. 592.

Gen. 592. An agency taking advantage of the account adjustment statute must be careful to ensure that the benefitting appropriations are charged the appropriate amounts. An appropriation “establishes a maximum authorized program level, meaning that an agency cannot, absent statutory authorization, operate beyond the level that can be paid for by its appropriations.” B-300248, Jan. 15, 2004. To the extent that an agency does not record an obligation against each appropriation for the value of the services each appropriation received, the benefitting appropriations would be improperly augmented. B-308762.

Failure to properly charge the benefitting appropriations could also result in a violation of the purpose statute, 31 U.S.C. § 1301. For example, the Department of Labor (Labor) violated the purpose statute and the account adjustment statute when it used appropriated funds of nine agencies to purchase computer equipment for a shared communications system for executives, but then charged eight of the agencies amounts in excess of the actual costs of the equipment provided. 70 Comp. Gen. 592. There, Labor’s cost allocation methodology resulted in eight agencies subsidizing costs properly allocable to the ninth. Labor based the amount that each agency would contribute to the purchase of the equipment on the Full-Time Equivalent (FTE) staff ceiling of each agency, reasoning that the value received from the equipment would be directly proportional to the size of the agency’s staff.

Labor’s Office of Inspector General (OIG) investigated and determined that Labor’s FTE allocation method resulted in a substantially disproportionate allocation of costs to most of the agencies. We agreed with the OIG’s conclusion, and held that Labor’s methodology for allocating the costs for the computer equipment based on FTEs was not reasonably designed to allocate costs according to usage. We noted that Labor should have based the allocation on the computer equipment received by each agency.

The computer equipment at issue in 70 Comp. Gen. 592 is akin to a direct cost, and the proportional benefit was easily traceable to a particular appropriation. There, we noted that Labor could have taken advantage of the “bookkeeping convenience” provided by the account adjustment statute to initially make a payment out of one appropriation for the benefit of another, so long as each appropriation ultimately paid for its own goods. AOC could take a similar approach under the account adjustment statute for its direct costs, or it could continue to charge the direct costs on a pay period basis.

The flexibility provided by the account adjustment statute to track costs throughout the course of a fiscal year and make one adjustment to its appropriations before the end of the fiscal year is also available for the allocation of indirect costs. If the expense is not traceable to a specific jurisdiction, then it is an indirect cost that should be allocated across all of the jurisdictions based upon a supportable methodology developed by AOC. AOC could, pursuant to the account adjustment statute, initially charge all of its indirect costs to one appropriation and then adjust its

accounts on an annual basis to ensure that each benefitting jurisdiction is charged for an appropriate share of the indirect costs using a reasonable methodology.<sup>21</sup>

AOC does not dispute that the account adjustment statute is available to use for shared costs benefitting multiple AOC appropriations. AOC Letter, at 1. AOC believes it is not the most appropriate way to allocate the Construction Division's costs on an ongoing basis, and places particular emphasis on its indirect costs. AOC indicates that it is comfortable using the account adjustment statute "for shared indirect costs such as major equipment (e.g., a crane or dump truck) for use by multiple, separately-appropriated AOC jurisdictions because it is relatively straightforward to allocate the cost among the various AOC appropriation accounts before the end of the fiscal year, based on the jurisdiction's historical use of [the Construction Division's] services." *Id.* AOC argues that other indirect costs, such as employee leave, training, administrative costs, personal protective equipment, and basic supplies, are more difficult to accurately apportion. *Id.*, at 2. Further, AOC argues that "[d]ividing indirect costs over multiple appropriations is administratively burdensome, as it would require [the Construction Division] to apportion even the most minor expenses (i.e., dividing an employee's \$20 hard hat among multiple jurisdictions)." *Id.* Here, AOC raises augmentation concerns and notes that "if such indirect costs cannot be accurately linked to any particular projects, the AOC bears the risk that it is impermissibly 'pooling' funds from its directly-appropriated jurisdictions to finance [the Construction Division's] indirect costs and therefore violating the purpose statute." *Id.*

AOC's objections to using the account adjustment statute are attributable to its apparent misunderstanding of the nature of an indirect cost. If the expense is not traceable to a specific jurisdiction, then it is an indirect cost that should be allocated across all of the jurisdictions based upon a supportable methodology developed by AOC. Regardless of whether AOC allocates indirect costs on a pay period basis, as it does currently, or once a year, as the account adjustment statute permits, AOC must identify, calculate, and assign indirect costs using a supportable, reasonable methodology. AOC has complained that the allocation process is "administratively burdensome." *Id.*, at 2. In that regard, the account adjustment statute, allowing AOC to adjust accounts once a year instead of its current practice of adjusting twenty-six times a year, might offer some relief to what AOC finds burdensome.

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<sup>21</sup> In order to take advantage of the account adjustment statute, AOC would need to have sufficient budget authority, available in the account initially charged, to support the amount of that pre-adjustment obligation. In its response to us, AOC did not raise this issue as a practical barrier to use of the account adjustment statute.

b. AOC Could Use its Statutory Transfer Authority to Pool its Appropriations for Indirect Costs

AOC has had statutory transfer authority since fiscal year 1997 that would permit AOC to pool its appropriations to manage indirect costs. 2 U.S.C. § 1862. Specifically, the statute provides that amounts may be transferred from the appropriation for House Office Buildings with approval of the Committee on Appropriations of the House of Representatives; that amounts may be transferred from the appropriation for Senate Office Buildings with approval of the Committee on Appropriations of the Senate; and that amounts may be transferred from any other appropriation available to AOC with approval of the Committees on Appropriations of the Senate and the House of Representatives. *Id.*

Using this authority, AOC could request approval from the relevant congressional committees to transfer amounts to one or two specific appropriations in order to fund shared indirect costs among the jurisdictions. Amounts transferred from one appropriation to another are available only for the same purposes provided in the provision appropriating the amounts. 31 U.S.C. § 1532 (providing that “[e]xcept as specifically provided by law, an amount authorized to be withdrawn and credited is available for the same purpose and subject to the same limitations provided by the law appropriating the amount”). As such, AOC would still need to develop a supportable methodology to allocate indirect costs across all of the jurisdictions in order to properly identify what amount should be transferred. Transferring the amounts would permit AOC to charge all of its indirect costs to the appropriations receiving the transfers and alleviate the need to allocate the obligations each pay period.

A Working Capital Fund Would Permit AOC to Pool its Appropriations for Indirect Costs

The establishment of a working capital fund would also permit AOC to pool amounts from its various appropriations but would not relieve AOC of the responsibility to develop a methodology for allocating indirect costs among the various jurisdictions. AOC believes that if it had a working capital fund, it would no longer have to link indirect costs to a particular project, and that a working capital fund would resolve any purpose statute concerns. AOC Letter, at 4. AOC’s view reflects a misunderstanding of working capital funds.

Working capital funds are a type of revolving fund, generally authorized to receive advances and reimbursements from other agencies’ appropriations and use these receipts to finance the operation of the revolving fund. B-308762. Typically, a working capital fund is initially capitalized with a no-year corpus, which the agency may obligate to perform services for the ordering appropriation. As the working capital fund performs those services, it “earns” the advances or reimbursements, which then may be credited to the working capital fund and become part of the no-year amounts within the fund. B-288142, Sept. 6, 2001. A working capital fund may

charge an ordering appropriation only those costs the fund has incurred in performing the work requested by the ordering appropriation. It “earns” those amounts only upon completion of performance. B-288142.

AOC proposed legislation establishing a working capital fund in order to relieve AOC of its asserted administrative burden of identifying and allocating indirect costs. A working capital fund, without some other authority, will not eliminate the need to continue identifying and allocating indirect costs.<sup>22</sup> Even within a working capital fund, AOC, therefore, must develop a supportable methodology and apply that methodology to allocate the Construction Division’s indirect costs among the various jurisdictions.

Separate from its assertions regarding the administrative burden of allocating indirect costs, AOC has raised concerns about the time-limited nature of its funds. As discussed above, expenses such as salaries and leave are generally chargeable to the appropriation current at the time those services are performed. As a result, AOC must obligate against funds currently available as Construction Division personnel perform services or take leave. This situation can present challenges where the contemplated project will cross fiscal years. If AOC engages a contractor for a construction project instead of using the Construction Division, it would obligate the full amount of the project against the jurisdiction appropriation available at the time the contract is executed. See, e.g., 23 Comp. Gen. 370 (1943) (noting that “the general rule is that the fiscal year current at the time the contract is made is chargeable with payments under the contract, although performance thereunder may extend into the ensuing fiscal year”).

A working capital fund might provide AOC some relief in this regard by offering different obligational consequences when a jurisdiction places an “order” for a project; in such case, the working capital fund would function more like a contractor to the jurisdictions. That is, if a jurisdiction placed an order with the working capital fund for a *bona fide* need existing at the time of the order, the appropriations of the ordering jurisdiction would be obligated at that time for the cost of the work to be performed.<sup>23</sup> See, e.g., B-319349, June 4, 2010; B-308944, July 17, 2007. The

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<sup>22</sup> To eliminate the need to allocate indirect costs would require legislation allowing AOC to charge all indirect costs incurred to one of its appropriations regardless of which of the jurisdiction appropriations benefitted from those costs.

<sup>23</sup> A working capital fund cannot be used to permit a customer agency (or here, a jurisdiction) to evade restrictions on its funds. 30 Comp. Gen. 453 (1951). When entering into a transaction with a working capital fund, the customer agency must still satisfy the various time rules Congress has imposed on its own appropriation. Specifically, the customer agency must obligate its appropriation for a valid purpose and for a *bona fide* need within the specified period of availability. Additionally, if the performing agency does not begin within a reasonable time of the order, the  
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jurisdiction's appropriations would then maintain their fiscal year identity until earned by the working capital fund, at which point they would then become part of the no-year amounts of the working capital fund. B-319349. The jurisdiction's funds would remain available to reimburse services performed by the working capital fund until those funds are canceled by operation of law.<sup>24</sup>

Under current law, if a jurisdiction used fiscal year appropriations to order a project from the Construction Division during fiscal year 2016 where performance will cross fiscal years, AOC would need to obligate an available appropriation for services performed by Construction Division personnel during fiscal year 2016, an available appropriation for services performed by Construction Division personnel during fiscal year 2017, and so on. In contrast, if that jurisdiction placed an order with a working capital fund, AOC would obligate the full estimated cost against the jurisdiction's fiscal year 2016 appropriations, which would then remain available to reimburse the working capital fund for services performed until the account closes by operation of law in fiscal year 2021.<sup>25</sup>

## CONCLUSION

AOC's current method for allocating indirect costs, although cumbersome, would not violate 31 U.S.C. § 1301, the purpose statute, as long as it is based upon a reasonable methodology. AOC already has the authority to streamline its process by using the account adjustment statute or its statutory transfer authority to manage its allocation of indirect costs. AOC's allocation of indirect costs pursuant to either the account adjustment statute or AOC's transfer authority would comply with the requirements of the purpose statute, as long as AOC uses a reasonable methodology to determine the allocation. Establishment of a typical working capital fund would not obviate the legal requirement under the purpose statute that AOC properly allocate its indirect costs using a reasonable methodology.

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agreement may not reflect a *bona fide* need of the client agency. See B-308944, July 17, 2007.

<sup>24</sup> Generally, after an appropriation expires at the end of its fiscal year of availability and before the account closes five years after the end of the fiscal year, the expired appropriation remains available for recording, adjusting, and liquidating obligations properly chargeable to that appropriation. 31 U.S.C. § 1553(a).

<sup>25</sup> AOC's 71 percent overhead rate could prove useful if using a working capital fund because AOC could obligate the estimated cost of the project, including its projected share of the Construction Division's indirect costs, against the jurisdiction's appropriation at the time the order is placed using the overhead rate. AOC could then adjust those obligations to reflect actual costs as the work is performed.

This opinion was prepared by Edda Emmanuelli Perez, Julie Matta, and Amanda Postiglione. Significant contributions were made by J. Lawrence Malenich, Anne SitWilliams, and Josh Edelman. If you have any questions, please contact Edda Emmanuelli Perez, Managing Associate General Counsel, at (202) 512-2853 or [EmmanuelliPerezE@gao.gov](mailto:EmmanuelliPerezE@gao.gov).



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