

DOCUMENT RESUME

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Loss of Funds and Validity of Exchange Transactions Incident to Evacuation of Vietnam. B-186348. July 18, 1977. 20 pp.

Decision by Elmer B. Staats, Comptroller General.

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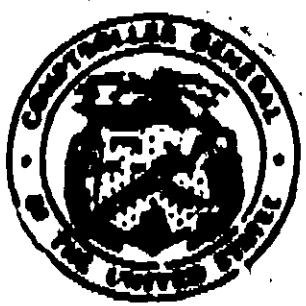
The Fiscal Assistant Secretary, Department of the Treasury, requested guidance on the proper procedures to be followed in accounting for funds lost incident to the evacuation of Vietnam. The losses of U.S. currency and Vietnam piasters during the evacuation should be treated as physical losses. Adjustments for these losses will be made from current appropriations for the disbursing function. The losses may be distributed among agencies using the U.S. disbursing officer's services on a reimbursable basis. Claims submitted by Vietnamese who turned in piasters but did not receive dollars may be honored if they can be substantiated. Deposits of Vietnam piasters by the U.S. disbursing officer in Vietnam should be treated as loss by exchange and charged to the Gains and Deficiencies account in the Treasury. (Author/SC)

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DECISION



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

FILE: B-186348

DATE: July 18, 1977

MATTER OF: Loss of Funds and Validity of Exchange Transactions Incident to Evacuation of Vietnam

- DIGEST:**
1. Sufficient evidence exists to support Treasury Department conclusion that United States currency in account of United States disbursing officer (USDO) was not destroyed prior to evacuation from Vietnam. Loss should be treated as physical loss. Adjustment for loss will be from current appropriation for disbursing function. 31 U.S.C. § 82a-1 (1970). Loss may be distributed among agencies using USDO services on reimbursable basis.
 2. Loss of Vietnam piasters, held by United States disbursing officer (USDO) and State Department officials, abandoned during evacuation should be treated as physical loss at official exchange rate at time of loss. Adjustment for loss will be from current appropriation for disbursing function. 31 U.S.C. § 82a-1 (1970). Loss may be distributed among agencies using USDO services on reimbursable basis.
 3. Deposits of Vietnam piasters by United States disbursing officer with Treasury of Vietnam and National Bank of Vietnam, should be treated as loss by exchange and charged to Gains and Deficiencies account in Treasury, pursuant to 31 U.S.C. § 492b and Treasury Circular No. 830, since deposits were for purposes of exchange operations.
 4. 31 U.S.C. § 492a-492c (1970) and Treasury regulations permit purchase of foreign currency "for official purposes." Purchases by State Department officials of piasters from Vietnamese employees prior to evacuation from Vietnam were "for official purposes." Claims now submitted by Vietnamese who turned in piasters but did not receive dollars may be honored, if they can be substantiated.

This decision is in response to two related requests. Initially, the Fiscal Assistant Secretary, Department of the Treasury, asked our opinion regarding the proper procedures to be followed in accounting for (1) dollar currency purportedly destroyed; (2) Vietnam piaster currency left in Vietnam; and (3) piasters remaining in accounts with the Treasury of

Vietnam and the National Bank of Vietnam, when the United States Embassy in Saigon, Vietnam, was closed and all personnel were evacuated in April 1975.

Specifically, during the evacuation of Americans and many Vietnamese from Vietnam, over \$2.5 million in United States currency which was in the account of the United States Disbursing Officer (USDO), an employee of the Department of State, was reportedly destroyed by burning. Some of the bills which had been reported destroyed have since been received at a Federal Reserve Bank. Treasury believes the total amount left behind should be treated as a physical loss of funds, that the USDO's account should be adjusted for the loss, and that the adjustment should be charged to the appropriation available at the time of adjustment for the expense of the disbursing function, as provided in 31 U.S.C. § 82a-1 (1970). In this case, the current salary and expense appropriation of the Department of State would be charged, the disbursing officer having been an employee of that department.

A substantial amount of piaster currency was also abandoned during the evacuation. The greater part of the piasters was held by the USDO. Lesser amounts were in the possession of officials of the Agency for International Development (AID) and the United States Information Agency (USIA). Treasury is of the opinion that the loss of these piasters should also be considered as a physical loss of funds, and that, as with the dollar currency, the United States dollar equivalent should be charged to the current salaries and expenses appropriation of State, in the case of the piasters left by the USDO, and to the applicable appropriations of AID and USIA for the amounts left behind by their employees in order to adjust the accounts in which the losses occurred. Treasury believes that the exchange rate to be used to value the loss should be 755 piasters to the dollar, which was the official rate for all exchange transactions until the final day of American departure from Vietnam.

In addition to the United States currency and the piaster bank notes left behind, there were substantial amounts of piasters on deposit in bank accounts in Vietnam in the name of the USDO. Accounts were maintained with the Treasury of Vietnam, the National Bank of Vietnam, and the Saigon Branch of the Bank of America. Prior to the closure of its Saigon Branch, the Bank of America turned over to the Central Bank all of its assets in Vietnam.^{1/} Treasury has taken the position

^{1/} Treasury states that it has not yet determined the propriety of this turnover by the Bank of America. In discussing this issue, therefore, we assume that any accountability for Bank of America piaster accounts will be subject to subsequent adjustment should there be a basis for recovery from the Bank of America.

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that the USDO's accountability for piasters held in the form of bank accounts should be treated as a loss by exchange, since the deposits were payable in piasters and, for practical purposes, the piasters now are valueless. Treasury proposes to charge this loss to the Gains and Deficiencies account in the Treasury. This action would be pursuant to 31 U.S.C. § 412b (1970), which provides that adjustments for losses resulting from official exchange transactions permitted by 31 U.S.C. §§ 492a-492c are to be made from moneys in the Treasury not otherwise appropriated.

The Department of State has responded to Treasury's position on these questions in a letter from the Director, Financial Services. In addition, the Controller, AID, has requested that we answer an additional, related question. Some of the piasters left behind had been received by State employees from Vietnamese employees of the United States in what State claims were intended to be currency exchange transactions, but neither dollars nor checks were issued in exchange. AID now asks that we hold that those transactions may be consummated by payment in dollars to the Vietnamese whose piasters were accepted, charging the payments to the Gains and Deficiencies account in the Treasury. Because AID's question is so closely linked with issues raised by Treasury, we have agreed to its request that we deal with all these issues together.

Loss of U.S. Dollar Currency

In a report dated September 15, 1975, Treasury has summarized in considerable detail the events of the day of the evacuation and the destruction of the United States currency, as well as the subsequent appearance of some of the bills which were supposed to have been destroyed. The report is based on a Secret Service investigation, and on a cable to the Secretary of State from the American Embassy in Bangkok, concerning the destruction of currency. The report states:

"On April 29, the U. S. Disbursing Officer had in her possession more than \$2.5 million in U.S. currency. Since it appeared that the evacuation of Saigon was imminent, preparations had been made to destroy currency, checks, and other similar items to prevent them from falling into enemy hands. Destruction was to take place in burn barrels in which the materials to be destroyed were to be placed in alternate layers with a solution of sodium nitrate. This chemical produces a very intense heat and is able to generate its own oxygen and thereby produce a complete incineration."

The report continues with a vivid description of the confusion and excitement of the last day before evacuation from Saigon. Apparently, embassy

personnel received evacuation orders at 10:00 a. m. on April 29 and immediately placed the currency in two burn barrels. However, destruct orders were not actually issued until 4:30 p. m. In the interval, two packages of \$80,000 each were retrieved for the Ambassador, and one barrel was prematurely ignited and had to be extinguished. Two new barrels were then substituted. Later, when the barrels were burning, an unsuccessful attempt was made to throw in the currency previously retrieved for the Ambassador but not used by him, but because of the heat of the flames, it was finally found necessary to shred it. At all times, according to the report, Seabee guards watched over the currency-- both the currency being burned and the currency being shredded.

On May 7, a cable was sent to the Secretary of State, reporting the destruction of the currency and listing the currency by denomination and serial number. State sent Treasury a copy, and Treasury, as a precautionary measure, advised all Federal Reserve Banks to be alert to receipt of any bills from Pacific sources with the listed serial numbers and which showed signs of contact with fire.

Subsequently, Treasury learned that 218 bills bearing serial numbers which had supposedly been destroyed, amounting to \$4,360, turned up in a bank facility in Arkansas which primarily served Camp Chaffee, a processing and housing point for Vietnamese refugees. The money was apparently in new condition, showing no evidence of exposure to fire or a chemical agent, although we have been informally advised that laboratory tests to confirm this have been inconclusive.

The USDO, in a written statement dated June 13, 1975, suggests two possible explanations for the mystery:

- "a. Serial numbers were noted and reported incorrectly,
or
- "b. Since the [Secret Service] stated '*** it would take 12 hours for that amount of currency to burn.' The barrels must have been overturned and monies withdrawn by unknown individuals."

We asked Treasury for additional information, concerning whether any more of the currency has turned up, in addition to the \$4,360, and the basis for its conclusion that the entire \$2.5 million should be treated as a physical loss. The Fiscal Assistant Secretary responded as follows:

"The prescribed procedure and means of destroying currency is contained in detail in Volume III of the Treasury Fiscal Requirements Manual, copy enclosed. The intent of the procedures is to assure that (1) all of the currency intended for destruction is fully accounted for, (2) that all of it is completely destroyed, and (3) that none of the

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residue can be used to support a fraudulent claim against the Government. In extraordinary circumstances, such as those prevailing in Vietnam in April 1975 at the time of the evacuation, the Treasury reviews the destruction process used after the fact. If the evidence indicates that it is reasonable to conclude that all of the currency was totally destroyed, the Treasury certifies that to the Federal Reserve Board without concern as to whether normal procedures were utilized. For example, we would not require inspection of the residue if the destruction equipment used assured that the incineration was irreversible once ignition had taken place. On the other hand, we would require reasonable assurance that none of the currency had been surreptitiously withdrawn between the last time it was counted and when it was placed in the destruction equipment. In certifying the destruction of currency to the Federal Reserve Board, we also ask the Board to take appropriate action to reduce the liability for outstanding currency and to credit the agency which suffered the loss.

"As to the alleged destruction of United States currency on April 29, 1975, at the Embassy in Vietnam, it is obvious that all of the money alleged to be destroyed was not destroyed, since a number of Federal Reserve notes reported to have been burned were subsequently received through the Federal Reserve Banks in the United States. Federal Reserve Banks do not normally check serial numbers on notes processed by them, but the Banks adjacent to Vietnamese refugee centers in this country did, subsequent to the Vietnam evacuation, make such a check at our specific request. The 217 notes they identified simply tell us that some of the purportedly destroyed notes were received in the United States. Additional notes could well have been, and likely were, received at any of the Federal Reserve Banks and destroyed or recirculated without being identified. Also, other amounts could be now in circulation outside the Federal Reserve Banks and we have no way of identifying them if at some point in time they reach the Federal Reserve Banks. There is no basis, therefore, for a determination as to specifically what part, if any, of the currency purported to be destroyed in Vietnam was actually destroyed. The Treasury cannot, therefore, certify that any specific amount of the currency was destroyed."

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Treasury assumes that this Office " * * * pursuant to 31 U.S.C. § 82a-1, would take the position that the amount of the currency lost should be charged to the appropriation or fund available for the expense of the disbursing function * * *." In response to our request for its views on these questions, State, in a letter from the Director, Financial Services, takes exception--

" * * * to the Treasury position that (1) the total amount of the United States currency must be treated as a physical loss of funds, and (2) the assumption that your office would take the position that the amount of the currency lost should be charged to the salary and expense appropriation of the Department of State."

State contends that, although the disbursing officer who was accountable for the funds was an employee of the Department of State, she was performing her function for a number of United States agencies in Vietnam, and that it would be inequitable for State to absorb the entire loss. State suggests that since the function being performed, the disbursing of funds, is a Treasury function, Treasury should bear the loss.

In any event, State argues, there is insufficient evidence to support Treasury's refusal to conclude that the funds were destroyed. State points out that only 218 \$20 bills (\$4,360) have been found, out of \$2,614,855 worth of currency which purportedly was burned. State considers that "[b]ased on physical observation, there is ample evidence that the destruction barrels were in flames and the currency included therein was destroyed."

The Secretary of the Treasury has general authority to make rules and regulations for officers who may receive Treasury notes, United States notes, or other securities of the United States, which he considers best calculated to promote the public convenience and security, and to protect the United States, as well as individuals, from loss. 31 U.S.C. § 427 (1970). This section is broad enough to give the Secretary authority to regulate the destruction of currency, including authority to determine when destruction may be said to have been accomplished. The Secretary's determination should be undisturbed, as with any administrative determination, when supported by substantial evidence.

In this instance, because of the evidence that some of the money was not destroyed, Treasury states that it cannot certify that any specific amount was destroyed. As State points out, there is considerable evidence, in the form of testimony by witnesses, that the destruction was carried out. Nevertheless, the reappearance of some of the currency in this country contradicts that testimony, and can be plausibly explained only by assuming that at least a portion of the currency was not destroyed. (As noted, the

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USDO suggested that the serial numbers may not have been correctly recorded, but that is conjecture and, even if true, would not necessarily refute the conclusion that some portion of the currency in the USDO's custody was not destroyed.)

Treasury's conclusion is thus at odds with State's conclusion, that all the currency was destroyed, based on the testimony that the barrels were in flames. In any case, there is evidently no way to certify the destruction of any given amount. Under the circumstances, we do not find sufficient justification to take issue with Treasury's administrative discretion in this matter. Accordingly, the \$2.5 million may be treated, in its entirety, as a physical loss.

Since State did not agree with the position that this was a physical loss, it has not treated the loss as chargeable to the accountable officer. State should now do so. Of course, a request for relief of the accountable officer or officers may be submitted pursuant to 31 U.S.C. § 82a-1 (1970).

As noted above, Treasury assumes that, if the loss is treated as a physical loss, our Office would charge the amount of the loss to the current appropriation or fund available for the expense of the disbursing function, in this case the salaries and expenses appropriation of State. The kind of adjustment or charge to which Treasury refers is provided for by statute as follows:

"Whenever it is necessary in the opinion of the Comptroller General to restore or otherwise adjust the account of any disbursing or accountable officer or agent * * * for relief heretofore or hereafter granted under this section, the amount of the relief shall, unless another appropriation is specifically provided therefor, be charged to the appropriation or fund available for the expense of the disbursing or other accountable function at the time the adjustment is effected." 31 U.S.C. § 82a-1.

It is apparent that State's concern in this matter that the loss not be treated as a physical loss derives in large part from the possibility that, if it is, it would be charged to State's current appropriations in order to adjust the account. Treasury appears to regard this as a necessary result. We concur.

The USDO was, as State points out, providing disbursing services for a number of United States agencies in Vietnam, presumably on a reimbursable basis. Although the entire adjustment may be charged to State's current appropriation available for the expense of the disbursing function (in the absence of another appropriation specifically provided therefor), we have held that in like circumstances:

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"* * * since the amounts of such adjustments properly may be considered as part of the costs of the disbursing function, we perceive no objection to so considering such amounts in the determination of the reimbursement charges assessed against agencies utilizing the services of the United States Disbursing Officers * * * and the distribution of such amounts to all of the utilizing agencies in the same manner as other costs are distributed." 37 Comp. Gen. 224, 225 (1957).

Loss of Piasters

We turn next to the question of the Vietnam piaster bank notes left behind by the USDO and officials of AID and USIA. The issue is whether the value of these piasters should be considered a physical loss of funds, as we concluded in the case of the dollars, or whether the amount of the loss should be charged to the Treasury's Gains and Deficiencies account pursuant to 31 U.S.C. § 492b (1970). This section states:

"Any gains in the accounts of disbursing officers of the United States resulting from operations permitted by sections 492a to 492c of this title shall be paid into the Treasury as miscellaneous receipts. There are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to adjust any deficiencies in the accounts of disbursing officers of the United States which may result from such operations. For the purposes of this section, the heads of agencies having jurisdiction over disbursing officers of the United States are authorized, on a fiscal year basis, to apply gains to offset deficiencies in the accounts of such disbursing officers."

The kinds of operations permitted by sections 492a-c of title 31 are, generally, exchanges of instruments in one currency for those in another, for official or accommodation purposes. The Gains and Deficiencies account has been established on the books of the Treasury to account for gains and losses resulting from authorized exchange transactions. In the event of a net deficiency in a fiscal year, Treasury requests an appropriation in the amount of the deficiency.

The piasters were acquired in a variety of transactions, as will be discussed in more detail below. For present purposes, we assume that they were acquired in exchange transactions pursuant to 31 U.S.C. §§ 492a-c, and the implementing regulation, Treasury Circular No. 350, "Regulations Governing Transactions by Treasury Department Disbursing Officers Under [31 U.S.C. §§ 492a-c]."

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Even assuming the piasters were acquired in exchange transactions, the loss did not result from exchange operations. Rather, it resulted from the immediate evacuation of Saigon and the abandonment of the currency. Under the circumstances, we agree with Treasury that the loss of the piasters was a "physical loss". As noted above, State has not disputed this point in its response to us.

Treasury makes the same assumption concerning the piaster loss that it made concerning the dollar loss, that the current appropriations available for the expenses of the various accountable officers would be charged with the total amount of the loss. Our comments above on this point with respect to the dollar loss apply equally here: current appropriations will be charged with the amount of the loss.

Loss of Piaster Bank Deposits

The third question raised by Treasury concerns the piasters on deposit in bank accounts in Vietnam in the name of the USDO. The accounts were payable in piasters. Since, for all practical purposes, the piasters are now worthless, Treasury contends that this is a loss by exchange, to be accounted for pursuant to 31 U.S.C. § 492b by a charge to the general fund of the Treasury.

Presumably, the funds deposited in the name of the USDO were for the purposes of the kinds of transactions specified in 31 U.S.C. § 492a, which states, in pertinent part:

"* * * disbursing officers of the United States are authorized, for official purposes, or for the accommodation of members of the Armed Forces and civilian personnel of the United States Government, veterans of the Armed Forces of the United States hospitalized or domiciled in institutions operated by the Veterans Administration and other institutions operated by agencies of the United States Government, contractors engaged in United States Government projects, and the personnel of such contractors, and personnel of authorized nongovernmental agencies operating with agencies of the United States, to cash and negotiate checks, drafts, bills of exchange, and other instruments payable in United States and foreign currencies, and to conduct exchange transactions involving United States and foreign currency and coin, checks, drafts, bills of exchange, and other instruments * * *."

31 U.S.C. § 492b allows the Treasury to charge the general fund for losses "resulting from" operations permitted by sections 492a to 492c.

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Although this loss was not the direct result of an exchange transaction as such, it may be regarded as having resulted from exchange transaction operations since the piasters were held for the purpose of these transactions. Moreover, it seems clear that the loss could not appropriately be treated as a physical loss since the piasters are still in the accounts where they were deposited, regardless of the loss of value. Accordingly, we agree with Treasury that the amounts left on deposit should be charged to the Gains and Deficiencies account, pursuant to 31 U.S.C. § 492b.

Payment to Vietnamese Claimants For Dollars
Turned In to United States Officials

The Controller, AID, asks for our concurrence that certain currency conversion transactions initiated by AID and USIA prior to the evacuation of Vietnam in April 1975 should be consummated, and charged to the Gains and Deficiencies account.

During the last days of the American presence in Vietnam, piasters were purchased from, among others, Vietnamese nationals who were employees of the United States and who were expected to be evacuated. Treasury Circular No. 830, supra, does not permit purchase of foreign currency, for accommodation purposes, from other than United States citizens (except in the case of members of the Armed Forces). Section 4A. However, foreign currency may be purchased with dollars from any source for disbursing, i.e. official, purposes. Section 3(a).

In the early stages of the emergency, the purchases of piasters were handled exclusively by the USDO, who paid for them in dollars. Later, the USDO issued Treasury checks for the piasters. At the end, with evacuation imminent, she gave receipts, for which checks were later issued.

In the last stages of this process, certain employees of USIA and AID also issued receipts for piasters purchased from their employees. In other cases, the USIA and AID employees accepted piasters from Vietnamese employees, without issuing receipts or dollars, intending to count the piasters and issue receipts later when time allowed. It is these transactions by USIA and AID which AID asks now be consummated by charges to the Gains and Deficiencies account, treating the payments, that is, as a loss by exchange.

AID argues as follows:

"[T]he United States Disbursing Officer (USDO) accepted piasters from Vietnamese employees in exchange for receipts issued by the USDO on April 28, 1975. The U.S. Treasury subsequently ratified the transactions initiated by the USDO, and issued Treasury checks for all piasters turned over to the USDO in Saigon in exchange for receipts issued by the USDO.

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Ratification was based upon a statement by Wolfgang I. Lehmann, former Deputy Chief of Mission, Saigon, Vietnam. * * * This decision of the Embassy applied to all U.S. Mission local personnel including those of AID and USIA.

"To our knowledge, 44 of the former Vietnamese employees who turned over piasters to officials of AID and USIA reached the United States and have filed claims for dollars. Requests were submitted to the U.S. Treasury for preparation of Treasury checks to the former employees. In March 1976, the U.S. Treasury requested the State Department to secure a statement signed by Ambassador Martin, Deputy Chief of Mission Lehmann or other high mission official as to whether or not AID officials were acting for Miss Ina Jean Kinsey, U.S. Disbursing Officer, when making conversions of piasters for U.S. dollars. A statement confirming AID's authority to effect the conversions for the USDO was furnished by DCM Lehmann and forwarded by the State Department to the U.S. Treasury on April 26, 1976. * * *

"The State Department was notified by memo, dated July 29, 1976, of the U.S. Treasury decision not to honor those transactions which would now involve the issuance of a Treasury check if the piaster losses are to be charged to Treasury's Gains and Deficiencies Account. * * *"

The following excerpts from a memorandum by the Fiscal Assistant Secretary of the Treasury provide information concerning the Saigon evacuation of April 1975, and discuss Treasury's refusal to honor the AID and USIA transactions:

"As certified by officials of USIA and AID, accommodation exchange transactions took place at the time the U.S. Mission began the evacuation of local national employees from Saigon. An official of the Department of State certified that the purchase of piastres was stopped when the total evacuation began. This office ratified those transactions for which records show that piastres were turned into the USDO prior to departure. However, because of the timing of accommodation exchange transactions initiated by USIA and AID, it appears highly questionable that the piastres received from Vietnamese employees of the above agencies, which were never turned in to the USDO prior to departure, were to be used by the U.S. Mission for 'official purposes.' Therefore, the decision has been made not to honor those transactions which would now involve the issuance of a Treasury check if the piastre losses are to be charged to Treasury's Gain and Deficiencies Account."

This view was enlarged upon by Treasury in a letter to our Office from the Fiscal Assistant Secretary of the Treasury:

"Treasury ratified the USDO transactions, and Treasury dollar checks were issued to Vietnamese employees because we were satisfied that the piastres accepted were taken 'for official purposes,' whereas we are not satisfied that the piastres accepted by AID and USIA were taken 'for official purposes.' We find nothing in the AID October 29 letter to the Comptroller General to change that view. However, I suggest that the most significant consideration is that the piastres accepted by the USDO and by USIA and AID were left in Vietnam and, as I stated in my April 13 letter, should be treated as a physical loss of funds. The practical effect of that view is that the piastres left by the USDO should, under 31 U.S.C. § 82a-1, be charged to the State salary and expenses appropriation, since dollars have been issued in exchange for those piastres. Further, under 31 U.S.C. § 82a-1 we also believe that the appropriations of AID and USIA should bear the charge for any dollar payment either agency authorizes."

AID makes the following arguments in support of its position:

"Contrary to the speculation of the U.S. Treasury, the piastres collected by A.I.D. pursuant to Embassy authorization were for turn over to the USDO 'to be used by the U.S. Mission for official purposes.' The fact that force majeure prevented completion did not alter the character of the authorization by the U.S. Embassy for official purposes.

"As indicated above, the record shows that the timing of accommodation exchange transactions undertaken by A.I.D. and USIA was concurrent with those exchange transactions handled by the USDO and which latter transactions were ratified by the U.S. Treasury.

"The reason AID and USIA were authorized to make the exchange transactions for the U.S. Mission was that it became physically impossible for the USDO to handle the volume and departures were being impeded.

* * * * *

"The A. I. D. and USIA transactions documented above are in all material respects identical with those transactions the U. S. Treasury honored and which were described in the Comptroller General's Decision B-186291 * * *."

* * * * *

"These [reasons why Treasury honored the transactions by the USDC] are precisely the reasons why the U. S. Treasury should accord the A. I. D. and USIA local employees who turned in their piasters in Saigon the same treatment as was accorded to the local employees to whom Treasury checks were issued. There is no valid substantive reason for different treatment.

"* * * we are not dealing with those cases in which local national employees brought out their piasters for conversion in the United States.

"With respect to the latter category of cases which the Treasury rejected for conversion, the House in a colloquy in enacting Section 413(c) of Public Law 94-329, made clear that Section 413(c) would serve to authorize the conversion of piasters brought out at the encouragement of American officials. In amplification of this, Mr. Buchanan engaged Mr. Morgan, the House Committee Chairman in the following colloquy:

"Mr. Buchanan . . . Am I correct in my understanding that this authority will permit the settlement of the equitable claims against the United States of Vietnamese refugees who are here and formerly were U. S. Mission employees?

"A number of our former Vietnamese employees were unable to receive the limited exchange of piasters into dollars in the closing days when the U. S. Mission authorized the exchange up to a maximum of \$2,000. The U. S. Mission was unable to handle the volume at its exchange windows and bottleneck had developed. American officials at that point encouraged Vietnamese employees to take their piasters along

and not delay departure, assuring them facilities would be provided to convert these piasters -- up to the limit of \$2,000 -- at the destination points of the U.S. evacuation. Thus, a substantial number obtained their exchange into dollars through turn-in of piasters in Saigon while others were denied the facility through no fault of their own and in reliance upon information given them by American officials.

"I believe the language of Section 413(c) authorizes this equitable settlement of former personnel claims and hope you can confirm my understanding."

* * * * *

"Mr. Morgan . . . Yes, that is the opinion of the chairman of the committee.

* * * * *

Mr. Buchanan . . . That was my understanding as well." (Congressional Record, H 1560, March 3, 1976).

"Thus, on the basis of according equitable treatment to those local employees who brought their piasters out, it is expected that over 200 former Vietnamese employees will benefit. It should be noted that in this colloquy the House members assumed as indeed did this Agency and USA, that the U.S. Treasury was according equal treatment to all the local employees of the U.S. Mission who turned in their piasters in Saigon. The colloquy did not include relief for those limited few who turned in their piasters in Saigon.

"We believe there is ample authority and justification for finding that the U.S. Treasury should provide these 44 claimants the same conversion payments that it accorded the other local employees who turned in their piasters in Saigon. It would be time consuming and cause needless added hardship to the claimants to leave the Agency no option than to go back to Congress and seek additional relief for the 44 claimants. * * *"

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Treasury relies on a purported factual distinction between the exchanges by the USDO herself and those by officials of USIA and AID, because of the timing of the transactions by the latter. According to Treasury, it is "highly questionable" that the piasters accepted by USIA and AID were intended to be used for official purposes.

The Treasury memorandum on which we relied in Matter of: Nguyen Thi Chung and Chau Thi Nguyen, B-186291, June 30, 1976, cited above by AID, had this to say about the exchange transactions by the USDO:

"* * * In essence, the Mission states that they needed large amounts of piasters for final payments of leases, contracts, and other piaster liabilities; and, since all banking institutions in Saigon closed on or about April 23, 1975, a decision was made by the Mission to purchase piasters from Mission personnel (Americans, locals and third-country nationals) prior to their evacuation. This accomplished two objectives -- it provided the Mission with needed piasters and also provided an opportunity for authorized personnel to obtain a limited amount of United States dollars prior to departure from Vietnam. The DCM [Deputy Chief of Mission] states that a dollar limit of \$2,000 was placed on piasters from each non-American. The statement makes no reference to an amount limited for American nationals.

"Current Treasury regulations covering accommodation exchange (Circular 830) do not permit for accommodation exchange purposes the purchase of local currency for dollars from non-United States nationals. If we accept the Mission's statement that the piasters were needed by the Embassy, the purchase transactions could be considered for 'official purposes' and such transactions would be permissible under the applicable statute, 31 U.S.C. 492, as well as Treasury regulations.

"The USDO at the Embassy in carrying out the Mission's instructions initially purchased piasters against payment in dollar currency. Subsequently, Treasury checks were issued to purchase the piasters. During the last few days in Saigon, this issuance of Treasury checks became impractical due to the volume

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of transactions being conducted and the decision was made to issue receipts to local nationals in exchange for piasters acquired by the Embassy.
* * *

"The financial records of the USDO for the month of April reflected a negative piaster accountability equivalent to \$1.4 million; while, at the same time, the D/O and others at the Embassy have stated that piasters with a value of somewhat over \$1 million were left at the Embassy at the final evacuation. Obviously, therefore, the financial records are incorrect and an attempt will be made by Treasury to accurately reconstruct transactions that took place but are not reflected in the D/O's accounts. It is clear, however, that piaster balances had been kept at a reasonable minimum; and, based on the data available to me, we have no reason to question the Mission's need for piasters. We feel, therefore, that the transactions involving Mission personnel in Vietnam should be ratified and those Treasury checks in possession of the USDO which are payable to local nationals or third-country nationals employed by the Mission in the amount of \$2,000 or less should now be released to the payees."

Relying on this rationale, Treasury in effect ratified the transactions in which piasters were purchased by the USDO from local nationals, as having been for "official purposes."

The purchase of piasters for dollars by the USDO, although it provided needed piasters for the U.S. Mission, also had the effect of converting piasters to dollars for Vietnamese who expected to be evacuated to the United States. This kind of exchange, if entered into solely for accommodation purposes, to supply the evacuees with dollars, would be unauthorized under Circular No. 830, but Treasury recognized that where the acquisition of dollars by the evacuees was merely incident to an exchange transaction for official purposes, it is not objectionable.

We agree with this view. However, we can find no factual basis in the record for Treasury's conclusion that the transactions by the USDO personally are distinguishable in purpose from those by the officials of AID and USIA.

Treasury states that the piasters acquired by USIA and AID were never turned in to the USDO. AID responds that the piasters were

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intended to be turned over to USDO but that this was prevented by "force majeure." According to the statement by Mr. Rice, Controller, USAID/Saigon:

"* * * cash was accepted from departing employees by their respective division chiefs and a record maintained of the individuals involved. It was intended to regularize the procedure the following morning by counting the piasters deposited and turning the money over to the USDO. This was never done since the American community evacuated Saigon the following day."

The USDO explained in this connection that:

"* * * At one point, USIS and Mr. Rice wanted to issue receipts, collect the Piastres and bring the receipts to me. I explained to the Administrative Officer and Mr. Young that I should be the central control point and regardless of the time involved, I should be the only one issuing receipts. Approval was granted for the Execution Officer of USIS to do this and also for the C&R supervisor of the Embassy. I am unsure whether or not it was agreed that Mr. Rice would be able to do this. I have later learned that Mr. Rice was verbally authorized to collect Piastres and to issue receipts."

Based on this testimony, which is uncontradicted in the record before us, there is no apparent reason to dispute AID's assertion that the piasters it purchased were intended to be turned in to the USDO, although this was prevented by events.

Moreover, there seems to be no basis to dispute the assertion that the quantity of piasters purchased by AID officials was needed for official purposes. Thus, the USDO estimates that 657,000,000 piasters were left behind at her location. At the exchange rate of 755 piasters to the dollar, this amounts to approximately \$870,000. Even assuming that USIA and AID converted the maximum of \$2,000 each for the 44 employees, only another \$88,000 worth of piasters would have been left at the USAID office. Treasury concluded in the memorandum quoted above, that "piaster balances had been kept at a reasonable minimum," based on the assumption that over \$1 million in piasters was left behind by the USDO alone.

Thus, there is no apparent basis for an inference that the amount of piasters purchased by AID officials so exceeded any foreseeable

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need that the purchase must be presumed not to have been for official purposes. See, in this connection, the statement of Mr. Hayes, then with the American Embassy, that:

"This tremendous intake of piasters served a useful purpose since the beginning of the month the banks in Saigon were experiencing runs and closing early due to their work volume. It became nearly impossible to obtain funds from the last week or so and after the 22nd none of the banks were in operations. These piasters received in exchange for dollars were then used to pay bills for the US Mission.

"In one case, OSA finance requested and received 185 million in piasters on April 25 in return for a US treasury check made out for the equivalent. USAID was also requesting payment of the rents in cash, other large bills were handled in a similar manner. I have no doubt had we the logistical capability towards the end of our tenure in Saigon we could have liquidated our piaster holdings.

"During this entire period Mr. Boudreau had requested Mr. Young to keep both a large amount of dollars and piasters on hand. This request forced us to keep the inventory of currency unnecessarily high."

Similarly, the USDO, in her statement, refers to issuance for various purposes of a total of 340 million piasters.

Treasury questions the timing of the exchange transactions by AID and USIA, presumably to suggest that because they began the day before the evacuation, they were not genuinely intended to acquire piasters for official purposes. However, as AID points out, the exchange transactions in question were being conducted at the same time as those by the USDO which Treasury has ratified. The timing alone is therefore not sufficient basis to distinguish the AID transactions from the USDO transactions. The following excerpt from Mr. Rice's statement shows, moreover, that the exchanges in question, even though they took place on April 28, 1975, the day before the evacuation, were not made with foreknowledge that there would be no time or opportunity to use the piasters purchased:

"* * * On April 29, 1975, around mid-morning, the decision was communicated to the official American community, by phone, radio, word of mouth, etc.,

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that a total evacuation was taking place that day, commencing immediately. The suddenness of this decision is important to convey, because it tends to dispel subsequent chidings of naivety, unawareness of events - even duplicity. * * * It was not until I returned to my apartment, around noon, and turned on the radio, and heard the Armed Forces Radio disc jockey saying 'it's 105 degrees in Saigon and rising' followed by the song 'White Christmas' that I realized an evacuation was in effect. I was never personally advised. * * *

Less than 24 hours before, in a USAID staff meeting on Monday afternoon, April 28, we were advised that while the situation indeed looked grim, there was reason to believe that the U. S. Embassy would continue to function even in the event of a military takeover, and that USAID would be allowed an orderly, undisturbed departure from the country-- a question of politics, not war."

In sum, we find no basis in the record to support Treasury's conclusion that, while the exchange transactions by the USDO were for official purposes, the simultaneous transactions by AID officials were not. That is not to say, however, that the transactions should be consummated, as AID suggests, by a charge to the Gains and Deficiencies account.

As discussed above, the Gains and Deficiencies account is available for gains or losses resulting from exchange transactions. Gains or losses could result, for example, from fluctuations in the value of foreign currency held by the United States.

In this case, the officials of USIA and AID purchased foreign currency for official purposes, but failed to make payment for the currency purchased. The purchased currency was lost. It is now worthless, as a practical matter, but there remains an obligation to pay for the currency purchased, at the exchange rate in effect when it was purchased. This obligation is not extinguished by virtue of the later loss of the piasters. Moreover, since the loss was not the result of exchange operations (as discussed above), it is not chargeable to the Gains and Deficiencies account.

In the case of the purchase by the USDO personally of piasters, with receipts issued in return, Treasury ratified those transactions, conceding that they were for official purposes. Those transactions were consummated by the issuance of Treasury checks which, we understand, were not chargeable to funds of State. This procedure was justified under the circumstances.

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There is, as the foregoing discussion indicates, no basis in the record to conclude that the exchange transactions by the employees of AID and USIA, acting in effect for the USDO, were not also for official purposes. Accordingly, we believe that, under the circumstances of this case, Treasury should honor the claims now presented by those Vietnamese whose piasters were accepted by the AID and USAID employees, to the extent the claims are substantiated, in the same manner as the claims of those whose piasters were accepted by USDO.

We emphasize at this point that we express no opinion herein on the merits or validity of the 44 claims. We have not been asked to do so and, in any event, the record before us does not include the information necessary to make such a determination. Some of the claims are apparently supported by receipts issued by the accountable officers and held by the claimants but, in other cases, there is evidently no contemporaneous documentary evidence, and the amount involved is uncertain.

Thomas B. Stead

Comptroller General
of the United States