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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Office of Natural Resources Revenue—Cooperative Agreements

File: B-321297

Date: August 2, 2011

DIGEST

The Office of Natural Resources Revenue (ONRR) enters into cooperative agreements with States and Indian Tribes to conduct audits of certain leases. ONRR must pay a State or Tribe 50 percent of civil penalties collected as a result of their audits, and offset its original obligation for the cooperative agreement by that amount. 30 U.S.C. § 1736. ONRR should deobligate its appropriation by that amount and, if the appropriation has not yet expired, the deobligated amounts become part of the unobligated balance of the appropriation. Consistent with the account closing law, 31 U.S.C. §§ 1551–1553, if the appropriation has expired, the deobligated amounts are only available to adjust previously incurred obligations.

DECISION

A certifying officer for the Office of Natural Resources Revenue (ONRR), Department of the Interior, requests an advance decision regarding appropriations used to fund cooperative agreements with States and Indian Tribes for audits of certain mineral leases. At the time ONRR enters into a cooperative agreement, it obligates appropriations for an agreed-upon amount that the parties had calculated would compensate the State or Tribe for the costs of the audits. If ONRR collects a civil penalty as a result of a State or Tribe's audit, ONRR must pay 50 percent of the civil penalty collected to the State or Tribe. 30 U.S.C. § 1736. However, section 1736 requires that ONRR must deduct that amount from the compensation otherwise due under the cooperative agreement.

ONRR asks how it should adjust its obligations in this event. Specifically, ONRR asks how it should dispose of any amounts that it had originally obligated to compensate a State or Tribe for audit activities, but are not disbursed because of section 1736. We conclude that ONRR should deobligate these amounts. If the appropriation has not yet expired, the deobligated funds are available to ONRR for new obligations. If the

appropriation has already expired, ONRR must account for deobligated funds in accordance with the account closing law. 31 U.S.C. §§ 1551–1553.

Our practice when rendering decisions is to obtain the views of the relevant agency to establish a factual record and the agency’s legal position on the subject matter of the request. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/legal/resources.html. The record in this case consists of the certifying officer’s request letter and additional information that ONRR provided our office.

BACKGROUND

The Office of Natural Resources Revenue, a division of the U.S. Department of the Interior, manages revenues derived from federal offshore and federal and American Indian onshore mineral leases. ONRR, *Who We Are*, available at www.onrr.gov/About (last visited July 28, 2011). The Department of the Interior leases federal and Indian lands to individuals and companies for natural resources development. *Id.* ONRR enters into cooperative agreements with States and Indian Tribes to conduct audits of these mineral leases and agrees to compensate the State or Tribe for costs incurred. 30 U.S.C. §§ 1732, 1735. ONRR obligates that amount at the time ONRR enters into a cooperative agreement.

ONRR is authorized to impose civil penalties when lessees fail to comply with, or knowingly violate, applicable regulations and laws. 30 U.S.C. § 1719. For instance, ONRR may penalize, up to \$25,000 a day, any person who knowingly submits false or misleading information to an auditor. *Id.* § 1719(d). Section 1736 provides that if the federal government collects a civil penalty as a result of a State or Tribe audit, ONRR must pay 50 percent of the amount collected to the State or Tribe. Under section 1736, ONRR must offset the amount of compensation otherwise due to the State or Tribe under a cooperative agreement with any amounts paid to the State or Tribe from civil penalties collected. In that event, the State or Tribe receives the total compensation due under the agreement; the only difference is that the source of the funds ONRR uses to compensate the State or Tribe includes collections from civil penalties, not just appropriations. Otherwise, the sole source of ONRR’s compensation to the State or Tribe would be appropriations.

DISCUSSION

At issue here is the disposition of ONRR appropriations that were obligated and would have been used to compensate a State or Tribe for auditing certain federal and Indian leases, but are not disbursed because of a section 1736 offset.

As with any other liability, an agency must record an obligation for a cooperative agreement against an available appropriation. *See* 31 U.S.C. § 1501(a)(5). An agency should record the amount of the government’s liability at the time an authorized government official signs the cooperative agreement. On occasion, an agency’s liability may change during the course of an agreement. For instance, an agency may

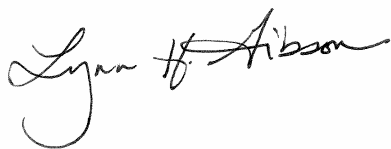
become aware of new information or may modify its agreements, both of which may change the government's liability. *See* B-305484, June 2, 2006, at 7–8. In such circumstances, an agency should adjust the amount of its recorded obligation as it definitizes the amount of its liability. *Id.*; B-300480, Apr. 9, 2003, at 6.

The actual liquidation of a recorded obligation typically follows at some later time. B-305484. If, as it turns out, the agency pays a sum less than the amount of the recorded obligation, the agency must deobligate the amount in excess of what is actually necessary to liquidate the obligation. B-207433, Sept. 16, 1983; B-183184, May 30, 1975. If the appropriation has not yet expired, the deobligated amounts become available for new obligations in the same manner and for the same purposes as the remaining unobligated balances in the appropriation. B-211323, Jan. 3, 1984; B-200519, Nov. 28, 1980; 40 Comp. Gen. 694, 696 (1961).

However, if the appropriation has expired, the agency must consider the account closing law. 31 U.S.C. §§ 1551–1553. Under that law, an appropriation available for a fixed period of time, such as ONRR's appropriation, expires at midnight on the last day of its period of availability and is no longer available for incurring new obligations. *Id.* The expired appropriation remains available to adjust obligations properly chargeable to the appropriation. 31 U.S.C. § 1553(a). *See also* B-286929, Apr. 25, 2001; 64 Comp. Gen. 410, 414–15 (1985); 52 Comp. Gen. 179, 182 (1972).

With these principles in mind, we turn back to the facts in this case. ONRR records an obligation against its appropriation for the total compensation owed to a State or Tribe for its audit activities under a cooperative agreement. If ONRR were to collect a civil penalty as a result of a State or Tribe's efforts, it must pay the State or Tribe 50 percent of the amounts collected, and offset that amount from the amounts ONRR had obligated for compensation under that cooperative agreement. 30 U.S.C. § 1736. In that event, the amount that ONRR had originally recorded as an obligation for purposes of compensation would be greater than needed to liquidate its obligation to the State or Tribe.

Accordingly, ONRR should adjust its recorded obligation. Specifically, ONRR should deobligate the offset amount from the amount originally recorded to compensate the State or Tribe. If the appropriation has not yet expired, the deobligated amounts become part of the unobligated balance of the appropriation and are available to ONRR for new obligations. If the appropriation has already expired, ONRR may only use the deobligated amounts to adjust previously incurred obligations charged to the account.



Lynn H. Gibson
General Counsel