

DIGESTS OF  
APPROPRIATIONS  
LAW DECISIONS AND  
OPINIONS

(January 1 to  
December 31, 2005)

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# List of Appropriations Law Decisions and Opinions

(January 1 to December 31, 2005)

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# Digests of Appropriations Law

## Decisions and Opinions

(January 1 to December 31, 2005)

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**Matter of:** State Department—Assistance for Lebanon

**File:** B-303268

**Date:** January 3, 2005

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This opinion addresses “notwithstanding” clauses found in both authorization and appropriation acts. In section 1224 of the Foreign Relations Authorization Act, 2003, Congress prohibited the State Department from making funds available for assistance to Lebanon until the President submitted and certified certain findings to Congress. Five months later, in section 534(a) of the Foreign Operations, Export Financing, and Related Appropriations Act, 2003, Congress enacted an appropriation providing funds for assistance to Lebanon “notwithstanding any other law.” A literal application of both statutory clauses posed an irreconcilable conflict. GAO resolved the conflict by applying the “last-in-time” rule of statutory construction. Because section 534(a) was passed later in time, it superseded section 1224, but only for fiscal year 2004 unless similar appropriation act provisions were enacted for subsequent fiscal years. As a result, the State Department was permitted to use fiscal year 2004 amounts appropriated in the Consolidated Appropriations Resolution available for assistance to Lebanon without the certification requirements of section 1224.

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**Matter of:** Office of National Drug Control Policy—Video News Release

**File:** B-303495

**Date:** January 4, 2005

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1. The Office of National Drug Control Policy (ONDCP) produced and distributed prepackaged news stories as part of some video news releases it issued under the Drug-Free Media Campaign Act of 1998, Pub. L. No. 105-277, div. D, title I, subtitle A, 112 Stat. 2681-752 (Oct. 21, 1998), codified in 21 U.S.C. ch. 23. Because ONDCP did not identify itself to the viewing audience as the producer and distributor of those prepackaged

news stories, ONDCP's news stories constituted covert propaganda and violated publicity or propaganda prohibitions contained in its 2002, 2003, and 2004 appropriations acts.

2. The use by the Office of National Drug Control Policy (ONDCP) of the term "Drug Czar" to describe the Director of ONDCP in some video news releases it issued under the Drug-Free Media Campaign Act of 1998, Pub. L. No. 105-277, div. D, title I, subtitle A, 112 Stat. 2681-752 (Oct. 21, 1998), codified in 21 U.S.C. ch. 23, does not constitute unlawful self-aggrandizement because ONDCP does not use the term to promote some sense of importance, accomplishment, respect, or authority for the Director, whether as an individual or as an officer of the government.

3. The Office of National Drug Control Policy (ONDCP) must report violations of the Antideficiency Act, 31 U.S.C. § 1341, pursuant to 31 U.S.C. § 1351, because ONDCP had no appropriation available to produce and distribute materials in violation of publicity or propaganda prohibitions contained in its 2002, 2003, and 2004 appropriations acts.

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**Matter of:** Capitol Police—Use of Emergency Response Fund for Overtime Pay

**File:** B-303964

**Date:** February 3, 2005

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The Emergency Response Fund (ERF) appropriation was available to cover overtime costs the Capitol Police incurred from operating the Security Traffic Checkpoint Program, which consisted of 14 security traffic checkpoints intended to secure all streets to the two main avenues leading to the Capitol building. The availability of the ERF is not dependent on the declaration of an emergency. The implementing legislation outlines five specific purposes, including providing counterterrorism measures and supporting national security. The Security Traffic Checkpoint Program was a counterterrorism measure and was undertaken in support of national security. Because the Capitol Police covered these overtime costs by

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transferring funds from the ERF, the Police did not violate the Antideficiency Act.

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**Matter of:** Reconsideration of B-303495—Office of National Drug Control Policy Prepackaged News Stories

**File:** B-303495.2

**Date:** February 15, 2005

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Two members of Congress asked that GAO reconsider its opinion in B-303495, Jan. 4, 2005, in which GAO determined that the Office of National Drug Control Policy's (ONDCP) use of appropriated funds to produce and distribute prepackaged news stories that were part of video news releases (VNRs) violated the prohibition on the use of appropriated funds for publicity or propaganda purposes. On reconsideration, GAO affirms its opinion that, since ONDCP's actions and intent resulted in the deliberate distribution of news stories to the public without identifying itself to the viewing audience as the producer and distributor of the prepackaged news stories, ONDCP's news stories constituted covert propaganda and violated publicity or propaganda prohibitions contained in its 2002, 2003, and 2004 appropriations acts. The fact that ONDCP used the television broadcasters as a medium to reach the target audience does not relieve it of its responsibility, since it is ONDCP's action, not the news organizations' action, that is subject to the prohibition. Further, while ONDCP is authorized by 21 U.S.C. § 1802(a)(1)(H) to engage in "news media outreach," this authority does not allow the distribution of information that would otherwise violate the publicity or propaganda prohibition. For these reasons, GAO declines to withdraw B-303495, Jan. 4, 2005, and stands by that decision.

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**Matter of:** Circular Letter to Heads of Departments, Agencies, and Others  
Concerned—Prepackaged News Stories

**File:** B-304272

**Date:** February 17, 2005

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Since 1951, Congress has enacted an annual, governmentwide prohibition on the use of appropriated funds for purposes of “publicity or propaganda.” During the past year, GAO found that several prepackaged news stories produced and distributed by certain government agencies violated this prohibition. In the course of this work, GAO learned that prepackaged news stories have become common tools of the public relations industry, and that some federal agencies are adopting them as well. The purpose of this Circular Letter is to remind agencies of the constraints imposed by the publicity or propaganda prohibition on the use of prepackaged news stories and to advise vigilance to assure that agencies’ activities comply with the prohibition. Importantly, prepackaged news stories can be utilized without violating the law, so long as there is clear disclosure to the television viewing audience that this material was prepared by or in cooperation with the government department or agency.

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**Matter of:** National Institutes of Health—Food at Government-Sponsored  
Conferences

**File:** B-300826

**Date:** March 3, 2005

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1. The National Institutes of Health (NIH) may pay for legitimate, reasonable conference costs, including meals and light refreshments, of a formal conference pertaining to Parkinson’s disease subject to the conditions outlined herein. A formal conference typically involves topical matters of interest to, and participation of, multiple agencies and/or nongovernmental participants. In addition, other indicators of a formal conference include registration, a published substantive agenda, and scheduled speakers or discussion panels. An agency hosting a formal conference may consider the cost of providing meals and refreshments to

conference attendees an allowable conference cost so long as (1) meals and refreshments are incidental to the conference, (2) attendance at the meals and when refreshments are provided is important for the host agency to ensure full participation in essential discussions, lectures, or speeches concerning the purpose of the conference, and (3) the meals and refreshments are part of a formal conference that includes not just the meals and refreshments and discussions, speeches, or other business that may take place when the meals and refreshments are served, but also includes substantial functions occurring separately from when the food is served. The NIH conference here satisfies these three criteria.

2. Without statutory authority to charge a fee and retain the proceeds, NIH may not charge a registration or other fee to defray the costs of providing meals or light refreshments. An appropriation establishes a maximum authorized program level, and an agency, without specific statutory authority, may not augment its appropriations from sources outside the government.

3. In applying this decision, NIH should develop an agency policy specifying the types of formal conferences at which NIH may consider providing food. NIH also should develop procedures to ensure that the provision of meals and refreshments meet the criteria listed above. We expect agency counsels, as well as certifying officers, agency auditors, and Inspectors General, to apply these criteria. To the extent that agency officials are uncertain as to the applicability of the criteria in particular circumstances, they may request a decision from this office, pursuant to 31 U.S.C. § 3529, before proceeding.

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**Matter of:** Circular Letter to Heads of Departments, Agencies, and Others Concerned—Transmission of Antideficiency Act Reports to the Comptroller General of the United States

**File:** B-304335

**Date:** March 8, 2005

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The Antideficiency Act requires agency heads and the mayor of the District of Columbia to “report immediately to the President and Congress all relevant facts and a statement of actions taken” concerning certain violations of the Act. In the Consolidated Appropriations Act, 2005, Congress amended the Antideficiency Act to add that the heads of executive agencies and the Mayor of the District of Columbia shall also transmit a copy of such reports to the Comptroller General “on the same date the report is transmitted to the President and Congress.” 31 U.S.C. §§ 1351, 1517(b), as amended. An agency may send copies of its Antideficiency Act reports in electronic form to [AntideficiencyActReports@gao.gov](mailto:AntideficiencyActReports@gao.gov). In the alternative, an agency may send paper copies of its reports to the following address: Comptroller General of the United States, U.S. Government Accountability Office, Antideficiency Act Reports, Room 7165, 441 G Street, N.W., Washington, D.C. 20548.

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**Matter of:** Review of Issues Relating to a Study on Expedited Removal Pursuant to the International Religious Freedom Act of 1998

**File:** B-304587

**Date:** April 6, 2005

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1. This decision concerned the study issued by the United States Commission on International Religious Freedom (USCIRF) under section 605 of the International Religious Freedom Act of 1998 (IRFA). Specifically, GAO was asked by the Chairman of the House Judiciary Committee to analyze: (1) whether USCIRF’s appropriation was available to fund the study, and (2) whether USCIRF requested that the Attorney General invite the experts designated by the Commission to conduct the

study, as described in section 605, and what actions were taken in response to such request. GAO found that USCIRF's use of carryover funds to finance the study was permissible under title II of IRFA and the relevant appropriations laws. Section 208(c)(2) of IRFA directed the Commission to provide the funds for the section 605 study, subject to the availability of appropriations. In annual appropriations acts, Congress appropriated funds for necessary expenses of the Commission, as authorized by title II of IRFA, and provided that the funds were to "remain available until expended," that is, without fiscal year limitation. The funds that USCIRF set aside and used for the study were therefore available for that purpose.

2. With respect to the invitation of experts, USCIRF requested the invitations contemplated by section 605 of IRFA from both the Attorney General and the Secretary of Homeland Security. There was no statutory requirement that either the request or the invitations be in writing. Both agencies communicated extensively with the experts through their lead representative and provided written protocols for the experts' access to the immigration proceedings, records, and other information needed to conduct the study. By extending cooperation to the USCIRF-designated experts and facilitating their performance of the study, both agencies invited them to conduct the study within the meaning of section 605 of IRFA.

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**Matter of:** Army—Availability of Army Procurement Appropriation for  
Logistical Support Contractors

**File:** B-303170

**Date:** April 22, 2005

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The Other Procurement, Army (Procurement) appropriation is not available to pay for logistical planning and plan implementation services related to medical equipment items acquired using the Procurement appropriation. Because the activities are not procurement activities, and consistent with its past practice and guidance, the Army should charge the Army's Operation and Maintenance appropriation for such services.

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**Matter of:** Social Security Administration—Grassroots Lobbying  
Allegation

**File:** B-304715

**Date:** April 27, 2005

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1. GAO declined to take further action on requests for a legal decision regarding whether the Social Security Administration engaged in a grassroots lobbying effort on behalf of the President's Social Security initiative in violation of the prohibitions in 18 U.S.C. § 1913 and section 503 of the Consolidated Appropriations Resolution, 2005, Pub. L. No. 108-447, div. F, title V, 118 Stat. 2809, 3162 (Dec. 8, 2004). GAO has long required evidence of a clear appeal by the agency to the public to contact congressional members in support of the agency's position before it would find that an agency violated these prohibitions. The materials submitted to GAO in this case did not evidence such an appeal. The requesters asked GAO to adopt a new, more relaxed standard in place of the established requirement, but GAO declined to do so.

2. GAO's requirement for evidence of a clear appeal by the agency to the public to contact congressional members in support of the agency's position before GAO will find that an agency violated the prohibitions on grassroots lobbying (contained in 18 U.S.C. § 1913 and section 503 of the Consolidated Appropriations Resolution, 2005, Pub. L. No. 108-447, div. F, title V, 118 Stat. 2809, 3162 (Dec. 8, 2004)) was founded upon the language and legislative history of the statutory provisions. This requirement is consistent with a proper respect for the right and responsibility of federal agencies to communicate with the public, as well as Congress, regarding agency policies and activities. GAO remains reluctant to construe these prohibitions in such a way that would unnecessarily or excessively constrain agency communications with the public or Congress.

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**Matter of:** James D. Guckert—Reprinting Government Press Releases as  
His Own Work

**File:** B-304829

**Date:** June 6, 2005

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Allegations that a private citizen, acting alone, reproduced in his own work, without attribution, verbatim excerpts from “White House press releases,” even if true, do not suggest a violation of the prohibition in the Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, div. H, title VI, § 624, 118 Stat. 2809, 3278 (Dec. 8, 2004), regarding the use of appropriated funds for publicity or propaganda.

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**Matter of:** Department of Labor—Grant to New York Workers’  
Compensation Board

**File:** B-303927

**Date:** June 7, 2005

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1. Appropriation to the Department of Labor “for payment to” New York Workers’ Compensation Board for “processing of claims” was not available for the Workers’ Compensation Board to make payments to other New York State entities. The Department should seek recovery of \$44 million improperly transferred unless the Secretary seeks and obtains congressional ratification of the grant expenditures to date.

2. Department of Labor’s grant to New York Workers’ Compensation Board imposed a responsibility on the Department to ensure proper performance of that grant, even though it was outside the Department’s normal sphere of operations.

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**Matter of:** National Archives and Records Administration's Records  
Center Revolving Fund—Property Damage Recovery

**File:** B-302962

**Date:** June 10, 2005

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The National Archives and Records Administration (NARA) should collect amounts sufficient to repair damages to facilities financed by the Records Center Revolving Fund, whether that damage is caused by NARA's federal agency customer, the customer's contractor, or NARA's own contractors, and deposit those amounts into the revolving fund. Agency customers that receive amounts from their own contractors to cover such repairs should transfer those amounts to the revolving fund.

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**Matter of:** Coast Guard—Electronic Certification Procedures

**File:** B-302789

**Date:** July 6, 2005

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1. Under the Coast Guard Finance Center's electronic certification system, the same certifying officer who approves the transmission of schedules of vouchers to Treasury for disbursement may also have certified individual vouchers included in the schedule. In approving the transmission of this schedule, the certifying officer is only confirming totals on the schedule. The government's risk of loss due to error, waste, or wrongful act is not jeopardized by a certifying officer's confirmation of totals on the schedule of vouchers that may include vouchers he or she individually certified.

2. A certifying officer who approves a schedule of payments transmitted to Treasury for disbursement is responsible only for errors made in the processing of the voucher schedule.

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**Matter of:** Veterans Affairs—Liability of Alexander Tripp

**File:** B-304233

**Date:** August 8, 2005

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The position of designated certifying officer carries with it personal financial liability for improperly certified payments. GAO has statutory authority to relieve a certifying officer from liability. 31 U.S.C. § 3528(b)(1). A Department of Veterans Affairs director, who acted as an approving official, is not a designated certifying officer and is therefore not personally financially liable for the improper certification of appropriated funds. The Department of Veterans Affairs should recover the improper payment from the payee, if possible, or from the certifying officer who actually certified the payment.

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**Matter of:** Relief of Accountable Officers Emery Banguid & Frank  
Forgione U.S. Embassy, Brazzaville, Republic of the Congo

**File:** B-305885

**Date:** September 2, 2005

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Relief is granted to a Class B Cashier and an Administrative Officer for the loss of \$21,403.04 from the U.S. Embassy in Brazzaville, Republic of the Congo. The loss resulted from the emergency evacuation and subsequent looting of the embassy during a local civil war, and GAO concurs with the Department of State that the loss occurred without fault or negligence on the part of either the cashier or the administrative officer.

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**Matter of:** National Institute of Environmental Health Sciences—  
American Chemistry Council Donation

**File:** B-303689

**Date:** September 30, 2005

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The Secretary of the Department of Health and Human Services and his delegates (including the National Institute of Environmental Health Sciences (NIEHS)) have authority to accept gifts, including conditional gifts, so long as they do not offend existing statutory or regulatory provisions. NIEHS may not delegate its grants award authority to nongovernmental entities. While the memorandum of understanding between NIEHS and the American Chemistry Council (ACC) provides ACC the opportunity to advise and provide input, it does not delegate to ACC any decision authority. To avoid any appearance of a conflict of interest, we suggest that NIEHS develop grant policies and procedures regarding the level of participation a donor may have in the grants process and work with donors to ensure that they consider all of the restrictions and other conditions they might wish to place on their donation before providing the donation to NIEHS.

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**Matter of:** Department of Education—No Child Left Behind Act Video  
News Release and Media Analysis

**File:** B-304228

**Date:** September 30, 2005

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1. Consistent with prior case law, we conclude that the Department of Education's (Department) use of appropriated funds to produce and distribute a prepackaged news story regarding programs under the No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (Jan. 8, 2002), violated the publicity or propaganda prohibition, *see, e.g.*, Pub. L. No. 108-199, div. F, title, VI, § 624, 118 Stat. 3, 356 (Jan. 23, 2004). We disagree with the Department's contention that the prepackaged news story is not covert propaganda because it contained only factual information. To constitute legitimate information dissemination activity,

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the Department must inform the viewing public that the government is the source of the information dissemination.

2. There are no appropriated funds available for the Department to conduct a media analysis that gathers information regarding the media and public's perception of the Republican Party's (or any other political party's) commitment to education. Because the Department incurred little if any expense by including this purely partisan factor in an otherwise acceptable media analysis, we find that the Department did not violate the publicity or propaganda prohibition. However, we caution that if the Department conducts future media analyses, it should be more diligent in its efforts to ensure that such analyses are free from explicit partisan content.

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**Matter of:** Department of Health and Human Services—Contract with Maggie Gallagher

**File:** B-304716

**Date:** September 30, 2005

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The Department of Health and Human Services, Administration for Children and Families' (ACF) use of appropriated funds to pay for the services of an expert consultant did not violate the applicable publicity or propaganda prohibition. Treasury and General Government Appropriations Act, 2002, Pub. L. No. 107-67, § 626, 115 Stat. 514, 552 (Nov. 12, 2001). The services provided included the drafting of several brochures, a presentation to ACF managers, and the production and dissemination of an article signed by the Assistant Secretary. The contract did not violate the publicity or propaganda prohibition because the services provided were not covert, self-aggrandizing, or purely partisan.

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**Matter of:** Department of Education—Contract to Obtain Services of  
Armstrong Williams

**File:** B-305368

**Date:** September 30, 2005

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1. The Department of Education contracted to obtain commentary on the No Child Left Behind Act by Mr. Armstrong Williams but took no steps to assure that its role in sponsoring that commentary was disclosed to the targeted audiences. This constituted covert propaganda in violation of the fiscal year 2004 publicity or propaganda prohibition found in the Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, div. F, title VI, § 624, 118 Stat. 3, 356 (Jan. 23, 2004).

2. Because the Department of Education had no appropriations available to contract for covert propaganda in violation of the publicity or propaganda prohibitions found in Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, div. F, title VI, § 624, 118 Stat. 3, 356 (Jan. 23, 2004), the Department also violated the Antideficiency Act, 31 U.S.C. § 1341. It must report these violations to the Congress and the President, and transmit a copy of that report to this Office. 31 U.S.C. § 1351, as amended.

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**Matter of:** Department of Education—No Child Left Behind Newspaper  
Article

**File:** B-306349

**Date:** September 30, 2005

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The Department of Education, through its contract with Ketchum, Inc., to promote education programs under the No Child Left Behind Act of 2001, contracted with the North American Precis Syndicate to write a newspaper article reporting on a study that the Department conducted regarding parents' views on the declining science literacy of students. The article, which appeared in numerous small newspapers and circulars throughout the country, failed to disclose the Department's involvement in its writing. The Department is urged to review this matter to determine whether there

has been a violation of the publicity or propaganda prohibition in light of the statutory requirement that prohibits the use of an agency's appropriated funds for prepackaged news stories unless the prepackaged news story includes a clear notification that it was prepared or funded by the agency. Pub. L. No. 109-13, § 6076, 110 Stat. 231, 301 (May 11, 2005).

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**Matter of:** Architect of the Capitol—Contract Ratification

**File:** B-306353

**Date:** October 26, 2005

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The Architect of the Capitol may use appropriated funds to pay a contractor for services rendered pursuant to an unauthorized commitment. The Architect of the Capitol's actions subsequent to learning of the unauthorized commitment constitutes a valid ratification. *See generally* B-259926, Mar. 31, 1995; B-251728.2, June 9, 1993.

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**Matter of:** Veterans Benefits Administration—Refreshments for Focus Groups

**File:** B-304718

**Date:** November 9, 2005

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To fulfill its statutory mission, the Veterans Benefits Administration (VBA), Department of Veterans Affairs, conducts focus groups in which veterans and their families participate. VBA asks whether it may use appropriated funds to pay for incentives in the form of refreshments or light meals to increase participation in and the effectiveness of focus groups. VBA may reasonably determine administratively that providing such incentives encourages participation in and improves the quality of information gleaned from focus groups, and accordingly may use appropriated funds to pay for such incentives. VBA should provide incentives pursuant to an

enforceable policy that ensures incentives are provided only when necessary and appropriate.

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**Matter of:** Department of Defense—Transfer and Use of Defense  
Emergency Response Funds

**File:** B-303145

**Date:** December 7, 2005

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1. Generally, agencies are prohibited from transferring funds absent specific statutory authority. 31 U.S.C. § 1532. The Emergency Supplemental Act, 2002, Pub. L. No. 107-117, div. B, ch. 3, 115 Stat. 2299 (Jan. 10, 2002), and the 2002 Supplemental Appropriations Act for Further Recovery from and Response to Terrorist Attacks on the United States, Pub. L. No. 107-206, 116 Stat. 820, 836 (Aug. 2, 2002), provided the Secretary of Defense the legal authority to transfer funds from the Defense Emergency Response Fund to other Department of Defense (DOD) appropriations.
2. Transferred funds are available only for the purposes for which they are appropriated, unless otherwise provided by law. Funds transferred from the Defense Emergency Response Fund (DERF) to other DOD appropriations, however, were available for the purposes of the transferee appropriations because of the clear language in the 2002 Supplemental Appropriations Act for Further Recovery from and Response to Terrorist Attacks on the United States. It provided that funds transferred from DERF shall be merged with and be available for the same purposes as the appropriation to which transferred. Pub. L. No. 107-206, 116 Stat. 820, 836 (Aug. 2, 2002).
3. Based on the information DOD provided, DERF and other appropriation accounts charged were available for the 20 projects at issue as approved. As described in the DOD documents provided, the 20 projects were sufficiently general in nature as to reasonably fall within the scope of the appropriations charged. However, as described in the DOD documents provided, some projects funded with Operation and Maintenance appropriations contemplated tasks that possibly involved construction. Accordingly, we recommend that DOD review these tasks to determine

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whether any tasks associated with the 20 projects involved military construction for which the charged O&M appropriation was unavailable. If DOD so determines, it should adjust its appropriation accounts accordingly.

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**Matter of:** Chemical Safety and Hazard Investigation Board—Membership Fees

**File:** B-305095

**Date:** December 8, 2005

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The United States Chemical Safety and Hazard Investigation Board (Board) appropriation is available to pay the membership fee for the Board to become a Corporate Associate member of the Risk Management and Decision Processes Center of the Wharton School, University of Pennsylvania (Center). An agency may use its appropriation to pay fees for an agency's membership in a private association when the membership furthers the purpose of the appropriation. The Board's salaries and expenses appropriation is available for carrying out activities pursuant to section 112(r)(6) of the Clean Air Act. The Board has determined that a corporate membership in the Center will provide the Board access to facilities, experts, and research that will assist the Board in carrying out its section 112(r)(6) responsibilities. Therefore, GAO does not object to the Board using its appropriation to pay the Center's Corporate Associate fee.

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**Matter of:** Social Security Administration—Use of the Gallup  
Organization to Poll the Public on Social Security

**File:** B-305349

**Date:** December 20, 2005

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The Social Security Administration (SSA) did not violate 5 U.S.C. § 3107 by hiring the Gallup Organization to survey the general public on its familiarity with the Social Security program and how that program is currently financed, and on its familiarity with various proposals to reform the program. For this purpose, Gallup is not a “publicity expert” within the meaning of section 3107. SSA’s authority to survey the general public on its knowledge of the Social Security program and program financing derives from the agency’s authority to administer that program.

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