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Decisions and Opinions

(January 1 to December 31, 2008)

Matter of: Relief of Accountable Officer at Veterans Medical Center

File: B-309267

Date: January 15, 2008

When there is an unexplained loss, as here, there is a rebuttable presumption of negligence on the part of the accountable officer. GAO finds that in this case there is insufficient evidence to rebut the presumption of negligence and denies relief for the loss of \$3,280 in patient funds receipts from 2001. In 1991, GAO delegated to agencies the authority to resolve losses of less than \$3,000. B-243749, Oct. 22, 1991. This limitation applies to single incidents or the total of similar incidents which occur about the same time and involve the same accountable officer. Thus, the Department of Veterans Affairs may resolve administratively the loss of \$123 in patient funds receipts from 2003 in a manner consistent with this decision and our prior decisions.

Matter of: National Telecommunications and Information Administration—Gift Cards for Respondents to the Converter Box Coupon Program Survey

File: B-310981

Date: January 25, 2008

The National Telecommunications and Information Administration (NTIA) may use appropriated funds to purchase \$25 gift cards as an incentive to encourage 220 individuals participating in a pilot test to complete and return a survey designed to gather information about NTIA's statutorily required converter box coupon program. NTIA deems this information essential to the success of the \$1.5 billion program. Although a gift card might otherwise be viewed as a personal expense, a direct connection exists between the use of the gift cards and the production of information

important to the execution of NTIA's statutory duties. The amount of the expenditure is modest, and the primary beneficiary of the expenditure is the government.

Matter of: Department of the Army—Use of Appropriations for Bottled Water

File: B-310502

Date: February 4, 2008

Federal law and U.S. Army Corps of Engineers (Corps) policy require that the Corps provide access to potable water for employees working in remote areas of the Savannah District. For work sites that have no access to potable water, it is within the Corps' discretion to decide how best to meet this responsibility, whether by providing bottled water or coolers or jugs for transporting water. GAO has no objection to the Corps using appropriated funds to supply bottled water, so long as the Corps administratively determines that bottled water is the best way to provide its employees at a particular remote area with access to potable water.

Matter of: Forest Service—Apportionment Limitation for Aviation Resources

File: B-310108

Date: February 6, 2008

The Forest Service violated the Antideficiency Act, 31 U.S.C. § 1517, when it exceeded an apportionment limitation of \$100 million for aviation resources to be used for forest fire suppression activities. The emergency exception to the Antideficiency Act is not applicable because the Forest Service had received an appropriation that was sufficient for these activities; the need for emergency funding was based on the apportionment limitation, which was well below the amount appropriated. The emergency exception does not permit an agency to incur obligations in excess of the

apportionment and it does not establish that the Forest Service, because of the emergency nature of its operations, is exempt from the Antideficiency Act. It is incumbent on Forest Service officials with funds control responsibilities, who should be aware of the limitation and how close the agency is to exceeding that limitation, to attempt to utilize the Office of Management and Budget's (OMB) procedures for time-critical reapportionments by contacting OMB by phone before the agency exceeds the limitation rather than afterwards.

Matter of: Consolidated Appropriations Act, 2008—Incorporation by Reference

File: B-316010

Date: February 25, 2008

Seven provisions in the Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844 (Dec. 26, 2007), incorporate by reference an explanatory statement of the House Committee on Appropriations that was printed in the *Congressional Record* on December 17, 2007. The seven provisions at issue unambiguously manifest the intent to incorporate by reference related amount allocations in the explanatory statement. The references in these seven provisions to the explanatory statement permit the agencies and others to ascertain with certainty the amounts and purposes for which the appropriations enacted by these seven provisions are available. Accordingly, the seven provisions establish the referenced allocations contained within the explanatory statement as legally binding restrictions on the agencies' appropriations. The affected agencies, therefore, are required to obligate and expend the appropriations in accordance with the referenced provisions of the explanatory statement.

Matter of: Election Assistance Commission—Availability of Funds for
Purchase of Replacement Voting Equipment

File: B-316107

Date: March 19, 2008

Section 251 of the Help America Vote Act of 2002 (HAVA), 42 U.S.C. § 15401, authorizes the Election Assistance Commission (EAC) to provide payments to states for a variety of enumerated purposes, including procurement of HAVA-compliant voting systems to improve the administration of federal elections. HAVA leaves to the states what type of voting equipment the individual states should use, as long as the equipment complies with HAVA. At issue in this decision is whether under section 251 of HAVA a state may fund the replacement of HAVA-compliant voting systems, originally purchased with HAVA funds, with a different kind of HAVA-compliant voting system. We conclude that EAC's proposed policy to permit such expenses is within EAC's discretion in its exercise of statutory authority under HAVA.

Matter of: Nuclear Regulatory Commission—Availability of
Appropriations for Credit Monitoring Services

File: B-310865

Date: April 14, 2008

If the Nuclear Regulatory Commission were to mistakenly disclose to the public personally identifiable information of an employee or private citizen, its appropriation is available to pay for credit monitoring services as long as the Commission determines that it is necessary under the particular circumstances. In making such a determination, the Commission should be guided by the risk-based, tailored approach outlined by the Office of Management and Budget. Such an expenditure would be consistent with statutory breach notification and mitigation requirements and,

notwithstanding any collateral personal benefit to an employee or individual, would be a necessary expense of the agency.

Matter of: Forest Service—Light Refreshments for National Trails Day

File: B-310023

Date: April 17, 2008

U.S. Forest Service appropriations are not available to provide light refreshments for attendees of National Trails Day events. Appropriations are not available to pay for food unless specifically authorized, or unless the agency can demonstrate that such expenditures are an essential, constituent part of accomplishing an authorized agency function. Neither of these conditions is present in this case. Providing light refreshments to attendees of Trails Day does not contribute materially to the accomplishment of an agency function.

Matter of: National Science Foundation—Disposition of False Claims Act Recoveries

File: B-310725

Date: May 20, 2008

The Inspector General (IG) for the National Science Foundation (NSF) may not credit to the IG appropriation amounts recovered pursuant to the False Claims Act to reimburse investigative costs incurred by the office. Recovery of these costs cannot be characterized as a repayment of an appropriation—the narrow exception to the miscellaneous receipts rule, 31 U.S.C. § 3302(b). Congress appropriates a specific amount to the IG for costs to carry out its duties under the Inspector General Act of 1978, including investigations of payments made pursuant to a false claim. Crediting the IG appropriation with these amounts without specific

statutory authority would violate the miscellaneous receipts statute and constitute an improper augmentation of the IG appropriation.

Matter of: Bureau of Alcohol, Tobacco, Firearms, and Explosives—
Prohibition in the 2008 Consolidated Appropriations Act

File: B-316510

Date: July 15, 2008

A proviso appearing in the 2008 Consolidated Appropriations Act directing that “beginning in fiscal year 2008 and thereafter, no funds appropriated under this or any other act may be used to disclose” data contained in the Firearms Trace System database to unauthorized parties is permanent law. Provisions in appropriations acts are presumed effective only for the covered fiscal year, unless Congress makes clear that they are permanent. Here, the provision contains words of futurity that indicate permanence. Because it was enacted later in time, the 2008 proviso supersedes a previously enacted similar proviso to the extent that they may irreconcilably conflict.

Matter of: Army—Mass Transit Benefits, Aberdeen Proving Ground

File: B-316381

Date: July 18, 2008

The Army established a policy implementing 5 U.S.C. § 7905, which permits agency heads to reimburse federal employees, including members of a uniformed service, for certain commuting expenses. The certifying officer received a request for reimbursement, consistent with Army policy, from an Army officer for expenses of taking a commuter rail train to his place of employment. In accordance with this policy, the certifying officer may certify payment for transit benefits for the eligible active duty Army officer, notwithstanding the certifying officer’s concerns about the wisdom of permitting benefits for short commuting distances or easy travel conditions

or when there is only one participant in the program. In implementing 5 U.S.C. § 7905, current Army policy provides that no installation outside the national capital region may restrict the benefit to eligible service members and employees for qualified means of transportation.

Matter of: Department of Homeland Security—Transfer of Support
Function for Principal Federal Officials

File: B-316533

Date: July 31, 2008

A prohibition against using the authority provided under section 872 of the Homeland Security Act to reorganize was applicable to amounts appropriated by a fiscal year 2008 Continuing Resolution because the prohibition, enacted in 2007, was carried forward under the terms of the Continuing Resolution. The Department of Homeland Security's transfer of a support function from one organizational unit to another constituted a reorganization under section 872 and was thus prohibited.

Matter of: Election Assistance Commission—Obligation of Requirements
Payments

File: B-316915

Date: September 25, 2008

Generally, under 31 U.S.C. § 1501, when entitlement to funds is established by statutory formula for a state, the obligation arises by operation of law and the amount should be recorded. B-164031(3).150, Sept. 5, 1979. At issue here is whether statutory preconditions, which must be met before the Election Assistance Commission (EAC) may distribute funds to states, affect when an obligation is incurred. Under the Help America Vote Act of 2002 (HAVA), the EAC must pay states assistance payments if they file a statement certifying they have met certain preconditions. GAO concluded that despite the preconditions, these HAVA payments are amounts

“required to be paid” within the meaning of 31 U.S.C. § 1501(a)(5)(A) and are thus obligated by operation of law and EAC should record the obligation in its funds control system. The preconditions affect the timing of the assistance payments; they do not implicate when EAC incurs an obligation for the payments because EAC is not in control of whether the states satisfy those preconditions.

Matter of: United States Postal Service Office of Inspector General—
Implementation of Postal Accountability and Enhancement Act
Section 603, Part 1

File: B-317022

Date: September 25, 2008

Section 603 of the Postal Accountability and Enhancement Act, Public Law 109-435, authorizes a direct appropriation for the Office of Inspector General (OIG) of the United States Postal Service (USPS) from the Postal Service Fund. This decision responds to questions posed by the USPS Inspector General (IG) concerning the appropriation of funds to OIG and the effect such an appropriation has on statutes that apply to OIG as a component of USPS.

USPS is exempt from “Federal law[s] dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds,” unless otherwise provided. 39 U.S.C. § 410. As a component of USPS, the Office of Inspector General (OIG) is covered by the same exemption.

USPS may not supplement OIG’s appropriations with additional funds, because doing so would constitute an augmentation. Agencies may not augment their appropriations because it would interfere with the congressional prerogative to control agency activity.

Matter of: Federal Aviation Administration—Authority to Auction Airport Arrival and Departure Slots and to Retain and Use Auction Proceeds

File: B-316796

Date: September 30, 2008

This opinion concerns the Federal Aviation Administration's (FAA) legal authority to auction airport and arrival slots. FAA currently proposes to hold such auctions at Newark, LaGuardia, and JFK airports. GAO evaluated FAA's property disposition, user fee, and other authorities, and concluded that FAA currently does not have authority to auction slots. Therefore, FAA may not collect, retain, or use proceeds from any slot auctions. GAO cautioned that if FAA goes forward and conducts slot auctions and retains and uses auction proceeds, GAO would raise exceptions under the Purpose Statute and the Antideficiency Act.

Matter of: Denali Commission—Overobligation of Apportionment

File: B-316372

Date: October 21, 2008

Because of the language the Denali Commission included in its Financial Assistance Award, the Commission incurred an obligation for the amount of a grant to the Alaska Department of Commerce, Community and Economic Development when it transmitted its Financial Assistance Award to the Alaska Department on August 27, 2005. The Commission did not violate the Antideficiency Act because it had sufficient funds available for the grant at the time it incurred the obligation; however, the Commission failed to record the obligation in accordance with the recording statute, 31 U.S.C. § 1501(a).

Matter of: Office of Compliance—Retroactive Salary Increase

File: B-317034

Date: October 21, 2008

As authorized by statute, the designated official at the Office of Compliance, on February 1, 2008, increased the compensation level of certain officers, but because of erroneous information, salaries were set at a level below the actual statutory cap. There is no contemporaneous documentation, however, establishing with certainty the actual salary increase intended by the official at the time of her determination, therefore the designated official may not adjust the pay level retroactively.
