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UNITED STATES GOVERNMENT

GENERAL ACCOUNTING OFFICE

Memorandum

B-179708-O.M.

TO : Director, FGMS

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Paul G. Dembling

FROM : General Counsel - Paul G. Dembling

SUBJECT: Legality of crediting reimbursements to appropriations current at the time of collection. B-179708-O.M.

This responds to David Lowe's memorandum of September 17, 1975, wherein he refers to the request of Chairman Mahon of the House Committee on Appropriations on the legality of DOD's practices regarding the crediting of collected reimbursements to the appropriation accounts current at the time of collection. Our previous memorandum on this matter, B-179708-O.M., July 21, 1975, was restricted basically to a review of reimbursements under 22 U.S.C. §§ 2205, 2208, and 2210 and 31 U.S.C. § 686. Mr. Lowe requested that we also discuss other statutory provisions which govern reimbursements for particular transactions, especially those involving foreign military sales and foreign military assistance, which account for billions of dollars in reimbursements to the military services annually.

In addition, Mr. Lowe requested us to suggest any amending statutory language needed to require that reimbursements from foreign military sales and assistance transactions be credited to the appropriation of the year in which the reimbursements are earned.

Finally, Mr. Lowe requests that we propose language to amend 10 U.S.C. § 2210(a) to require crediting of reimbursements in all transactions thereunder to the appropriation which earned such reimbursement, and provide proposed amending language which would apply the same requirement to all DOD reimbursable transactions.

We understand that our opinion is to be annexed as an addendum to an audit report being prepared in your division for Chairman Mahon. The following Attachment, which incorporates much of our earlier reply, dated July 21, 1975, represents our expanded views on this matter.

Attachment

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CREDITING OF COLLECTED REIMBURSEMENTS AND OTHER AMOUNTS  
RECEIVED IN PAYMENT FOR SERVICES OR SUPPLIES FURNISHED  
BY OR THROUGH THE DEPARTMENT OF DEFENSE AND ITS COMPONENTS

A report issued by the Surveys and Investigations Staff of the House Appropriations Committee on the management of "M" and "Surplus Fund" accounts in the Federal Government discusses at pages 36-48 several areas concerning the treatment of reimbursements, with particular reference to the practices of the Department of Defense (DOD). The report, at pages 41-47, addresses DOD's practice of exercising an option to credit reimbursements either to the appropriation which "earned" them or to the appropriation current at the time of collection. The report points out the potential for augmentations as a result of this option approach, as well as some potential for avoiding what might otherwise be violations of the Antideficiency Act, 31 U.S.C. § 665(a)(1970).

An October 13, 1972, memorandum from the Assistant Comptroller of the Army Department to the Army Audit Agency explains the option approach as follows:

"The provision [DOD Instruction] in question permits earned but uncollected reimbursements to be credited either to the year in which earned or to the year in which collected. The basis for crediting earned reimbursements to the year in which the services were performed or the supplies furnished is Section 601 of the Economy Act (31 USC 686). Subparagraph (b) of that statute provides that amounts paid in reimbursement will be credited to the appropriation or fund against which charges have been made pursuant to such order. Obviously charges against the appropriation of the agency receiving an order would be made in the year in which the work is actually performed, or the supplies furnished. The basis for crediting reimbursements to the appropriation for the year in which the collection is received is Section 2205 of Title 10, U. S. Code. That statute provides that reimbursements may be credited to authorized accounts and when so credited are available for obligation for the same period as the funds in the account so credited. This statute has been interpreted by legal counsel in OSD as authorizing the crediting of reimbursements to current appropriations in the case of annual accounts, on the premise that only a current annual account would be available for obligation, as indicated in the statute.

"Since there are two statutes, as outlined above, governing the crediting of reimbursements, one to the year in which the

B-179708-O.M.

work was performed, and the other to the year in which the collection is received, an option exists as to which method to follow. Thus, when a receivable is set up in the year of work performance, and it is later found that the reimbursements will not be needed in that year, the receivable may be moved forward to the appropriation for the succeeding fiscal year, in the manner outlined in the cited DODI in anticipation of the receipt of the collection in that fiscal year."

## I

The reimbursements referred to in the Comptroller memorandum are payments for the furnishing of goods or services by DOD or a component thereof to another DOD component or another Federal agency. Section 601(a) of the so-called "Economy Act," as amended, 31 U.S.C. § 686(a)(1970), referred to in the memorandum, constitutes general authority for inter- or intra-agency transactions involving the furnishing of materials, work, or services on a reimbursable basis. Subsection (b) of 31 U.S.C. § 686 provides:

"Amounts paid as provided in subsection (a) of this section shall be credited, (1) in the case of advance payments, to special working funds, or (2) in the case of payments other than advance payments, to the appropriations or funds against which charges have been made pursuant to any such order, except as hereinafter provided. The Secretary of the Treasury shall establish such special working funds as may be necessary to carry out the provisions of this subsection. Such amounts paid shall be available for expenditure in furnishing the materials, supplies, or equipment, or in performing the work or services, or for the objects specified in such appropriations or funds. Where materials, supplies, or equipment are furnished from stocks on hand, the amounts received in payment therefor shall be credited to appropriations or funds, as may be authorized by other law, or, if not so authorized, so as to be available to replace the materials, supplies, or equipment, except that where the head of any such department, establishment, bureau, or office determines that such replacement is not necessary the amounts paid shall be covered into the Treasury as miscellaneous receipts."

By the terms of subsection 686(b)~~X~~ reimbursements are to be credited to the appropriation which financed the transaction and thus "earned" the reimbursement, except as further provided in subsection (b)~~X~~. It is further provided in subsection (b)~~X~~ that reimbursements in payment for materials, supplies or equipment furnished from stocks on hand shall be credited to appropriations or funds authorized by other law, or if not so authorized, to be available for replacement (to the extent that replacement is necessary). Our long-standing construction of subsection 686(b)~~X~~ is that reimbursements for stocks on hand may be credited only to accounts currently available for replacement of such stocks at the time that they were furnished.

In view of the foregoing, the basic rule with respect to transactions governed solely by the provisions of 31 U.S.C. § 686~~X~~ is that reimbursements for work, services, or materials (including stocks on hand) must be credited to the account which earned them, irrespective of when the reimbursements are collected. If the appropriation which earned the reimbursement remains available at the time of collection, there is, of course, no distinction between a credit to the year earned or to the year collected. But if the appropriation which earned the reimbursement has expired for obligation purposes at the time of collection, such reimbursement can only be credited to the expired account or to the appropriate "M" account, as the case may be. See 31 U.S.C. § 701(c)~~X~~(1970).

There are, however, many transactions, particularly in the case of DOD, subject to specific statutory provisions which either supplement or wholly supersede 31 U.S.C. § 686~~X~~.

The most notable example of a statute superseding 31 U.S.C. § 686~~X~~ is section 2208 of title 10~~X~~ United States Code (1970), pursuant to which working capital (revolving) funds have been established within DOD to finance transactions among WD components involving the exchange of common goods and services on a reimbursable basis. Since such transactions are independently authorized and governed by the title 10 provision, they are not subject at all to 31 U.S.C. § 686~~X~~. ~~cf.~~ 31 Comp. Gen. 83, 87 (1950). Moreover, since these transactions are financed by revolving funds, the timing of collections vis-a-vis the furnishing of goods or services is immaterial.

With reference to statutes supplementing 31 U.S.C. § 686~~X~~ as already pointed out, subsection 686(b)~~X~~ itself provides that reimbursements for materials, supplies or equipment furnished from stock "shall be credited to appropriations or funds as may be authorized by other law \* \* \*." In this regard, 10 U.S.C. § 2210(a)~~X~~(1970) provides:

"Current applicable appropriations of the Department of Defense may be credited with proceeds of the disposals of supplies [that] are not financed by stock funds established under section 2208 of this title."

This provision was enacted originally as part of section 645 of the Department of Defense Appropriation Act, 1954, approved August 1, 1953, ch. 305, 67 Stat. 336, 357. Section 645 also repealed a number of so-called "replacing accounts" which had theretofore served as a device for applying reimbursements to replace stocks and materials. The "replacing accounts" generally provided that moneys arising from the disposal of various materials would be available for the same purposes as the appropriation from which they were furnished during the fiscal year in which the disposal occurred and through the following year. See H.R. Rep. No. 680, 83d Cong., 1st Sess., 56-57 (1953), for the language of the replacing accounts repealed by section 645.

Under the language of 10 U.S.C. § 2210(a), quoted above, it seems clear that the "current applicable appropriations" to be "credited with proceeds of the disposals of supplies" are meant to be applicable appropriations current at the time proceeds are received. This construction is reinforced by the fact that, as noted, the replacing accounts superseded by what is now 10 U.S.C. § 2210(a) were apparently designed in effect to preserve the obligational availability of reimbursements for a full year after expiration of the appropriations which "earned" them.

In view of the foregoing, we believe that, by virtue of 10 U.S.C. § 2210(a), reimbursements for supplies may clearly be credited to the appropriation current at the time of collection. Moreover, since the language of section 2210(a) is permissive, it does not preclude the option of crediting such reimbursements instead to the appropriation which earned them. Finally, it might be noted that, inasmuch as section 2210(a) refers generally to "proceeds of the disposals of supplies" (excluding only those financed by stock funds), its application is not limited to Economy Act transactions.

A related statute concerning the crediting of reimbursements is 10 U.S.C. § 2205 (1970), which provides:

"Reimbursements made to appropriations of the Department of Defense or a department or agency thereof under section 686 of title 31, or other amounts paid by or on behalf of a department or agency of the Department of Defense to another department or agency of the Department of Defense,

B-179708-O.M.

or by or on behalf of personnel of any department or organization, for services rendered or supplies furnished, may be credited to authorized accounts. Funds so credited are available for obligation for the same period as the funds in the account so credited. Such an account shall be accounted for as one fund on the books of the Department of the Treasury."

This provision derives originally from section 408 of the National Security Act Amendments of 1949, approved August 10, 1949, ch. 412, 63 Stat. 578, 590.

P.L. 216

To the extent that reimbursements relate to the furnishing of supplies, 10 U.S.C. § 2205 appears to overlap with 10 U.S.C. § 2210(a) discussed above. Thus it is clear that the "current applicable appropriations" referred to in section 2210(a) are "authorized accounts" within the contemplation of section 2205. In fact, the original version of section 2205 (i.e., section 408 of the 1949 statute, supra) used the language "authorize[d] replacing or other accounts." (Underscore supplied.)

Therefore, sections 2205 and 2210(a) are mutually reinforcing with respect to crediting reimbursements for stocks and materials to the appropriation year in which collected. However, while section 2210(a) applies only to reimbursements for stocks and materials, section 2205 applies as well to reimbursements for services furnished. Thus it remains to consider the treatment of the latter under section 2205.

The purpose of section 408 of the 1949 statute was explained in the House Armed Services Committee report on that legislation, H.R. Rep. No. 1064, 81st Cong., 1st Sess., 14 (1949), as follows:

"Availability of reimbursements (section 408)

"This section is intended to simplify procedures presently required under the Economy Act. Based upon the theory that the National Military Establishment should, where advantageous, have an integrated operation despite the fact that it is composed of three departments separately administered, it permits the crediting of reimbursements and sums paid by a department or organization for supplies furnished or for services rendered to authorized replacing or other accounts. The need for continuing use of existing

replacing **accounts** which are **now** available to the Department of the **Army** and to a **limited** extent to the Department of the **Air Force**, will diminish as the working-capital inventorp'accounts **are** Implemented—a further step in the clarification of the appropriation and accounting structure. Funds so credited **will remain** available for obligation for the period for which **the** funds in the receiving account **are** available and such accounts will appear **as one** fund on **the books** of the Treasury Department. **Also**, the effect of this section **will** be to eliminate **some** of the procedures necessary under the Economy Act **in** that **it** permits the direct charging of appropriations of **the** Department which orders certain **work** or services from another department. **It** eliminates the necessity of establishing working-fund advance accounts between the military departments.

"**Inasmuch** as the **armed** services have available the **facilities** of general accounts of advances, interdepartmental settlements **can**, therefore, **be** made **at** the end of **a** month without the necessity of **advance of funds**."

The legislative history of the Act approved September 7, 1962, Pub. L. No. 87-651, 76 Stat. 506, 520, which codified section 408 of the 1949 statute as 10 U.S.C. § 2205, ~~also~~ emphasized the purpose of this section "to authorize the Department of Defense to operate as an integrated department \*." H.R. Rep. No. 1401, 87th Cong., 2d Sess., All (1962); S. Rep. No. 1876, 87th Cong., 2d Sess., 19 (1962).

In contrast to 10 U.S.C. § 2210(a) ~~discussed~~ hereinabove, the legislative history of 10 U.S.C. § 2205 ~~does~~ not seem to be of direct assistance in considering whether reimbursements for services may be credited to appropriations current at the time of collection. While section 2205 ~~permits~~ reimbursements to be credited to "authorized accounts," we are not aware of any provision comparable to 10 U.S.C. § 2210(a) ~~which~~ specifically deals with authorized accounts for services reimbursements.

As noted at the outset of this memorandum, DOD maintains that the "authorized accounts" referred to in section 2205 must mean appropriations current at the time reimbursements are collected since section 2205 also provides that funds so credited remain available for the same period as the receiving account and only the appropriation current at the time of collection would be available for obligation. In our view, this rationale has some logic and seems consistent with the language of section 2205. Inclusion of the second sentence of section 2205, referring to the obligational availability of reimbursements,

B-179708-O.M.

is apparently designed to do more than merely describe earning accounts, Moreover, it would seem somewhat anomalous to construe section 2205 as contemplating a different treatment for services reimbursements than for reimbursements for supplies.

Accordingly, in the absence of any legislative history or other authority to the contrary, we would concur in DOD's position that 10 U.S.C. § 2205 does generally allow the crediting of reimbursements covered thereunder to the appropriation current at the time of collection. As in the case of 10 U.S.C. § 2210(a) the authority so conferred is permissive and therefore does not exclude the alternative of crediting such reimbursements to the year earned. Thus we would also agree that DOD's option approach is legally valid.

There exist several other statutory provisions which govern reimbursements for particular transactions which are, in effect, independent of either sections 2205 or 2210(a) of title 10. Most notable, perhaps, are the statutes governing reimbursements for military sales or assistance transactions. Although these statutes often use language similar to that used in the statutes discussed above, the Army Comptroller memorandum, supra, is not directly relevant to their operation.

11

Crediting of reimbursements under the Military Assistance Program is covered generally by 22 U.S.C. § 2392(d) (1970), which provides:

"Except as otherwise provided in section 2318 of this title, reimbursement shall be made to any United States Government agency, from funds available for use under subchapter II of this chapter [military assistance and sales], for any assistance furnished under subchapter II of this chapter, from, by, or through such agency. Such reimbursement shall be in an amount equal to the value (as defined in section 2403(m) of this title) of the defense articles or of the defense services (other than salaries of members of the Armed Forces of the United States), or other assistance furnished, plus expenses arising from or incident to operations under subchapter II of this chapter. The amount of such reimbursement shall be credited to the current applicable appropriations, funds, or accounts of such agency." (Emphasis supplied.)

B-179708-O.M.

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Section 2318<sup>✓</sup> authorizes the President to order defense articles from DOD stocks and defense services subject to subsequent reimbursements. Subsection (b)<sup>✓</sup> of this section authorizes DOD to incur obligations in applicable appropriations in anticipation of such reimbursements.

The language used in 22 U.S.C. § 2392(d)<sup>✓</sup> parallels that in 10 U.S.C. § 2210<sup>✓</sup> in that "current applicable appropriations" are to be credited with reimbursements. Similar language is also used in 22 U.S.C. § 2392(c)<sup>✓</sup> (1970) which deals with reimbursements for commodities, services, and facilities provided. Section 2392(c)<sup>✓</sup> provides as follows:

"In the case of any commodity, service, or facility procured from any agency of the United States Government to carry out subchapter I of this chapter [economic assistance), reimbursement or payment shall be made to such agency from funds available to carry out such subchapter. Such reimbursement or payment shall be at replacement cost, or, if required by law, at actual cost, or at any other price authorized by law and agreed to by the owning or disposing agency. The amount of any such reimbursement or payment shall be credited to current applicable appropriations, funds, or accounts, from which there may be procured replacements of similar commodities, services, or facilities, except that where such appropriations, funds, or accounts are not reimbursable except by reason of this subsection, and when the owning or disposing agency determines that such replacement is not necessary, any funds received in payment therefor shall be deposited into the Treasury as miscellaneous receipts." (Emphasis supplied.)

It would appear that the above-quoted language clearly contemplates that, with the exceptions specified, reimbursements and payments shall be credited to appropriations current at the time of collection, rather than the appropriation against which charges were made when the articles or services were furnished.

Several other sections of title 22 which were derived from the same original statute as sections 2392(c)<sup>✓</sup> and (d)<sup>✓</sup> (i.e., the Foreign Assistance Act of 1961, Pub. L. No. 87-195, 75 Stat. 424, 440, as amended), are also relevant to the treatment of particular reimbursements. For example, 22 U.S.C. § 2390<sup>✓</sup> provides in pertinent part:

"Terms of detail or assignment of personnel.

"Details or assignments may be made under section 2387 or 2388 of this title or section 1928 of this title--

B-179708-O.M.

"(1) without reimbursement to the United States Government by the foreign government or international organization;

"(2) upon agreement by the foreign government or international organization to reimburse the United States Government for compensation, travel expenses, benefits and allowances, or any part thereof, payable to the officer or employee concerned during the period of assignment or detail; and such reimbursements (including foreign currencies) shall be credited to the appropriation, fund, or account utilized for paying such compensation, travel expenses, benefits or allowances, or to the appropriation, fund, or account currently available for such purposes; \* \* \* (Emphasis supplied.)

Similarly, 22 U.S.C. § 2355(a) ✓ (c) ✓ and (d) ✓ provide respectively:

"(a) Commodities and defense articles; disposal to prevent spoilage or wastage or to conserve usefulness; funds realized from disposal. or transfer.

"Any commodities and defense articles procured to carry out this chapter shall be retained by, or upon reimbursement, transferred to, and for the use of, such agency of the United States Government as the President may determine in lieu of being disposed of to a foreign country or international organization, whenever in the judgment of the President the best interests of the United States will be served thereby, or whenever such retention is called for by concurrent resolution. Any commodities or defense articles so retained may be disposed of without regard to provisions of law relating to the disposal of property owned by the United States Government, when necessary to prevent spoilage or wastage of such commodities or defense articles or to conserve the usefulness thereof. Funds realized from any disposal or transfer shall revert to the respective appropriation, fund, or account used to procure such commodities or defense articles or to the appropriation, fund, or account currently available for the same general purpose.

\* \* \* \* \*

"(c) Funds realized as result of illegal transactions.

"Funds realized as a result of any failure of a transaction financed under authority of subchapter I

of this chapter to conform to the requirements of this chapter, or to applicable rules and regulations of the United States Government, or to the terms of any agreement or contract entered into under authority of subchapter I of this chapter, shall revert to the respective appropriation, fund, or account used to finance such transaction or to the appropriation, fund, or account currently available for the same general purpose.

"(d) Funds realized from sale, transfer, or disposal of returned defense articles.

"Funds realized by the United States Government from the sale, transfer, or disposal of defense articles returned to the United States Government by a recipient country or international organization as no longer needed for the purpose for which furnished shall be credited to the respective appropriation, fund, or account used to procure such defense articles or to the appropriation, fund, or account currently available for the same general purpose." (Emphasis supplied.)

It is reasonable to assume that by using different language in different sections of the same original statute regarding the crediting of reimbursements, Congress intended that different methods of crediting reimbursements be used. Yet if it was concluded that by using the language "currently applicable appropriations, funds, or accounts," the Congress merely intended to mean that appropriations current at the time the reimbursements were earned or their successor accounts were to be so credited, then this would render nugatory the additional language in 22 U.S.C. §§ 2390~~X~~ and 2355(a)~~X~~, (c)~~X~~ and (d)~~X~~ indicating that reimbursements may also be credited to the appropriation, fund, or account used to "finance a transaction," "procure such commodity," or "utilized for paying" certain expenses. Therefore, the language in 22 U.S.C. §§ 2390~~X~~ and 2355(a)~~X~~, (c)~~X~~ and (d)~~X~~ appears to authorize an option of crediting the reimbursement either to the appropriation which earned the reimbursement or to the appropriation current at the time of collection, whereas 22 U.S.C. §§ 2392(c)~~X~~ and (d)~~X~~ would appear to authorize crediting of reimbursements to the appropriations current at the time of collection. With regard to 22 U.S.C. § 2355~~X~~, see S. Rep. No. 612, 87th Cong., 1st Sess. 29 (1961) wherein it was stated:

"Funds realized from such disposal (or, in the case of transfer, funds accruing from interagency reimbursements) are to revert to the appropriation account from which the

goods were procured in the first instance or to the amount [sic] currently available for such procurement."

### III

With reference to Foreign Military Sales Act transactions, 22 U.S.C. § 2761 (1970) authorizes cash sales of defense articles from DOD stocks and of DOD defense services. 22 U.S.C. § 2762 (Supp. III, 1973) provides for (a) the procurement of defense articles and services for foreign cash sales and (b) use of DOD appropriations to make contract payments subject to reimbursement. 22 U.S.C. § 2763 (1970) authorizes foreign credit sales of defense articles and services to be financed for a period not exceeding 10 years. 22 U.S.C. § 2777(a) (1973) provides that:

"Cash payments received under sections 2761 and 2762 of this title and advances received under section 2763 of this title shall be available solely for payments to suppliers (including the military departments) and refunds to purchasers and shall not be available for financing credits and guaranties."

It is clear that DOD may retain reimbursements and other payments made to it under the foregoing provisions. (Compare 22 U.S.C. § 2777(b), which requires that certain other collections from foreign countries and international organizations be transferred to the Treasury as miscellaneous receipts.) However, these statutory provisions do not specify how such payments are to be treated once they are received by DOD.

It appears that the proceeds of sales from DOD stocks could be credited to accounts current at the time of collection pursuant to 10 U.S.C. § 2210(a). See discussion supra. The situation is less clear in the case of other Sales Act payments received by DOD. As noted, 22 U.S.C. §§ 2761-63 and 2777(a) are silent in this regard; and so is the legislative history of the Foreign Military Sales Act. Nevertheless, certain additional title 22 provisions are of relevance here. As discussed previously, reimbursements to DOD (and other Federal agencies) from military assistance appropriations may generally be credited to accounts current at the time of collection. See 22 U.S.C. §§ 2355(a), (c), and (d); 2390; 2392(c) and (d), supra. While it appears to be of limited application at present, as to sales, section 2392(d) literally authorizes the crediting to current DOD accounts of reimbursements made from military assistance appropriations for military sales, as well as grant, transactions. Similarly, sections 2355(a) and (d), by their terms, authorize crediting to current accounts of proceeds realized from the transfer to United States agencies of defense articles originally procured for foreign grant or sale, or from the disposal of defense articles returned by a foreign country or international organization.

B-179708-O.M.

While the foregoing provisions do **not expressly** address the treatment of reimbursements under all types of military sales transactions, they do **seem** to reflect a basic approach in favor of permitting credits to current accounts. Accordingly, and in the absence of any contrary **statutory** provisions or legislative history, **we** have no **basis** to challenge the WD practice of crediting Sales Act payments of **all types** to either the earning accounts **or** accounts current at the time of collection.

## IV

**Finally**, there **are** numerous other statutes involving particular transactions which provide that payments received thereunder shall be deposited to the Treasury **as** miscellaneous receipts or more **or** less clearly **indicate** against which appropriations such reimbursements shall **be** credited. **Most** of these statutory provisions use language similar to that discussed **above**, and thus do not require extensive discussion.

10 U.S.C. § 2211<sup>✓</sup> (1970), concerning reimbursement **for** equipment, material, and **services** furnished to **members** of the United Nations, specifically provides **for** crediting of such reimbursements **in** the manner authorized by 22 U.S.C. § 2392(d), and, therefore, **as** discussed above, would permit credits to appropriations current at the time of collection.

10 U.S.C. § 2481<sup>✓</sup> (1970), dealing with **sales** by the military departments of utilities **or** related services, provides for crediting of proceeds of such sales "**\* \* \*** to the appropriation currently available for the supply of that utility or service." **This would also** provide for the crediting of proceeds to appropriations current at the time of collection.

10 U.S.C. § 2575<sup>✓</sup> (1970), dealing with the disposition of **of** unclaimed property specifically provides for proceeds of **sales** to "**\* \* \*** be covered into the Treasury **as** miscellaneous receipts."

10 U.S.C. § 2633<sup>✓</sup> (1970) deals with the furnishing of stevedoring and terminal **services**. Subsection (c) provides for crediting of proceeds to "**\* \* \*** the appropriation or **fund out** of which the services or facilities were supplied." **This** would appear to provide for credit to the appropriation **which earned** the payment.

Proceeds of **sales** of certain interests in land, covered by 30 U.S.C. § 2665<sup>✓</sup> (1970), are to be "**\* \* \*** credited to the appropriations under which the property **was** procured." **Again**, this apparently provides for credit to **the** appropriation which earned the payment.

B-179708-O.M.

10 U.S.C. § 2667(d)<sup>✓</sup>(1970), concerning leasing by the military departments, clearly provides for depositing of rentals into the Treasury as miscellaneous receipts. As for payments for utilities or services furnished to the lessee, credit *is* to be made to the " \* \* \* appropriation from which the cost of furnishing them was paid." This indicates that payments for utilities are to be credited to the appropriation which earned them.

Proceeds derived from the *sale* of certain surplus cuttings of materials are to be credited to the " \* \* \* appropriation out of which the material was purchased." 31 U.S.C. § 488<sup>✓</sup>(1970). Again, this indicates that credit is to be made to the appropriation which earned the payment.

## V

To summarize the foregoing, whether reimbursements may be credited to the appropriation current at the time of collection (assuming such appropriation is not the same one that "earned" the reimbursement) depends upon the statutory authority under which the reimbursable transaction occurred. With respect to inter- or intra-agency transactions operating solely under the Economy Act, 31 U.S.C. § 686<sup>✓</sup> (i.e., where 10 U.S.C. § 2205<sup>✓</sup> or other law is not applicable), reimbursements may only be credited to the appropriation account which earned them, irrespective of when such reimbursements are actually collected. However, many DOD reimbursable transactions are subject to specific statutory provisions which wholly or partially supplant the Economy Act, as follows:

- Transactions financed by working capital funds under 10 U.S.C. § 2208<sup>✓</sup> operate independently of any other statute including the Economy Act. Since these are revolving funds, the timing of reimbursement collections is immaterial.
- Under 10 U.S.C. §§ 2205<sup>✓</sup> and 2210(a)<sup>✓</sup>, we believe that DOD has authority to credit collections representing proceeds from disposals of supplies, i.e., materials, to appropriations current at the time of collection. Since 10 U.S.C. § 2210(a)<sup>✓</sup> refers generally to "disposals of supplies," this provision is apparently not limited in its application to transactions between DOD components.
- 10 U.S.C. § 2205<sup>✓</sup> deals generally with reimbursements for materials and services in inter- and intra-agency transactions. We believe that this section permits the

B-179708-O.M.

crediting of reimbursements for materials and services to the appropriation current at the time of collection (although, in view of 10 U.S.C. § 2210(a), it is somewhat redundant in the case of reimbursements for materials).

--Under 22 U.S.C. § 2392(c) and (d) and as to other Military Assistance Program transactions, we are of the view that DOD has authority to credit collections to appropriations current at the time of collection. Moreover, pursuant to certain other statutes, notably 22 U.S.C. § 2355(a), (c) and (d), it appears that DOD has the additional option of crediting reimbursements to the appropriation which earned them.

--Although not wholly clear, Military Sales Act transactions, covered by 22 U.S.C. §§ 2761, 2762, 2763 and 2777 also appear to permit crediting of reimbursements or payments to appropriations current at the time of such reimbursement or payment.

It can readily be seen from the foregoing analysis that the treatment of reimbursements and other payments received by DOD is subject to numerous, diverse, and sometimes seemingly overlapping statutory provisions. Thus it appears that certain reimbursements must be credited to the account which "earned" them, others to the account current at the time of collection, and still others may be credited to either account. In many cases, it is not clear why a particular reimbursement is treated in one way rather than another.

As the Appropriations Committee staff report points out, requiring or permitting credits to accounts current at the time of collection has the effect of augmenting such current accounts. The report also notes that the option approach (crediting either to the year in which earned or to the year in which collected) could be used as a device to avoid what might otherwise be violations of the Antideficiency Act, 31 U.S.C. § 665(a) (1970).

A requirement that reimbursements be credited only to the earning account would avoid these problems. This approach might be considered undesirable to the extent that reimbursements to current accounts serve as the only means of assuring that DOD does not permanently lose obligational authority for carrying out its own primary objectives, by using its appropriations to furnish goods or services to other organizations or countries without being "made whole." Thus several statutes

E-179708-O.M.

discussed herein which permit credits to a current account— for example, 22 U.S.C. § 2392(c) ~~are~~ clearly designed to assure that replacement of goods can be accomplished. However, authority to credit current accounts is unnecessary for this purpose to the extent that obligations may be incurred against an earning account in anticipation of reimbursements. See 10 U.S.C. § 2210(b); 22 U.S.C. § 2318. **4**

There are suggested below possible amendments to several of the statutes described herein, which would generally limit the crediting of reimbursements to earning accounts. It should be noted that most of the proposed changes in the title 22 provision would affect reimbursements to Federal agencies in addition to DOD.

The proposed amendments are as follows (new matter underscored and bracketed matter deleted):

10 U.S.C. § 2205: ~~X~~

"(a) Notwithstanding any other provision of law (consistent with subsection (b) of this section), reimbursements made to appropriations of the Department of Defense or a department or agency thereof [under section 636 of title 31], or other amounts [paid by or on behalf of a department or agency of the Department of Defense to another department or agency of the Department of Defense, or by or on behalf of personnel of any department or organization,] payable to such appropriations from any source, for services rendered or supplies furnished, (may be credited to authorized accounts. Funds so credited are available for obligation for the same period as the funds in the account so credited, Such an account shall be accounted for as one fund on the books of the Department of the Treasury.) shall be credited to the appropriation account which financed such rendering of services or furnishing of supplies, subject to section 701(c) of title 31.

"(b) Subsection (a) of this section applies only to reimbursements and other payments which are otherwise authorized by law to be credited to agency appropriations or funds in lieu of transfer or deposit to the Treasury as miscellaneous receipts."

10 U.S.C. § 2481(b): ✓

"(b) Proceeds of sales under subsection (a) shall be credited to the appropriation [currently] available for the supply of that utility or service at the time of such sale."

B-179708-O.M.

22 U.S.C. § 2355(a)<sup>X</sup> (last sentence):

"\* \* \* Funds realized from **any** disposal or transfer shall revert to the respective appropriation, fund, or account **used** to procure such **commodities** or defense articles [or to the appropriation, fund, or account currently available for the **same** general purpose],"

22 U.S.C. § 2355(c)<sup>X</sup>:

"Funds realized as a result of any failure of a transaction financed under authority of subchapter I of this chapter, shall revert to the respective appropriation, fund, or account **used to finance such transactions** [or to the appropriation, fund, or account currently available for the **same** general purpose]."

22 U.S.C. § 2355(d)<sup>X</sup>

"Funds realized by the United States **Government** from the sale, transfer, or disposal of defense articles returned to the United States Government by a recipient country or international organization as no longer needed **for** the purpose for which furnished shall be credited to the respective appropriation, fund, or account used to procure such **defense** articles [or to the appropriation, fund, or account currently available for the **same** general purpose]."

22 U.S.C. § 2390(2)<sup>X</sup> (following the **first** semicolon):

"\* \* \* and such reimbursements (including foreign currencies) shall **be** credited to the appropriation, fund, or account utilized for paying such compensation, travel expenses, benefits or allowances [, or to the appropriation, fund, or account currently available for such purpose]: \* \* \*"

22 U.S.C. § 2392(c)<sup>X</sup> (last sentence) :

"\* \* \* The amount of **any such** reimbursement or payment shall be credited to [current applicable appropriations, funds, or accounts, from which there may be procured replacements of similar **commodities, services, or facilities**, except that where such appropriations, fund, or accounts are not reimbursable except by reason of this subsection, **and] the** appropriation, fund, or account which financed the procurement

of such commodity, service, or facility, except that when the owning or disposing agency determines that [such] replacement is not necessary, any funds received in payment therefor shall be deposited into the Treasury as miscellaneous receipts."

22 U.S.C. § 2392(d)<sup>X</sup>(last sentence):

"\* \* \* The amount of such reimbursement shall be credited to [the current applicable appropriations, funds, or accounts of such agency] the appropriation, fund, or account of such agency which financed the furnishing of such assistance."

22 U.S.C. § 2762(b)<sup>✓</sup>(last sentence):

"\* \* \* Appropriations available to the Department of Defense may be used to meet the payments required by the contracts for the procurement of defense articles and defense services and the appropriations which were so used shall be reimbursed by the amounts subsequently received from the country or international organization to whom articles or services are sold."

22 U.S.C. § 2777(a)<sup>X</sup>(new sentence at end of subsection):

"\* \* \* Payments to the military departments, and other Federal departments and agencies as suppliers, shall be credited to the appropriation, fund, or account which financed the defense article or service for which the payment is made."

DEPARTMENTS AND ESTABLISHMENTS  
Services between  
Reimbursement  
Appropriation availability

APPROPRIATIONS  
Augmentation  
Services between agencies

APPROPRIATIONS  
Defense Department  
Reimbursement  
Military Assistance Program  
transactions

MISCELLANEOUS RECEIPTS  
Special account x. miscellaneous receipts  
Collections  
Military Assistance Program transactions

APPROPRIATIONS  
Defense Department  
Reimbursement  
Foreign Military Sales Act payments

MISCELLANEOUS RECEIPTS  
Special account y. miscellaneous receipts  
Collections  
Foreign Military Sales Act payments