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**MANUAL FOR
GENERAL GOVERNMENT MATTERS
FEDERAL APPROPRIATIONS**

**UNITED STATES
GENERAL ACCOUNTING OFFICE
OFFICE OF GENERAL COUNSEL**

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FEDERAL APPROPRIATIONS

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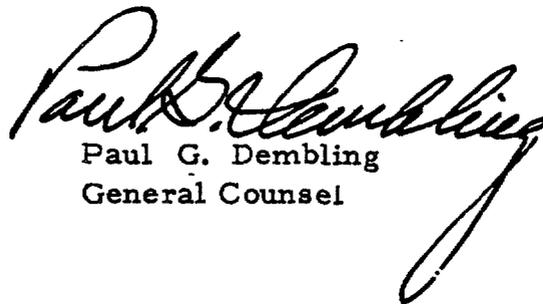
NOTE: Some of the information contained in the 1972 edition of the Federal Appropriations Manual may be out of date. A current, revised edition is now being written and should be available in 1980.

September, 1972

FOREWORD

This manual has been designed to be of assistance in answering the questions most frequently raised concerning the use of appropriated funds. It has been compiled from various rules and statutes which regulate the expenditure of such funds, from the Constitution of the United States, from various decisions of the courts and the Comptroller General of the United States, and from opinions of the Attorney General.

This manual should be considered as a general guide only and not as all inclusive. Within these limits it is hoped that it will prove beneficial to the reader.


Paul G. Dembling
General Counsel

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DEFINITIONS

An appropriation by an agency to make payments from the Treasury. 7 GAO 4.3. An appropriation does not include the making of a loan or to declare special obligations and 35 Comp. Gen.

The term "contract" is defined in the Act of 1950, "appropriation and authorization of advance of appropriations available for contract."

In statute, an appropriation is made to make funds available but when used for antideficiency to create obligations.

TYPES OF APPROPRIATIONS AND OTHER OBLIGATIONS

Appropriations

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(2) which include period of

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CHAPTER 1

GENERAL

DEFINITIONS

An appropriation has been defined as "an authorization by an act of the Congress to incur obligations and to make payments out of the Treasury for specified purposes." 7 GAO 4.3. However, the mere authorization of an appropriation does not authorize the incurring of obligations or the making of expenditures, it being necessary for the act to declare specifically that an appropriation is made before obligations and expenditures are authorized. 31 U.S.C. 627. 35 Comp. Gen. 306; 37 id. 732.

The term "appropriation" includes authority to enter into contracts before actual appropriations of funds are made. Section 101 of the Budget and Accounting Procedures Act of 1950, 31 U.S.C. 2, for example, states that the term "appropriations" "includes, in appropriate context, funds and authorizations to create obligations by contract in advance of appropriations, or any other authority making funds available for obligation or expenditure."

In statutes, the term "appropriation" is used generally to make funds available for withdrawal from the Treasury, but when used in relation to budgetary apportionments and for antideficiency purposes, the term includes authorizations to create obligations in advance of appropriation of funds.

TYPES OF APPROPRIATIONS AND OTHER OBLIGATIONAL AUTHORITY

Appropriations, as stated in 7 GAO 4.6, include:

(1) One-year appropriation. As appropriation which is available for obligation only during a specific fiscal year;

(2) Multiple-year appropriation. An appropriation which is available for obligation for a definite period in excess of one fiscal year;

(3) No-year appropriation. An appropriation which is available for obligation for an indefinite period;

(4) Definite appropriation. An appropriation of a specific amount of money;

(5) Indefinite appropriation. An appropriation of an unspecified amount of money, such as all or part of the receipts from certain sources, the specific amount of which is determinable only at some future date;

(6) Current appropriation. An appropriation made by the Congress in, or immediately prior to fiscal year during which it is available for obligation;

(7) Permanent appropriation. An appropriation which by virtue of standing legislation becomes available automatically;

(8) Unexpired appropriation. An appropriation which is available for obligation;

(9) Expired appropriation. An appropriation which is no longer available for obligation but is still available for payment of existing obligations, including those transferred to successor accounts established pursuant to 31 U.S.C. 701-708.

An appropriation may combine several of the above characteristics.

CONSTITUTIONAL PROVISIONS

Authority for appropriations

The source of authority for Federal appropriations is Article I, section 8, of the Constitution, which vests in the Congress the general powers, among others, to pay the debts and provide for the common defense and general welfare of the United States and to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by the Constitution in the Government of the United States or in any

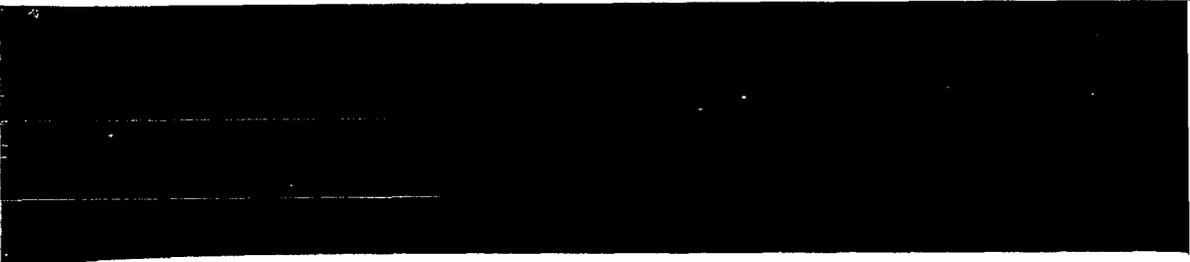
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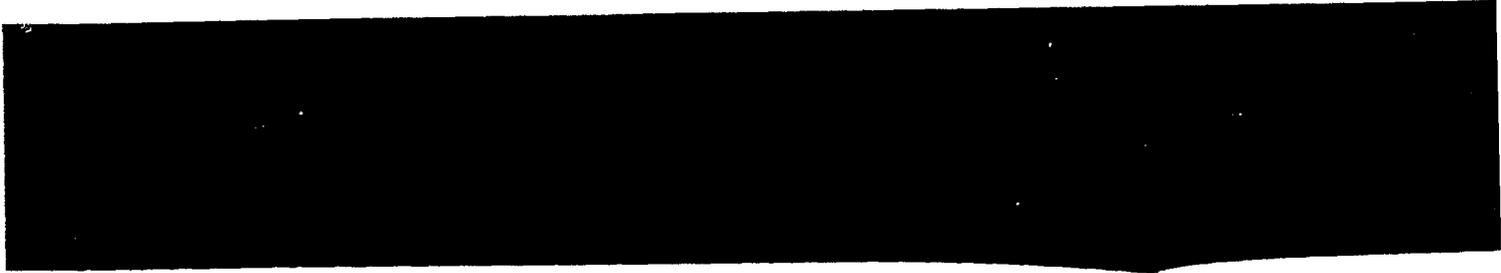
department or officer thereof (clause 18). U.S. v. Realty Co., 163 U.S. 427, 440.

Requirement for appropriations

Article I, section 9, of the Constitution provides that "no Money may be drawn from the Treasury, but in Consequence of Appropriations made by Law." See 37 Comp. Gen. 564, 566. This provision is a restriction upon the Executive Branch that no money can be paid out of the Treasury unless it has been appropriated by an Act of Congress. Cincinnati Soap Co. v. U.S., 301 U.S. 308; Collins v. U.S., 15 Ct. Cls. 22, 35. The purpose of appropriations, as well as the terms and conditions under which they are made, is a matter solely in the hands of Congress. Spaulding v. Douglas Aircraft Co., 60 F. Supp. 985, affirmed 154 F 2d 419.

Restrictions on appropriations

Article I, section 8, of the Constitution provides that no appropriation to raise and support armies shall be for a longer term than two years.



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CHAPTER 2

AVAILABILITY OF APPROPRIATIONS

DEFINITIONS

The term "availability" as applied to appropriations refers to the purpose for which they are made and to the period in which they may be obligated and expended.

AVAILABILITY AS TO PURPOSE

Administrative discretion concerning the use of appropriated funds may not contravene the appropriation act of other applicable provisions of law.

Objects for which made

Appropriations are available only for the objects for which made. 31 U.S.C. 628. 37 Comp. Gen. 472; id. 564; id. 732.

Appropriated funds cannot be made available by means of a transfer to a working fund or to another appropriation for objects or purposes for which such funds would not be available under the appropriation from which the transfer is made. The utilization of such methods cannot operate to divest said funds of their identity as appropriated moneys or exempt them from the requirement that they be expended solely for the purpose for which originally made available. 26 Comp. Gen. 545, 548.

The use of a specific appropriation for one program to pay obligations under another program during a temporary exhaustion of funds is in contravention of 31 U.S.C. 628 even though repayment is contemplated after supplemental appropriations are made. 36 Comp. Gen. 386.

Additional duties imposed by law

Appropriations of departments and agencies are available to defray the expenses of additional duties imposed upon them by proper legal authority. 30 Comp. Gen. 258; 15 id. 167; 46 id. 604.

Necessary or incidental expenses

It is a settled rule that, where an appropriation is made for a particular object, by implication it confers authority to incur expenses which are necessary or incident to the proper execution of the object unless there is another appropriation which makes more specific provision for such expenditures, or unless they are prohibited by law. 50 Comp. Gen. 534; 38 id. 782, 785; 29 id. 419.

Decision reexamined earlier decision wherein it was held that expenditures for incentive music did not constitute necessary expenses under an appropriation involved. It held that funds appropriated to the Bureau of Public Debt would be available for payments to the Musak Company for tapes of incentive music upon a determination by the Commissioner that based on factors such as the improvement of employee morale, increased employee productivity and resulting savings to the Government, the proposed expenditure constituted a "necessary expense" of the Bureau under its appropriation. 51 Comp. Gen. (B-86148, June 6, 1972).

Although contempt of court fine which was imposed by a Federal court against an employee acting in compliance with administrative regulations and instructions is a judgment of a court, a fine is different in nature, principle and purpose from a judgment which is payable from the permanent indefinite appropriation established by section 1302 of the act of July 27, 1956, 31 U.S.C. 724a, and therefore, while the contempt fine may not be paid from the permanent appropriation for judgments, if there is an administrative determination that the fine was incurred in the accomplishment of official business for which the department's salaries and expenses appropriation is made, the fine would be payable from such appropriation. 44 Comp. Gen. 312.

Following Federal Trade Commission (FTC) decision in American Chinchilla Corp., 1970, holding that indigent respondents before FTC are entitled to counsel at Government expense, FTC may also pay transcript costs, and incidental expenses of respondent, attorney, and witnesses, since such expenses are provided to FTC attorneys, and basis of decision is that respondents' right to equal presentation of cases should not be abridged for lack of funds, and

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since FTC appropriations are normally lump sums for "necessary expenses"; furthermore, intervenors may receive expenses on same basis where upon "good cause shown" intervention has been allowed. B-139703, July 24, 1972.

The issuance of invitational travel orders and the payment of commuted travel allowances under 5 U.S.C. 5703 to civilian persons other than Federal Government employees who are requested to testify at pretrial investigations pursuant to Article 32 of the Uniform Code of Military Justice, 10 U.S.C. 832, which is implemented by the Manual for Courts-Martial prescribed by Executive Order No. 11476, June 19, 1969, may be authorized, even though the manual makes no provision for the subpoena of witnesses and the payment of witness fees, since the investigations are an integral part of the courts-martial proceedings. However, as the approval authority is discretionary, it should be exercised within the framework of the Military Code, which in Article 49 provides for depositions, and the Manual, which in paragraph 34d prescribes guidelines, and the Joint Travel Regulations revised accordingly. 50 Comp. Gen. 810.

Viewing Article 32 of the Uniform Code of Military Justice as a substantial ingredient of court-martial proceedings, decision held that there was no significant basis for a categorical denial of the exercise of discretionary authority to issue travel orders and pay travel allowances to civilians other than Federal employees under 5 U.S.C. 5703 but that guidelines for the exercise of such authority would be a prerequisite to revision of the Joint Travel Regulations. 50 Comp. Gen. 810.

In order to reimburse the General Services Administration for parking facilities leased in a commercial building pursuant to paragraph 10c, GSA Order PBS 7030.2B, April 18, 1968, for the accommodation of the employees of the agency assigned to the building, the agency may use the appropriations used to reimburse GSA for the rental of the building. 49 Comp. Gen. 476.

Even though not expressly authorized by statute, uses under long continued practice with the knowledge and sanction of the Congress have been viewed as being within the contemplation of a current appropriation. 18 Comp. Gen. 533.

Presumption of availability

An appropriation ordinarily not available for a particular purpose cannot be presumed to be available because the department has indicated that the expense shall be charged thereto. 18 Comp. Gen. 713. Cf 37 id. 732.

Where there has been included in budget estimates an amount to be expended for a specific purpose, and such amount subsequently is appropriated by the Congress, the accounting officers of the Government generally have recognized the availability of the appropriation for such purpose, even though no express provision therefor is made. 26 Comp. Gen. 545, 547; 28 id. 298; B-146672, November 8, 1961. However, where the amount actually appropriated is less than the approved budget estimates, the itemized estimate for a specific purpose, which is not included in the appropriation language, is of little value in determining the intention of the Congress with respect to any particular item so estimated. See A-89588, October 23, 1937.

Available for needs only

Appropriations may be used to procure only that which is needed as distinguished from that which is desired. 16 Comp. Gen. 171; Cf. 38 id. 291, 293; 41 id. 348, 350.

Deficiency or supplemental appropriations

A deficiency or supplemental appropriation is available for the same purposes and is subject to the same terms and conditions as the original, unless otherwise provided. 20 Comp. Gen. 769; 25 id. 601, 604. But where the supplemental act contains new legislation and provides funds for its administration, the operation of such new legislation may not begin prior to the date of the supplemental act in the absence of a clear intention that the new provision is to be retroactively effective. 20 Comp. Gen. 769.

Specific v. general appropriation

An appropriation for a specific object is available for that object to the exclusion of a more general appropriation which would otherwise be available for the same object, and

the exhaustion of the appropriation. 19 Comp. Gen. 38 id. 758, 767.

A general appropriation for the "maintenance and operation of the V. A. Hospital" may not be used for the maintenance of a laboratory or for the maintenance of a clinic from the proceeds of a special organization of a specific appropriation and miscellaneous funds to cover the expenses of the hospital. The fact that the object precludes the use of the appropriation which would otherwise be available. 1954.

The fact that an appropriation is included in a budget does not determine its character as a specific or general appropriation. It is designated, and available for the expenditure for a specific purpose, such as for a more general appropriation.

Two appropriations

Where either appropriation is construed as available under any other appropriation as to which it is accepted, and continued of any other for changes in the appropriation. id. 827.

Administrative d

Administrative appropriations may not be in conflict with those authorized by

the exhaustion of the specific appropriation does not authorize charging the excess payment to the more general appropriation. 19 Comp. Gen. 892; 20 id. 272; 36 id. 526, 528; 38 id. 758, 767.

A general appropriation for "necessary operating expenses of the Veterans Administration, not otherwise provided for" may not be used for payment of expenses of installing laboratories and other clinical equipment of a Veterans Administration clinic incident to relocation of the clinic from leased space to a Government building upon reorganization of the Veterans Administration, because a specific appropriation was provided for medical administration and miscellaneous operating expenses which was intended to cover the expenses involved, and the rule is well established that the existence of a specific appropriation for an object precludes the use of a more general appropriation which would otherwise be available. B-118803, February 24, 1954.

The fact that an appropriation for a specific purpose is included in a general appropriation does not deprive it of its character as an appropriation for the particular purpose designated, and where such specific appropriation is available for the expenses necessarily incident to its principal purpose, such incidental expenses may not be charged to the more general appropriation. 20 Comp. Gen. 739.

Two appropriations available for same purpose

Where either of two appropriations reasonably may be construed as available for expenditures not specifically mentioned under any appropriation, the administrative determination as to which appropriation will be charged will be accepted, and continued use of same appropriation to exclusion of any other for the same purpose is required in absence of changes in the appropriation acts. 10 Comp. Gen. 440; 23 id. 827.

Administrative discretion

Administrative discretion concerning uses of appropriations may not go beyond the statutes, nor be exercised in conflict with law, nor for accomplishment of purposes unauthorized by the appropriation. 18 Comp. Gen. 285.

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AVAILABILITY AS TO TIME

The concept that fiscal year appropriations can be obligated only during the years for which made was adopted apparently in the first general appropriation for the entire Government "for the service of the current year" 1789, 1 Stat. 95, and except as otherwise specifically provided in particular cases, has been followed consistently since that time. 18 Comp. Gen. 969 and decisions therein cited. 37 Comp. Gen. 861, 863.

An appropriation is available for obligation only during the period--definite or indefinite--for which it is made. 31 U.S.C. 712a.

Interagency services

Funds which are transferred under section 601 of the act of June 30, 1932, 31 U.S.C. 686, for the payment of services or supplies furnished by one Federal agency to another are available only for the same period as the appropriation from which the transfer is made. Section 1210, act of September 6, 1950, 31 U.S.C. 686-1. 31 Comp. Gen. 83, 85; 39 id. 317, 318.

Interagency agreements issued pursuant to section 601 of the act of June 30, 1932, 31 U.S.C. 686, and chargeable to fiscal year appropriations are required by section 1210 of the act of September 6, 1950, 31 U.S.C. 686-1, to be deobligated at the end of the fiscal year of appropriation obligation availability to the extent that the performing agency has not incurred valid obligations under the agreement. 31 Comp. Gen. 83; 34 id. 418; 39 Comp. Gen. 317.

Interagency agreements under section 601 of the act of June 30, 1932, 31 U.S.C. 686, chargeable to no-year appropriations may be recorded as valid obligations, if the agreements meet the requirements of section 1311(a)(1) of the Supplemental Appropriations Act, 1955, 31 U.S.C. 200(a)(1), and such obligations are not required by section 1210 of the act of September 6, 1950, 31 U.S.C. 686-1, to be deobligated at the end of any particular fiscal year regardless of the obligation availability status of the funds in the hands of the performing agency. 39 Comp. Gen. 317, 319.

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Orders required by law to be placed with another Government agency are not issued under authority of section 601 of the Economy Act of 1932, 31 U.S.C. 686, and, therefore, are not subject to the restriction on funds transferred under that act contained in section 1210 of the General Appropriation Act, 1951, 31 U.S.C. 686-1. Accordingly, job orders placed in June 1954 with the General Services Administration pursuant to statutory regulation may be treated as valid obligations against the agency's 1954 appropriation notwithstanding General Services Administration performed the work after the 1954 fiscal year. 35 Comp. Gen. 3.

Appropriation limitations

A limitation item included in an appropriation is subject to the same fiscal year limitation attaching to the parent appropriation as a whole unless the limitation is specifically exempted therefrom in the appropriation act. 37 Comp. Gen. 246, 248.

Appropriations for public buildings

Appropriations for the construction of public buildings are available until the work is completed. 31 U.S.C. 682 and 718.

Appropriations for plans and specifications, or for land acquisition, do not constitute public buildings appropriations under said statutes so as to render inapplicable fiscal year limitations. 36 Comp. Gen. 790, 793; 34 id. 67.

Expired appropriations

a. Unobligated balances. The act of July 25, 1956, 31 U.S.C. 701-708, provides for the withdrawal of the unobligated balance of each such appropriation by September 30 of the fiscal year following the fiscal year in which the period of availability expires and return of the funds to the source(s) from which derived, but restoration of any portion of such balance may be made to the appropriate accounts if the head of the agency concerned determines that such action is necessary to liquidate obligations or effect adjustments.

The unobligated balances of appropriations which are not limited to a definite period of time shall be withdrawn in the manner provided in section 701(a)(2) of this title, whenever the head of the agency concerned shall determine that the purposes for which the appropriation was made has been fulfilled; or, in any event, whenever disbursements have not been made against the appropriation for two full consecutive fiscal years: Provided, That amounts of appropriations not limited to a definite period of time which are withdrawn pursuant to this section or were heretofore withdrawn from the appropriation account by administrative action may be restored to the applicable appropriation account for the payment of obligations and for the settlement of accounts. 31 U.S.C. 706.

b. Obligated balance. Pursuant to the act of July 25, 1956, 31 U.S.C. 701-708, the obligated balance of each appropriation available for a definite period of time must be transferred on June 30 of the second full fiscal year following the close of the period of availability to an appropriation account (designated as a successor (M) account) of the agency or subdivision thereof responsible for the liquidation of obligations from this and all other appropriation accounts for the same general purpose. The obligated balance is the same amount reported under section 1311 of the Supplemental Appropriation Act, 1955, 31 U.S.C. 200.

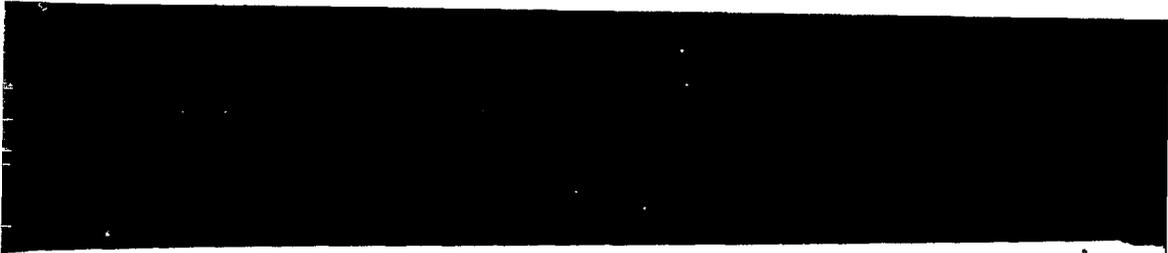
Claims chargeable to successor accounts may be paid without action by the General Accounting Office, except those claims which are required to be submitted to the General Accounting Office for adjudication. 7 GAO 19.6.

Indefinite Appropriations

The apparent purpose of section 6 of the act of July 25, 1956, 31 U.S.C. 706, is the closing of inactive appropriations not limited to a definite period of time. Therefore, although an appropriation which was established on July 1, 1954, and which was not obligated or disbursed for more than two full consecutive fiscal years--even though it was initially established to remain available until expended--is required to be withdrawn and redeposited into the general fund of the Treasury. 39 Comp. Gen. 244.

Exceptions to 31

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Exceptions to 31 U.S.C. 701-708

The enactment of statutory provisions to except any appropriation(s) from the provisions of 31 U.S.C. 701-708 and to fix the period for which such appropriation(s) shall be available for expenditure is authorized. 31 U.S.C. 708.

AUGMENTATION

STATUTORY PROVISIONS

The use of funds for purposes for which Section 628. Therefore, funds from another source are not specifically authorized. Gen. 775; 16 id. 9

When the consent of members of a corporation is required (37 U.S.C. 10101) 30 days is required beyond the contract to pay the storage days to enable the government rate in which would violate section 10101 which limits expenditures even though the the storage cost practice of contribution to a member temporary storage. Gen. 773. See also

STATUTORY AUTHORITY

The reimbursement of expenses to an individual who participates in a program sponsored by the government in mutual interest may be charged to the individual. However, in the absence of any augmentation of the acceptance of a program. Comp. Gen. 689

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CHAPTER 3

AUGMENTATION OF APPROPRIATIONS

STATUTORY PROHIBITION

The use of appropriated funds is limited to the purposes for which the funds were appropriated. 31 U.S.C. 628. Therefore, appropriations may not be augmented with funds from another appropriation or other sources unless specifically authorized by law. 26 Comp. Dec. 43; 2 Comp. Gen. 775; 16 id. 911; 23 id. 694, 697; 36 id. 268, 269.

When the continued storage of the household effects of members of the uniformed services beyond the authorized (37 U.S.C. 406(b)) temporary storage period of 180 days is required by an unforeseen emergency or conditions beyond the control of a member, the use of appropriations to pay the storage company for a period in excess of 180 days to enable the member to enjoy the benefit of the Government rate incident to the additional temporary storage would violate section 3678, Revised Statutes, 31 U.S.C. 628, which limits expenditures to the objects for which made, even though the member would subsequently be billed for the storage cost of the extended period. Therefore, the practice of converting a storage account from the Government to a member upon the expiration of the 180 days temporary storage period should be continued. 48 Comp. Gen. 773. See also, 35 id. 701; 34 id. 454.

STATUTORY AUTHORIZATION

The reimbursement for travel, subsistence, and other expenses to an officer or employee officially directed to participate in a convention, seminar, or similar meeting sponsored by "associations of regulated industries" for the mutual interest of the Government and the association may be charged to the employing agency's appropriation. However, in the absence of statutory authority to accept gifts, any augmentation of the agency's appropriation by the acceptance of a gift or donation would be unauthorized. 46 Comp. Gen. 689.

The furnishing of hotel accommodations, meals, and other traveling accommodations do not supplement employee's salary and may be treated as authorized donations to agency provided per diem is adjusted or eliminated accordingly and record is kept by agency of value of services in kind so furnished. 36 Comp. Gen. 268; 49 id. 572, 574.

The expenditure of Canal Zone Government funds for conversion of buildings transferred to said Government by the Department of the Navy with a right of recapture reserved to the transferor would not be an improper augmentation of Navy appropriations provided that funds were specifically appropriated to the Canal Zone for such purpose. 37 Comp. Gen. 767, 772.

OBLIGATIONS

APPLICABLE STATE REGULATIONS

Any study include reference may be obligated available for obligations requirements regarding of unobligated budget of violations of efficiency Act, 31 U also, to the regulating Office in Title Guidance of Federal by the Secretary eral under sections Act of 195 issued by the Board particular administrative applicable decision States.

GENERAL RULE

The general year appropriate year is that the made within the contract must be the fiscal year 19628.

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CHAPTER 4

OBLIGATION OF APPROPRIATIONS

APPLICABLE STATUTES AND REGULATIONS

Any study of the obligation of appropriations must include reference to the purposes for which appropriations may be obligated, the periods for which appropriations are available for obligation and payment, and the statutory requirements regarding recording of obligations, disposition of unobligated balances of appropriations, and the reporting of violations of statutory restrictions such as the Antideficiency Act, 31 U.S.C. 665. Consideration should be given, also, to the regulations prescribed by the General Accounting Office in Title 7 of its Policy and Procedures Manual for Guidance of Federal Agencies, to the joint regulations issued by the Secretary of the Treasury and the Comptroller General under section 115 of the Budget and Accounting Procedures Act of 1950, 31 U.S.C. 66c, to the applicable circulars issued by the Bureau of the Budget, to the regulations of the particular administrative agencies concerned, and to the applicable decisions of the Comptroller General of the United States.

GENERAL RULE

The general rule regarding the obligation of a fiscal year appropriation for payments to be made in a succeeding year is that the contract imposing the obligation must be made within the fiscal year sought to be charged and the contract must have been made to meet a bona fide need of the fiscal year to be charged. 33 Comp. Gen. 57, 61; 38 id. 628.

Determination of what constitutes a bona fide need of the service of a particular fiscal year depends in large measure upon the facts and circumstances of the particular case, there being no stated general rule for application to all situations which may arise. For example, it is recognized that a contract for the delivery of material presently unobtainable on the open market but required for completion of work currently in progress may be considered a bona fide need of the fiscal year in which the contract is made,

provided the time intervening between contracting and delivery is necessary for manufacture of the material. The procurement of supplies, however, is subject to the prohibition in 41 U.S.C. 13 against the making of contracts in excess of one year. 37 Comp. Gen. 155, 159. See also 44 id. 399.

NATURE OF AN OBLIGATION

An appropriation is obligated when a definite commitment is made or a legal liability incurred to pay funds therefrom. 18 Comp. Gen. 363; 38 id. 81. For budgetary accounting purposes the term "obligations incurred" has been construed as being inclusive of both obligations which have matured (legal liabilities) and those which are contingent upon the subsequent rendition of services, the furnishing of materials, the performance of travel, et cetera. A-97205, February 3, 1944.

CRITERIA FOR RECORDING AND REPORTING OBLIGATIONS

Section 1311(a) of the Supplemental Appropriation Act, 1955, 31 U.S.C. 200(a), provides as follows:

"After August 26, 1954, no amount shall be recorded as an obligation of the Government of the United States unless it is supported by documentary evidence of

Binding agreement

"(1) a binding agreement in writing between the parties thereto, including Government agencies, in a manner and form and for a purpose authorized by law, executed before the expiration of the period of availability for obligation of the appropriation or fund concerned for specific goods to be delivered, real property to be purchased or leased, or work or services to be performed; or"

The factors requisite to a binding agreement which may be recorded as an obligation under section 1311 of the Supplemental Appropriation Act, 1955, 31 U.S.C. 200, are a written bid, an acceptance of the bid communicated to the

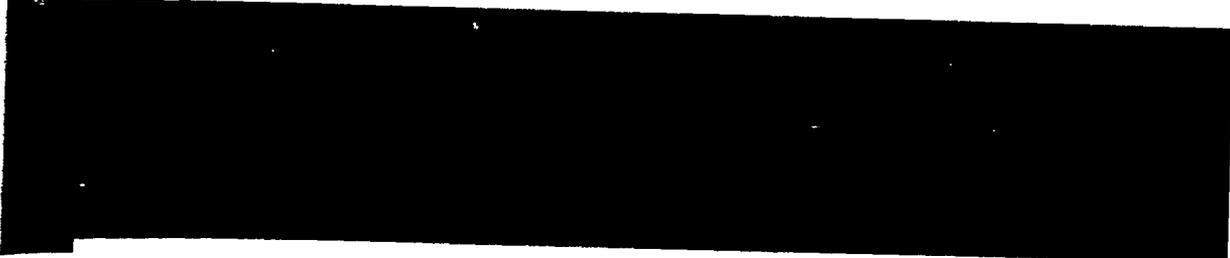
bidder in the sale of the close of the fiscal year of the termination of the term of the contract without a counter offer, no advance by the contractor of an obligation under

An award determined to be invalid was charged was not in agreement to comply with section 1311-31 U.S.C. 200(a) obligation for a

Agreements other than Federal year appropriations are valid appropriations 1311(a)(1) and are for re year appropriations activities became related in the a 39 Comp. Gen. 1

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bidder in the same manner as the bid was made before the close of the fiscal year sought to be charged, and incorporation of the terms and conditions of the respective bid in the contract without qualification. If the bid constitutes a counter offer, no binding agreement would exist until acceptance by the contractor, nor may the contract be recorded as an obligation until such time. 35 Comp. Gen. 319, 321.

An award of a Government contract which was determined to be invalid after the fiscal year appropriation to be charged was no longer available did not effect a binding agreement to obligate the appropriation within the meaning of section 1311(a)(1), Supplemental Appropriation Act, 1955, 31 U.S.C. 200(a)(1); therefore, the funds are not available for obligation for a valid award. 38 Comp. Gen. 190.

Agreement between the National Science Foundation and other Federal agencies whereby grants are made from no-year appropriations to said agencies to perform research are valid appropriation obligations under the terms of section 1311(a)(1) of the Supplemental Appropriation Act, 1955, and are for recording and reporting as such since the no-year appropriations made available for scientific research activities became legally obligated for the full amounts stipulated in the agreements on the date of execution thereof. 39 Comp. Gen. 317, 319.

The appropriation chargeable with the cost of uniforms purchased pursuant to the Federal Employees Uniform Allowance Act is the one currently available when the expenditure is made or the debt incurred by the employee, and, although reimbursement may not be made until a subsequent fiscal year under administrative procedures, the obligation for certification under section 1311, Supplemental Appropriation Act, 1955, 31 U.S.C. 200, arises simultaneously with the expenditure or incurrence of the debt by the employee. 38 Comp. Gen. 81; 39 id. 422, 424.

The execution, after the expiration of the period for obligation of Federal airport appropriations, of amendments to grant agreements to provide for increasing the amount of Government obligations under such grant agreements created a liability which was additional to the liability originally incurred, and pursuant to section 1311,

Supplemental Appropriation Act, 1955, 31 U.S.C. 200, and 31 U.S.C. 712a, unobligated balances of the expired appropriations were not available to pay the increases authorized in said amendments. 37 Comp. Gen. 861; cf. 41 Comp. Gen. 134, 138.

Loan agreement

"(2) a valid loan agreement, showing the amount of the loan to be made and the terms of repayment thereof; or"

Order with Government agency

"(3) an order required by law to be placed with a Government agency; or"

Subsection 1311(a)(3) is applicable only to orders required by law to be placed with Government agencies, and orders placed with the General Supply Fund and Buildings Management Fund which are not required by law to be placed with the General Services Administration may not be treated as obligations since no legal obligation is incurred until GSA as agent for the ordering agency executes a contract or the operation is performed by GSA labor. 34 Comp. Gen. 705.

Order without advertising

"(4) an order issued pursuant to a law authorizing purchases without advertising when necessitated by public exigency or for perishable subsistence supplies or within specific monetary limitations; or"

Grant or subsidy

"(5) a grant or subsidy payable (i) from appropriations made for payment of or contributions toward, sums required to be paid in specific amounts fixed by law or in accord with formulae prescribed by law, or (ii) pursuant to agreement authorized by, or plans approved in accord with and authorized by, law; or". 50 Comp. Gen. 857.

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"(6) a liability which may result from pending litigation brought under authority of law; or"

Regulations to be issued by Department of Defense for recording and reporting obligations pursuant to section 1311 of the Supplemental Appropriation Act, 1955, 31 U.S.C. 200, respecting liability which may result from litigation brought under authority of law, should conform with 17 Comp. Gen. 664 and 34 *id.* 67, which hold that appropriations for land acquisition under condemnation proceedings become obligated at the time the Attorney General is requested to institute the proceedings. 34 Comp. Gen. 418, 423.

Obligations may be recorded under this section only in those cases where there is no question as to the Government's liability and the pending litigation is for the sole purpose of determining the amount of such liability. 35 Comp. Gen. 185.

Services, travel, public utilities

"(7) employment or services of persons or expenses of travel in accordance with law, and services performed by public utilities; or"

Anticipated costs of administrative and engineering services performed by Government employees incident to highway construction projects financed with fiscal or no-year funds not subject to obligational authority in section 106, Federal-Aid Highway Act of 1956, 23 U.S.C. 155, are not a part of contract cost to create valid appropriation obligations prior to authorization and actual performance of such services and may not properly be recorded and reported as obligations under section 1311 of the Supplemental Appropriation Act, 1955. 38 Comp. Gen. 316.

Expenditures for official travel may not be recorded as an obligation hereunder until the travel is actually performed, or until a ticket is purchased, but estimated costs of transportation may be tentatively recorded as an appropriation obligation within the fiscal year current at the time the travel orders are issued provided adjustments to actual obligation are made periodically and prior to submission of

the report required by section 1311(b) of the Supplemental Appropriation Act, 1955, 31 U.S.C. 200(b). 35 Comp. Gen. 183.

Other legal liabilities

"(8) any other legal liability of the United States against an appropriation or fund legally available therefor."

Subsection 1311(a)(8) of the Supplemental Appropriation Act, 1955, 31 U.S.C. 200(a)(8), refers to legal liabilities of the United States under legally available appropriations which are not covered by prior subsections (a)(1) through (a)(7). 34 Comp. Gen. 319.

REPORTING REQUIREMENTS

Statutory requirements

Section 1311 of the Supplemental Appropriation Act, 1955, as amended by Public Law 86-79, approved July 8, 1959, 31 U.S.C. 200, provides:

"(b) Report by agency heads in connection with requests for proposed appropriations

"Hereafter, in connection with the submission of all requests for proposed appropriations to the Bureau of the Budget, the head of each Federal agency shall report that any statement of obligations furnished therewith consists of valid obligations as defined in subsection (a) of this section.

"(c) Same; certifications and records; retention for audit; prohibition against redelegation of responsibility

"Each report made pursuant to subsection (b) of this section shall be supported by certifications of the officials designated by the head of the agency, and such certifications shall be supported by records evidencing the amounts which are

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"(d) Restriction on use of appropriations or funds

"No appropriation or fund which is limited for obligation purposes to a definite period of time shall be available for expenditure after the expiration of such period except for liquidation of amounts obligated in accord with subsection (a) of this section; but no such appropriation or fund shall remain available for expenditure for any period beyond that otherwise authorized by law.

"(e) Amounts to be included in statements of obligations to the Congress

"Any statement of obligation of funds furnished by any agency of the Government to the Congress or any committee thereof shall include only such amounts as may be valid obligations as defined in subsection (a) of this section."

GAO requirements

General Accounting Office regulations regarding obligation records and reports and reporting and related requirements under section 1311 are prescribed in 7 GAO 17.

WAGE BOARD PAY INCREASES

The effective date of pay increases to wage board employees serves to create Government liability for payment thereof, and the appropriation chargeable therewith is the one currently available for wage payments during the period to which the increases apply. Therefore, since liabilities

resulting from administrative action granting pay increases to wage board employees constitute valid obligations for recording under section 1311(a) of the Supplemental Appropriation Act, 1955, failure to report such obligations to Bureau of the Budget violates reporting requirements of section 1311(b) of the act irrespective of the matter of obtaining an apportionment or supplemental or deficiency appropriation for the payment of such obligations. See section 21, Bureau of the Budget Circular No. A-11, July 1959. 39 Comp. Gen. 422.

CONTINGENT LIABILITIES

Although claims for price adjustment due to changed conditions encountered in construction received by the Corps of Engineers as construction agent for the Saint Lawrence Seaway Development Corporation are not obligations for reporting pursuant to section 1311 of the Supplemental Appropriation Act, 1955, 31 U.S.C. 200, they do represent possible liabilities which should be reported as contingent liabilities in the statements of financial condition of public enterprise fund accounts. 37 Comp. Gen. 691.

The important criterion for determination of when a contingent liability should be recognized for reporting as a footnote in the statements of financial condition of public enterprise fund accounts is the existence of past circumstances or actions which may result in a liability in the future rather than the form or manner of presentation of a claim; therefore, a claim for price adjustment under the changed conditions clause of construction contracts which requires claims to be in writing would require recognition as a contingent liability upon receipt of the claim by the contracting agent and recognition would not be dependent upon an appeal or on the filing of a suit in court. 37 Comp. Gen. 691.

The liability of the Saint Lawrence Seaway Development Corporation for claims which might be submitted to the Court of Claims is too hypothetical in nature to be determined; however, it is believed that judgments should be recorded as a cost in the Corporation's accounts and disclosed in its financial statements regardless of whether the judgment is paid from corporate or noncorporate funds so that there is full disclosure of the costs of construction of the seaway. 37 Comp. Gen. 691.

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CHAPTER 5

PROHIBITION AGAINST OVEROBLIGATION

STATUTORY PROHIBITION

The Antideficiency Act (31 U.S.C. 665) provides as follows:

- (a) Expenditures or contract obligations in excess of funds prohibited.

"No officer or employee of the United States shall make or authorize an expenditure from or create or authorize an obligation under any appropriation or fund in excess of the amount available therein; nor shall any such officer or employee involve the Government in any contract or other obligation, for the payment of money for any purpose, in advance of appropriations made for such purpose, unless such contract or obligation is authorized by law."

- (c) Apportionment of appropriations.

"Except as otherwise provided in this section, all appropriations or funds available for obligation for a definite period of time shall be so apportioned as to prevent obligation or expenditure thereof in a manner which would indicate a necessity for deficiency or supplemental appropriations for such period; and all appropriations or funds not limited to a definite period of time, and all authorizations to create obligations by contract in advance of appropriations, shall be so apportioned as to achieve the most effective and economical use thereof. ****"

- (h) Expenditures in excess of apportionment prohibited.

"No officer or employee of the United States shall authorize or create an obligation or make an expenditure (A) in excess of an apportionment or reapportionment, or (B) in excess of the amount permitted by regulations prescribed pursuant to subsection (g) of this section."

(i) Reports on violations.

"(2) In the case of a violation of subsections (a), (b), or (h) of this section by an officer or employee of an agency, or of the District of Columbia, the head of the agency concerned or the Commissioners of the District of Columbia, shall immediately report to the President, through the Director of the Bureau of the Budget, and to the Congress all pertinent facts together with a statement of the action taken thereon."

RESPONSIBILITY OF AGENCY HEADS

The Antideficiency Act imposes upon the heads of departments and agencies a responsibility to conduct Government operations during a fiscal year within the limits of appropriations and to expend such appropriations at a rate which will not exhaust the funds before the end of the period for which they are appropriated. 38 Comp. Gen. 501.

When transfer of an appropriation to another account is directed by Congress through enactment of legislation and there are insufficient unobligated funds currently available to effect the transfer, no violation of the Antideficiency Act occurs. 38 Comp. Gen. 93.

APPORTIONMENT OR REAPPORTIONMENT

The apportionment or reapportionment of appropriations which will necessitate a deficiency or supplemental appropriation or a drastic curtailment of Government services in the event additional funds are not appropriated by Congress is prohibited by the Antideficiency Act, 31 U.S.C. 665, unless such action is required because of the enactment of new laws or certain specified emergency situations. 38 Comp. Gen. 501; 36 *id.* 699; B-168796, February 2, 1970.

The authority of section 210 of the General Government Matters Appropriation Act, 1958, which permits the apportionment of appropriations, because of pay increases

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granted to wage board employees, on a basis indicating a need for a supplemental or deficiency appropriation to the extent necessary to enable payment of such pay increases--when considered in conjunction with the mandatory provisions of section 1 of Public Law 85-872, regarding establishment of effective dates for such pay increases--manifests clear Congressional intent to sanction an exception to the antideficiency statute relative to authorizing obligations or expenditures for pay increases granted to wage board employees in excess of the annual appropriations made for the compensation of such employees. See 38 Comp. Gen. 93; Cf. id. 501. Accordingly, obligations or expenditures of funds due to pay increases granted to wage board employees under Public Law 85-872, which exceed the available appropriation and which are incurred prior to obtaining an apportionment request or supplemental or deficiency appropriation to discharge payment of the additional compensation may, to the extent necessary to permit payment thereof, be considered as obligations "authorized by law" within the purview of the antideficiency statute and, therefore, not in violation thereof. 39 Comp. Gen. 422.

An estimate for anticipated pay increases in making an apportionment which anticipates the need for a supplemental or deficiency appropriation--as distinguished from "pay increases as may be granted"--does not comply with the terms of section 210 of the Governmental Matters Appropriation Act, 1958, and such estimate is ineligible for inclusion in such an apportionment. See Bureau of the Budget Circular No. A-34, Transmittal Memorandum No. 1, October 7, 1957. 39 Comp. Gen. 422.

REPORTING OF VIOLATIONS

The charging of part of a contract for the installation of automatic telephones against an appropriation allocation which is insufficient to cover the entire contract and the balance against anticipated proceeds from sale of replaced equipment results in overobligation of appropriations in violation of the Antideficiency Act which must be reported immediately by the head of the agency to the President and Congress pursuant to section 2(i)(2) of the act, notwithstanding that overobligation resulted from misinterpretation of regulations on use of proceeds of replaced

equipment, consideration of mitigating circumstances giving rise to the overobligation of fund not being a matter within the jurisdiction of the General Accounting Office. 35 Comp. Gen. 356.

DEFICIENCY APPROPRIATION REQUEST

While the Government Printing Office has no control over the volume of printing and binding which it is required by law to do for Congress, the amount annually appropriated therefor operates as a ceiling upon expenditures for congressional printing and binding. However, since inadequacy of funds to pay charges against the 1956 appropriation resulted from work required by Congress to be done, it must be assumed Congress intended to authorize the Public Printer to exceed the appropriation and that it will appropriate in deficiency or supplemental acts, if necessary, the funds necessary to meet the overobligation so incurred, and request for deficiency appropriation should be submitted to Congress under usual procedure, the liability not being transferable to the related 1957 appropriation for liquidation purposes without specific statutory sanction. B-123964, November 27, 1956.

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CHAPTER 6

CONTRACTS GENERALLY

ADEQUACY OF APPROPRIATIONS

No contract or purchase on behalf of the United States may be made unless authorized by law or under an adequate appropriation. 41 U.S.C. 11; 48 Comp. Gen. 494.

The restrictions in 41 U.S.C. 11 are for application in the alternative so that where authority to make contracts is complete and unrestricted, a liability arising thereunder is not avoided by omission of Congress to provide the money to discharge it, but where an alleged liability rests wholly upon authority of an appropriation they must stand or fall together. Shipman v. U.S., 18 Ct. Cls. 138. Cf. 19 Op. Atty. Gen. 650. 37 Comp. Gen. 199, 201.

PUBLIC BUILDINGS OR IMPROVEMENTS

"No contract shall be entered into for the erection, repair, or furnishing of any public building, or for any public improvement which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose." 41 U.S.C. 12. 38 Comp. Gen. 392; id. 758.

The authority in section 16, title 2, Canal Zone Code, for the acquisition or construction of buildings is an appropriation authorization and does not supersede the prohibition in 41 U.S.C. 12, against the execution of contracts for construction of public buildings in the absence of a specific appropriation for such purpose; therefore, a specific appropriation for the conversion of buildings in the Canal Zone is required before any expenditure can be made. 37 Comp. Gen. 767.

PURCHASE OF LAND

"No land shall be purchased on account of the United States, except under a law authorizing such purchase." 41 U.S.C. 14.

The inclusion of purchase options in leases executed under long-term commercial leasing program of Post Office Department would not be contrary to 41 U.S.C. 14 provided that the option is not exercised in the absence of express statutory authority for the purchase of land and until appropriations are specifically made available for property acquisitions. 38 Comp. Gen. 227.

The use of funds appropriated for forest management to pay a deposit to a court incident to a condemnation proceeding which is instituted to obtain clear title to land but which will result in obtaining a new title is in effect a deposit for the purchase of land which under 41 U.S.C. 14 requires specific authorizing legislation and, therefore, the appropriation for forest management may not be used for payment of the deposit into the court in connection with the condemnation proceedings. 41 Comp. Gen. 796.

The transfer of real property reported as excess to needs of one Government agency to another Government agency under the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 471, may be made without regard to whether the acquiring agency has specific land and public building acquisition authority as required under 41 U.S.C. 14 which is applicable to the acquisition of new land and buildings and not to land and buildings already owned by the Government. 38. Comp. Gen. 782.

STATIONERY AND SUPPLIES

"Except as otherwise provided, it shall not be lawful for any of the executive departments to make contracts for stationery or other supplies for a longer term than one year from the time the contract is made." 41 U.S.C. 13.

ORDERS OR CONTRACTS WITH GOVERNMENT-OWNED ESTABLISHMENTS

Orders or contracts for work or material or for the manufacture of material pertaining to approved projects placed with Government-owned establishments pursuant to the Act of June 20, 1920 (41 U.S.C. 23) are obligations in the same manner as similar orders or contracts placed with

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FISCAL YEAR LIMITATION

"Except as otherwise provided by law, all balances of appropriations contained in the annual appropriation bills and made specifically for the service of any fiscal year shall only be applied to the payment of expenses properly incurred during that year, or to the fulfillment of contracts properly made within that year." 31 U.S.C. 712a.

Where a purchase order was issued to General Services Administration for space in a specific location, an obligation is created in fiscal year appropriations even though the location might be changed. B-158374, February 21, 1966.

A trucking service contract for satisfying a need for current services cannot under 31 U.S.C. 712a be extended beyond the fiscal year even though the availability of the agency's obligated appropriation is extended specifically by statute. 33 Comp. Gen. 90.

The general rule in applying 31 U.S.C. 712a and similar prior provisions of law is that, in the absence of a statute providing otherwise, salaries and expenses of Government employees, including those whose duties involve the inspection and superintendence of construction work in progress at the close of the fiscal year, are payable only from appropriations made for the fiscal years in which the services are rendered or the expenses incurred. 38 Comp. Gen. 316, 319.

Long-term leases for automatic data processing equipment under fiscal year appropriations that would commit the Government to a minimum rental period of more than 1 year, and whose multi-year character would not change until the Government took effective cancellation action, are prohibited by 41 U.S.C. 11; 31 id. 665(a); id. 712a. However, revolving funds may be used to finance leases for reasonable periods of time in excess of 1 year, subject to the conditions that sufficient funds are available and are obligated to cover the costs under the entire contract. 48 Comp. Gen. 497.

The accounting procedure employed by the Administrative Office of the United States Courts with respect to paying court-appointed attorneys under the provisions of the Criminal Justice Act of 1964 from the appropriation current at the time of the appointment regardless of the date the voucher, subject to court review, is submitted, may not be revised to make payment from the appropriation current at the time the voucher is approved in order to eliminate holding the obligated appropriation account open beyond the close of a normal fiscal year. The contractual obligation for payment of an attorney occurs at the time he is appointed, even though the exact amount of the obligation remains to be determined; and pursuant to sections 3732 and 3679, Revised Statutes, and 41 U.S.C. 11; 31 *id.* 665(a); *id.* 712a, the fee payable is chargeable to the appropriation for the fiscal year in which the obligation was incurred. 50 Comp. Gen. 589.

Bona fide need of fiscal year

In order to obligate a fiscal year appropriation for payments to be made in a succeeding year, the contract imposing the obligation must have been made within the fiscal year sought to be charged and the contract must have been made to meet a bona fide need of the fiscal year to be charged. 33 Comp. Gen. 57, 61.

Lumber procurement contracts which contain standard variations clause permitting ten percent overshipment or undershipment may be recorded as obligations in the maximum quantities deliverable without violating section 1311 of the Supplemental Appropriation Act, 1955, concerning recording of obligations. 34 Comp. Gen. 596.

Future needs

A contract which would obligate an agency to pay more than the cost of the maximum quantity of supplies needed in any one fiscal year as a termination penalty or as damages for failure to renew the contract in subsequent fiscal years is in violation of the statutory prohibitions against obligation of current appropriations to meet the needs of other years (31 U.S.C. 628 and 665 and 41 U.S.C. 11 and 13). 36 Comp. Gen. 683; See also, 42 Comp. Gen. 272.

When a continuing supply of materials is needed over a period of time, the contract term may not exceed one year,

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and only the needs of the first fiscal year may be considered a bona fide need of the year in which the contract is executed to be considered properly made under 31 U.S.C. 712a. 37 Comp. Gen. 155, 159; 44 id. 399.

Replacement contracts

Replacement contracts may be charged to same appropriation obligated with defaulted contract only if the original contract is terminated and the replacement contract is awarded within a reasonable time. 32 Comp. Gen 565; 44 id. 623, 626.

The rule that the appropriations originally obligated with the cost of a contract which is in default are available for a replacement contract, provided the need continues to exist, is not affected by section 1311 of the Supplemental Appropriation Act, 1955, 31 U.S.C. 200, respecting documentary evidence of obligations, the original contract having been a valid binding agreement for obligation of the appropriation involved. 34 Comp. Gen. 239: For application of rule to grants see, B-157179, September 30, 1970.

Lease agreement

A lease agreement for rental of nitrogen gas cylinders for a 25-year period, which is incident to the regular and continuing purchase of gas from the lessor over the lease period, is in violation of 41 U.S.C. 13, which prohibits the execution of contracts for more than a year and 31 U.S.C. 665 and 41 id. 11 which limit the obligation of appropriations by contract to needs arising within the fiscal year covered by the appropriation to be charged. 37 Comp. Gen. 60, 62.

INTEREST ON DELAYED CONTRACT SETTLEMENT

Decision recognized that GAO's ruling, 22 Comp. Gen. 772, precluding payment of interest on delayed contract claims in the absence of express statutory authorization was rendered invalid by a Supreme Court decision. The GAO decision then held that the Department of Defense could provide by regulation for contractual agreement to pay interest on claims that were not promptly settled by the Government. 51 Comp. Gen. 251.

Cost-sharing requirements

The decision held that the cost-sharing requirements which would become fully effective on July 1, 1972, under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 were not to apply to agreements entered into before January 2, 1971, the effective date of the act, and that such prior agreements requiring full Federal funding of relocation costs extended beyond July 1, 1972, the date when agreements would provide for cost-sharing. The rationale of the decision was that certain sections of the act demonstrated that Congress did not intend to alter existing contract rights which were based on agreements allowing for 100% Federal funding. 51 Comp. Gen. 267.

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CHAPTER 7

PUBLIC BUILDINGS AND IMPROVEMENTS

NECESSITY FOR SPECIFIC APPROPRIATION

"No contract shall be entered into for the erection, repair, or furnishing of any public building, or for any public improvement which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose." 41 U.S.C. 12.

The object of this section is to prevent executive officers from involving the Government in expenditures or liabilities beyond those contemplated and authorized by the law-making power. 1895, 21 Op. Atty. Gen. 244.

The express statutory authority required for the construction of public buildings under 41 U.S.C. 12 may not be inferred from a statute which establishes a special fund for acquiring, administering, operating, maintaining, and developing helium properties, in the absence of evidence of congressional intent that the general terms employed in describing the authorized uses to be made of the special fund were to be construed so broadly as to warrant an exemption for the construction of buildings for helium activities from the mandatory requirement in 41 U.S.C. 12. 38 Comp. Gen. 392; 42 *id.* 212, 215.

Although appropriations made available to agencies may be used for necessary expenses, the term "necessary expenses" refers to current or running expenses of a miscellaneous character incident to and directly related to the agency's particular functions and does not include expenses for the construction and improvement of public buildings for which specific statutory authority is required under 41 U.S.C. 12. 38 Comp. Gen. 758.

Renovations to make a building suitable for occupancy by a Federal agency constitute "improvements" within the meaning of 41 U.S.C. 12, and in the absence of specific authority in the agency appropriations, general appropriations for necessary expenses may not be used to reimburse the

General Services Administration for the renovation work. 38 Comp. Gen. 758.

PERIOD OF AVAILABILITY

Under 31 U.S.C. 682 and 718, appropriations for the construction of public buildings are available until the work is completed. Appropriations for plans and specifications or for land acquisition, however, do not constitute public building appropriations within the meaning of said statutes so as to render inapplicable fiscal year limitations. 36 Comp. Gen. 790, 793; 34 id. 67.

REPAIRS V. PROJECT CHANGES

Repairs to a Federal-county watershed project which was damaged due to unusually heavy rainfall prior to the completion of the planting of sod-forming vegetation and which would be useless unless the damage is repaired may be regarded as within the objectives of the Watershed Protection and Flood Prevention Act, 16 U.S.C. 1001, notwithstanding the additional costs required to rebuild the project to original specifications; however, an alternative plan in lieu of repairs which would involve a major revision of the original project at considerable added cost would constitute a new project which should be submitted for congressional approval before being undertaken. 38 Comp. Gen. 53.

AGENCY V. GSA APPROPRIATIONS

Guard service

Under the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 318, 490, specific appropriation is made to the General Services Administration (GSA) for the function of protecting public buildings and property. Therefore, agency appropriations, not specifically made available therefor, may not be used to reimburse GSA for special guard service furnished the particular agency in connection with a particular project in a building under GSA control. 34 Comp. Gen. 42.

Air conditioning

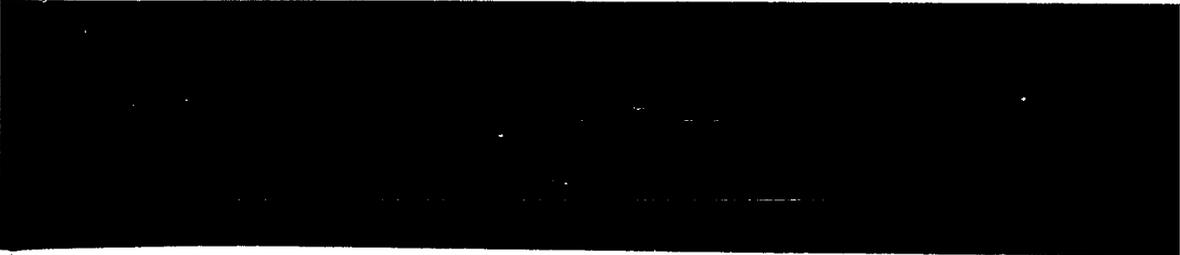
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Air conditioning of public buildings

The cost of the procurement and installation of air-conditioning equipment for federally owned buildings under the control of the General Services Administration may not be charged to the appropriations for the Federal agency occupying space in the building in the absence of specific statutory authority therefor. 38 Comp. Gen. 193.

Where a Public Health Service Clinic occupied space on a cooperative basis, rent free, in a building owned by Dade County, Florida, the appropriations of the Department of Health, Education, and Welfare were available to pay for the cost of purchasing and installing air-conditioning units in the clinic, the building not being federally owned and under GSA control so that no appropriations other than those of the Department of Health, Education, and Welfare could be used for such purpose. B-119485, April 15, 1954.

Inasmuch as the Bureau of Old-Age and Survivors Insurance budgets for the cost of leased space, including the cost of maintaining and servicing such space, and finances such expenditures from the Federal Old-Age and Survivors Insurance Trust Fund and the General Services Administration (GSA) does not include in its budget funds for leased space occupied by the Bureau, funds of the Bureau may be used to reimburse GSA for the purchase, installation, and servicing of air-conditioning in non-federally-owned leased space, provided that it is determined that air-conditioning would be in the interest of the Government. But the Bureau's funds are not available for such purpose with respect to federally owned buildings, even though GSA has not budgeted for such expenditures, because GSA has the responsibility for air-conditioning buildings under its control, and in the absence of specific statutory authority therefor, an agency's funds are not available for such purpose. 39 Comp. Gen. 120.

PURCHASE OF LAND

"No land shall be purchased on account of the United States, except under a law authorizing such purchase." 41 U.S.C. 14. 41 Comp. Gen. 796.

Transfer of excess property between agencies

The restriction placed upon the purchase of land on behalf of the United States by 41 U.S.C. 14 does not apply to the transfer of excess property--including real property--between Federal agencies under the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 471.

RENTAL OF SPACE

No contract shall be made for the rent of any building, or part of any building, to be used for the purposes of the Government in the District of Columbia, until an appropriation therefor shall have been made. 40 U.S.C. 34.

The prohibition in 40 U.S.C. 34 against the execution of a contract for rent of buildings in the District of Columbia for governmental purposes until an appropriation has been made is comprehensive and applies to all uses whether temporary or permanent; therefore, funds appropriated for public schools of the District of Columbia are not available for payment of rent for temporary use of stage and auditorium facilities in Constitution Hall in the absence of express statutory authority for the rental of buildings. 35 Comp. Gen. 314; 49 *id.* 305, 308; but see, B-173503, September 15, 1971.

The cost of catering services furnished by a hotel located in the District of Columbia to a conference held pursuant to the Government Employees Training Act, 5 U.S.C. 41, and considered a proper administrative expense when necessary to achieve the objectives of a training program, may be paid, the prohibition in 40 U.S.C. 34 regarding the procurement of hotel room accommodations in the District of Columbia in the absence of an express appropriation for the rental of space for Government use in the District having no application, even though the cost of using the hotel facilities are included in the catering charges, as the cost of the space is merely a cost item included by the hotel in fixing catering charges and the rental of space per se is not involved. 50 Comp. Gen. 610.

Rental of space in a building located in Bladensburg, Maryland, by the National Science Foundation for storage of

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scientific educational exhibits is not prohibited by 40 U.S.C. 34, which prohibits execution of contract for rental of buildings for Government use in the District of Columbia until an appropriation has been made therefor, because Bladensburg is located in Maryland and not in the District of Columbia. Moreover, the authority granted the Foundation in section 11 of the National Science Foundation Act of 1950, 42 U.S.C. 1870, to do all things necessary to carry out the provisions of the act and to make expenditures necessary therefor is sufficient to support payment of the storage charges. B-140744, October 1, 1959.

Rental and alterations limitations

No appropriation shall be obligated or expended for rent of buildings for Government use at rental in excess of per annum rate of 15 per centum of the fair market value of the premises nor for alterations, improvements, or repairs in excess of 25 per centum of the first year's rental. 40 U.S.C. 278a.

a. Rental limitation. Tenants whose leases provide for termination in the event the property is taken for public use by eminent domain proceedings have no property right to compensation upon a taking, and termination payments made by the Government to prior tenants of a building leased by the Government must be included as an expense in obtaining possession of the building in the computation of the 15 percent fair-market-value limitation in 40 U.S.C. 278a. 35 Comp. Gen. 85.

Where premises are occupied by a Government agency at a nominal rent or on a rent-free basis, any repairs or alterations necessary for continued occupancy may be considered as a cost of occupancy, as in lieu of rent, for each year of the rental term, but the total cost of such repairs, alterations, and improvements, plus the nominal rental, during any year of the rental term may not exceed 15 per centum of the fair market value at date of lease unless such total plus nominal rent does not exceed \$2,000 per annum. 35 Comp. Gen. 713.

b. Alterations, improvements or repairs limitation. The fact that improvements to a lessor's property would

result in no enhancement of the property does not preclude the application of the 25 per centum limitation in section 322 of the Economy Act of 1932, 40 U.S.C. 278a, which is applicable to "alterations" as well as "improvements" and contemplates modifications or changes in leased property irrespective of the extent to which they might prove useful to the property owner. 29 Comp. Gen. 279.

Section 322 of the Economy Act, 40 U.S.C. 278a, is an exception to the general rule that appropriated funds may not be used for the permanent improvement of privately owned property by any agency of the United States unless specifically authorized by law. 29 Comp. Gen. 279; 42 id. 480, 483.

The limitation in section 322 of the Economy Act of 1932, 40 U.S.C. 278a, which precludes the use of appropriations for the improvement of rented premises in excess of 25 percent of the rent for a year is not applicable to unimproved lands leased by the Government; however, if the lease is for improved land, i.e., land and buildings, the limitation is for application irrespective of whether improvements are to the land, the buildings, or both. 38 Comp. Gen. 143.

INSURANCE OF PROPERTY

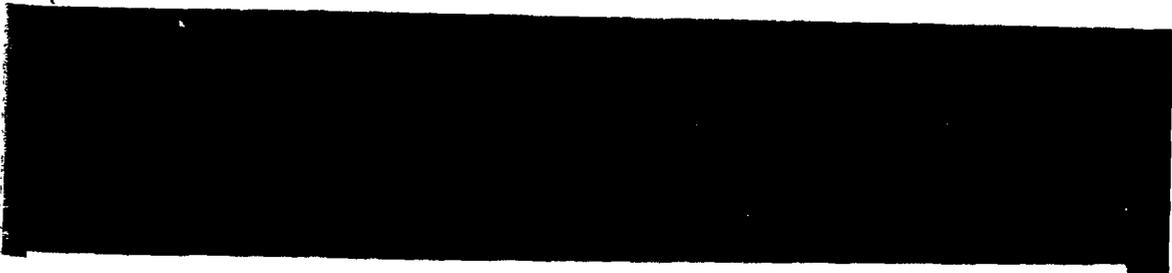
Self-insurance of Government-owned property

It is the general policy of the Government to assume its own risks of loss, upon the theory that the magnitude of the Government's resources makes it more advantageous for the Government to carry its own risks than to have them assumed by private insurers at rates sufficient to cover all losses, to pay their operating expenses (including agency or brokers' commissions), and to leave such insurers a profit. 19 Comp. Gen. 211, 214; 16 id. 453, 454; 21 id. 929. Thus, it has been held consistently that appropriated moneys are not available for the payment of insurance premiums on Government-owned property in the absence of specific statutory authority for the payment of such premiums. 17 Comp. Gen. 419, 421; 21 id. 929.

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Insurance under lease-purchase contracts

A lease-purchase contract executed under a law allowing for reimbursement to the owner for the cost of carrying appropriate insurance may not include a provision which requires the contractor to carry insurance for the protection of the Government because appropriated moneys are not available, in the absence of specific statutory authority for insurance for the protection of the Government. 35 Comp. Gen. 391; id. 393.

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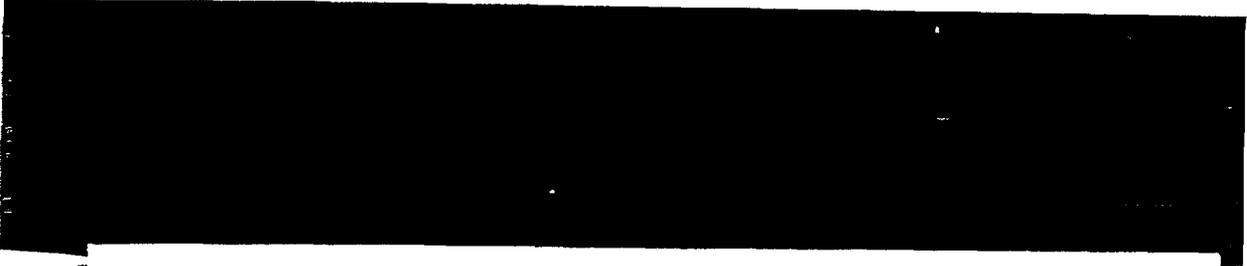
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CHAPTER 8

ADVANCE PAYMENTS

STATUTORY PROHIBITION

No advance of public money shall be made in any case unless authorized by the appropriation concerned or other law. 31 U.S.C. 529.

Lease agreement

The execution of a lease agreement for the rental of nitrogen gas cylinders for a 25-year period is in contravention of the advance payment prohibition in 31 U.S.C. 529. 37 Comp. Gen. 60.

Service charges by local governments

A sewer service charge which is established by a local government and required to be paid in advance, with a penalty if not paid when due, may be paid by a Federal agency in advance, notwithstanding the advance payment prohibition in 31 U.S.C. 529, there being little possibility that the local government will fail to furnish the services after payment is made and in view of the savings to the Federal Government by advance payment of the charge. 39 Comp. Gen. 285.

Public Utilities

A proposed billing change to provide for the advance payment of local telephone service may not be approved on the basis that exceptions have been recognized to the advance payment prohibition in 31 U.S.C. 529, since such have been extended only when provided for in either legislative or appropriations acts, and for State or local governments because of their established financial responsibility, but not for any other group, including those rendering public utility services; therefore, the billing of the Government on different terms than those of other telephone subscribers presenting no unsurmountable problems with telephone companies generally, no particular accounting advantage can be perceived to the

proposed billing change and the local telephone bills should continue to be paid after the rendition of the service. 42 Comp. Gen. 659.

Property lien or
interest acquired by government

Although under the advance payment prohibition in 31 U.S.C. 529 payment may not be made for articles in which the United States has acquired no right or interest and from which it derives no benefit, payment may be made in advance of the delivery of articles into the actual possession of the United States if the articles are impressed with a valid lien in favor of the United States in an amount at least equal to the payment. 28 Comp. Gen. 468. Therefore, payments of earnest money for real estate purchase agreements which are executed by the Postmaster General pursuant to the Post Office Department Property Act of 1954 and under which the Government obtains a protected interest in the land are not in contravention of the advance payment prohibition in 31 U.S.C. 529. 34 Comp. Gen. 659.

STATUTORY AUTHORIZATION

Specific authority for one fiscal year

The authorization to make advance payments contained in the Interior Department Appropriation Act, 1955, for "Health, education, and welfare services" has reference only to advance payments for a bona fide need during the fiscal year 1955; therefore, the appropriation may not be obligated with an advance payment to cover the portion of an educational program which extends beyond the fiscal year 1955. 34 Comp. Gen. 432.

Publications

The decennial index published by the American Chemical Society may not be regarded as a publication within the meaning of the advance payment exemption in 31 U.S.C. 530a, formerly section 530 (37 Comp. Gen. 720); nor do phonograph recordings and tape-recorded material qualify as publications thereunder (21 Comp. Gen. 524; 46 id. 394; 48 id. 784).

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Educational Institutions

The specific authority for the expenditure of funds through grants in the act of September 6, 1958, Public Law 85-934, 42 U.S.C. 1891, which provides for the performance of scientific research for the Federal Government by non-profit institutions satisfies the requirement of section 3648, Revised Statutes, 31 U.S.C. 529, that advances of public money must be authorized by the appropriation concerned or other law, and, therefore, payment of a grant to a university for scientific research in advance of the performance of such services may be made. 41 Comp. Gen. 394; See 41 Comp. Gen. 626 allowing for advance payment of tuition fees when training at college is authorized.

Prompt Payment Discounts

General Services Administration procedure of paying direct delivery vouchers prior to receipt of receiving reports from consignees, so as to take advantage of discounts for prompt payment will not be objected to, provided a determination is made provisions proposed to be included in each specific contract or in general provisions of standard form for supply contracts provide adequate security for safeguarding U.S. interests and that such advance payment procedure is in the public interest. B-158487, April 4, 1966.

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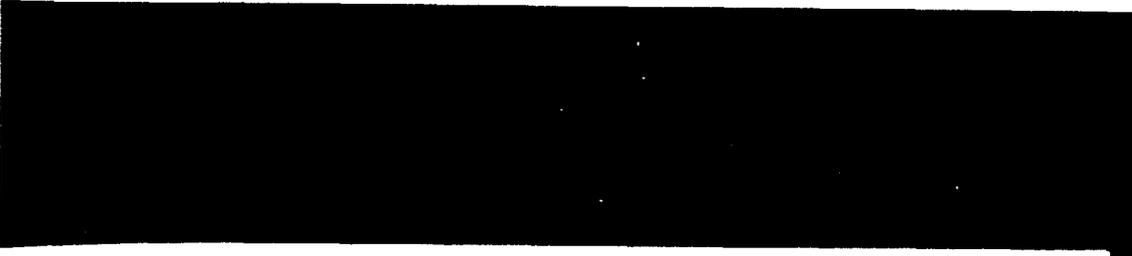
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CHAPTER 9

COMPENSATION

PROMOTION RESTRICTION

The Whitten Rider was an amendment to the Supplemental Appropriation Act, 1952, 5 U.S.C. 3101 note, which establishes the general requirement, with certain exceptions stated therein, that no person in any executive department or agency whose position is subject to the Classification Act of 1949, as amended, shall be promoted or transferred to a higher grade subject to such Act without having served at least one year in the next lower grade.

An employee who was promoted in violation of the minimum service requirements of the Whitten Rider may not be regarded as in a de facto status so as to retain the additional salary, and, notwithstanding the absence of fault on the part of the employee, the excess salary so received must be refunded. 36 Comp. Gen. 230; 45. id. 330, 332.

The Whitten Rider is not only an appropriation restriction but is a restriction, also, on excessively rapid promotions, and prohibits the promotion or transfer of an employee to a higher grade position prior to the date he meets the service requirement for promotion; therefore, an action which transfers or promotes an employee into a higher grade position, except for salary payment, prior to the time he meets service requirements is contrary to the Whitten Rider. 32 Comp. Gen. 381.

EMPLOYMENT OF ALIENS

The special deposit accounts established under 40 U.S.C. 174k(b) and 174j-4, with the Treasurer of the United States by the Architect of the Capitol as manager of the House and Senate restaurants, constitute permanent indefinite appropriations for use similar to a revolving fund in view of the fact the funds otherwise would be for deposit as miscellaneous receipts; and the funds do not lose their identity as appropriated funds, because funds appropriated for the contingent

expenses of the House and Senate are deposited and disbursed from the accounts. Therefore, since the restaurant employees are paid from funds considered appropriated funds, the restriction in Public Law 91-144, against the payment of compensation from appropriated funds to other than United States citizens, prohibits the employment of aliens by the restaurants. 50 Comp. Gen. 323.

A provision in the Independent Offices Appropriation Act, 1939, 52 Stat. 435, prohibiting the payment of appropriated funds as compensation to noncitizen employees of the Government¹ renders salary payments to an alien who mistakenly certified himself to be a United States citizen illegal, and such payments must be refunded to the United States. 18 Comp. Gen. 815.

Under a statutory provision which exempted nationals of countries allied with the United States in the prosecution of the war (World War II) from a statutory restriction against the use of appropriated funds for compensation to noncitizens, a Russian national may retain compensation paid her for the period that Russia was allied with the United States, as administratively determined, her appointment for said period not being void but voidable. 35 Comp. Gen. 216. B-161976, August 10, 1967.

SUBVERSIVE ACTIVITIES PROHIBITION

A restriction in an appropriation act against the use of any appropriation to compensate a person who advocates, or who is a member of an organization that advocates, the overthrow of the Government of the United States by force or violence requires recovery from employee who fraudulently certified he was not a member of a subversive organization of all salary payments for the periods, as administratively determined, during which employee belonged to a subversive organization. 35 Comp. Gen. 126.

¹ Annual appropriation acts have carried a similar general restriction, the most recent of which is in section 602 of the Treasury, Postal Service, and General Government Appropriations Acts, 1972, Public Law 92-49, 85 Stat. 108, 122.

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ADDITIONAL COMPENSATION RESTRICTIONS

"An employee or a member of a uniformed service whose pay or allowance is fixed by statute or regulation may not receive additional pay or allowance for the disbursement of public money or for any other service or duty, unless specifically authorized by law and the appropriation therefor specifically states that it is for the additional pay allowance."
5 U.S.C. 5536.

An Army officer who claims reimbursement for parking fees incurred in connection with duty as an ROTC instructor at a university, on the basis it was a "condition of employment" incident to assignment is denied payment since 5 U.S.C. 5536 provides that members of the uniformed services whose pay and allowances are fixed by law, may not receive additional pay for other services unless authorized by law, and Title 37 U.S.C. governing pay and allowances of the uniformed services does not authorize additional allowance for automobile parking incident to reporting for duty at an assigned station. B-163696, April 25, 1968.

"(b) The head of an agency may provide, directly or by contract, an employee stationed in the United States with quarters and facilities, when conditions of employment or of availability of quarters warrant the action.

(c) Rental rates for quarters provided for an employee under subsection (b) of this section or occupied on a rental basis by an employee or member of a uniformed service under any other provision of statute, and charges for facilities made available in connection with the occupancy of the quarters, shall be based on the reasonable value of the quarters and facilities to the employee or member concerned, in the circumstances under which the quarters and facilities are provided, occupied, or made available. The amounts of the rates and charges shall be paid by, or deducted from the pay of,

the employee or member of a uniformed service, or otherwise charged against him in accordance with law. The amounts of payroll deductions for the rates and charges shall remain in the applicable appropriation or fund. When payment of the rates and charges is made by other than payroll deductions, the amounts of payment shall be credited to the Government as provided by law.

(d) When, as an incidental service in support of a program of the Government, quarters and facilities are provided by appropriate authority of the Government to an individual other than an employee or member of a uniformed service, the rates and charges therefor shall be determined in accordance with this section. The amounts of payment of the rates and charges shall be credited to the Government as provided by law." 5 U.S.C. 5911 (b)-(d).

Under the foregoing statutes, the furnishing of free residential quarters by the Canal Zone Government to officials of a United States District Court was held to be illegal, and the collection of rental from the officials for the quarters occupied was required by Budget Circular A-45. 34 Comp. Gen. 445.

Reward monies representing the value of contraband articles seized by the Republic of Colombia acting upon information furnished by a U.S. Air Force officer temporarily attached to the Colombian Air Force for training purposes are payable not to the officer but to the United States under the principle that the earnings of an employee in excess of regular compensation gained in the course of, or in connection with, his service belonged to his employer. Moreover, even if the United States were not entitled to the reward, the acceptance of the reward by the officer was precluded, absent congressional consent, by Article I, section 9, Clause 8 of the Constitution which prohibits acceptance by a public officer of presents, emoluments, office or title of any kind whatever from a foreign state. 49 Comp. Gen. 819.

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Exception for notaries public

"An employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia who is required to serve as a notary public in connection with the performance of official business is entitled to an allowance, established by the agency concerned, not in excess of the expense required to obtain the commission. Funds available to an agency concerned for personal services or general administrative expenses are available to carry out this section." 5 U.S.C. 5945.

Employees who are required to serve as notaries public in the performance of official business may be paid in accordance with 5 U.S.C. 5945, even though the employees also use the notarial powers for private business. 36 Comp. Gen. 465.

DUAL COMPENSATION AND
EMPLOYMENT RESTRICTIONS

"(1) Unless otherwise authorized by law and except as otherwise provided by paragraph (2) of this subsection, appropriated funds are not available for payment to an individual of pay from more than one position if the pay of one of the positions is paid by the Secretary of the Senate or the Clerk of the House of Representatives, or one of the positions is under the Office of the Architect of the Capitol, and if the aggregate gross pay from the positions exceeds \$7,724 a year.

(2) Notwithstanding paragraph (1) of this subsection, appropriated funds are not available for payment to an individual of pay from more than one position, for each of which the pay is disbursed by the Clerk of the House of Representatives, if the aggregate gross pay from those positions exceeds the maximum per annum gross rate of pay authorized to be paid to an employee out of the clerk hire allowance of a Member of the House.

(3) For the purposes of this subsection, "gross pay" means the annual rate of pay (or equivalent thereof in the case of an individual paid on other than an annual basis) received by an individual." 5 U.S.C. 5533(c).

The employment of either enlisted men on furlough or other civilian Government employees as emergency pickup labor to serve as firefighters on lands under jurisdiction of Department of Interior is in contravention of 5 U.S.C. 5533. 33 Comp. Gen. 368; 46 id. 400.

Aside from the question of dual employment in contravention of 5 U.S.C. 5533, it has been held repeatedly that the holding of a civilian federal position while receiving active duty pay as a member of the Armed Forces is incompatible with military duty, actual or potential, and that it is immaterial that the individual may have been on furlough from the Armed Forces during the involved periods. 27 Comp. Gen. 510; 47 id. 505.

In the absence of any provision in the District of Columbia Code authorizing waiver of retirement salary, a retired judge of the Municipal Court of Appeals of the District of Columbia is prohibited by 5 U.S.C. 5533, from accepting compensation as a civilian Federal employee. 31 Comp. Gen. 505.

Part-time or intermittent positions

If temporary seasonal employment is intermittent, the holding of another part-time or intermittent position is not prohibited by 5 U.S.C. 5533. 37 Comp. Gen. 64.

Part-time employees may not be appointed to another part-time position if the \$2,000 salary rate limitation in 5 U.S.C. 5533 is exceeded, but they may serve in an intermittent job, as the compensation attached to such employment is not viewed as salary. 37 Comp. Gen. 64.

OFFICERS IN ARREARS

"(a) The pay of an individual in arrears to the United States shall be withheld until he

has accounted of the United States liable.

(b) The holding of a position (a) in the Office, or his or his, the Attorney General, suit to and his s

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The compensation 5512 is not limited to the position; therefore, both civilian and naval service Gen. 731.

DE FACTO EMPLOYMENT

While an employee upon discovery is considered a de facto employee, if statutory prohibition is received, he has no salary; therefore, the employee's salary is not stored to approval. 38 Comp. Gen. 505.



has accounted for and paid into the Treasury of the United States all sums for which he is liable.

(b) When pay is withheld under subsection (a) of this section, the General Accounting Office, on request of the individual, his agent, or his attorney, shall report immediately to the Attorney General the balance due; and the Attorney General, within 60 days, shall order suit to be commenced against the individual and his sureties." 5 U.S.C. 5512.

Under this provision the salary and contributions an employee makes to the Civil Service Retirement and Disability Fund are available for set-off to satisfy his debt. 38 Comp. Gen. 731.

The compensation subject to withholding under 5 U.S.C. 5512 is not limited to remuneration received as an incident to the position in which the arrearages occurred; therefore, both civil service pay and retainer pay incident to naval service due debtor must be withheld. 38 Comp. Gen. 731.

DE FACTO EMPLOYEES

While an employee whose employment was terminated upon discovery of falsification of his application is considered a de facto employee--not applicable in case of statutory prohibition--and may retain compensation already received, he has no enforceable right to payment of compensation; therefore, retirement deductions taken from employee's salary during de facto employment should be restored to appropriation from which salary payments were made. 38 Comp. Gen. 175.

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CHAPTER 10

INTERAGENCY SERVICES

ECONOMY ACT OF 1932

Agencies are authorized under section 601 of the Economy Act of 1932, 31 U.S.C. 686, to use their available funds to procure supplies or services from other Government agencies and to make advance payments therefor, if requested, under 31 U.S.C. 686-1, but the funds involved are available to the performing agency only for the period provided in the act appropriating the funds to the ordering agency.

Interagency agreements under 31 U.S.C. 686 chargeable to fiscal year appropriations are required by 31 U.S.C. 686-1 to be deobligated at the end of the fiscal year of appropriation obligation availability to the extent that the performing agency has not incurred valid obligations under the agreement. 31 Comp. Gen. 83; 34 id. 418; 39 Comp. Gen. 317.

In view of the authority granted Government departments and agencies in 31 U.S.C. 686 to negotiate among themselves to furnish material, supplies, equipment, and services similar to those furnished by commercial concerns and to pay for property which is transferred, an agency loaning property to another agency may provide by agreement that the property be returned in as good condition as when loaned and that the expense of placing the property in such condition be borne by the borrowing agency provided said agency's appropriation is available therefor. 30 Comp. Gen. 295. Compare 38 id. 558

Section 601 of the Economy Act, 31 U.S.C. 686, involves procurement between two agencies of the Government or two bureaus of an agency operating under separate appropriations. Therefore, an intrabureau plan proposed by the Department of Commerce, which contemplates that one appropriation of a bureau will initially finance costs for bureau-wide or other activities for which separate appropriations are provided and will thereafter be reimbursed from the appropriations of the benefiting activities, is not

within the purview of 31 U.S.C. 686, and in the absence of express statutory authority suspending the application of 31 U.S.C. 686-1 and 686, the plan may not be adopted. 38 Comp. Gen. 734, 737.

Orders required by law to be placed with another Government agency are not issued under authority of 31 U.S.C. 686, and, accordingly, are not subject to the restriction on funds transferred under 31 U.S.C. 686 which is contained in 31 U.S.C. 686-1. 35 Comp. Gen. 3, 5.

The loan of a tug by the Maritime Administration to the Coast Guard for a temporary period on a nonreimbursable basis with the Coast Guard assuming responsibility and costs for the vessel and for its return in as good condition as when loaned, less reasonable wear and tear, and subject to availability of Coast Guard appropriations will not be objected to; however, if the loan is for an indefinite period which might result in permanent transfer without reimbursement, it would violate the reimbursement requirement of 31 U.S.C. 686, and statutory authority for such transfer should be obtained from Congress. 38 Comp. Gen. 558.

ORDERS OR CONTRACTS WITH GOVERNMENT-OWNED ESTABLISHMENTS

Orders or contracts for work or material or for the manufacture of material pertaining to approved projects placed with Government-owned establishments pursuant to the Act of June 20, 1920 (41 U.S.C. 23) are obligations in the same manner as similar orders or contracts placed with commercial manufacturers or private contractors, and the appropriations remain available for the payment of obligations so created as in the case of contracts or orders with commercial manufacturers or private contractors. 41 U.S.C. 23. 1 Comp. Gen. 175; 34 id. 423.

FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

Moving of agencies

Under the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 304c and 490, the Administrator

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of General Services is authorized, generally, to perform all functions with respect to acquiring space in buildings by lease and to assign and reassign space therein, and to the extent that General Services Administration appropriations are insufficient therefor, the Administrator may require payments through advances or otherwise from the agencies to which leased space has been assigned for all or any part of the cost of rent or expenses of moving. Therefore, although the moving of an agency from a Federal building to leased space would benefit another agency, the expenses of the move are chargeable only to the moving agency. 35 Comp. Gen. 701; 33 id. 423; cf. 43 Comp. Gen. 687.

The expenses of installing laboratories and other clinical equipment upon relocation of Veterans Administration clinical activities in Washington, D.C., from leased space to a Government building were considered to be necessary solely because of the specialized uses or services to be performed by the clinic--as distinguished from Government occupancy generally. Accordingly, such expenses were chargeable to the activity benefited thereby rather than to the General Services Administration. B-118803, February 24, 1954.

Air-conditioning public buildings

Federally owned buildings under GSA control. The responsibility for air-conditioning federally owned buildings under its control rests with the General Services Administration, and, in the absence of a specific provision in an agency's appropriation act or of an indication in the legislative history of such act that Congress intends the funds therein to be available to the agency for air-conditioning the space it occupies in federally owned buildings under GSA control, the agency's funds are not available for such purposes except to make space suitable for scientific, laboratory, or other specialized purposes. 38 Comp. Gen. 193.

Reimbursement to GSA

While section 210(a)(6) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 490(a)(6), authorizes the General Services Administration (GSA) to obtain payments in advance or otherwise for certain services

furnished other Government agencies on a reimbursable basis and to credit such payments to applicable GSA appropriations, it does not authorize the furnishing of every service on a reimbursable basis but presupposes that the agency involved has available appropriations from which it may reimburse GSA. 38 Comp. Gen. 193.

Renovation of the old Emergency Hospital in Washington, D.C., for use by Federal Aviation Agency appears to be incidental to normal office space requirements of the Agency as opposed to any specialized requirement or purpose--such as alterations for scientific or laboratory space. Therefore, the Agency's appropriations, which merely provide for necessary expenses and which contain no specific provisions for alterations, repairs or improvements to federally owned buildings, may not be made available to GSA on reimbursable basis for renovation expenses. See 41 U.S.C. 12. Moreover, the Administrator of General Services is authorized under 40 U.S.C. 603 to enlarge, remodel, and extend existing public buildings, for which purpose annual appropriations are granted. 38 Comp. Gen. 588.

Transfer of excess Government property

The transfer of excess property--including real property--between Federal agencies is authorized under 40 U.S.C. 471 and may be made without regard to whether the acquiring agency has specific land and public building acquisition authority as required under 41 U.S.C. 14. 38 Comp. Gen. 782.

Foreign excess property may be transferred from one Government agency to another under 40 U.S.C. 511-514 if a determination has been made that the property is excess to the needs of the disposing agency. 38 Comp. Gen. 822.

DEFINITION

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CHAPTER 11

REVOLVING FUNDS

DEFINITION

Revolving fund accounts are authorized by specific provisions of law for recording the transactions of a continuing cycle of operations. Receipts derived from such operations are available in their entirety for use by the fund. 7 GAO 4.10(7).

A construction appropriation of the Bureau of Indian Affairs which was used for the purchase of motor vehicles subsequently transferred to the interagency motor pool is not to be considered a revolving fund within the meaning of section 211(g) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 491(g), even though the construction costs are for reimbursement, since the monies reimbursed for construction costs are for deposit into miscellaneous receipts and are not available to finance a continuing cycle of operations. Therefore, the General Services Administration need not reimburse the Bureau of Indian Affairs for the transferred vehicles. 38 Comp. Gen. 185.

COLLECTIONS REPRESENTING APPROPRIATED FUNDS

Fees which are collected by Federal Credit Unions and deposited to a revolving fund for administrative and supervisory expenses, pursuant to 12 U.S.C. 1755 and 1756, represent appropriated funds and are subject to statutory restrictions and limitations, including the prohibition in 31 U.S.C. 679 against the use of appropriated funds to reimburse employees for local official telephone calls made from private residences. 35 Comp. Gen. 615.

The "Farm Labor Supply Revolving Fund" established by the Supplemental Appropriation Act, 1952, to finance expenditures for the importation of Mexican agricultural workers into the United States represents an "appropriation" within the meaning of section 322 of the Economy Act of 1932, 40 U.S.C. 278a, so as to be subject to the limitations upon repairs and improvements of rented premises, even though monies originally provided for the establishment of

the Fund have been returned to the Treasury and its operations have since then been financed exclusively by collections from private parties who employ the workers. 35 Comp. Gen. 436.

USE AS OPPOSED TO
SPECIFIC APPROPRIATIONS

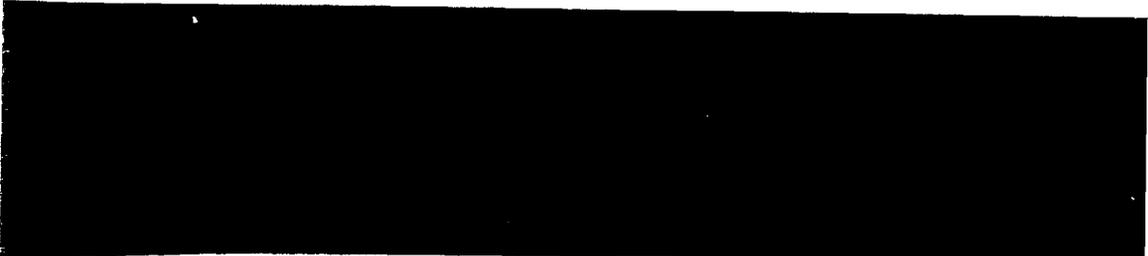
This case involved a proposal by the Military Sealift Command (MSC), Department of the Navy, involving the construction and charter-hire to MSC of nine 25,000-ton tankers without specific congressional approval. A separate bareboat charter would be entered into with respect to each vessel. These charters would provide for a construction period and if a vessel was not delivered during the construction period, the MSC would remain obligated to charter the vessel. Questions that arose incident to this proposal included (1) the capital asset nature of the vessels and whether such nature would require specific appropriation as opposed to the use of a revolving fund and (2) the consequence if expenditures or a shortfall in anticipated revenues so depleted the revolving fund that it lacks sufficient monies to pay the charter-hire in a given year, or to compensate for inadequate proceeds of sale or for the loss or seizure of the vessels.

As to the first question, i.e., whether the commitments of MSC served to transform the charters into a purchase of a capital asset which would require an appropriation rather than allow the use of the Navy Industrial Fund, the decision held that while the MSC assumed all the liabilities attached to ownership and in effect equitable ownership of the vessels upon construction, the fact remains that MSC never would obtain title to all or any portion of any of the nine vessels and therefore GAO could not say that the arrangement would result in the purchase of an asset for which funds are required to be authorized and appropriated by the Congress. 51 Comp. Gen. 598.

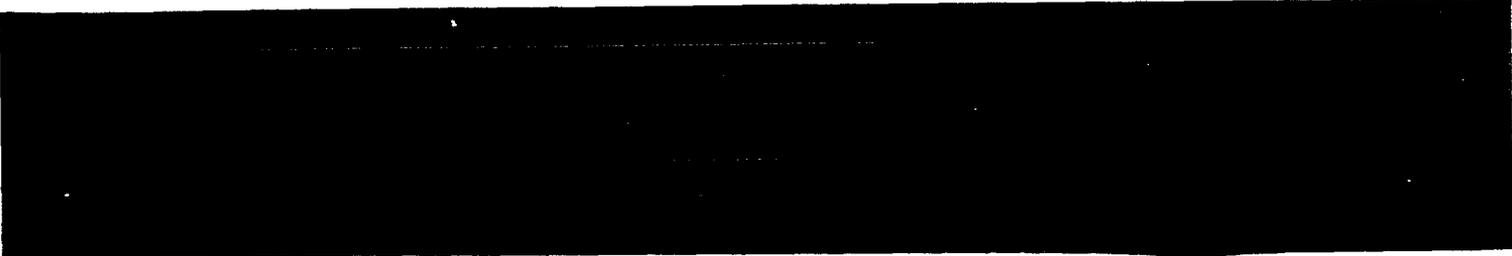
OBLIGATIONS

With regard to the second question, as to what would happen if expenditures are a shortfall in anticipated revenue so depleted the fund that it lacked sufficient monies to pay the charter-hire in a given year or to compensate for inadequate proceeds of sale or for the loss or seizure of the

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vessels, the decision held that while GAO has never recognized any authority of a Federal agency to incur obligations against receipts anticipated beyond the current year in the absence of specific authority of law, in view of the various statutory authorities relating to the Navy Industrial Fund and the assurance of the Department of Defense that the obligation availability of the Navy Industrial Fund in fiscal 1972 was more than sufficient to cover obligations for the total charges permitted under the initial period and all succeeding obligation periods without considering anticipated reimbursements beyond one year, GAO could not question the legality of the proposed arrangement. 51 Comp. Gen. 598.



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CHAPTER 12

STATUTORY INTERPRETATION

CONFLICTING FLOOR DEBATES

Decision held that discretionary grants in aid of law enforcement program could be made to units of local governments as well as States notwithstanding that the plain language of the act could be read either way and there was a direct conflict as to the language's meaning in the legislative history made in debates in the House and the debates in the Senate. 49 Comp. Gen. 411

CONFERENCE REPORT

While the language of section 610 of the Agricultural Act of 1970, Public Law 91-524, could be read to restrict cotton research and promotion programs only insofar as funding came from savings to be generated by the application of subsidy payment ceilings, the decision held that in view of the legislative history contained in the conference report on the act to the effect that the only discretion intended for the Secretary of Agriculture in regard to market development research and sales promotion was over the approval or disapproval of the various research and promotional projects, it was clearly the intention of the conferees that in all other respects the Secretary was to have no discretion whatsoever in making available \$10,000,000 each year for the carrying out of approved promotion projects. B-142011, April 30, 1971.

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CHAPTER 13

SUNDRY RESTRICTIONS AND PROVISIONS

The statutory restrictions on the use of appropriated funds are varied. Some are found in specific statutes, while others are included in appropriation acts. Some of the more commonly known restrictions not previously mentioned are discussed herein.

ENTERTAINING

Expenditures for entertaining individuals may be made only when authorized by statute and authorized or approved by proper administrative officers. See 5 Comp. Gen. 455; *id.* 1018. B-67182, July 2, 1947; 43 *id.* 305; 47 *id.* 657. Alcoholic beverage expenditures are not reimbursable in the absence of a statute specifically so providing. B-157312, May 23, 1966.

INSURANCE

Appropriated moneys are not available for the payment of insurance premiums on Government-owned property in the absence of specific statutory authority therefor. 21 Comp. Gen. 928.

The payment of construction-differential subsidy, including a part of a War Risk Builder's Insurance, involves no departure from the principle that the Government shall assume its own risks, the risk of loss remaining in the shipbuilder under the pro forma contract until the completed vessel is delivered to and accepted by the owner. 37 Comp. Gen. 511.

Since the authority granted the Department of Agriculture to purchase insurance covering vehicles located in foreign countries was applicable only with respect to activities of the Foreign Agricultural Service, there is no authority for the expenditure of appropriations of the Department--other than those for activities of the Foreign Agricultural Service--to purchase insurance coverage for Government-owned vehicles in foreign countries. 39 Comp. Gen. 145; 45 *id.* 542.

In connection with the rental of automobiles from commercial sources the Government will not pay nor will it reimburse employees for the cost of the collision damage waiver or collision damage insurance available in commercial rental contracts for an extra fee. The waiver or insurance referred to is the type offered a renter to release him from liability for damage to the rented automobile in amounts up to the amount deductible (usually \$100) on the insurance included as a part of the rental contract without additional charge. B-172721, March 13, 1972.

The cost of flight insurance purchased by an employee incident to official travel is a cost for the personal protection of the employee and not an incidental expense necessarily incurred in the transaction of official duties within the meaning of the provision for other expenses in the Standardized Government Travel Regulations and, therefore, the employee may not be reimbursed for the cost of flight insurance. 40 Comp. Gen. 11; 47 id. 319.

JUDGMENTS

Payment of final judgments rendered by a district court against the United States are required by 28 U.S.C. 2414 to be paid on settlement by the General Accounting Office.

When the amount of a final judgment against the United States in the Court of Claims or a district court is not in excess of \$100,000, payment shall be made from the permanent appropriations established for payment of judgments pursuant to 31 U.S.C. 724a. When over \$100,000 is recovered against the United States, the appropriation provided by 31 U.S.C. 724a, does not apply, and a special appropriation from the Congress is required. B-173904, February 18, 1972.

While costs of a judgment against the United States in a condemnation proceeding instituted by the United States under 33 U.S.C. 593 incident to a particular project may not be paid from a public works appropriation in view of the specific condition in the Senate document detailing the project involved which provided that the United States should not bear any costs of land easements and rights-of-way, such judgment costs (interest) are for payment from

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the permanent appropriations for payment of judgments in 31 U.S.C. 724a. 39 Comp. Gen. 166.

The personal injuries and property damage claims of a private insurance policy holder and his subrogee insurer that arose in connection with a tort--a collision with a Government vehicle operated by a Forest Service employee--although presented separately are not separate and distinct claims, as a subrogee's rights grow out of the rights and the cause of action of his subroger and, therefore, the claims totaling in excess of \$2,500, the limit prescribed by the Federal Tort Claims Act (28 U.S.C. 2672) for payment by an administrative agency, payment of the claims may not be made by the Department of Agriculture from its appropriated funds, but are for payment by the United States General Accounting Office from the appropriations made by 31 U.S.C. 724a for payment of judgments and compromise settlements. 49 Comp. Gen. 758.

MEMBERSHIP FEES, ETC.

5 U.S.C. 5946 provides:

"Except as authorized by a specific appropriation, by express terms in a general appropriation, or by sections 4109 and 4110 of this title, appropriated funds may not be used for payment of--

(1) membership fees or dues of an employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia in a society or association; or

(2) expenses of attendance of an individual at meetings or conventions of members of a society or association.

This section does not prevent the use of appropriations for the Department of Agriculture for expenses incident to the delivery of lectures, the giving of instructions, or the acquiring of information at meetings by its employees on subjects relating to the authorized work of the Department."

An Internal Revenue Service estate tax attorney who paid \$50 to maintain his status as an attorney in good standing of the State Bar of California, may not be reimbursed his membership fee, notwithstanding the loss of membership status before the California bar would result in his disqualification for Government employment as a tax attorney, since qualification expenses under 5 U.S.C. 5105 and 5112 are personal. Moreover, 5 U.S.C. 5946 provides that appropriated funds may not be used for membership fees of an employee in a society or association. B-171667, March 2, 1971.

The provision in 5 U.S.C. 5946 regarding nonavailability of appropriations without specific statutory authority for payment of fees for membership of officers and employees in private associations does not prohibit a Federal agency from joining a society or association in its own name, provided such membership is otherwise proper. 24 Comp. Gen. 814. Nor does it prohibit a Federal agency from paying from appropriated funds the cost of assessments and stock purchases for several of its employees in a library association where access to the books, publications and services available thereby was essential to the agency's work and the only alternative was the purchasing of a large number of books and necessary incidental library service. 19 Comp. Gen. 937. Distinguish 32 id. 15.

REGISTRATION FEES

The registration fees incurred by a member of the uniformed services while on temporary duty, incident to attendance at a meeting, conference, or workshop sponsored by a Federal agency, may be reimbursed to the member from appropriations available to the Department of Defense for travel expenses under appropriate Departmental regulations when the member is otherwise properly directed by orders of competent authority to attend the meeting in a temporary duty status; but since the Federal agency meeting is not a meeting of a technical, scientific, professional, or similar organization within the contemplation of 37 U.S.C. 412, the approval of the Secretary of Defense required by section 412 is not necessary. 50 Comp. Gen. 527.

NON-GOVERNMENTAL GOVERNMENT

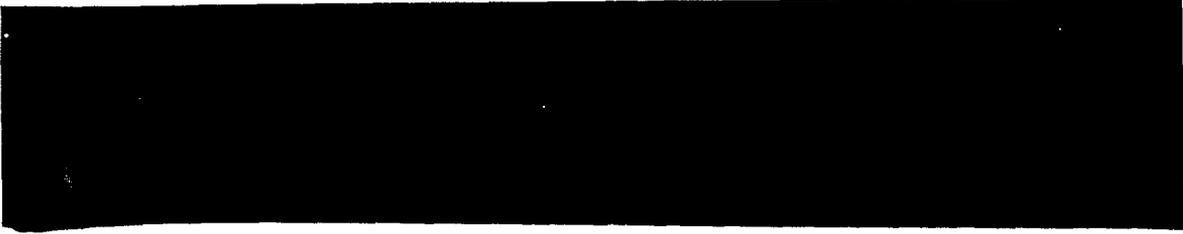
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The utilization of the services of Federal employees during official working hours for the collection of funds for various charity drives and of monthly payments for hospitalization insurance has been recognized as a proper exercise of administrative discretion with respect to the performance of duty of employees, and practice has not been questioned where employees so utilized were not hired specifically for and did not devote substantial periods of time to such purposes. B-119740, July 29, 1954.

PERSONAL FURNISHINGS AND EXPENSES

The established rule is that personal furnishings are not authorized to be purchased under appropriations, in the absence of specific provisions therefor contained in such appropriation or other acts, if such furnishings are for the personal convenience, comfort, or protection of such employees, or are such as to be reasonably required as a part of the usual and necessary equipment for the work on which they are engaged or for which they are employed.

The rental of an amplifying device for attachment to a telephone for use by a handicapped employee, which device is not a hearing device for the employee's comfort and convenience but will be attached to the telephone to obtain the best results from available personnel, is a proper charge to an appropriation for salaries and expenses. 23 Comp. Gen. 831.

When the use of employees photographs facilitates accomplishing the purposes of the Government, the general rule that the cost of photographs of individual employees of the Government is a personal expense that is not chargeable to public funds in the absence of a definite indication as to the necessity for the expenditures in the accomplishment of some purpose for which the appropriation was made is not for application, and, therefore, the cost of the photographs distributed by an area Director of Equal Employment Opportunity Commission (EEOC), not for his personal publicity but to publicize the activities and functions of the

agency constitutes a proper charge against the appropriation in effect at the time the photographs were taken, as the publicity engendered by the publication of the photographs increased cooperation with the agency and facilitated accomplishing its purposes. 47 Comp. Gen. 321.

Although the cost of prescription ground safety glasses (frames and lenses) which an agency requires employees to wear for their protection may be paid from appropriated funds pursuant to 5 U.S.C. 7903, which authorizes the purchase of special clothing and equipment for the protection of employees, who are engaged in hazardous duties, in the performance of their assigned tasks, the glasses to remain the property of the Government and subject to its control, the cost of eye examinations and prescriptions may not be paid by an agency, unless an employee is unable to furnish a prescription, or that a prescription cannot be made from glasses he normally wears, the necessity for prescription ground safety lenses presupposing employees normally wear or require vision correctives made up from a prescription. 42 Comp. Gen. 626.

The rental of a dinner jacket by an employee who is required to attend a dinner while in travel status overseas is not essential to the transacting of official business within the contemplation of the Standardized Government Travel Regulations, and the employee's failure to take with him the necessary clothing to meet reasonably anticipated personal necessities is not considered sufficient to shift the burden of the cost of procuring such clothing from personal to official business. 35 Comp. Gen. 361; 45 *id.* 272. *Cf.* 48 Comp. Gen. 48, for case where formal attire is requirement for assignment.

The cost of seasonal greeting cards to be sent by overseas posts of a Government agency to local dignitaries and other important individuals in the countries where the posts are located is not a cost incident to the functions of the agency to justify the use of appropriated funds and to warrant exception to the long-standing rule that, in the absence of specific authority, the cost of Christmas cards is a personal expense to be borne by the officer who ordered and sent the cards. 37 Comp. Gen. 360; 47 *id.* 314.

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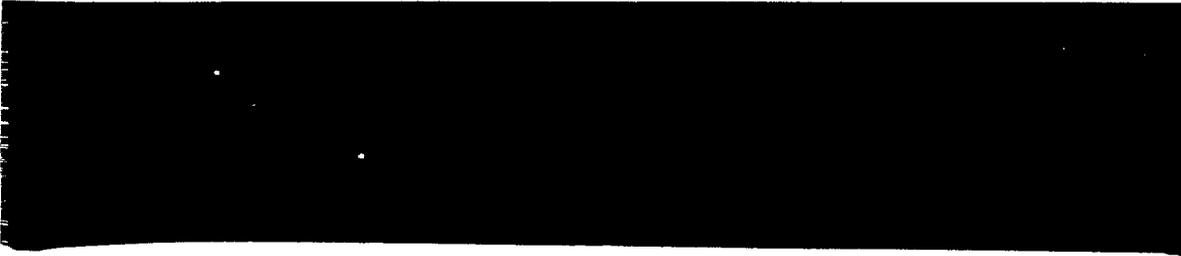
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Business-type calling cards for the use of officers and employees in the performance of their official duties are considered items of a personal nature and in view of the provisions of 44 U.S.C. 1102(a) which limits printing to that necessary to the public business, the cost of calling cards may not be charged to appropriated moneys in the absence of specific statutory authorization. 41 Comp. Gen. 529.

PERSONAL SERVICES

Employment of private detectives

"An individual employed by the Pinkerton Detective Agency, or similar organization, may not be employed by the Government of the United States or the government of the District of Columbia." 5 U.S.C. 3108.

The prohibition of the statute is against the employment of a detective agency or its employees, regardless of the character of the services to be performed, and the fact that the services of said agencies are not to be of a detective or investigative nature is not material. 26 Comp. Gen. 303, 306; 38 id. 881. See 44 id. 564 for exception.

Health Services

A Government agency has authority under 5 U.S.C. 7901 to provide immunization for specific diseases without charge to employees whenever it will be to the Government's interest to do so. 47 Comp. Gen. 54.

Procurement by contract

A provision in an appropriation act which placed a ceiling on the number of graded civilian employees that could be employed for a fiscal year precludes the employment by contract of personnel in excess of the ceiling from outside the Government. 32 Comp. Gen. 427.

The general rule is that purely personal services for the Government are required to be performed by Federal personnel under Government supervision. However,

the requirement of this rule is one of policy rather than positive law and when it is administratively determined that it would be substantially more economical, feasible, or necessary by reason of unusual circumstances to have the work performed by non-Government parties, and that is clearly demonstrable, we would not object to the procurement of such work through proper contract arrangement. 51 Comp. Gen. 561.

Voluntary services

No officer or employee of the United States shall accept voluntary service for the United States or employ personal service in excess of that authorized by law, except in cases of emergency involving the safety of human life or the protection of property. 31 U.S.C. 665(b).

No officer or employee of the Government can create a valid claim in his favor by paying obligations of the United States from his own funds. 33 Comp. Gen. 20.

Although the acceptance of voluntary services is prohibited under 31 U.S.C. 665(b), there is no provision of law which purports to prevent the acceptance of gratuitous services, if otherwise lawful, where the services are rendered by one who, upon appointment as a Government employee without compensation, agrees in writing and in advance that he waives any and all claims against the Government on account of such service. 27 Comp. Gen. 194.

RECREATION AND ENTERTAINMENT OF GOVERNMENT EMPLOYEES

The general rule respecting the use of appropriated funds for furnishing recreational and entertainment facilities to Government employees is that such use is unauthorized in the absence of specific statutory authority, or authority by necessary implication, notwithstanding it may be highly desirable to furnish such facilities because of the absence thereof otherwise and the location of the work. 18 Comp. Gen. 147.

While recreational and entertainment programs for field employees may be administratively desirable, they

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RETIREMENT

Section 8 prohibits the payment of persons who are provisions of law by a court-martial of an offense which is a felony in 18 U.S.C. 1 of the United States, 1, 1954. 3 Comp. Gen. 62.

STATE AND LOCAL

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have at most only an indirect bearing upon the purposes for which the Department of the Navy's appropriations were made, and, in the absence of legislative intent that appropriated funds be used therefor, the use of such funds for payment of salaries of civilian personnel to develop, organize, and supervise such programs is unauthorized. 27 Comp. Gen. 679.

In view of administrative determination that nominal cost of renting equipment for playing of incentive-type music would be more than offset by increased employee morale and productivity, the General Accounting Office will view such expenditure as constituting a necessary expense and allow payment from agency appropriation. 51 Comp. Gen. ____ (B-86148, June 6, 1972).

RETIREMENT ANNUITIES AND RETIRED PAY

Section 8312 of Title 5 of the United States Code prohibits the payment of annuities or retirement benefits to persons who commit an act of offense coming within the provisions of the act of September 1, 1954. A conviction by a court-martial of a member of the uniformed services of an offense under the Uniform Code of Military Justice which is a felony within the meaning of that term as used in 18 U.S.C. 1 is a conviction of a felony under the laws of the United States within the meaning of the act of September 1, 1954. 35 Comp. Gen. 302; 38 id. 310 and 817. Cf. 41 Comp. Gen. 62.

STATE AND LOCAL TAXES

Appropriated funds may not be used to reimburse a Government employee for the payment of a license fee for the operation of Government equipment under a State law because the States have no power by taxation or otherwise to retard, impede, burden or in any manner control the operation of the constitutional laws enacted by Congress to carry into effect the powers vested in the Federal Government. 31 Comp. Gen. 81; 46 id. 695; 49 id. 450.

Sewer service charges which are established by a local government and required to be paid quarterly in advance, with a penalty if not paid when due, are not taxes or

assessments so that Federal agencies could invoke their constitutional immunity, but rather are charges for a service which Federal agencies may not refuse to pay, and the penalty charge which is an integral part of the rate structure applicable to all users is for payment when the quarterly sewer charge is not paid in advance. 39 Comp. Gen. 285.

An invoice bearing interest presented by a State Drainage District to the Federal Government in the amount assessed against the Government for the rehabilitation of a drainage ditch that is computed in the same manner as the taxes levied against property owners other than the Federal Government imposes a tax and, the United States exempted by the Constitution from State taxation, the tax may not be collected by designating the tax an invoice or statement for services. However, the General Accounting Office would see no objection to presentation on a quantum meruit basis of a claim for the amount which represents the fair and reasonable value of the service actually received by the United States and, with regard to future services, would not object to entering into a utility type service agreement--the compensation to cover the fair and reasonable value of the services to be furnished. 49 Comp. Gen. 72.

The 25 percent tax imposed on rents charged for occupancy of parking space in parking stations which was paid by an employee for parking a Government vehicle while on official business may not be reimbursed to the employee as the incidence of the tax falls directly on the Government as lessee and under its constitutional prerogative, the Government is entitled to rent or lease parking space free from the payment of the tax and the employee was not required to pay the tax. The Municipal Code imposing the tax exempts the United States if payment is made by Government check, but it is not feasible for an employee operating a Government vehicle on official business to pay for parking by Government check. However, since the Government's immunity does not extend to an employee when he operates his own vehicle on official business, he may be reimbursed the tax under 5 U.S.C. 5704 as part of the parking cost. 51 Comp. Gen. 367. See however, 52 Comp. Gen. _____. (B-174213, August 14, 1972).

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TELEPHONE CALLS FROM PRIVATE RESIDENCES

Under 31 U.S.C. 679 appropriated funds, unless specifically authorized by statute, may not be used for the expense of furnishing telephone service to a Government officer or employee in any private residence or apartment except for long-distance telephone calls required strictly for public business. 35 Comp. Gen. 615; B-172155, August 13, 1971.

Official telephone calls which are made within a particular telephone exchange area from private residences of Government employees and for which additional charges are made on the basis of message units are local as distinguished from long-distance calls, regardless of whether the calls are dialed or manually handled as person-to-person calls, and reimbursement from appropriated funds for such calls is prohibited by 31 U.S.C. 679. 35 Comp. Gen. 615.

Although there is no authority to expend appropriated funds for telephone answering services or devices to cover private telephones, the listing of private telephones used for public business under the official name of the service involved may be made at Government expense since such listing would benefit the Government only while the answering services or devices would presumably cover personal as well as official calls. B-130288, February 27, 1957.

TRAINING PROGRAMS

Subsection 4107(c) of Title 5 of the United States Code prohibits the use of appropriated funds for training of an employee for the purpose of acquiring an academic degree in order to qualify for an appointment or solely for the purpose of providing an opportunity to such employee to obtain one or more academic degrees.

While a prohibition in an appropriation against the use of appropriated funds for training in the legal profession was intended primarily to preclude Government financing of undergraduate study, training on a higher level was not automatically exempt from the prohibition, and each

case involving graduate courses for qualified attorneys must be considered on its own merits. 39 Comp. Gen. 58; 49 id. 681.

SUBVERSIVE ACTIVITIES PROHIBITION

Subsection 4107(a) of Title 5 of the United States Code reads as follows:

"Appropriations or other funds available to an agency are not available for payment for training an employee—

(1) by, in or through a non-Government facility which teaches or advocates the overthrow of the Government of the United States by force or violence; or

(2) by or through an individual concerning whom determination has been made by a proper Government administrative or investigatory authority that, on the basis of information or evidence developed in investigations and procedures authorized by law or Executive order, there exists a reasonable doubt of his loyalty to the United States."

The subversive activity prohibition need not be regarded as applicable to individual teachers or instructors employed by institutions which provide training or to employees of Government contractors where there is no contractual relationship between the Government or the employee receiving the training and the teacher or employee of the contractor. 38 Comp. Gen. 857.

WAIVER OF RESTRICTIONS

Although the language of an emergency fund appropriation, which authorizes the President in his discretion to make expenditures without regard to law, does not in itself operate to waive Federal statutes and rules controlling the expenditure of appropriated funds, the broad scope of the discretionary authority vested in the President permits the waiver of specific appropriation restrictions. 35 Comp. Gen. 545.

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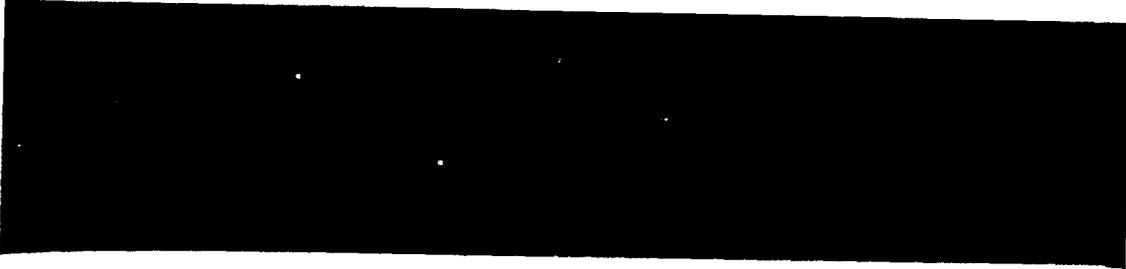
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PASSENGER MOTOR VEHICLES COST LIMITATION

"Unless otherwise specifically provided, the maximum amount allowable *** for the purchase of any passenger motor vehicle (exclusive of buses and ambulances), is hereby fixed at \$2100 except station wagons for which the maximum shall be \$2400." 31 U.S.C. 638c.

The price limitation in 31 U.S.C. 638c includes all equipment and accessories which are permanently attached to an which contribute to comfort, convenience, and the efficient operation of the vehicle as a passenger carrying vehicle, and, therefore, accessory items such as heavy duty batteries and generators and special tires necessary in the performance of police work but which contribute to the efficient operation of the vehicle are subject to the purchase limitation of this section. 36 Comp. Gen. 725; 40 id. 205.

The purchase of passenger motor vehicles to conduct research and development programs for the prevention and control of air pollution is not subject to the appropriation authorization requirement of 31 U.S.C. 638a (a), nor the maximum price limitation in section 638c, as these statutory prohibitions are intended for imposition on the purchase of vehicles to be used to carry passengers. 49 Comp. Gen. 202.

The Federal Bureau of Investigation (FBI) may purchase air conditioned cars for police-type use from fiscal year 1969 funds since appropriation act, P.L. 90-470 exempts the FBI from the purchase price limitation of 31 U.S.C. 638c. B-131418, September 25, 1968.

USE AND DISPOSAL OF FEDERAL PROPERTY AND INTERESTS

Leasing authority of the National Aeronautics and Space Administration was held not to extend to entering into a 30-year lease of public land to be used for the site of a nondenominational chapel. Therefore, under Article IV, section 3, Clause 2 of the Constitution, construction of a nondenominational chapel at the John Fitzgerald Kennedy

Flight Center would require congressional approval.
50 Comp. Gen. 63.

A plan to equalize the parking fees of agency employees located in two buildings, one a Federal building, the other a leased building, under the management of a commercial parking firm ignores that in the proposed "single facility" concept, space is the principal ingredient of the plan and not the management services, and that the parking fees to be collected go beyond a realistic charge for the management services. Therefore, the parking equalization plan was not approved. However, the use of appropriated funds for lease of parking space for employees use was authorized under stated circumstances. See also B-168946, February 26, 1970 and B-168096, December 7, 1970. 49 Comp. Gen. 476.

The requirement in the Adult Education Act of 1966 (20 U.S.C. 1201-1213), and the implementing statutory regulation, that a State's contribution from non-Federal sources for any fiscal year "will be not less than the amount expended for such purpose from such sources during the preceding fiscal year" may not be waived since the statute and regulation are constructive, if not actual, notice of the requirement, and the grant funds are to be recovered if a State fails to meet its financial contribution. If the failure is due to circumstances beyond the State's control, possible waiver is for consideration on an individual basis. The fact that initially the grant was erroneously made does not justify waiver as the Government is only bound by acts of its agents within the scope of delegated authority, which does not permit giving away the money or property of the United States, either directly or by the release of vested rights. 51 Comp. Gen. 162.

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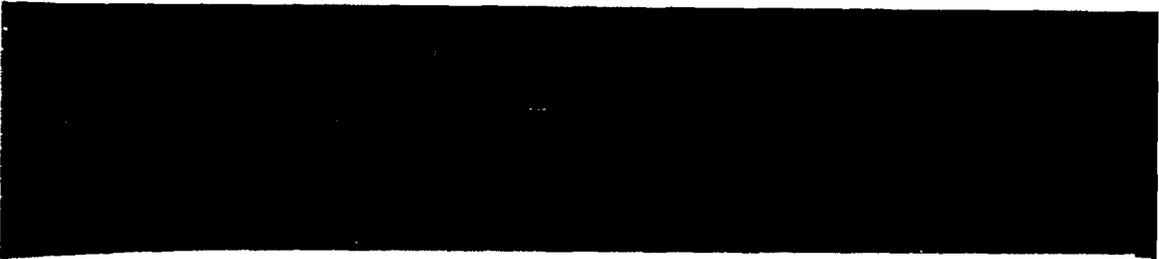
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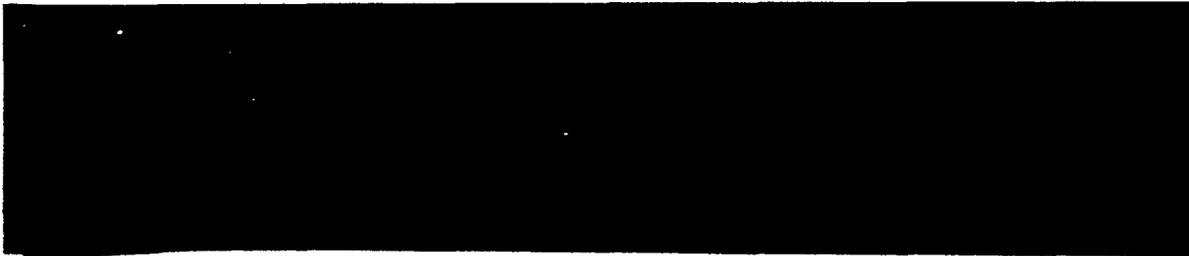


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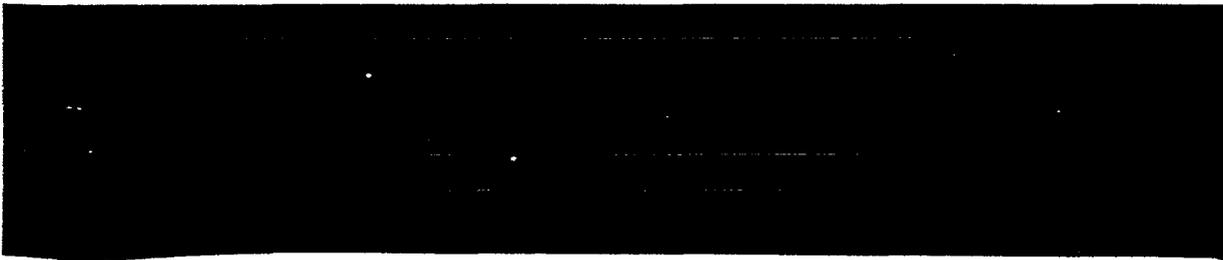
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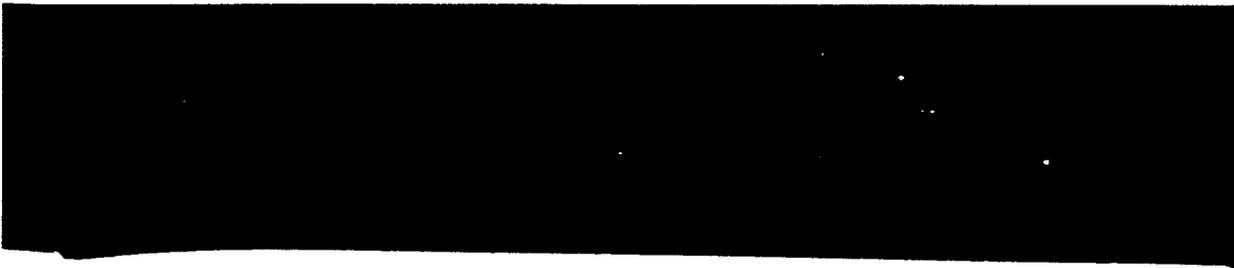
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