S202512

IN THE SUPREME COURT OF CALIFORNIA

In Re Sergio C. Garcia On Admission

Bar Miscellaneous 4186

REQUEST FOR JUDICIAL NOTICE

Exhibit H to Sergio Garcia's Consolidated Answer to Multiple Amicus Briefs

and

PROPOSED ORDER

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Attorneys for Sergio C. Garcia
Applicant for Admission

Applicant Sergio C. Garcia requests that this Court take judicial notice of the following exhibit:

> **Exhibit H:** Pub. No. GAO-04-261SP, *Principles of Federal Appropriations Law*, United States General Accounting Office, Office of the General Counsel (January 2004) [**REDACTED**]

This exhibit is relevant to the definition of "appropriated funds" under 8 U.S.C. 1621(c), as argued by the USA in its amicus brief at page 11.

This request is made in accord with Rule 8.252, California Rules of Court. California law permits judicial notice of federal agency manuals. *Ellison v. Sequoia Health Services* (2010) 183 Cal. App. 4th 1486. Similarly, Federal courts have taken judicial notice of agency handbooks. *United States v. City of St. Paul* (8th Cir.2001) 258 F.3d 750, 753.

Exhibit H is published by the federal agency that does the accounting for the federal government. Its rendition of "appropriated funds" is not the same as argued by the USA in its brief. Furthermore, Exhibit H's discussion of "de minimis" in

the context of appropriated funds is relevant to this Court's determination of the issues under 8 U.S.C. 1621(c).

Counsel certifies that each of the pages submitted is a true and correct copy as downloaded from the GAO website. The exhibit is redacted, so as to avoid submitting a 3-volume set of over 2,000 pages.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 19, 2012, at Walnut Creek, California.

JEROME FISHKIN
Attorney for Applicant Sergio C. Garcia

S202512

IN THE SUPREME COURT OF CALIFORNIA

In Re Sergio C. Garcia On Admission

Bar Miscellaneous 4186

PROPOSED ORDER

TAKING JUDICIAL NOTICE

On the motion of Applicant Sergio C. Garcia, and good cause having been shown, this Court takes judicial notice of the following documents:

> **Exhibit H:** Pub. No. GAO-04-261SP, *Principles of Federal Appropriations Law*, United States General Accounting Office, Office of the General Counsel (January 2004) [**REDACTED**]

IT IS SO ORDERED:

Date: _____ _____

United States Government Accountability Office
GAO Office of the General Counsel

Principles of Federal Appropriations Law

Third Edition

REDACTED

United States General Accounting Office
GAO
Office of the General Counsel

January 2004

Principles of Federal Appropriations Law

Third Edition

Volume I

This volume supersedes the Volume I, Second Edition of the Principles of Federal Appropriations Law, 1991.

On August 6, 2010, the web versions of the Third Edition of the Principles of Federal Appropriations Law, Volumes I, II and III, were reposted to include updated active electronic links to GAO decisions. Additionally, the Third Edition's web based Index/Table of Authorities (Index/TOA) was replaced by an Index/TOA that incorporated information from Volume I, II and III. These four documents can be used independently or interactively. To use the documents interactively, click on http://www.gao.gov/special.pubs/redbook1.html and you will be directed to brief instructions regarding interactive use.

The Security of this file is set to prevent a situation where linked references are appended to the PDF. If this change prevents an Acrobat function you need (e.g., to extract pages), use the the password "redbook" to revise the document security and enable the additional functions.

GAO-04-261SP

Chapter 2

The Legal Framework

A. Appropriations and Related Terminology

1. Introduction

The reader will find it useful to have a basic understanding of certain appropriations law terminology that will be routinely encountered throughout this publication. Some of our discussion will draw upon definitions that have been enacted into law for application in various budgetary contexts. Other definitions are drawn from custom and usage in the budget and appropriations process, in conjunction with administrative and judicial decisions.

In addition, 31 U.S.C. § 1112(c), previously noted in Chapter 1, requires the Comptroller General, in cooperation with the Treasury Department, Office of Management and Budget, and Congressional Budget Office, to maintain and publish standard terms and classifications for "fiscal, budget, and program information," giving particular consideration to the needs of the congressional budget, appropriations, and revenue committees. Federal agencies are required by 31 U.S.C. § 1112(d) to use this standard terminology when providing information to Congress.

The terminology developed pursuant to this authority is published in a GAO booklet entitled *A Glossary of Terms Used in the Federal Budget Process (Exposure Draft)*, GAO/AFMD-2.1.1 (Washington, D.C.: Jan. 1993) [hereinafter *Glossary*]. Unless otherwise noted, the terminology used throughout this publication is based on the *Glossary*.[1] The following sections present some of the more important terminology in the budget and appropriations process. Many other terms will be defined in the chapters that deal specifically with them.

2. Concept and Types of Budget Authority

Congress finances federal programs and activities by providing "budget authority." Budget authority is a general term referring to various forms of authority provided by law to enter into financial obligations that will result

[1] The Office of Management and Budget adopted these definitions in OMB Circular No. A-11, *Preparation, Submission and Execution of the Budget* (July 25, 2003).

in immediate or future outlays of government funds. As defined by the Congressional Budget Act, "budget authority" includes:

> "(i) provisions of law that make funds available for obligation and expenditure (other than borrowing authority), including the authority to obligate and expend the proceeds of offsetting receipts and collections;
>
> "(ii) borrowing authority, which means authority granted to a Federal entity to borrow and obligate and expend the borrowed funds, including through the issuance of promissory notes or other monetary credits;
>
> "(iii) contract authority, which means the making of funds available for obligation but not for expenditure; and
>
> "(iv) offsetting receipts and collections as negative budget authority, and the reduction thereof as positive budget authority.
>
> "The term includes the cost for direct loan and loan guarantee programs, as those terms are defined by [the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, § 13201(a)]." [2]

a. Appropriations

Appropriations are the most common form of budget authority. As we have seen in Chapter 1 in our discussion of the congressional "power of the purse," the Constitution prohibits the withdrawal of money from the Treasury unless authorized in the form of an appropriation enacted by Congress.[3] Thus, funds paid out of the United States Treasury must be

[2] Section 3(2) of the Congressional Budget and Impoundment Control Act of 1974, 2 U.S.C. § 622(2) and note, as amended by the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, §§ 13201(b) and 13211(a), 104 Stat. 1388, 1388-614 and 1388-620 (Nov. 5, 1990). Prior to the Congressional Budget Act, the term "obligational authority" was frequently used instead of budget authority.

[3] The Constitution does not specify precisely what assets comprise the "Treasury" of the United States. An important statute in this regard is 31 U.S.C. § 3302(b), discussed in detail in Chapter 6, which requires that, unless otherwise provided, a government agency must deposit any funds received from sources other than its appropriations in the general fund of the Treasury, where they are then available to be appropriated as Congress may see fit.

accounted for by charging them to an appropriation provided by or derived from an act of Congress.

The term "appropriation" may be defined as:

> "Authority given to federal agencies to incur obligations and to make payments from Treasury for specified purposes."[4]

While other forms of budget authority may authorize the incurring of obligations, the authority to incur obligations by itself is not sufficient to authorize payments from the Treasury. *See, e.g., National Ass'n of Regional Councils v. Costle*, 564 F.2d 583, 586 (D.C. Cir. 1977); *New York Airways, Inc. v. United States*, 369 F.2d 743 (Ct. Cl. 1966). Thus, at some point if obligations are paid, they are paid by and from an appropriation. Section B.1 of this chapter discusses in more detail precisely what types of statutes constitute appropriations.

Appropriations do not represent cash actually set aside in the Treasury. They represent legal authority granted by Congress to incur obligations and to make disbursements for the purposes, during the time periods, and up to the amount limitations specified in the appropriation acts. *See United States ex rel. Becker v. Westinghouse Savannah River Co.*, 305 F.3d 284 (4th Cir. 2002).

Appropriations are identified on financial documents by means of "account symbols," which are assigned by the Treasury Department, based on the number and types of appropriations an agency receives and other types of funds it may control. An appropriation account symbol is a group of numbers, or a combination of numbers and letters, which identifies the agency responsible for the account, the period of availability of the appropriation, and the specific fund classification. Detailed information on reading and identifying account symbols is contained in the *Treasury Financial Manual* (I TFM 2-1500). Specific accounts for each agency are listed in a publication entitled *Federal Account Symbols and Titles*, issued quarterly as a supplement to the TFM.

[4] *Glossary* at 21; *Andrus v. Sierra Club*, 442 U.S. 347, 359 n.18 (1979). *See also* 31 U.S.C. §§ 701(2) and 1101(2).

d. Classification Based on Availability for New Obligations[27]

1. *Current or unexpired appropriation*: An appropriation that is available for incurring new obligations.

2. *Expired appropriation*: An appropriation that is no longer available to incur new obligations, although it may still be available for the recording and/or payment (liquidation) of obligations properly incurred before the period of availability expired.

3. *Canceled appropriation*: An appropriation whose account is closed, and is no longer available for obligation or expenditure for any purpose.

An appropriation may combine characteristics from more than one of the above groupings. For example, a "permanent indefinite" appropriation is open ended as to both period of availability and amount. Examples are 31 U.S.C. § 1304 (payment of certain judgments against the United States) and 31 U.S.C. § 1322(b)(2) (refunding amounts erroneously collected and deposited in the Treasury).

e. Reappropriation

The term "reappropriation" means congressional action to continue the availability, whether for the same or different purposes, of all or part of the unobligated portion of budget authority that has expired or would otherwise expire. Reappropriations are counted as budget authority in the first year for which the availability is extended.[28]

B. Some Basic Concepts

1. What Constitutes an Appropriation

The starting point is 31 U.S.C. § 1301(d), which provides:

> "A law may be construed to make an appropriation out of the Treasury or to authorize making a contract for the payment of money in excess of an appropriation only if the

[27] *Glossary* at 24. See also our discussion of the disposition of appropriation balances in Chapter 5, section D.

[28] *Glossary* at 23. *See also* 31 U.S.C. § 1301(b) (reappropriation for a different purpose is to be accounted for as a new appropriation).

law specifically states that an appropriation is made or that such a contract may be made."

Thus, the rule is that the making of an appropriation must be expressly stated. An appropriation cannot be inferred or made by implication. *E.g.*, 50 Comp. Gen. 863 (1971).

Regular annual and supplemental appropriation acts present no problems in this respect as they will be apparent on their face. They, as required by 1 U.S.C. § 105, bear the title "An Act making appropriations ... ." There are situations in which statutes other than regular appropriation acts may be construed as making appropriations, however. *See, e.g.*, 31 U.S.C. § 1304(a) ("necessary amounts are appropriated to pay final judgments, awards, compromise settlements"); 31 U.S.C. § 1324 ("necessary amounts are appropriated to the Secretary of Treasury for refunding internal revenue collections").

An appropriation is a form of budget authority that makes funds available to an agency to incur obligations and make expenditures.[29] 2 U.S.C. § 622(2)(A)(i). *See also* 31 U.S.C. § 701(2)(C) ("authority making amounts available for obligation or expenditure"). Consequently, while the authority must be expressly stated, it is not necessary that the statute actually use the word "appropriation." If the statute contains a specific direction to pay and a designation of the funds to be used, such as a direction to make a specified payment or class of payments "out of any money in the Treasury not otherwise appropriated," then this amounts to an appropriation. 63 Comp. Gen. 331 (1984); 13 Comp. Gen. 77 (1933). *See also* 34 Comp. Gen. 590 (1955).

For example, a private relief act that directs the Secretary of the Treasury to pay, out of any money in the Treasury not otherwise appropriated, a specified sum of money to a named individual constitutes an appropriation. 23 Comp. Dec. 167, 170 (1916). Another example is B-160998, Apr. 13, 1978, concerning section 11 of the Federal Fire Prevention and Control Act of 1974,[30] which authorizes the Secretary of the Treasury to reimburse local fire departments or districts for costs incurred in fighting fires on federal

[29] We discuss the concept of budget authority and define the term appropriation in section A ("Appropriations and Related Terminology") of this chapter.

[30] Pub. L. No. 93-498, 88 Stat. 1535, 1543 (Oct. 29, 1974).

property. Since the statute directed the Secretary to make payments "from any moneys in the Treasury not otherwise appropriated" (i.e., it contained both the specific direction to pay and a designation of the funds to be used), the Comptroller General concluded that section 11 constituted a permanent indefinite appropriation.

Both elements of the test must be present. Thus, a direction to pay without a designation of the source of funds is not an appropriation. For example, a private relief act that contains merely an authorization and direction to pay but no designation of the funds to be used does not make an appropriation. 21 Comp. Dec. 867 (1915); B-26414, Jan. 7, 1944.[21] Similarly, public legislation enacted in 1978 authorized the U.S. Treasury to make an annual prepayment to Guam and the Virgin Islands of the amount estimated to be collected over the course of the year for certain taxes, duties, and fees. While it was apparent that the prepayment at least for the first year would have to come from the general fund of the Treasury, the legislation was silent as to the source of the funds for the prepayments, both for the first year and for subsequent years. It was concluded that while the statute may have established a permanent authorization, it was not sufficient under 31 U.S.C. § 1301(d) to constitute an actual appropriation. B-114808, Aug. 7, 1979. (Congress subsequently made the necessary appropriation in Pub. L. No. 96-126, 93 Stat. 954, 966 (Nov. 27, 1979).)

The designation of a source of funds without a specific direction to pay is also not an appropriation. 67 Comp. Gen. 332 (1988).

Thus far, we have been talking about the authority to make disbursements from the general fund of the Treasury. There is a separate line of decisions establishing the proposition that statutes, which authorize the collection of fees and their deposit into a particular fund, and, which make the fund available for expenditure for a specified purpose, constitute continuing or permanent appropriations; that is, the money is available for obligation or expenditure without further action by Congress. Often it is argued that a law making moneys available from some source other than the general fund of the Treasury is not an appropriation. This view is wrong. Statutes establishing revolving funds and various special deposit funds and making

[21] A few early cases will be found that appear inconsistent with the proposition stated in the text. *E.g.*, 6 Comp. Dec. 514, 516 (1899); 4 Comp. Dec. 325, 327 (1897). These cases predate the enactment on July 1, 1902 (32 Stat. 552, 560) of what is now 31 U.S.C. § 1301(d) and should be disregarded.

amounts in those funds available for obligation and expenditure are permanent appropriations. The reason is that, under 31 U.S.C. § 3302(b), all money received for the use of the United States must be deposited in the general fund of the Treasury absent statutory authority for some other disposition. B-271994, July 24, 1997. Once the money is in the Treasury, it can be withdrawn only if Congress appropriates it.[25] Therefore, the authority for an agency to obligate or expend collections without further congressional action amounts to a continuing appropriation or permanent appropriation of the collections. *E.g., United Biscuit Co. v. Wirtz*, 359 F.2d 206, 212 (D.C. Cir. 1965), *cert. denied*, 384 U.S. 971 (1966); 69 Comp. Gen. 260, 262 (1990); 73 Comp. Gen. 321 (1994).

Cases involving the "special fund" principle fall into two categories. In the first group, the question is whether a particular statute authorizing the deposit and expenditure of a class of receipts makes those funds available for the specified purpose or purposes without further congressional action. These cases, in other words, raise the basic question of whether the statute may be regarded as an appropriation. Cases answering this question in the affirmative include 59 Comp. Gen. 215 (1980) (mobile home inspection fees collected by the Secretary of Housing and Urban Development); B-228777, Aug. 26, 1988 (licensing revenues received by the Commission on the Bicentennial); B-204078.2, May 6, 1988, and B-257525, Nov. 30, 1994 (Panama Canal Revolving Fund); B-197118, Jan. 14, 1980 (National Defense Stockpile Transaction Fund); and B-90476, June 14, 1950. *See also* 1 Comp. Gen. 704 (1922) (revolving fund created in appropriation act remains available beyond end of fiscal year where not specified otherwise).

The second group of cases involves the applicability of statutory restrictions or other provisions that by their terms apply to "appropriated funds" or exemptions that apply to "nonappropriated funds." For example, fees collected from federal credit unions and deposited in a revolving fund for administrative and supervisory expenses have been regarded as appropriated funds for various purposes. 63 Comp. Gen. 31 (1983), *aff'd upon reconsideration*, B-210657, May 25, 1984 (payment of relocation expenses); 35 Comp. Gen. 615 (1956) (restrictions on reimbursement for certain telephone calls made from private residences). Other situations applying the "special fund as appropriation" principle are summarized below:

[25] U.S. Const. art. I, § 9, cl. 7, discussed in Chapter 1, section B.

- Various funds held to constitute appropriated funds for purposes of GAO's bid protest jurisdiction:[20] 65 Comp. Gen. 25 (1985) (funds received by National Park Service for visitor reservation services); 64 Comp. Gen. 756 (1985) (Tennessee Valley Authority power program funds); 57 Comp. Gen. 311 (1978) (commissary surcharges).

- Applicability of other procurement laws: *United Biscuit Co., supra* (Armed Services Procurement Act applicable to military commissary purchases); B-217281-O.M., Mar. 27, 1985 (federal procurement regulations applicable to Pension Benefit Guaranty Corporation revolving funds); B-275669.2, July 30, 1997 (American Battle Monuments Commission must comply with the Federal Acquisition Regulations and Federal Property and Administrative Services Act).

- User fee toll charges collected by the Saint Lawrence Seaway Development Corporation are appropriated funds. However, many of the restrictions on the use of appropriated funds will nevertheless be inapplicable by virtue of the Corporation's organic legislation and its status as a corporation. B-193573, Jan. 8, 1979, *modified and aff'd*, B-193573, Dec. 19, 1979; B-217578, Oct. 16, 1986. The December 1979 decision noted that the capitalization of a government corporation, whether a lump-sum appropriation in the form of capital stock or the authority to borrow through the issuance of long-term bonds to the U.S. Treasury, consists of appropriated funds.

- User fees collected under the Tobacco Inspection Act are appropriated funds and as such are subject to restrictions on payment of employee health benefits. 63 Comp. Gen. 285 (1984).

- Customs Service duty collections are appropriations authorized to be used for administration and collection costs. B-241488, Mar. 13, 1991.

- The Prison Industries Fund is an appropriated fund subject to the General Services Administration's surplus property regulations. 60 Comp. Gen. 323 (1981).

Other cases in this category are 50 Comp. Gen. 323 (1970); 35 Comp. Gen. 496 (1956); B-191761, Sept. 22, 1978; and B-67175, July 16, 1947. In

[20] GAO regulations exempt nonappropriated fund procurements. 4 C.F.R. § 21.5(g).

each of the special fund cases cited above, the authority to make payments from the fund involved was clear from the governing legislation.

Finally, the cases cited above generally involve statutes that specify the fund to which the collections are to be deposited. This is not essential, however. A statute that clearly makes receipts available for obligation or expenditure without further congressional action will be construed as authorizing the establishment of such a fund as a necessary implementation procedure. 59 Comp. Gen. 215 (42 U.S.C. § 5419); B-226520, Apr. 3, 1987 (nondecision letter) (26 U.S.C. § 7475). *See also* 13 Comp. Dec. 700 (1907).

Two recent court decisions held that revolving funds do not constitute "appropriations" for purposes of determining whether those courts have jurisdiction over claims against the United States under the Tucker Act (28 U.S.C. § 1491). These decisions—*Core Concepts of Florida, Inc. v. United States*, 327 F.3d 1331 (Fed. Cir. 2003), *petition for cert. filed*, 72 U.S.L.W. 3148 (Aug. 18, 2003), and *AINS, Inc. v. United States*, 56 Fed. Cl. 522 (2002)—concluded that GAO's view of revolving funds as continuing or permanent appropriations does not apply to issues of Tucker Act jurisdiction.[34] The Court of Appeals for the Federal Circuit, the Court of Federal Claims, and their predecessors traditionally hold that Tucker Act jurisdiction does not extend to "nonappropriated fund instrumentalities" that receive no traditional general revenue appropriations derived from the general fund of the Treasury.[35] *Core Concepts* and *AINS* dealt only with the issue of Tucker Act jurisdiction in this context and have no bearing on the status of revolving funds in the broader appropriations law context discussed above.[36]

[34] But see *MDB Communications, Inc. v. United States*, 53 Fed. Cl. 245 (2002), and *American Management Systems, Inc. v. United States*, 53 Fed. Cl. 525 (2002), two other recent decisions that do apply GAO's view that revolving funds are appropriations to support Tucker Act jurisdiction.

[35] *E.g., Furash & Co. v. United States*, 252 F.3d 1336, 1342 (Fed. Cir. 2001); *Dunkler v. United States*, 782 F.2d 1008 (Fed. Cir. 1986); *Aaron v. United States*, 51 Fed. Cl. 690 (2002); *L'Enfant Plaza Properties, Inc. v. United States*, 668 F.2d 1211 (Ct. Cl. 1982); *Kyer v. United States*, 369 F.2d 714, 718 (Ct. Cl. 1966), *cert. denied*, 387 U.S. 929 (1967).

[36] See, in this regard, *Core Concepts*, 327 F.3d at 1338, noting that GAO's position and the authorities it cites on the status of revolving funds "are not applicable to the non-appropriated funds doctrine [governing Tucker Act jurisdiction] in the same sense that they are applicable to federal appropriations law."

2. Specific *versus* General Appropriations

a. General Rule

An appropriation for a specific object is available for that object to the exclusion of a more general appropriation, which might otherwise be considered available for the same object, and the exhaustion of the specific appropriation does not authorize charging any excess payment to the more general appropriation, unless there is something in the general appropriation to make it available in addition to the specific appropriation.[37] In other words, if an agency has a specific appropriation for a particular item, and also has a general appropriation broad enough to cover the same item, it does not have an option as to which to use. It must use the specific appropriation. Were this not the case, agencies could evade or exceed congressionally established spending limits.

The cases illustrating this rule are legion.[38] Generally, the fact patterns and the specific statutes involved are of secondary importance. The point is that the agency does not have an option. If a specific appropriation exists for a particular item, then that appropriation must be used and it is improper to charge the more general appropriation (or any other appropriation) or to use it as a "back-up." A few cases are summarized as examples:

- A State Department appropriation for "publication of consular and commercial reports" could not be used to purchase books in view of a specific appropriation for "books and maps." 1 Comp. Dec. 126 (1894). The Comptroller of the Treasury referred to the rule as having been well established "from time immemorial." *Id.* at 127.

- The existence of a specific appropriation for the expenses of repairing the U.S. courthouse and jail in Nome, Alaska, precludes the charging of such expenses to more general appropriations such as "Miscellaneous expenses, U.S. Courts" or "Support of prisoners, U.S. Courts." 4 Comp. Gen. 476 (1924).

[37] *See, e.g.*, B-272191, Nov. 4, 1997.

[38] A few are 64 Comp. Gen. 138 (1984); 36 Comp. Gen. 526 (1957); 17 Comp. Gen. 974 (1938); 5 Comp. Gen. 399 (1925); B-289209, May 31, 2002; B-290011, Mar. 25, 2002.

- A specific appropriation for the construction of an additional wing on the Navy Department Building could not be supplemented by a more general appropriation to build a larger wing desired because of increased needs. 20 Comp. Gen. 272 (1940). *See* B-235086, Apr. 24, 1991 (a specific appropriation for the construction and acquisition of a building precludes the Forest Service from using a more general appropriation to pay for such a purchase). *See also* B-278121, Nov. 7, 1997.

- Appropriations of the District of Columbia Health Department could not be used to buy penicillin to be used for Civil Defense purposes because the District had received a specific appropriation for "all expenses necessary for the Office of Civil Defense." 31 Comp. Gen. 491 (1952).

Further, the fact that an appropriation for a specific purpose is included as an earmark 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 (1941). In the cited decision, a general appropriation for the Geological Survey contained the provision "including not to exceed $45,000 for the purchase and exchange ... of ... passenger-carrying vehicles." It was held that the costs of transportation incident to the delivery of the purchased vehicles were chargeable to the specific $45,000 appropriation and not to the more general portion of the appropriation. Similarly, a general appropriation for the Library of Congress contained the provision, "$9,619,000 is to remain available until expended for the acquisition of books, periodicals, newspapers and all other materials... ." The Comptroller General held that the $9,619,000 was an earmark requiring the Library to set aside that money to purchase books and other library materials. The earmark barred the Library from transferring or using those funds for another purpose. B-278121, *supra*. In deciding the proper appropriation to charge for administrative costs for Oil Pollution Act claims, the Comptroller General stated, "As a general rule, an appropriation for a specific object is available for that object to the exclusion of a more general appropriation which might otherwise be considered for the same object." B-289209, *supra* (citing 65 Comp. Gen. 881 (1986)); B-290005, July 1, 2002.

The rule has also been applied to expenditures by a government corporation from corporate funds for an object for which the corporation

had received a specific appropriation, where the reason for using corporate funds was to avoid a restriction applicable to the specific appropriation. B-142011, June 19, 1968.

Of course, the rule that the specific governs over the general is not peculiar to appropriation law. It is a general principle of statutory construction and applies equally to provisions other than appropriation statutes. *E.g.*, 62 Comp. Gen. 617 (1983); B-277905, Mar. 17, 1998; B-152722, Aug. 16, 1965. However, another principle of statutory construction is that two statutes should be construed harmoniously so as to give maximum effect to both wherever possible. In dealing with nonappropriation statutes, the relationship between the two principles has been stated as follows:

> "Where there is a seeming conflict between a general provision and a specific provision and the general provision is broad enough to include the subject to which the specific provision relates, the specific provision should be regarded as an exception to the general provision so that both may be given effect, the general applying only where the specific provision is inapplicable."

B-163375, Sept. 2, 1971. *See also* B-255979, Oct. 30, 1995.

As stated before, however, in the appropriations context, this does not mean that a general appropriation is available when the specific appropriation has been exhausted. Using the more general appropriation would be an unauthorized transfer (discussed later in this chapter) and would improperly augment the specific appropriation (discussed in Chapter 6).

b. Two Appropriations Available for Same Purpose

Although rare, there are situations in which either of two appropriations can be construed as available for a particular object, but neither can reasonably be called the more specific of the two. The rule in this situation is this: Where two appropriations are available for the same purpose, the agency may select which one to charge for the expenditure in question. Once that election has been made, the agency must continue to use the same appropriation for that purpose unless the agency at the beginning of the fiscal year informs the Congress of its intent to change for the next fiscal year. *See* U.S. General Accounting Office, *Unsubstantiated DOE Travel Payments*, GAO/RCED-96-58R (Washington, D.C.: Dec. 28, 1995). Of course, where statutory language clearly demonstrates congressional intent to make one appropriation available to supplement or increase a

different appropriation for the same type of work, both appropriations are available. *See* B-272191, Nov. 4, 1997 (Army permitted to use Operations and Maintenance (O&M) funds for property maintenance and repair work in Germany even though Real Property Maintenance, Defense (RPM,D) funds were available for the same work because Congress said the O&M funds were "in addition to the funds specifically appropriated for real property maintenance under the heading [RPM,D]").

3. Transfer and Reprogramming

For a variety of reasons, agencies have a legitimate need for a certain amount of flexibility to deviate from their budget estimates. Two ways to shift money are transfer and reprogramming. While the two concepts are related in this broad sense, they are nevertheless different.

a. Transfer

Transfer is the shifting of funds between appropriations.[39] For example, if an agency receives one appropriation for Operations and Maintenance and another for Capital Expenditures, a shifting of funds from either one to the other is a transfer.

The basic rule with respect to transfer is simple: Transfer is prohibited without statutory authority. The rule applies equally to (1) transfers from one agency to another,[40] (2) transfers from one account to another within the same agency,[41] and (3) transfers to an interagency or intra-agency working fund.[42] In each instance, statutory authority is required. An agency's erroneous characterization of a proposed transfer as a "reprogramming" is irrelevant. *See* B-202362, Mar. 24, 1981. Moreover, informal congressional approval of an unauthorized transfer of funds

[39] U.S. General Accounting Office, *A Glossary of Terms Used in the Federal Budget Process (Exposure Draft)*, GAO/AFMD-2.1.1 (Washington, D.C.: Jan. 1993), at 80.

[40] 7 Comp. Gen. 524 (1928); 4 Comp. Gen. 848 (1925); 17 Comp. Dec. 174 (1910). A case in which adequate statutory authority was found to exist is B-217093, Jan. 9, 1985 (transfer from Japan-United States Friendship Commission to Department of Education to partially fund a study of Japanese education).

[41] 70 Comp. Gen. 592 (1991); 65 Comp. Gen. 881 (1986); 33 Comp. Gen. 216 (1953); 33 Comp. Gen. 214 (1953); 17 Comp. Dec. 7 (1910); B-286661, Jan. 19, 2001; B-206668, Mar. 15, 1982; B-178205.80, Apr. 13, 1976; B-164912-O.M., Dec. 21, 1977.

[42] 26 Comp. Gen. 545, 548 (1947); 19 Comp. Gen. 774 (1940); 6 Comp. Gen. 748 (1927); 4 Comp. Gen. 703 (1925).

United States Government Accountability Office

GAO

Office of the General Counsel

February 2006

Principles of Federal Appropriations Law

Third Edition

Volume II

This volume supersedes the Volume II, Second Edition of the Principles of Federal Appropriations Law, 1992.

On August 6, 2010, the web versions of the Third Edition of the Principles of Federal Appropriations Law, Volumes I, II and III, were reposted to include updated active electronic links to GAO decisions. Additionally, the Third Edition's web based Index/Table of Authorities (Index/TOA) was replaced by an Index/TOA that incorporated information from Volume I, II and III. These four documents can be used independently or interactively. To use the documents interactively, click on http://www.gao.gov/special.pubs/redbook1.html and you will be directed to brief instructions regarding interactive use.

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GAO-06-382SP

Abbreviations

APA	Administrative Procedure Act
BLM	Bureau of Land Management
CDA	Contract Disputes Act of 1978
CCC	Commodity Credit Corporation
C.F.R.	Code of Federal Regulations
EAJA	Equal Access to Justice Act
EEOC	Equal Employment Opportunity Commission
FAR	Federal Acquisition Regulation
FY	Fiscal Year
GAO	Government Accountability Office
GSA	General Services Administration
HUD	Department of Housing and Urban Development
IRS	Internal Revenue Service
NRC	Nuclear Regulatory Commission
OMB	Office of Management and Budget
SBA	Small Business Administration
TFM	Treasury Financial Manual
U.S.C.	United States Code
URA	Uniform Relocation Assistance and Real Property Acquisition Policies Act

not permit crediting refunds to appropriations in amounts *greater* than the overpayment. The decision in B-302366 illustrates this point. In that case, a Department of Energy contractor turned over to the department a refund it had received from the State of Washington for taxes which the contractor had previously paid and for which it had been reimbursed by the department. Along with the tax refund, the contractor also turned over to the department an additional amount it had received from the state as interest on the refunded taxes. GAO agreed with the department that the tax refund itself could be credited to the appropriation originally used to reimburse the contractor for the tax payment. However, the decision held that the additional amount representing interest could not be credited to the appropriation but must be returned to the Treasury as miscellaneous receipts pursuant to 31 U.S.C. § 3302(b):

> "The nonstatutory refund exception . . . does not allow the department to retain the interest paid by the state. Because the nonstatutory exception operates simply and solely to restore to an appropriation amounts that should not have been paid from the appropriation, crediting an amount in excess of that paid from the appropriation would improperly augment the appropriation."

In this regard, the decision rejected the department's suggestion that the interest payment could be regarded as merely restoring the appropriation to an amount adjusted for inflation. The decision noted that Congress does not appropriate on a net present value basis. Likewise, GAO has held that agencies may retain and credit to their appropriations refunds in the form of recoveries under the False Claims Act (31 U.S.C. § 3729) to the extent that they represent compensatory damages to reimburse erroneous payments, but not "exemplary" damages in the nature of penalties. B-281064, Feb. 14, 2000; 69 Comp. Gen. 260 (1990).

For other examples of refunds that may be retained to the credit of an appropriation, see 65 Comp. Gen. 600 (1986) (rebates from Travel Management Center contractors); 62 Comp. Gen. 70 (1982) (partial repayment of contribution to International Natural Rubber Organization occasioned by addition of new members); B-139348, May 12, 1959 (refund of overcharge by public utility); and B-209650-O.M., July 20, 1983 (same).

It should be noted that crediting refunds to agency appropriations is permissive, not mandatory. Thus, the Comptroller General advised the General Services Administration that rebates received from travel

management contractors could be deposited to the general fund of the Treasury if the small amounts involved did not justify the cost of processing these payments to the credit of the agency appropriation accounts that "earned" them. 73 Comp. Gen. 210 (1994). The Comptroller General also approved crediting *de minimis* ($100 or less) rebates to currently available accounts rather than the prior year accounts that earned them. 72 Comp. Gen. 63 (1992). However, the Comptroller General refused to extend this *de minimis* exception to rebates that could aggregate $1,000 or more. 72 Comp. Gen. 109 (1993).

A repayment is credited to the appropriation initially charged with the related expenditure, whether current or expired. If the appropriation is still current, then the funds remain available for further obligation within the time and purpose limits of the appropriation. However, if the appropriation has expired for obligational purposes (but has not yet been closed), the repayment must be credited to the expired account, not to current funds. *See* 23 Comp. Gen. 648 (1944); 6 Comp. Gen. 337 (1926); B-138942-O.M., Aug. 26, 1976. If the repayment relates to an expired appropriation, crediting the repayment to current funds is an improper augmentation of the current appropriation unless authorized by statute. B-114088, Apr. 29, 1953. These same principles apply to a refund in the form of a credit, such as a credit for utility overcharges. B-139348, May 12, 1959; B-209650-O.M., July 20, 1983.[158] *Cf.* B-260063, June 30, 1995, fn. 3 (there is no authority for an agency to hold refunds of erroneous payments in an interest bearing account pending final payment to a contractor since such refunds should be credited to the appropriation account initially charged with the erroneous payment). Once an appropriation account has been closed in accordance with 31 U.S.C. §§ 1552(a) or 1555, repayments must be deposited as miscellaneous receipts regardless of how they would have been treated prior to closing. 31 U.S.C. § 1552(b). *See also* B-260993, June 26, 1996; B-257905, Dec. 26, 1995; 73 Comp. Gen. 210, 211 (1994).

Where funds are authorized to be credited to an appropriation, restrictions on the basic appropriation apply to the credits as well as to the amount originally appropriated. A-95083, June 18, 1938.

[158] It should not be automatically assumed that every form of credit accruing to the government under a contract will qualify as a refund to the appropriation. *See, e.g.*, B-302366, July 12, 2004; A-51604, May 31, 1977.

The fact that some particular reimbursement is authorized or even required by law is not, standing alone, sufficient to overcome 31 U.S.C. § 3302(b). *E.g.*, 67 Comp. Gen. 443 (1988); 22 Comp. Dec. 60 (1915); 1 Comp. Dec. 568 (1895). The accounting for that reimbursement—whether it may be retained by the agency and, if so, how it is to be credited—will depend on the terms of the statute. Some statutes, for example, permit reimbursements to be credited to current appropriations regardless of which appropriation "earned" the reimbursement. *See, e.g.*, 10 U.S.C. § 2208(g); 10 U.S.C. § 2210(a)(1); 22 U.S.C. § 2392(c); 22 U.S.C. § 2509(g). As a general proposition, however, this practice, GAO has pointed out, diminishes congressional control.[189]

As might be expected, there have been a great many decisions involving the miscellaneous receipts requirement. It is virtually impossible to draw further generalizations from the decisions other than to restate the basic rule: An agency must deposit into the General Fund of the Treasury any funds it receives from sources outside of the agency unless the receipt constitutes an authorized repayment or unless the agency has statutory authority to retain the funds for credit to its own appropriations.

(3) Timing of deposits

As to the timing of the deposit in the Treasury, 31 U.S.C. § 3302(b) says merely "as soon as practicable." There is another statute, however, now found at 31 U.S.C. § 3302(c), which provides in relevant part:

> "(1) A person having custody or possession of public money, including a disbursing official having public money not for current expenditure, shall deposit the money without delay in the Treasury or with a depositary designated by the Secretary of the Treasury under law. Except as provided in paragraph (2), money required to be deposited pursuant to this subsection shall be deposited not later than the third day after the custodian receives the money. . . .

[189] For further discussion of these concepts in the context of statutes applicable to the Defense Department, see GAO, *Reimbursements to Appropriations: Legislative Suggestions for Improved Congressional Control*, FGMSD-75-52 (Washington, D.C.: Nov. 1, 1976). A more recent report made a similar point in relation to agencies crediting user fee proceeds to their appropriations. GAO, *Federal User Fees: Budgetary Treatment, Status, and Emerging Management Issues*, GAO/AIMD-98-11 (Washington, D.C.: Dec. 19, 1997).

simply on the failure of the original request to include sufficient information to enable an independent evaluation. Of course, if the agency cannot or is unwilling to make a required statutory determination, there is nothing GAO can do and a request for reconsideration is pointless.

3. *De Minimis* Rule: Payments of $100 or Less

In B-161457, July 14, 1976, a circular letter to all department and agency heads, and disbursing and certifying officers, the Comptroller General advised as follows:

> "[I]n lieu of requesting a decision by the Comptroller General for items of $25 or less, disbursing and certifying officers may hereafter rely upon written advice from an agency official designated by the head of each department or agency. A copy of the document containing such advice should be attached to the voucher and the propriety of any such payment will be considered conclusive on the General Accounting Office in its settlement of the accounts involved."

The amount has since been raised to $100. GAO, *Policy and Procedures Manual for Guidance of Federal Agencies*, title 7, § 8.3 (Washington, D.C.: May 18, 1993). This does not preclude a certifying or disbursing officer from seeking a decision if deemed necessary since the entitlement to advance decisions is statutory, but it does provide a means for simplifying the payment of very small amounts. An accountable officer is not liable for a payment made under this authority even if the payment is later found to be improper or erroneous. The $100 threshold applies equally to questions arising after payment has been made. 61 Comp. Gen. 646, 648 (1982).

4. Relief *versus* Grievance Procedures

Federal employees have the right to organize and to bargain collectively with respect to conditions of employment. 5 U.S.C. § 7102. Collective bargaining agreements may include negotiated grievance procedures, which may in turn provide for dispute resolution by binding arbitration. *Id.* § 7121. The Federal Labor Relations Authority (FLRA) decides questions of an agency's duty to bargain in good faith under 5 U.S.C. § 7105(a)(2)(E). Agencies have a duty to bargain in good faith to the extent not inconsistent with federal law. *Id.* § 7117. The FLRA also decides appeals alleging that an arbitration award is contrary to federal law. *Id.* § 7122.

United States Government Accountability Office
GAO
Office of the General Counsel

September 2008

Principles of Federal Appropriations Law

Third Edition

Volume III

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GAO-08-978SP

to Payment of Questionable Contractor Costs and Missing Assets, GAO-06-306 (Washington, D.C.: Feb. 28, 2006) (interagency agreement under authority other than the Economy Act).

d. What Work or Services May Be Performed

(1) Details of personnel

A very common type of interagency service is the loan or detail of personnel. A detail is "the temporary assignment of an employee to a different position for a specified period, with the employee returning to regular duties at the end of the detail." 64 Comp. Gen. 370, 376 (1985). Some of the earliest administrative decisions deal with details of personnel.

In 14 Comp. Dec. 294 (1907), the Comptroller of the Treasury was asked to advise the Secretary of the Treasury on a proposal to loan an employee to another agency, with the "borrowing agency" to reimburse only the employee's travel and incidental expenses, but not basic salary. The Comptroller knew what the answer should be: "If these were questions of first impression I would be impelled to answer each of them in the negative, because of that provision of the statute [31 U.S.C. § 1301(a)] which requires all appropriations to be used exclusively for the purposes for which made." 14 Comp. Dec. at 295. However, he continued, "they are not questions of first impression." *Id.* The practice had developed in the executive branch of loaning employees without reimbursement except for extra expenses incurred on account of the detail. This practice had been around for so long, according to the Comptroller, that it was virtually etched in stone. *Id.* at 295–96. As long as the agency could spare the employee for the requested time, it would be—

> "in the interest of good government and economy to so utilize his services. His regular salary would be earned in any event, and in all probability without rendering in his own Department adequate services therefor. Therefore reimbursement has never, to my knowledge, been made on such details for regular salaries. But where additional expenses have accrued because of such detail such expenses have always been reimbursed to the regular appropriation from which originally paid . . . ."

Id. at 296. This rationale was quite remarkable. Subsequent comptrollers obviously struggled with the rationale's weakness and were careful not to expand the rule of the 1907 case. Thus, if the loaning agency had to employ someone else to do the detailed employee's job while he was gone, the

salary was reimbursable. 22 Comp. Dec. 145 (1915). A 1916 case, 23 Comp. Dec. 242, soundly attacked the rationale of 14 Comp. Dec. 294, specifically the assumption that the employee "would have remained idle if he had not been loaned," 23 Comp. Dec. at 245, and came close to throwing it out, but did not. Early GAO decisions failed to seize the opportunity but instead adhered to the "no reimbursement" rule. *E.g.*, 6 Comp. Gen. 217 (1926).[35]

The 1932 enactment of the Economy Act provided the vehicle for change, but it was slow to implement. It was quickly recognized that the Economy Act authorized fully reimbursable details of personnel. 13 Comp. Gen. 234 (1934). However, as with the first round of Economy Act decisions in other contexts, the early decisions held that agencies had a choice. If they chose not to enter into a written Economy Act agreement expressly providing for full reimbursement, they could continue to operate under the old rules. *Id.* at 237. The question of how you could have nonreimbursable details in light of 31 U.S.C. § 1301(a) never went away but, like a stubborn weed in the garden, the "informal accommodation" approach survived (*e.g.*, B-182398, Mar. 29, 1976; B-30084, Nov. 18, 1942), and was reaffirmed as late as 59 Comp. Gen. 366 (1980).

If enactment of the Economy Act was the first shoe dropping, the second shoe did not drop until 64 Comp. Gen. 370 (1985). After reviewing the prior decisions and the legislative history of the Economy Act, the Comptroller General said in 1985 what the Economy Act probably thought it was saying in 1932, and certainly what the Comptroller of the Treasury really wanted to say in 1907:

> "Although Federal agencies may be part of a whole system of Government, appropriations to an agency are limited to the purposes for which appropriated, generally to the execution of particular agency functions. Absent statutory authority, those purposes would not include expenditures for programs of another agency. Since the receiving agency is gaining the benefit of work for programs for which funds have been appropriated to it, those appropriations should be used to pay for that work. Thus, a violation of the

[35] Oddly, the early decisions were not so rigid when it came to intra-agency work. Where an employee did work for different bureaus within the same agency, the agency could prorate the salary among the appropriations involved, or could pay the entire salary from one appropriation and seek reimbursement from the others. 5 Comp. Gen. 1036 (1926).

> purpose law does occur when an agency spends money on salaries of employees detailed to another agency for work essentially unrelated to the loaning agency's functions."

64 Comp. Gen. at 379. Accordingly, absent specific statutory authority to the contrary, details of personnel between agencies or between separately funded components of the same agency may not be done on a nonreimbursable basis, but must be done in accordance with the Economy Act, which requires full reimbursement of actual costs, one of which is the employee's salary. The fact that the loaning agency pays the employee from a revolving fund changes nothing; a nonreimbursable detail still creates an unauthorized augmentation of the receiving agency's appropriation as well as violates the purpose limitations of 31 U.S.C. § 1301(a). B-247348, June 22, 1992.

Apart from details which may be nonreimbursable under some specific statutory authority, the decisions recognize two exceptions. First, nonreimbursable details are permissible "where they involve a matter similar or related to matters ordinarily handled by the loaning agency and will aid the loaning agency in accomplishing a purpose for which its appropriations are provided." 64 Comp. Gen. at 380. Second, details "for brief periods when . . . the numbers of persons and cost involved are minimal" and "the fiscal impact on the appropriation is negligible" do not require reimbursement. *Id.* at 381. GAO has declined to attempt to specify the limits of the *de minimis* exception but it could not, for example, be stretched to cover a detail of 15–20 people. 65 Comp. Gen. 635 (1986).

The Department of Justice's Office of Legal Counsel has taken essentially the same position as 64 Comp. Gen. 370. 13 Op. Off. Legal Counsel 188 (1989) (United States Attorney's Office for the District of Columbia must reimburse Defense Department for year-long detail of 10 lawyers); 12 Op. Off. Legal Counsel 233 (1988) (detail of Internal Revenue Service agents to investigate tax fraud for an Independent Counsel could be nonreimbursable under the commonality of functions exception). While the OLC's approach and analysis are otherwise the same, it has misgivings over the propriety of a *de minimis* exception. 13 Op. Off. Legal Counsel at 190.

While the agreement should normally precede the detail, an agreement entered into after the detail has started can include the services already performed. B-75052, May 14, 1948. Reimbursement should include accrued annual and sick leave. 17 Comp. Gen. 571 (1938). It should also include

travel expenses incurred in connection with the detail work. 15 Comp. Gen. 334 (1935); B-141349, Dec. 9, 1959. If the detail is to be for a substantial period of time, the loaning agency should change the employee's official duty station to the location of the detail and then restore it when the assignment is done. If applicable to the distances involved, the employee may then become entitled to allowances incident to a permanent change of station, such as shipment of household goods. 24 Comp. Gen. 420 (1944). A case where this was done is B-224055, May 21, 1987.

If interagency details are authorized under statutory authority other than the Economy Act, whether or not they are reimbursable will naturally depend on the terms of the statute. A statute which is silent on the issue will generally be construed as not precluding reimbursement unless a contrary intent is manifested. For example, 5 U.S.C. § 3341 authorizes intra-agency details within the executive branch for renewable periods of not more than 120 days. The statute says nothing about reimbursement. GAO regards this as merely providing authority to make the details and not as exhibiting an intent that they be nonreimbursable. 64 Comp. Gen. at 381–82. The same applies to 5 U.S.C. § 3344 which authorizes detailing of administrative law judges but is similarly silent on the issue of reimbursement. 65 Comp. Gen. 635 (1986). The Justice Department has said the same thing with respect to "temporary reassignments" under the Anti-Drug Abuse Act of 1988.[37] 13 Op. Off. Legal Counsel 188 (1989). An example of a statute which addresses reimbursement is 3 U.S.C. § 112, which authorizes details of executive branch employees to various White House offices and requires reimbursement for details exceeding 180 calendar days in any fiscal year. *See* 64 Comp. Gen. at 380; B-224033-O.M., May 26, 1987.

A different type of statute, discussed and applied in B-247348, June 22, 1992, is 44 U.S.C. § 316, which prohibits details of Government Printing Office employees "to duties not pertaining to the work of public printing and binding . . . unless expressly authorized by law."

Finally, it is not uncommon for agencies to detail employees to congressional committees. Two 1942 decisions, 21 Comp. Gen. 954 and 21 Comp. Gen. 1055, addressed this situation and held essentially that the details could be nonreimbursable if the committee's work for which the detail was sought could be said to help the agency accomplish some

[37] Pub. L. No. 100-690, title I, 102 Stat. 4181 (Nov. 18, 1988).

purpose of its own appropriations. These cases were the source of the "commonality of function" exception which 64 Comp. Gen. 370 applied across the board. *See* 64 Comp. Gen. at 379. The second 1942 decision emphasized that "mutuality of interest" is not enough:

> "[I]t must appear that the work of the committee to which the detail or loan of the employee is made will actually aid the agency in the accomplishment of a purpose for which its appropriation was made such as by obviating the necessity for the performance by such agency of the same or similar work."

21 Comp. Gen. at 1058. A 1988 decision applied these precedents to conclude that the Treasury Department could detail two employees to the House Committee on Government Operations on a nonreimbursable basis to work with the committee on the oversight and review of the FTS-2000 telecommunications project. B-230960, Apr. 11, 1988.

As to reimbursable details, 2 U.S.C. § 72a(f) provides that "[n]o committee [of the Congress] shall appoint to its staff any experts or other personnel detailed or assigned from any department or agency of the Government, except with the written permission of" specified committees. The Justice Department's Office of Legal Counsel (OLC) regards this as implicit authority for reimbursable details of executive branch personnel to congressional committees, the theory being that a restriction like 2 U.S.C. § 72a(f) would be rather pointless if the authority did not already exist. 12 Op. Off. Legal Counsel 184, 185 (1988). *See also* 1 Op. Off. Legal Counsel 108 (1977). However, OLC cautions that agencies should have due regard for potential ethics and separation-of-powers concerns. 12 Op. Off. Legal Counsel at 186–89. GAO has pointed out that 2 U.S.C. § 72a(f) is a limitation on the authority of congressional committees to appoint staff assigned or detailed to the committee, not a limitation on agencies to assign or detail employees to committees. B-129874, Jan. 4, 1971. Accordingly, the responsibility for compliance with section 72a(f) rests with the committee making the request for personnel rather than with the loaning agency. *Id.*

GAO details its own personnel to congressional committees under various authorities. A provision in GAO's organic legislation, 31 U.S.C. § 712(5), requires the agency to provide requested help, presumably including loans of personnel, to committees "having jurisdiction over revenue, appropriations, or expenditures." Details under this provision are not

required to be reimbursed. B-129874, Jan. 4, 1971; B-130496-O.M., Mar. 13, 1957. In addition, GAO has applied the two 1942 decisions, 21 Comp. Gen. 954 and 21 Comp. Gen. 1055, to itself. B-41849, May 9, 1944; B-130496-O.M., Mar. 13, 1957. Another statute, 31 U.S.C. § 734, provides that the Comptroller General "may assign or detail [GAO employees] to full-time continuous duty with a committee of Congress for not more than one year." A part of this statute which required reimbursement by the Senate was deleted in the 1985 Legislative Branch Appropriations Act[38] "to put the Senate on the same basis as the House in this regard." S. Rep. No. 98-515, at 15 (1984).

(2) Loans of personal property

Another area where the Economy Act wrought considerable change was reimbursement for interagency loans of equipment and other personal property. Prior to 1932, there was no authority to charge another government agency for the use of borrowed property. *E.g.*, 9 Comp. Gen. 415 (1930). Also, the borrowing agency lacked authority to use its appropriations to repair the borrowed property unless for its own continued use, the theory being that the property belonged to the United States and not to any individual agency. To some extent at least, the Economy Act amounts to "tacit recognition of property ownership rights in the various departments and agencies possessing such property." 30 Comp. Gen. 295, 296 (1951).

Thus, one early case held that the Economy Act provided sufficient authority for the old Civil Aeronautics Board to lease surplus aircraft from another government agency. 24 Comp. Gen. 184 (1944). It also authorized the Soil Conservation Service to borrow a shallow draft river boat from the Bureau of Land Management for certain work in Alaska. 30 Comp. Gen. 295 (1951). The logic of the 1951 decision is simple. If the Economy Act authorizes the permanent transfer of equipment, and it unquestionably does, then it must also authorize "lesser transactions between departments on a temporary loan basis." *Id.* at 296. Another boat was involved in 38 Comp. Gen. 558 (1959). The Maritime Administration wanted to loan a tug to the Coast Guard and asked if the transaction was within the scope of 24 Comp. Gen. 184. Sure it was, GAO replied. There was no "essential difference" between the lease in the 1944 case and the loan in this one

[38] Pub. L. No. 98-367, § 8(2), 98 Stat. 472, 475 (July 17, 1984).

United States Government Accountability Office

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Office of the General Counsel

July 2010

Principles of Federal Appropriations Law

Third Edition

Index and Table of Authorities

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GAO-09-576SP

A Note on Citations

A variety of legal and non-legal sources are cited in the *Principles of Federal Appropriations Law*. For those not schooled in the minutia of modern legal citation practice, we offer the following "cheat sheet" as a guide to these Tables of Authority.

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Notes:

[1] Court cases are published (and cited) in *many* different reporters. These are just a few of the more commonly cited ones which appear in the *Principles of Federal Appropriations Law*. Each court case has a name derived from the parties to the case (i.e., *Plaintiff v. Defendant*). Court cases are filed alphabetically by that name in the table entitled "Court Cases."

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DECLARATION OF SERVICE BY MAIL

I am employed in Contra Costa County, California. I am over the age of 18 years, and I am not a party to the within action. My business address is 1575 Treat Blvd., Suite 215, Walnut Creek, CA 94598. On this date, I served the

REQUEST FOR JUDICIAL NOTICE
Exhibit H to Sergio Garcia's Consolidated Answer to Multiple Amicus Briefs
and
PROPOSED ORDER

by placing a true copy in a sealed envelope with postage fully prepaid, through the United States Postal Service at Oxford, California, addressed to

SEE ATTACHMENT A

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on the date below at Walnut Creek, California.

9/19/2012

DATE

PATRICIA HOEKWATER

ATTACHMENT A

PARTY REPRESENTED	ATTORNEY(S) SERVED
Committee of Bar Examiners of the State Bar of California	Joseph Starr Babcock State Bar of California 180 Howard Street San Francisco, CA 94105 Rachel Simone Grunberg Office of the General Counsel, State Bar of California 180 Howard Street San Francisco, CA 94105 Robert E. Palmer Gibson Dunn and Crutcher LLP 3161 Michelson Drive Irvine, CA 92612-4412 Donald K. Tamaki Minami Tamaki LLP 360 Post Street, 8 Floor San Francisco, CA 94108-4903 Mark A. Perry Gibson Dunn and Crutcher LLP 1050 Connecticut Avenue, N.W. Washington, DC 20036-5306 Kevin R. Johnson U.C. Davis School of Law 400 Mark Hall Drive Davis, CA 95616 Bill Ong Hing University of San Francisco School of Law 2199 Fulton Street San Francisco, CA 94117 Bryan Springmeyer 275 Battery Street Suite 1170 San Francisco, CA 94111

AMICUS REPRESENTED	ATTORNEY(S) SERVED
American Civil Liberties Union American Civil Liberties Union of Northern California American Civil Liberties Union of San Diego and Imperial Counties American Civil Liberties Union of Southern California American Immigration Lawyers Association Asian Law Caucus Legal Aid Society - Employment Law Center National Asian Pacific American Bar Association National Immigration Law Center	Jennifer C. Newell Michael Tan American Civil Liberties Union Foundation Immigrants' Rights Project 39 Drumm Street San Francisco, CA 94111 Bernard Pavel Wolfsdorf American Immigration Lawyers Association 1416 2nd Street Santa Monica, CA 90401 Lee Gelernt American Civil Liberties Union Foundation 125 Broad Street, 18th Floor New York, NY 10004
Asian Pacific American Legal Center Asian Law Alliance Dream Bar Association Mexican American Legal Defense and Educational Fund National Association of Latino Elected and Appointed Officials Educational Fund National Council of La Raza	Nicholas David Espiritu Mexican American Legal Defense and Educational Fund 634 S. Spring Street, 11th Floor Los Angeles, CA 90014
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Los Angeles County Bar Association Alameda County Bar Association Asian American Bar Association of the Greater Bay Area Asian Pacific American Bar Association of Silicon Valley Bar Association of San Francisco Beverly Hills Bar Association Kern County Bar Association Marin County Bar Association Mexican American Bar Association Multicultural Bar Alliance of Southern California Riverside County Bar Association Sacramento County Bar Association San Bernardino County Bar Association San Diego County Bar Association Santa Clara County Bar Association	Carlos Roberto Moreno Irell and Manella LLP 1800 Avenue of the Stars, Suite 960 Los Angeles, CA 90067

South Asian Bar Association of Northern California	

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