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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Payment of Fees for Actuarial Accreditation Examination Review Courses and Examination

File: B-286026

Date: June 12, 2001

DIGEST

Under the Government Employees' Training Act, 5 U.S.C. § 4109(a), PBGC may pay for its actuaries to attend accreditation examination review courses and to provide on-the-job study time, but may not pay the cost of accreditation examinations.

DECISION

By letter dated August 2, 2000, the General Counsel of the Pension Benefit Guaranty Corporation (PBGC) asked whether PBGC may use appropriated funds to pay, as training costs, fees for actuary accreditation examination review courses, on-the-job study time, and examination fees. As explained below, PBGC has authority, under 5 U.S.C. § 4109(a), to use appropriated funds for review courses and on-the-job study time, but not for examination fees.

Background

PBGC is a wholly-owned government corporation, 5 U.S.C. § 105, that administers the defined-benefit termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1301 - 1368. When a covered pension plan terminates with unfunded benefit liabilities, PBGC takes over the plan and pays the unfunded portion of the basic benefits with its insurance funds. 29 U.S.C. § 1322. PBGC employs a number of actuaries to calculate pension benefits. To obtain employment as an actuary at PBGC, a person must have an undergraduate degree or a combination of relevant education and experience; an actuary need not have a professional license or credential for employment. Letter from PBGC General Counsel, August 2, 2000.

Two organizations, the Joint Board for the Enrollment of Actuaries and the Society of Actuaries, offer examinations to accredit actuaries. In the course of negotiating a collective bargaining agreement with its actuaries, PBGC proposes to use its training funds to pay to send actuaries to examination review courses, provide actuaries with

on-the-job study time to review the course materials, and pay for the accreditation examinations. PBGC explained that because pension plan participants and sponsors often challenge PBGC's benefit-calculation decisions (sometimes in litigation), the review courses, even though designed to prepare examinants for the exams, would enhance the ability of PBGC actuaries to carry out their assignments. These courses, PBGC has determined, "focus on a number of realistic actuarial problems that mirror the problems that PBGC's actuaries will face as they advance in their careers." PBGC Letter, August 2, 2000.

PBGC expects, further, that having actuaries who sit for the exam and obtain actuary credentials will enhance PBGC's credibility when dealing with actuaries hired by participants and sponsors who challenge PBGC's decisions. PBGC also has determined that offering actuarial training and examinations at government expense will assist in recruiting and retaining actuaries. Recruitment and retention problems have been exacerbated in recent times by the high salaries that actuaries command in the private sector.

Analysis

At issue here is whether the cost of the examination review courses, on-the-job study time, and accreditation exams are properly viewed as personal qualification expenses or as training expenses. As early as 1890, the Supreme Court held that expenses necessary to qualify a government employee to do his or her job are personal expenses, and as such, are not chargeable to appropriated funds. "[I]t is the duty of persons receiving appointments from the government . . . to qualify themselves for the office." United States v. Duzee, 140 U.S. 169, 171 (1890). The accounting officers of the government have adhered to this rule.[1] As stated in an 1895 Comptroller of the Treasury decision, "That which is required of a person to become invested with an office must be done at his own expense unless specific provision is made by law for payment by the Government." 2 Comp. Dec. 262, 263 (1895). Our decisions have applied this rule on numerous occasions. In 61 Comp. Gen. 357 (1982), for example, we held that an agency could not pay the costs of bar review courses or bar membership fees for its employee attorneys. We viewed these expenses as personal expenses related to qualifying for office. See also 46 Comp. Gen. 695 (1976) (medical licensing fees for Public Health Service physicians); 22 Comp. Gen. 460 (1942) (expenses for Federal Trade Commission attorney's admittance to bar of a United States Circuit Court of Appeals); B-260771, October 11, 1995 (cost of obtaining Certified Government Manager designation).

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[1] The Federal Labor Relations Authority, for example, has consistently taken the position that the payment of personal expenses is not authorized under a collective bargaining agreement, since the payment of personal expenses is not properly chargeable to appropriated funds. See, e.g., American Federation of Government Employees Counsel 214, AFL-CIO and Air Force Logistics Command, 30 FLRA No. 112, cited in B-249061, May 17, 1993.

In at least two instances, however, we either expressly or tacitly viewed accreditation review courses as training costs, rather than as personal qualification expenses, authorized by the Government Employees' Training Act (Act). 5 U.S.C. §§ 4101 - 4118. In B-187525, October 15, 1976, we held that the Interstate Commerce Commission (ICC) could pay, as training costs, the costs of a California bar review course for a staff attorney already admitted to the bar of another state. The ICC had assigned the staff attorney to work in California. The rules of the United States District Court in California required that an attorney, although already admitted to the bar of another state, obtain admission to the California bar. ICC had agreed to pay for its attorney to take a California bar review course, determining that the review course, by preparing the attorney for the California bar exam, would enable the agency to perform its duties in California. We concluded that the bar review course constituted training, not a qualification expense for the ICC attorney, on the grounds that the ICC found it necessary to the agency's objectives to assign this attorney to California, and the attorney had, in fact, already qualified himself for employment when he gained admission to his first bar. Accordingly, we did not view the expense of the California bar review course as a personal qualification expense, but rather as an authorized training expense under the Act.

In another decision, 55 Comp. Gen. 759 (1976), the Department of Interior's Bureau of Reclamation had asked whether it could pay the examination fee and travel costs of an employee taking an examination to qualify as an accredited rural appraiser.[2] The facts of the decision indicate that the Bureau had paid the employee's tuition for a review course to prepare for the accreditation exam. Although the Bureau had not raised the use of appropriated funds for the review course as an issue, we noted, without objection, the Bureau's determination that the course was payable as training under the Act.

These two 1976 decisions share one thing in common - - the explicit or tacit acceptance of accreditation review courses as authorized training. As the Comptroller of the Treasury recognized, appropriated funds are available to pay for what might otherwise constitute a personal expense of qualifying for a federal position to the extent Congress has authorized the use of appropriated funds for such purpose.[3] 2 Comp. Dec. at 263. By focusing solely on the benefit of the review

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[2]The Bureau determined that having their appraisers designated as accredited rural appraisers would further the agency's goals, specifically in condemnation cases. The Bureau took the position that "if Government appraisers testifying for the government are to enjoy equal credibility [with appraisers hired by private landowners], they too must be professionally accredited." 55 Comp. Gen. at 759.

[3] See, e.g., 36 Comp. Gen. 465 (1956). Notwithstanding the personal nature of the expense, Congress has authorized the use of appropriated funds to reimburse an employee whose job includes serving as a notary public the expense of the commission. 5 U.S.C. § 5945. The expense is payable with appropriated funds even though the employee uses the commission for private as well as government business. 36 Comp. Gen. at 466.

courses to the person seeking to qualify for a position or to earn an accreditation, our decisions have not consistently given due regard to agencies' authority to cover such costs in appropriate circumstances as training expenses. See, e.g., 61 Comp. Gen. at 360.

In 1958 Congress enacted the Government Employees' Training Act to authorize federal agencies, including government corporations such as PBGC, to use appropriated funds to train government employees. 5 U.S.C. § 4101(1)(C). The Act authorizes the head of each agency to establish training programs, consistent with OPM's implementing guidance. The purpose of each agency's training program is to assist an agency's mission and performance goals by improving employee performance. 5 U.S.C. § 4103. Section 4101(4) defines training to include "placing or enrolling the employee in, a planned, prepared, and coordinated program, [or] course . . . in scientific, professional, technical . . . or other fields which will improve individual and organizational performance and assist in achieving the agency's mission and performance goals."[4]

Our decisions have interpreted this Act to be "sufficiently broad and flexible to enable an agency to provide whatever training is necessary to develop the skills, knowledge, and abilities that will best qualify employees for the performance of official duties." B-182398, October 24, 1974. See also B-258442, B-258443, April 19, 1995. While the Act and regulations grant a considerable degree of discretion to agency heads to determine the types of training to provide, the head of an agency "is not authorized to expand the statutory definition or pay for items not contemplated by the definition." B-187525, October 15, 1974.[5] Section 4101 requires that a program, to constitute training, be designed to increase the knowledge and proficiency of the persons attending them. B-182398, October 24, 1974. In this regard, OPM has issued the following guidance:

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[4] Section 4118 of the Act authorizes OPM to promulgate regulations containing the principles, standards, and related program requirements. 5 U.S.C. § 4118. Implementing regulations issued by the Office of Personnel Management (OPM) cite to training that both develops the potential of employees to meet future agency needs and "improves an employee's current job performance." 5 C.F.R. § 410.101(d)(2).

[5] In 68 Comp. Gen. 721 (1989), for example, we held that the FBI could not use its appropriations to pay, as training, costs incurred by an FBI Academy firearms instructor related to tryouts for the United States Olympic Shooting Team. The tryouts, we concluded, were designed not "to develop skills, knowledge and abilities . . . through a planned, prepared and coordinated routine of instruction," but to select persons to compete in the Olympic Games. Id. at 722. The tryouts were, therefore, not training under the Act.

> "An agency may pay for a refresher course, such as refresher training in professional engineering for an engineer or in law for an attorney. Although the training may prepare the employee for a professional examination, the training itself is justified because it will improve the employee's performance of his or her official duties."

OPM Human Resources Flexibilities, http://www.opm.gov/hrd/lead/flex.htm.

Given OPM's role under the Act, we believe its guidance merits deference if otherwise reasonable. Chevron USA, Inc. v. NRDC, 467 U.S. 837, 844 (1984). Here, in fact, we agree with OPM's guidance. The Government Employees' Training Act provides an agency head with the discretionary authority to pay the costs of a review course so long as the agency head determines that the review course will enhance knowledge, skills, and abilities that the agency deems important to an employee's performance of official duties. While a consideration, the fact that the course may also prepare the employee to sit for a professional accreditation exam is not controlling. To the extent that our earlier decisions, such as 61 Comp. Gen. 357 (1982), failed to honor an agency's determination that an examination review course would constitute appropriate training under the Act and held that the costs of review courses were expenses of personal qualification not payable from appropriated funds, we overrule such decisions.

Here, PBGC has determined that the actuary review courses will enhance the ability of PBGC actuaries to carry out their assignments, even if the actuaries were later to sit for the exam. In addition, in this case, as in our 1976 ICC decision, B-187525 (discussed above), PBGC's actuaries, like the ICC staff attorney, have already qualified themselves for their positions with PBGC. In these circumstances it would be factually, and logically, inaccurate to categorize the costs of the review courses as personal qualification expenses. Even apart from this factual distinction, PBGC has the discretion under the Training Act to determine that the review courses constitute appropriate training for its actuaries. As the Comptroller of the Treasury recognized in 1895, where other authority exists for payments of arguably personal qualification expenses, determinations made pursuant to that authority should be respected. Accordingly, PBGC may use appropriated funds to pay for the cost of the review courses as training.

Given that the review courses are appropriate training under the Act, we would not object to PBGC providing actuaries on-the-job study time to work through the course materials and problems. As PBGC points out, the study time will enhance their actuaries' "retention of . . . information, [and] . . . continue their professional development." The Act authorizes agencies to "pay all … of the pay … of an

employee of the agency selected and assigned for training under this chapter, for the period of training." 5 U.S.C. § 4109(a)(1).[6]

We find no authority, however, that would permit PBGC to pay the cost of the accreditation examination. We have long held that an agency may not pay the costs of its employees taking licensing exams, B-187525, October 15, 1976, or professional accreditation exams, 55 Comp. Gen. 759 (1976). A licensing or accreditation examination does not fall within the Act's definition of training, that is, it is not a program or course designed to develop or enhance knowledge, skills, and abilities. Rather, an accreditation exam is designed to test knowledge, skills, and abilities to ensure that the examinant satisfies professional standards as a prerequisite to accreditation. In 55 Comp. Gen. 759 (1976), discussed above, the Bureau of Reclamation asked whether it could pay the expenses of an employee taking an examination to qualify as an accredited rural appraiser. The Bureau cited reasons very similar to those argued by PBGC in its request letter, including, among other things, recognition of Bureau appraisers as experts by the courts. We held that the Bureau was not authorized to use appropriated funds to pay for the accreditation examination where the exam merely tested the skills the employee had acquired in a previous training course.[7] The expense of professional accreditation is personal to the employee and should be paid with personal funds; accreditation, in fact, belongs to the employee personally, not the agency, and remains so for life, irrespective of whether the employee remains with the federal government and irrespective of whether the government benefits from the accreditation. See 47 Comp. Gen. 116 (1967).

OPM, in this regard, advises agencies that they may not use appropriated funds to pay for professional examinations, "such as bar exams or CPA exams." OPM Human Resource Flexibilities (above). Again, we believe OPM's guidance in this matter is entitled to deference. Although one can differ on the issue presented, OPM's position is consistent with the Training Act and our decisions. At the same time, we recognize that using appropriated funds to pay for certain credentials or professional

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[6] Compare with B-156287, February 5, 1975. We held that an agency could not pay employees' salaries during the time they were off of work to take bar review courses and study for the bar exam where the agency had not authorized the courses as training. In that case, the agency's scheduled termination five months after the date of the bar exam made a determination that the training would assist in meeting the agency's mission and performance goals conceptually difficult.

[7] Where a review course, or other training, concludes with an examination assessing the level of knowledge a student learned in the course, an agency need not demand that the trainer itemize the cost of the exam. Universities, for example, typically do not impose a fee for end-of-semester exams separate from the fee for the course. Costs associated with the examination would normally be payable as part of the course fee. B-187525, October 15, 1976. The costs of the accreditation examination for actuaries are not included, however, in the fee for the review courses.

licenses, including the examination fee for that credential or license, would likely enhance an agency's ability to recruit and retain qualified employees. Unfortunately, we have identified no authority that would permit agencies to use appropriations for that purpose.[8] To the extent PBGC or another agency finds it important for the agency to pay for selected exams, we would encourage such agency to seek the necessary legislative authority from the Congress. See generally 2 Comp. Dec. at 263. In our view, any such authority should be structured to ensure that the agency may use appropriated funds only for payment of selected credentials and licenses that the agency deems to be in the interest of the federal government and not otherwise required as a condition of employment.

Conclusion

Under the Government Employees' Training Act, PBGC may pay for its actuaries to attend review courses for the accreditation examination and to provide on-the-job study time to review course material, but may not pay for the cost of the accreditation examination.

Anthony H. Gamboa
General Counsel

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[8] The Training Act includes a restriction on the use of training funds for an employee to obtain an academic degree, whether or not the degree is a job qualification. 5 U.S.C. § 4107. This statutory provision includes an exception, however, authorizing degree training where there is a need for such training "to assist in the recruitment or retention of employees" in shortage occupations. 5 U.S.C. § 4107(b), 5 C.F.R § 410.308. This prohibition is conceptually consistent with the longstanding rule that personal qualification expenses are payable with appropriated funds only where Congress has explicitly so authorized. See also 41 U.S.C. § 433(h).