



G A O

Accountability • Integrity • Reliability

United States General Accounting Office
Washington, DC 20548

B-302760

May 17, 2004

The Honorable Jack Kingston
Chairman, Subcommittee on Legislative Branch
Committee on Appropriations
House of Representatives

Subject: Transfer of Fiscal Year 2003 Funds from the Library of Congress to the
Office of the Architect of the Capitol

Dear Mr. Chairman:

This responds to your request for our legal opinion regarding a transfer of fiscal year 2003 funds from the Library of Congress (Library) to the Office of the Architect of the Capitol (Architect). Specifically, you ask for our opinion on the propriety of a September 30, 2003, transfer of \$500,000 from the Library's "Salaries and Expenses" appropriation to the Architect's "Library Buildings and Grounds" appropriation for the purpose of redesigning and renovating a loading dock at the Library's Madison Building. The Library's appropriation is a 1-year appropriation; the Architect's appropriation includes 1-year, 3-year and no-year funds. You ask whether this transfer has resulted in extending the obligational availability of the Library's 1-year appropriation, and whether the funds were properly obligated for a *bona fide* need of the fiscal year for which they were appropriated.

As we explain below, the transfer of funds from the Library to the Architect did not extend the obligational availability of the Library's appropriation. Under the Library's transfer authority, 2 U.S.C. § 141(c), transferred Library funds were only available for the *bona fide* needs of fiscal year 2003. The Library had a *bona fide* need to renovate the Madison Building loading dock in September 2003 when it entered into an interagency agreement with the Architect. In signing the interagency agreement, the Library incurred an obligation for \$500,000. Accordingly, that amount is available to liquidate the obligation in future fiscal years to cover costs incurred by the Architect in accordance with the terms of the interagency agreement.

Consistent with our customary practice when rendering opinions, upon receipt of your request, we sent letters to the General Counsels of both the Library and the Architect to establish a record on the matter you put before us. Letters from Thomas H. Armstrong, Assistant General Counsel, General Accounting Office, to Charles Tyler, General Counsel, Office of the Architect of the Capitol, and to Elizabeth Pugh, General Counsel, Library of Congress, April 8, 2004. We requested

certain documentary evidence from both the Library and the Architect, and asked a series of questions designed to permit us to assess the Library's and the Architect's rationale for the transfer in question. We received responses from the Library and the Architect on April 27, including detailed documentary evidence of the design work for the loading dock and the funds transfer.

BACKGROUND

The Consolidated Appropriations Resolution, 2003, appropriated funds to the Library of Congress for "Salaries and Expenses" for fiscal year 2003 which were available, *inter alia*, for "necessary expenses of the Library of Congress not otherwise provided for, including . . . custody and custodial care of the Library buildings." Pub. L. No. 108-7, Div. H, Tit. I, 117 Stat. 11, 376 (2003) (Legislative Branch Appropriations).¹ The Architect also received appropriations in this same Act, under the heading "Library Buildings and Grounds," "[f]or all necessary expenses for the mechanical and structural maintenance, care and operation of the Library buildings and grounds." Part of the Architect's appropriation is only available for fiscal year 2003, part remains available until September 30, 2007, and part remains available until expended. *Id.* at 372.

The Consolidated Appropriations Resolution, 2003, also updated the Act of June 29, 1922, Ch. 251, § 1, 42 Stat. 715, as amended, which assigns responsibilities between the Architect and the Library over the Library's buildings and grounds. Pub. L. No. 108-7, § 1208, 117 Stat. at 375-76, *codified at* 2 U.S.C. § 141. As amended, section 141(a) allocates to the Architect responsibility for structural integrity, mechanical, electrical, plumbing and elevator systems, architectural features and compliance with relevant buildings codes. 2 U.S.C. § 141(a). Section 141(b) allocates to the Library all other work not assigned to the Architect. 2 U.S.C. § 141(b). According to the Library, the principal division of labor between the Library and the Architect remains largely the same – historically, the Architect has been responsible for architectural, structural, and mechanical work at the Library buildings and grounds, and the Library has been responsible for furnishing, equipping and maintaining the interior of the buildings.² Letter from Elizabeth Pugh, General Counsel, Library of Congress, to Thomas H. Armstrong, Assistant General Counsel, General Accounting Office, April 27, 2004 (Pugh Letter).

¹ Section 202 of the general provisions, applicable to Library appropriations, confirms the availability of those funds for fiscal year 2003 obligations. Pub. L. No. 108-7, Div. H, Tit. II, 117 Stat. at 382.

² *Compare* 2 U.S.C. § 141(2002) *with* 2 U.S.C. §§ 141(a)(1)(C), (D) (2004). (The superceded section 141 did not specify responsibility for compliance with building and fire codes and for architectural features of the buildings.)

The Senate Appropriations Committee report states that the purpose of the amendment to section 141 was to address the division of labor between the Architect of the Capitol and the Librarian of Congress with respect to Library buildings and grounds. S. Rep. No. 107-209 at 48 (2002). The amendment also was to provide for flexibility in accomplishing necessary work, authorizing the Architect and the Library to reallocate facilities projects between themselves and to transfer project funding accordingly.³ *Id.*

In this regard, the Act authorizes the Architect and the Library to enter into agreements with each other to perform work and allows each agency to transfer funds to the other for that purpose:

“The Architect of the Capitol and the Librarian of Congress may enter into agreements with each other to perform work under this section, and, subject to the approval of the Committees on Appropriations of the House of Representatives and the Senate and the Joint Committee on the Library, may transfer between themselves appropriations or other available funds to pay the costs therefor.” 2 U.S.C. § 141(c) (emphasis added).

The Senate Committee on Appropriations directed the Library and the Architect to enter into a Memorandum of Understanding to set forth “their mutual understanding of the scope of work that may be transferred between them, the conditions under which work and funds will be transferred, and the process for managing such projects” under section 141. S. Rep. No. 107-209 at 48. Accordingly, the Library and the Architect finalized a Memorandum of Understanding in August 2003 “to provide a basis for the orderly planning, management, and funding of construction projects at the Library of Congress.” Memorandum of Understanding between the Architect of the Capitol and the Library of Congress, § 1, Aug. 9, 2003 (MOU).

According to both the Library and the Architect, the work at issue here, the redesign and renovation of the Madison Building’s loading dock, falls within the Architect’s responsibility. 2 U.S.C. § 141(a). Pugh Letter; Letter from Charles K. Tyler, General Counsel, Office of the Architect of the Capitol, to Thomas H. Armstrong, Assistant

³ See also *Legislative Branch Appropriations for Fiscal Year 2003*: Hearing before a Subcommittee of the Senate Committee on Appropriations, 107th Cong. 9 (Mar. 13, 2002) (Statement by the Librarian of Congress Dr. James Billington) (“The Library also requested, but the Architect did not approve, funding requests for construction of book-storage module[s]. . .”); *Legislative Branch Appropriations for Fiscal Year 2003*: Hearing before a Subcommittee of the House Committee on Appropriations, 107th Cong. 227 (Apr. 24, 2002) (Response of Deputy Librarian of Congress Donald L. Scott to Rep. Moran) (“We are clearly frustrated [with the Architect] by the lack of progress which many of our [the Library’s] projects experience . . .”).

General Counsel, General Accounting Office, April 27, 2004 (Tyler Letter). The MOU states that “the decision whether the [Library] will undertake a project that would otherwise be handled by the [Architect] pursuant to the terms of the Act [Pub. L. No. 108-7, 2 U.S.C. § 141] will be mutual, and will be reflected in a bilaterally executed Interagency Agreement.” MOU, § 1.c. The MOU does not authorize the Library to perform any specific project; subsequent interagency agreements will contain such authorization. MOU, § 1.d.

On July 30, 2003, the Librarian of Congress requested approval from the chairmen of the respective committees, in accordance with 2 U.S.C. § 141(c), to transfer \$500,000 from the Library to the Architect to renovate the loading dock at the Library’s Madison Building.⁴ The Librarian cited the October 2001 anthrax incident on Capitol Hill as requiring new policies, procedures and operations to increase security for mail delivery and to reconfigure space based on the new mail operations. Letters to Chairmen. The Librarian also cited “the need to obligate project funds by September 30.”

After receiving approval from the respective committee chairmen as required by section 141(c), the Architect and the Librarian entered into an interagency agreement on September 26, 2003, as called for by the MOU.⁵ Interagency Agreement between the Architect of the Capitol and the Library of Congress, Sept. 26, 2003. The interagency agreement incorporates the MOU by reference and contains a “Statement of Work” detailing the services to be performed and includes design and construction drawings. Interagency Agreement, § 1, Attach. B, Attach. C. The interagency agreement further states that “[The Library] will advance an amount totaling \$500,000 in FY [fiscal year] 2003 funds to [the Architect] for the purpose of the design/build of the project specified in the Statement of Work,” and that “[t]here is a *bona fide* need

⁴ Letters from James H. Billington, Librarian of Congress, to the Honorable Jack Kingston, Chairman, Subcommittee on the Legislative Branch, Committee on Appropriations, U.S. House of Representatives; to the Honorable Ben Nighthorse Campbell, Chairman, Subcommittee on the Legislative Branch, Committee on Appropriations, U.S. Senate; and to the Honorable Ted Stevens, Chairman, Joint Committee on the Library, July 30, 2003 (Letters to Chairmen).

⁵ The respective chairmen approved the transfer by returning the letters to the Librarian indicating their approval by their respective signatures. Copies of the returned letters are included as Attachment A of the interagency agreement. Chairman Kingston signed his letter on September 24, 2003. Interagency Agreement, Attach. A. The letter to the Chairman of the Joint Committee on the Library, though signed by both the Chairman and Vice-chairman, was not dated. *Id.* The letter to the Chairman of the Senate Subcommittee on the Legislative Branch was signed by both the Chairman and Ranking Member, though only the Ranking Member dated his signature (September 3, 2003). *Id.*

for this project in fiscal year 2003.” Interagency Agreement, § 4. Funds were subsequently transferred electronically on September 29, 2003. On September 30, 2003, pursuant to a Library of Congress “Notice of Miscellaneous Obligation” identifying the Architect of the Capitol as the vendor, an “authorized certifying officer” recorded an obligation of \$500,000 against the Library’s fiscal year 2003 funds. Library of Congress Financial Services Directorate, Doc. No. 03BUDBB0001, Sept. 30, 2003. Both the Library and the Architect estimate that the project will start in May 2004; the Architect estimates the actual construction time to be 9 months.⁶ Pugh Letter; Tyler Letter.

ANALYSIS

The matter before us concerns the Architect of the Capitol’s (Architect) use in fiscal years 2004 and 2005 of funds appropriated to the Library of Congress (Library) for fiscal year 2003. A fiscal year appropriation, like the Library’s appropriation, is available only for the agency’s *bona fide* needs of that fiscal year. 31 U.S.C. § 1502(a). *See also* B-282601, Sept. 27, 1999. For that reason, questions fairly arise whenever an agency transfers funds from a fiscal-year appropriation to an appropriation that is available for more than 1 year, as the Library did when it transferred funds from its appropriation to the Architect’s appropriation. The questions presented here are (1) whether the September 30, 2003, transfer of \$500,000 from the Library’s “Salaries and Expenses” appropriation to the Architect’s “Library Buildings and Grounds” appropriation extended the availability of the Library’s 1-year appropriation; and (2) whether those funds were properly obligated for a *bona fide* need of fiscal year 2003. Because the Library’s Salaries and Expenses appropriation is available for expenses of “custody and custodial care of the Library buildings,” Pub. L. No. 108-7, Div. H, Tit. I, 117 Stat. 11, 376 (2003), we have no objection to the Library transferring amounts for this purpose.

A transfer of funds from one appropriation to another is permitted only when authorized by law. 31 U.S.C. § 1532. Even when a transfer is permitted, the amounts transferred are subject to the same purpose and time limitations as imposed by the law that appropriated those amounts. *Id.*

The \$500,000 transfer occurred in the context of an interagency transaction. Authority to engage in interagency transactions, like section 141(c), permits the transfer of funds between the two agencies who are parties to the transaction in order to cover the costs of the goods or services that are the subject of the transaction. *See, e.g.*, B-289380, July 31, 2002. Section 141(c) specifically authorizes the Architect and the Library to “enter into agreements with each other to perform

⁶ We note that the interagency agreement is silent as to the duration of the construction period, and could have been drafted with greater specificity in this regard. *See* Interagency Agreement, § 5 (Term and Termination).

work under this section,” and to “transfer between themselves appropriations . . . to pay the costs therefor.” 2 U.S.C. § 141(c). Section 141(c) does two things: it establishes transfer authority (“transfer between themselves”), and it defines the purpose for which transferred amounts are available (“to perform work under this section”). The redesign and renovation of the Library’s loading dock is certainly “work under this section,” because section 141(a) allocates this responsibility to the Architect. Therefore, section 141(c) permits the Library to enter into an agreement with the Architect for the redesign and renovation of the loading dock, and to transfer Library appropriations to the Architect to pay the costs incurred by the Architect in performing that work.⁷

Section 141(c), however, does not waive, or otherwise modify, any time constraints imposed in appropriations laws on amounts transferred. While permitting transfers and defining the purposes for which transferred amounts are available, section 141(c) does not address the time availability of transferred amounts. Accordingly, the fiscal year 2003 amounts transferred from the Library to the Architect are available for obligation only for the *bona fide* needs of fiscal year 2003. 31 U.S.C. § 1532. However, the fact that the \$500,000 transferred were fiscal year 2003 funds does not necessarily mean that they may not be applied to cover costs incurred in fiscal year 2004 and 2005. Whether the \$500,000 can be used to cover costs incurred by the Architect in fiscal years 2004 and 2005 depends on (1) whether the Library incurred an obligation for that amount in fiscal year 2003, the period of the funds legal availability, and (2) whether the obligation was for a *bona fide* need of the Library in fiscal year 2003.

Did the Library incur an obligation in fiscal year 2003?

An interagency transaction, like that authorized by section 141(c), is, in some ways, not unlike a contractual transaction. *See, e.g.*, B-286929, Apr. 25, 2001. Similar to a contractual transaction, at the time the agencies involved in the transaction enter into an interagency agreement, the ordering agency incurs an obligation for the costs of the work to be performed, and the amount obligated remains available to pay these costs once the work is completed. *See, e.g.*, 59 Comp. Gen. 386 (1980) (a Printing and Binding Requisition submitted by a federal agency to the Government Printing Office (GPO), when accompanied by copy or sufficient specifications for GPO to proceed with the job, creates a valid obligation if the need for printing existed at the time the requisition was submitted). *See also* B-286929, Apr. 25, 2001 (interagency obligations pursuant to Brooks Act treated like other agency obligations, rather than like Economy Act obligations, and the existence of a defined requirement at the time the agreement is executed forms the basis for incurring and recording a financial

⁷ Without the section 141(c) authorization, this transfer of funds would constitute an impermissible augmentation of the Architect’s appropriations for Library buildings and Grounds. *See, e.g.*, B-206668, Mar. 15, 1982.

obligation); 23 Comp. Gen. 82 (1943).⁸ The fiscal year appropriation current at the time of the order should be charged for the full costs of the order, notwithstanding that the work may not be completed during that fiscal year. 59 Comp. Gen. 386 (1980). Here, the Library entered into an interagency agreement with the Architect in fiscal year 2003. It was that agreement that obligated the Library's fiscal year 2003 appropriation; the amount obligated for the agreement remains available to cover the Architect's costs of performing the work ordered in the interagency agreement.⁹

The fact that the Library transferred funds to the Architect in advance of the Architect's completion of the work did not result in the Library extending the availability of the amount transferred. The Library can make payment to the Architect, as section 141(c) requires it to do, either by transferring funds after the Architect completes the work ordered, or by advancing the funds for the Architect to use as it incurs costs in performing the work.¹⁰ Regardless of the payment method chosen, the obligation of the appropriation in September 2003, at the time of the interagency agreement, makes those funds available in fiscal years 2004 and 2005 – so long as the funds are used solely to cover the costs of the work ordered in the agreement.¹¹

⁸ Cf. B-300480, Apr. 9, 2003 (defining obligation in the context of a legal liability to include interagency agreements).

⁹ An agency may obligate a fiscal year appropriation for the provision of services that extend beyond the end of the fiscal year in which the appropriation is made when those services constitute a single, nonseverable undertaking. See B-257977, Nov. 15, 1995; 73 Comp. Gen. 77 (1994); 70 Comp. Gen. 296 (1991). Once expired, appropriated funds remain available to liquidate obligations properly chargeable to that account for five fiscal years after the period of availability. 5 U.S.C. §§ 1552(a), 1553(a). Because the Library would receive no benefit if the Architect were not to complete construction of the Madison building loading dock, the interagency agreement between the Architect and the Library for that work represents a single, nonseverable undertaking. See, e.g., B-257977, Nov. 15, 1995.

¹⁰ While interagency transactions are like contractual transactions in some ways they differ from contractual transactions in other ways. The option to advance funds to the performing agency in an interagency transaction is not available in a contractual transaction. 31 U.S.C. § 3324(a) (advance payment prohibition.) The advance payment prohibition, by its terms, applies to contracts; it does not apply to interagency transactions. See, e.g., B-207215, Mar. 1, 1983; see also 25 Comp. Gen. 834 (1946).

¹¹ If the amount the Library advances is based on an estimate of costs, the Architect, at completion of the work, must return to the Library any of the advance remaining after all costs are paid. B-288142, Sept. 6, 2001. The amounts transferred do not take on the 3-year or no-year character of the Architect's appropriation. Conversely, if
(...continued)

It is important to distinguish the interagency transaction authority of section 141(c) from the general interagency transaction authority of the Economy Act, 31 U.S.C. § 1535. Although the Economy Act provides general authority for interagency transactions, it does not govern transactions carried out under other specific authorities such as section 141(c). This is important because the Economy Act imposes conditions on Economy Act transactions that do not apply to transactions under other, independent authorities. B-289380, July 31, 2002.

For our purposes here, while the Economy Act, like other interagency transaction authorities, requires the ordering agency to obligate its appropriation when it enters into an agreement with another federal agency, if the appropriation charged is a fiscal-year appropriation, the Economy Act requires the ordering agency to deobligate the appropriation at the end of the fiscal year to the extent that the performing agency has not performed. 31 U.S.C. § 1535(d). *See, e.g.*, 39 Comp. Gen. 317 (1959); 34 Comp. Gen. 418, 421-22 (1955). That requirement is specific to Economy Act transactions and does not apply to transactions governed by statutory authority other than the Economy Act, like section 141(c). B-289380, July 31, 2002; *see also* B-282601, Sept. 27, 1999 (section 1535(d) only applies to interagency agreements under the Economy Act); B-167790, Sept. 22, 1977 (the agreement was authorized by statutory provisions other than the Economy Act, so therefore was not subject to the unique obligation treatment applicable to Economy Act transactions). Here, the interagency agreement between the Library and the Architect is based on specific statutory authority, 2 U.S.C. § 141(c), not the Economy Act.

Was the Library's obligation for a *bona fide* need of fiscal year 2003?

An appropriation limited in time may be obligated only to meet a legitimate need of the time period for which Congress provided the appropriation. 31 U.S.C. § 1502(a). *See also* B-282601, Sept. 27, 1999; B-257977, Nov. 15, 1995; 73 Comp. Gen. 77 (1994); 70 Comp. Gen. 296 (1991). The question arises, then, whether the \$500,000 transfer was properly obligated for a *bona fide* need of the Library during the period that these funds were available for obligation, that is, fiscal year 2003.

The Library first identified a need to renovate the loading dock and mail handling facilities as early as 1996, and commissioned a contractor to study the loading dock and mail handling operation. Pugh letter. According to the Library's General Counsel, the October 2001 anthrax incident on Capitol Hill accelerated the Library's

(...continued)

there are cost overruns and the \$500,000 transfer was insufficient to cover project costs, then the Library may only use fiscal year 2003 funds to pay for such overruns.

reengineering of its security, entrance and exit and mail handling operations. *Id.* See also *Legislative Branch Appropriations Hearing for Fiscal Year 2003*, House hearing at 137 (Statement by the Librarian of Congress Dr. James Billington) (“New protocols for mail delivery have had a profound impact on many business processes in the Library. Anthrax concerns severely delayed processing copyright registrations, acquiring materials for the collections, and communicating with many domestic and foreign partners.”). In February 2002 the Library hired a firm to design the Madison Building loading dock area. Pugh letter. “Discussions with the Architect ensued, and on April 20, 2003 the Library received a memorandum from the Architect commenting on issues with the design proposal and providing a budget estimate for the project.” *Id.* In July 2003, the Library formally requested approval for the transfer of funds to renovate the loading dock. See Letters to Chairmen, footnote 4, *infra*.

We necessarily defer to the Library’s determination of whether its loading dock and mail handling facilities are, in fact, capable of accommodating the heightened security considerations resulting from the October 2001 anthrax incident. From a *bona fide* need perspective, so long as the agency has identified a prior legitimate need that continues to exist, the appropriation current at the time the agency acts upon that need is available for the agency to use to satisfy that need. See, e.g., 73 Comp. Gen. 259 (1994) (an agency’s compliance with the *bona fide* need rule is measured at the time the agency incurs an obligation, and depends on the purpose of the transaction and the nature of the obligation being entered into). See also 61 Comp. Gen. 184, 186 (1981) (*bona fide* need determination depends upon the facts and circumstances of the particular case). Here, the Library appears to have identified a need as early as 1996, but at least in 2001, that continued into subsequent fiscal years. With its September 2003 interagency agreement, the Library acted to satisfy its need. Because the Library had established its need to renovate the loading dock at least in 2001, and not having satisfied that need at that time, the Library’s fiscal year 2003 appropriation was available for that purpose. The fact that the Library will not benefit from the renovation until after fiscal year 2003 does not mean that the renovation is not a *bona fide* need of fiscal year 2003.

CONCLUSION

The transfer of funds from the Library of Congress’ “Salaries and Expenses” appropriation to the Architect of the Capitol’s “Library Buildings and Grounds” appropriation for the purpose of redesigning and renovating a loading dock at the Library’s Madison Building did not extend the availability of the Library’s appropriation for obligation. Under the Library’s transfer authority, 2 U.S.C. § 141(c), transferred Library funds were only available for the *bona fide* needs of fiscal year 2003. The Library had a *bona fide* need to renovate the loading dock in September 2003 when it entered into an interagency agreement with the Architect. In signing the

interagency agreement, the Library incurred an obligation for \$500,000. That amount should be used to liquidate the obligation in fiscal years 2004 and 2005 to cover costs incurred by the Architect in accordance with the terms of the interagency agreement.

Sincerely yours,

/signed/

Anthony H. Gamboa
General Counsel