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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: National Archives and Records Administration Records Center
Revolving Fund—Advance Payments

File: B-306975

Date: February 27, 2006

DIGEST

1. The Treasury and General Government Appropriations Act, 2000, Pub. L. No. 106-58, Title IV, National Archives and Records Administration (NARA), Revolving Fund, 113 Stat. 430, 460–61 (Sept. 29, 1999), authorizes agencies to make advance payments to the NARA Records Center Revolving Fund for the monthly charges for storage and related services for temporary and pre-archival records.
2. NARA proposes to bill its customers at the beginning of each month based on its estimate of services it will provide that month and to adjust the next month's bill to reflect actual costs of services rendered. GAO has no objection to this billing method, except to note that if a customer advances fiscal year funds for September's estimated costs, NARA may not credit excess amounts in adjusting October's bill. NARA must return the excess to the customers. These funds would not be available for obligation of the next fiscal year commencing October 1. Likewise, if a customer agency owes more than the amount advanced in September, the customer must cover the underpayment from the previous fiscal year's funds.

DECISION

The National Archives and Records Administration (NARA) has requested a decision on whether its customer agencies' appropriations are available to pay, in advance, monthly charges for storage services for temporary and pre-archival records. NARA also asks that if we find that advance payments are authorized, whether NARA may base the charges on monthly projections and then adjust agencies' bills the following month to reflect the actual amount of services provided. Letter from Michael Whitacre, Director, Revolving Fund Finance Staff, NARA, to Anthony H. Gamboa, General Counsel, GAO, faxed to GAO on November 22, 2005. (Whitacre Letter). As we explain below, the Treasury and General Government Appropriations Act, 2000, Pub. L. No. 106-58, Title IV, National Archives and Records Administration,

Revolving Fund, 113 Stat. 430, 460–61 (Sept. 29, 1999), provides authority for agencies to use appropriated funds for advance payments to NARA for providing the storage services in question. We have no objection to the method NARA proposes for assessing the charges.

BACKGROUND

NARA stores temporary and pre-archival records that belong to it and other federal agencies in its Records Center Program Facilities. Other federal agencies may enter into agreements with NARA to transfer and store records at NARA records centers. *See* 44 U.S.C. § 3103; 36 C.F.R. §§1220.38(a), 1228.156(a). *See generally* 44 U.S.C. §§ 2901–2909 (Records Management).

The Treasury and General Appropriations Act, 2000, established the “Records Center Revolving Fund” (revolving fund) to pay for expenses and equipment necessary to provide storage and related services for temporary and pre-archival records of federal agencies. Pub. L. No. 106–58, Title IV, National Archives and Records Administration, Revolving Fund, 113 Stat. 430, 460-61 (Sept. 29, 1999).

Congress established the revolving fund to make NARA’s record center storage operations completely self-sufficient, without the necessity for additional appropriations. S. Rep. No. 106-87, at 68 (1999). As prescribed in the revolving fund’s authorizing legislation, NARA charges other agencies user fees “as payment for providing personnel, storage, materials, supplies, equipment, and services” Pub. L. No. 106-58, 113 Stat. 461. NARA is required to charge for services at rates that “will return in full the expenses of operation, including reserves for accrued annual leave, worker’s compensation, depreciation of capitalized equipment and shelving, and amortization of information technology software and systems.” *Id.*

In past years, NARA’s practice has been to bill its revolving fund customers after the end of the month in which it provides the services. Whitacre Letter. NARA did this because the revolving fund’s billing system is unable to generate the actual amount due for services until after the close of the month in which they are delivered. *Id.* However, to avoid potential cash flow problems, NARA intends to change its practice to require revolving fund customers to pay in advance for fund services. *Id.*

NARA proposes to bill its revolving fund customers for services at the beginning of each month. NARA would base the amounts billed on estimates of the amount of services provided. NARA proposes to base its estimates on the average of the previous 11 months’ services except in specific circumstances that would dictate that a different amount be used. Whitacre Letter. Then, in the following month, NARA would adjust the customer’s bill, crediting the customer with the amount of

the difference between the amount advanced for the previous month and the actual amount of services received that month, or adding an amount if the actual cost of services exceeded the amount advanced. *Id.*

A NARA customer has expressed concerns over whether agency appropriations are available to pay for record storage and related services in advance, before the actual amount due the revolving fund is known. *Id.* Also, NARA is itself a revolving fund customer; the Records Center provides storage services to NARA programs that are funded by appropriations that are separate from the revolving fund. NARA has requested this decision so that it may properly address customer concerns and so it may know whether it may pay in advance into the revolving fund from its own appropriations for records storage services.

ANALYSIS

As a general rule, agencies are prohibited from making advance payments for goods and services unless authorized by a specific appropriation or other law. 31 U.S.C. § 3324. The statute establishing the revolving fund, Public Law 106-58, specifically authorizes agencies to make advance payments to the revolving fund for services related to the storage of temporary and pre-archival records. Referring to agency payments to the revolving fund for services, it states, “Such payments may be made in advance or by way of reimbursement.” Pub. L. No. 106-58, 113 Stat. 461. Under the so-called “plain meaning” rule of statutory interpretation, where the language of a statute is unambiguous, its plain meaning controls. *Connecticut National Bank v. Germain*, 503 U.S. 249, 253-254 (1992). The language of the revolving fund’s authorizing legislation is very clear that “payments may be made in advance . . .” *Id.* Given this clear statutory statement of authority, we conclude that NARA’s customers may use their appropriated funds to make advance payments into the Records Center Revolving Fund for temporary and pre-archival storage and related services.

We generally have no objection to NARA’s proposed method for accounting for its advance billing—charging monthly usage averages and then adjusting accounts when the actual amounts are determined. *See generally* 72 Comp. Gen. 120, 121–122 (1993) (under Economy Act transaction, ordering agency may advance funds to performing agency for services; the performing agency must return excess advanced funds to the ordering agency once actual costs of services are determined).

Of course, customer funds derived from fiscal (or fixed) year appropriations advanced for September services that exceed that month’s actual costs may not be used to reduce the agency’s October estimated payment. When an agency withdraws funds from its appropriation and makes them available for credit to another appropriation, that amount is available for obligation only for needs of the agency arising in the same time period as the appropriation from which the funds were withdrawn. 31 U.S.C. § 1532.

Our decision in B-288142, Sept. 6, 2001, applying the provisions of 31 U.S.C. § 1532, supports this result. In that case, customer agencies made estimated advance payments out of fiscal year appropriations for library information support services. The agencies made the payments into the Federal Library and Information Network (FEDLINK) revolving fund, which the Library of Congress administers. The Library requested our decision on whether it could retain in the revolving fund, unexpended balances of customer funds advanced to FEDLINK to cover the cost of customer orders in fiscal years after the fiscal year of the customer's appropriation. We held that the Library could not retain such funds because to do so "would violate section 1532 as well as the time constraints legislatively imposed on the appropriation from which the advance was made." *Id.*

Thus, unless there is some other authority to the contrary, and we are aware of no such authority, fiscal year funds advanced to the revolving fund in September are available only for storage and related service expenses incurred by the end of the fiscal year ending in September. Therefore, advanced funds are not available for expenses attributable in October to the following fiscal year, and they must be returned to the customer agency. Likewise, if a customer owes more, the customer must cover the underpayment from the previous fiscal year's funds.

CONCLUSION

Under the express provisions of the Treasury and General Government Appropriations Act, 2000, agency appropriations are available to make advance payments for monthly charges for storage and related services for temporary and pre-archival records. We have no objection to the method NARA proposes for assessing charges except to note that if a customer advances fiscal year funds for September, NARA may not credit excess amounts in adjusting October's bill; NARA must return the excess to the customer agency. These funds would not be available for obligations of the next fiscal year commencing October 1. In a like manner, if the funds advanced do not cover all the costs for September, the customer must cover the underpayment from the previous fiscal year's funds.

/signed/

Anthony H. Gamboa
General Counsel