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(January 1 to December 31, 2006)

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Digests of Appropriations Law Decisions and Opinions

(January 1 to December 31, 2006)

Matter of: Department of Education—Grant Extensions

File: B-303845

Date: January 3, 2006

1. Department of Education's 4-year extension of a 5-year grant made to an Historically Black Graduate Institution (HBGI) was improper given the plain language of the authorizing statute limiting grants to HBGIs to a period not to exceed 5 years. 20 U.S.C. § 1063b(b).

2. Department of Education's 4-year extension of a 5-year grant made to an Historically Black College and University (HBCU) amounted to an improper waiver of its regulations, which limited the duration of HBCU grant periods to 5 years. 34 C.F.R. § 608.11.

Matter of: National Aeronautics and Space Administration—Retention of Demutualization Compensation

File: B-305402

Date: January 3, 2006

1. The National Aeronautics and Space Administration (NASA) may not retain proceeds from the sale of demutualization compensation received from its contractor, California Institute of Technology (Caltech). Caltech had received demutualization compensation in the form of stock from Prudential Life Insurance Company on policies held for the benefit of employees who operated a NASA laboratory pursuant to a long-standing contract between NASA and Caltech. The proceeds do not qualify as a repayment to NASA, and NASA has no authority to retain and credit to its appropriation proceeds from the sale of the compensation. Accordingly, NASA must deposit them into the Treasury as miscellaneous receipts under 31 U.S.C. § 3302(b).

2. After NASA determined that proceeds from the sale of demutualization compensation were public moneys, NASA should have ensured that such proceeds were deposited in the United States Treasury the day following receipt of those proceeds. Directing Caltech officials to deposit proceeds in an interest-bearing money market account violated 31 U.S.C. § 3302(c)(1) and the applicable Treasury regulation, 31 C.F.R. § 206.5(a)(1).

Matter of: Contractors Collecting Fees at Agency-Hosted Conferences

File: B-306663

Date: January 4, 2006

GAO affirmed its decision in B-300826, Mar. 3, 2005, which addressed the availability to the National Institutes of Health (NIH) of its appropriation for the purpose of providing food to attendees at NIH-hosted conferences. Upon reconsideration, GAO found no basis to change the conclusion that when an agency lacks statutory authority to charge a fee at a conference and retain the proceeds, neither the agency hosting a conference, nor a contractor on behalf of the agency, may do so. GAO notes that Congress may enact legislation authorizing an agency hosting a conference on behalf of the government to collect and retain an attendance fee.

Matter of: United States Capitol Police—Employee Shuttle

File: B-305864

Date: January 5, 2006

The United States Capitol Police (USCP) may not use appropriated funds for a shuttle bus service from its parking lot to the Fairchild Building, or any other USCP building, where the purpose of the service is to facilitate the commutes of USCP employees. Commuting costs are personal expenses, and, absent statutory authority, appropriations are not available for personal expenses. Where, however, USCP establishes a legitimate operational need for a building-to-building shuttle, there is no objection to

employees' incidental use of the service as part of the home-to-work commute, so long as such use does not result in additional expense to the government.

Matter of: Architect of the Capitol—Payment for Electrical and Security Improvements at the Thurgood Marshall Federal Judiciary Building

File: B-306284

Date: January 5, 2006

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1. The Administrative Office of the United States Courts (AOUSC) ordered electric and security upgrades to the Thurgood Marshall Federal Judiciary Building (the building) that were completed in 2000. Because both the electrical and the security work benefited all tenants and enhanced the value of the building and improved its capacity, we do not object to viewing them as capital improvements.

2. Under the Trust Agreement establishing, among others, the Operating Reserve Fund, such Fund was available to the extent of available funds for improvements generally to the building. Although the Architect of the Capitol (AOC) had other funding options available to it, so long as the Operating Reserve Fund has adequate available balances, we would not object to the AOC's use of the Operating Reserve Fund to cover the costs of the electrical and security improvements.

3. Whether, under the circumstances present here, the AOC should seek reimbursement from the AOUSC for the electrical and security work performed is a discretionary judgment reposed in him. Failure to obtain reimbursement would be an augmentation of the AOUSC's funds because as capital improvements the AOUSC's funds are not directly available and because the AOUSC's appropriation does not constitute a specific and exclusive funding source for all improvements to the building.

Matter of: Help America Vote Act of 2002—Audits and Recovery of Funds

File: B-306475

Date: January 30, 2006

The Help America Vote Act of 2002 provides that if the Comptroller General determines as a result of an audit that a fund recipient is not compliant with program requirements, or that an excess payment has been made, the recipient must return a certain portion of the payment. However, the Comptroller General need not make such a determination before a paying agency may audit and take corrective action on questioned costs. This provision of the Act does not supersede the independent statutory authority of agencies to audit and take corrective action on the use of federal funds. If the Comptroller General were to make a determination under the Act as a result of any audit he conducts, he will make an appropriate recommendation for the agency to determine liability and to take corrective action.

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

File: B-306975

Date: February 27, 2006

1. The Treasury and General Government Appropriations Act, 2000, Pub. L. No. 106-58, title IV, 113 Stat. 430, 460-61 (Sept. 29, 1999), authorizes agencies to make advance payments to the National Archives and Records Administration (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 in 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.

Matter of: Office of Federal Housing Enterprise Oversight—Settlement Agreement with Freddie Mac

File: B-306860

Date: February 28, 2006

The terms of a settlement agreement entered into between the Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Home Loan Mortgage Corporation (Freddie Mac), in which Freddie Mac agreed to pay a vendor to electronically format certain documents for OFHEO, will not augment OFHEO's appropriations. Under the settlement agreement, OFHEO agreed to dismiss all administrative charges it had brought against Freddie Mac. In exchange, Freddie Mac agreed, among other things, to pay a vendor picked by OFHEO up to $1 million to electronically format and code certain documents belonging to Freddie Mace for OFHEO's use. No augmentation of OFHEO's appropriations will occur as the settlement agreement satisfies a prosecutorial objective, and no contractual relationship between OFHEO and the vendor exists with respect to the formatting of Freddie Mac's documents.

Matter of: Impoundments Resulting from the President's Proposed Rescissions of October 28, 2005

File: B-307122

Date: March 2, 2006

On October 28, 2005, the President transmitted to Congress a proposal to rescind $2.3 billion of available funding to offset the cost of Hurricane

Katrina relief. The proposal called for cancellations from 53 different federal programs. Notwithstanding the President's characterization of his proposals as cancellations, in anticipation of congressional enactment of these cancellations, agencies withheld over $470 million in budget authority from obligation, affecting 12 programs, for approximately 2 months. This letter to the Director of the Office of Management and Budget reports GAO's determination that the agencies' withholding in these 12 instances constituted impoundments under the Impoundment Control Act.

Matter of: Impoundments Resulting from the President's Proposed Rescissions of October 28, 2005

File: B-307122.2

Date: March 2, 2006

On October 28, 2005, the President transmitted to Congress a proposal to rescind $2.3 billion of available funding to offset the cost of Hurricane Katrina relief. The proposal called for cancellations from 53 different federal programs. Notwithstanding the President's characterization of his proposals as cancellations, in anticipation of congressional enactment of these cancellations, agencies withheld over $470 million in budget authority from obligation, affecting 12 programs, for approximately 2 months. This letter to the Chairman and Ranking Member of the appropriations committees in the Senate and the House of Representatives reports GAO's determination that the agencies' withholding in these 12 instances constituted impoundments under the Impoundment Control Act.

Matter of: Clarence Maddox—Relief of Liability for Improper Payments for Bottled Water

File: B-303920

Date: March 21, 2006

GAO denies relief for a disbursing/certifying officer of the United States District Court for the Southern District of Florida who certified improper payments to purchase bottled water for court employees in the absence of any documentation that the available drinking water posed a health risk. While the disbursing/certifying officer claims that he was unaware that the bottled water being purchased was for employees (bottled water for jurors is an allowable expense), and that he certified the payments in good faith, GAO did not agree. To find "good faith" as used in the relief statute requires that there be no doubt regarding, nor reason to doubt, the propriety of the payments. Since the record states that the payments for employee bottled water came from a different account than that for juror bottled water, and vouchers for the improper purchases indicate that each purchase was funded by that different, non-juror, account, we find that reasonable examination of the vouchers should have identified the water being purchased as other than for jurors. GAO therefore could not conclude that he had no reason to doubt the propriety of the payments.

Matter of: Presidio Trust—Use of Appropriated Funds for Audio Equipment Rental Fees and Services

File: B-306424

Date: March 24, 2006

Where Congress authorized the Presidio trust to lease, manage, and administer the operations of the Presidio property and the Trust's regular operating procedures include providing a venue for public and private events, providing audio equipment and related services is a necessary and incidental part of the Trust's operations. Accordingly, the Trust's appropriations were available to cover expenses incurred during the

National Academy of Public Administration's use of the Presidio's facilities for its 2005 annual Board of Directors meeting.

Matter of: Department of Defense—Obligation of Chemical Weapons Demilitarization Funds

File: B-305494

Date: March 27, 2006

GAO was asked to monitor whether funds appropriated for chemical weapons demilitarization activities at Blue Grass Army Depot, Kentucky, and Pueblo Depot, Colorado, were being properly obligated and whether the Department of Defense was impounding funds for chemical weapons demilitarization. GAO verified that the Department had obligated $103 million for chemical weapons demilitarization activities at the two depots and found no impoundment of funds had occurred.

Matter of: Department of Defense Accountable Officials—Local Nationals Abroad

File: B-305919

Date: March 27, 2006

The Department of Defense may use appropriated funds to employ foreign local nationals as departmental accountable officials under 10 U.S.C. § 2773a even though foreign local nationals may not be subject to pecuniary liability under United States law. The Department of Defense should formulate a written policy addressing the consideration and circumstances under which local nationals may serve as departmental accountable officials.

Matter of: United States Capitol Police—Waiver of Erroneous Salary Payments

File: B-307529

Date: March 28, 2006

In 2003, Congress designated the Chief of Police as the single disbursing officer for the United States Capitol Police (USCP). Pub. L. No. 108-7, div. H, title I, § 1018, 117 Stat. 11, 366–69 (Feb. 20, 2003). The transfer of the disbursing authority for USCP employees from the Secretary of the Senate and the Chief Administrative Officer of the House of Representatives to the Chief of Police did not also transfer the authority to waive collection of erroneous payments, because Public Law 108-7 only transferred the functions, duties, and authorities of the Secretary and the Chief Administrative Officer *as disbursing officers*, and waiver of erroneous payments is not a function of a disbursing officer. Authority to waive erroneous payments made to USCP employees remains with the Speaker of the House and the Secretary of the Senate. To avoid implementation problems, GAO recommended that Congress consider addressing this issue to ensure equitable and efficient consideration of USCP employees' applications for waiver.

Matter of: United States Capitol Police—Human Capital and Financial Management Laws and Implementing Policies, Procedures, and Regulations

File: B-306811

Date: March 31, 2006

The Committee on Appropriations, House of Representatives, asked that we identify and review legislation applicable to the United States Capitol Police (USCP) to determine whether the USCP has written regulations, policies, and procedures that are consistent with the applicable legislation. This letter provides the results of GAO's review of selected provisions of law applicable to the human capital and financial management operations of the USCP and the status of USCP policies, procedures, and regulations

related to that legislation. The attachments to the letter contain charts that identify the particular statute and its related policy, procedure, or regulation.

Matter of: Procurement Provisions in Appropriations Acts

File: B-306050

Date: April 28, 2006

Legislation such as the Competition in Contracting Act and the Federal Acquisition Streamlining Act established a comprehensive acquisition framework to accommodate the needs of individual agencies while maximizing uniformity across the federal government. The Committee on Government Reform, House of Representatives, expressed concern about the potential impact of other legislation on Congress's efforts to promote a consistent, governmentwide approach to procurement and asked GAO to review procurement-related provisions appearing in recent appropriations legislation. This letter provides the results of GAO's review of 30 appropriations acts for fiscal years 2001 through 2005 and includes tables of appropriation provisions that created new acquisition requirements, carved specific exceptions to existing requirements, or reiterated existing requirements.

Matter of: Scope of Waiver Authority (2 U.S.C. § 130c)

File: B-307681

Date: May 2, 2006

1. The Secretary of the Senate has authority under 2 U.S.C. § 130c to waive a claim for the amount of erroneous salary payments made to a former United States Capitol Police (USCP) employee in violation of the antinepotism statute, 5 U.S.C. § 3110. This includes the authority to waive claims for nonsalary compensation to the same extent that the Secretary of the Senate may waive claims for salary payments. 2 U.S.C. § 130c. The

phrase "pay or allowances," as used in the waiver authority, includes all forms of remuneration made to an employee in addition to salary.

2. Neither the Secretary nor the United States Capitol Police may pay unpaid compensation to an individual employed in violation of the antinepotism statute, 5 U.S.C. § 3110. The statute imposes an absolute prohibition on payment. It says that an individual employed in violation of the statute "is not entitled to pay, and money may not be paid from the Treasury" to pay such an individual. In these circumstances, only Congress through private relief legislation may authorize payment of unpaid compensation.

Matter of: National Mediation Board—Compensating Neutral Arbitrators Appointed to Grievance Adjustment Boards under the Railway Labor Act

File: B-305484

Date: June 2, 2006

1. The National Mediation Board (NMB) incurs an obligation when it appoints a neutral arbitrator to a grievance adjustment board to hear a specific case or a specified group of related cases. To comply with the Antideficiency Act, NMB must have an appropriation available to cover the estimated costs of the arbitrator at the time it incurs the obligation. 31 U.S.C. § 1341(a). Because NMB does not control the number of days an arbitrator will work before submitting an award, NMB should record an obligation based on its best estimate of the costs of paying the arbitrator and adjust the obligation up or down as more information becomes available. NMB should liquidate the obligation from the appropriation current at the time NMB incurs the obligation, notwithstanding that the arbitrator's performance may extend into the next fiscal year. To the extent we indicated in two prior decisions, B-217475, Dec. 24, 1986, and B-217475, May 5, 1986, that NMB may record obligations monthly based on the anticipated expenditures it approves in monthly compensation requests, they are overruled.

2. An availability of funds clause is not sufficient to protect NMB from violating the Antideficiency Act. The obligation to pay an arbitrator arises at the time of appointment in the full amount of the liability incurred, and NMB must have an appropriation available at that time to pay the full cost.

3. Pending cases to which NMB has not yet appointed an arbitrator constitute a contingent liability of NMB. Contingent liabilities are not recordable as obligations until the contingency actually materializes.

4. NMB will violate the Antideficiency Act if it appoints an arbitrator to a new or existing board and incurs an obligation in excess of its apportionment or any other subdivision of funds as specified in its administrative fund control regulations. If NMB does not have an administrative fund control system, it should work with the Office of Management and Budget to establish one.

5. NMB does not incur an obligation to pay a neutral arbitrator when the parties to a grievance enter into an agreement to form a Special Board of Adjustment or Public Law Board. NMB may anticipate eventually appointing an arbitrator to hear these cases, but it is the appointment of the arbitrator by an authorized NMB official, not the organization of the Special Board of Adjustment or Public Law Board, that is the obligating event for NMB.

6. When NMB appoints an arbitrator to a Special Board of Adjustment or a Public Law Board, the appointment does not constitute an open-ended contract to pay the arbitrator for cases referred to the Special Board of Adjustment or the Public Law Board subsequent to the appointment. The addition of a new case constitutes a new arbitrator appointment and a new obligation.

Matter of: Forest Service—Surface Water Management Fees

File: B-306666

Date: June 5, 2006

Appropriated funds are not available to pay surface water management fees assessed by King County, Washington, against national forest lands

and other Forest Service properties because those fees constitute a tax. The federal government is constitutionally immune from state and local taxation. Although section 313(a) of the Clean Water Act, 33 U.S.C. § 1323(a), waives sovereign immunity from certain state and local environmental regulations and fees, it does not waive immunity from taxation. Such a waiver must clearly and expressly confer the privilege of taxing the federal government.

Matter of: The Truth in Regulating Act Proposed Legislation

File: B-302705

Date: June 7, 2006

The Truth in Regulating Act of 2000 (TIRA), Pub. L. No. 106-312, 114 Stat. 1248 (Oct. 17, 2000), contemplated a 3-year pilot project during which GAO would perform independent evaluations of economically significant agency rules when requested by a chairman or ranking member of a committee of jurisdiction of either house of Congress. The TIRA project was conditioned upon whether Congress appropriated the necessary funds, which Congress did not do during the 3-year period contemplated for the pilot project. The authority for the pilot project expired on January 15, 2004. In the 109th Congress, two bills were introduced which would make GAO responsible for conducting TIRA evaluations on a permanent basis. This letter contains GAO comments on the bills, including, among other things, that Congress consider including a provision recognizing that GAO could not conduct any TIRA evaluations without a specific appropriation enacted by Congress and that that program be tested as a pilot project first before becoming permanent.

Matter of: Customs and Border Protection—Relocation Expenses

File: B-306748

Date: July 6, 2006

Customs and Border Protection's Salaries and Expenses appropriations are available to pay for relocation expenses that agency employees incur to relocate their primary residences from Canada and Mexico to the United States in order to comply with a new agency requirement that Customs employees assigned to duty stations in the United States maintain their primary residence in the United States. Customs has determined that U.S. residency enables its border workforce to better carry out its mission. Accordingly, GAO does not object to Customs using its appropriations to pay relocation costs if Customs chooses to do so.

Matter of: Department of Education—No Child Left Behind Newspaper Article Entitled "Parents Want Science Classes that Make the Grade"

File: B-307917

Date: July 6, 2006

Letter advising the Department of Education that GAO stands by its conclusions in B 305368, Sept. 30, 2005, and B-304228, Sept. 30, 2005, that the Department's promotional activities, including a prepackaged news story and the Armstrong Williams subcontract, resulted in Antideficiency Act violations. GAO disagreed with the Department's view that appropriated funds used for the newspaper article entitled "Parents Want Science Classes that Make the Grade" was proper. The provision in Pub. L. No. 109-13, § 6076, 110 Stat. 231, 301 (May 11, 2005), *confirmed* GAO's opinion that the critical element in determining whether the promotional materials constitute covert propaganda under the publicity or propaganda prohibition is whether the intended audience is informed of the source of the materials, and therefore section 6076 did not create new law.

Matter of: Department of Energy—December 2004 Agreement with the United States Enrichment Corporation

File: B-307137

Date: July 12, 2006

1. Section 3112(b) of the USEC Privatization Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321-335, 1321-344 (Apr. 26, 1996), 42 U.S.C. § 2297h-10(b), authorized the Department of Energy (DOE) to transfer to the United States Enrichment Corporation (USEC) Russian-origin uranium so that USEC could sell the uranium on DOE's behalf for consumption by domestic end users, as provided for in a December 2004 agreement between DOE and USEC.

2. DOE violated 31 U.S.C. § 3302(b), the miscellaneous receipts statute, and augmented its appropriations when it authorized USEC to hold, invest, and use the proceeds from public sales of government-owned uranium to compensate USEC for costs it incurred in decontaminating uranium on behalf of DOE, prior to enactment in November 2005 of specific statutory authority exempting the proceeds of those uranium sales from the miscellaneous receipts statute.

Matter of: Status of Funds Proposed for Cancellation in the President's Fiscal Year 2007 Budget

File: B-308011

Date: August 4, 2006

On February 6, 2006, the President submitted his proposed Budget for Fiscal Year 2007 to Congress in which he requests cancellation or rescission of previously appropriated funds from 40 programs, administered by 13 agencies. Although the President did not submit a special message under the Impoundment Control Act, the Department of Transportation's Maritime Administration reported to GAO that it withheld $2,068,018 from obligation in response to the legislative proposal in the Budget. This letter to the Chairman and Ranking Member of the

Committee on Appropriations, United States Senate, reports GAO's determination that the Maritime Administration's withholding in this instance constituted an impoundment under the Impoundment Control Act and that no other affected agencies were withholding funds in response to the proposals in the Budget.

Matter of: Department of Homeland Security—Use of Management Directorate Appropriations to Pay Costs of Component Agencies

File: B-307382

Date: September 5, 2006

1. Where one can reasonably construe two appropriations as available for an expenditure not specifically mentioned under either appropriation, GAO will not question an administrative determination as to which appropriation to charge. Either Department of Homeland Security's (DHS) Management Directorate appropriations or the various "management and administration" appropriations for DHS subcomponents, may be reasonably construed as available to pay the costs of mail operations, parking for official agency vehicles, and executive sedan services incurred by component agencies. Having elected to use the Management Directorate appropriations to pay such costs, DHS must now continue to use that same appropriation to the exclusion of the management and administration appropriations of the various components.

2. DHS charged fiscal year 2005 costs of employee transit benefit subsidies to both the Management Directorate appropriations and the management and administration appropriations for three subcomponent agencies. Continued use of the same appropriation to the exclusion of any other for the same purpose is required to provide for consistency, regularity, and predictability in the execution of the appropriations provided by Congress. DHS should elect to charge these costs to either the Management Directorate appropriations or the management and administration appropriations for the respective DHS subcomponent. DHS should then

adjust its fiscal year 2005 accounts accordingly under the authority of 31 U.S.C. § 1553(a).

Matter of: Department of the Army—Availability of Funds for Security Clearance Expenses

File: B-307316

Date: September 7, 2006

An Army captain's costs of renouncing his Turkish citizenship in order to obtain a security clearance necessary for his assignment to the United States Army Center for Health Promotion and Preventive Medicine can be considered an official, not a personal, expense since they are incurred incident to the Army requirement that he obtain a security clearance for his new assignment. Because the costs were incurred primarily for the benefit of the government, GAO has no objection to reimbursing the captain for such expenses.

Matter of: State Justice Institute—Newsletter Advertising Charges

File: B-307317

Date: September 13, 2006

The State Justice Institute (Institute) may retain a fee for the use of advertising space in its semiannual newsletter. Congress established the Institute as a private, nonprofit corporation. 42 U.S.C. § 10702(a). Although the Institute has many aspects of a federal agency, its authorizing statute states that "[e]xcept as otherwise specifically provided . . . the Institute shall not be considered a department, agency, or instrumentality of the Federal Government." 42 U.S.C. § 10704(c)(1). Nothing in the Institute's authorizing legislation explicitly or implicitly requires application of the miscellaneous receipts statute, which states that all money received "for the government" must be deposited in the Treasury. 31 U.S.C. § 3302(b). Thus, the Institute is not subject to the miscellaneous

receipts statute. Certain legal and policy considerations may inform the Institute's choices regarding advertising it carries in its newsletter.

Matter of: National Labor Relations Board—Improper Obligation of Severable Services Contract

File: B-308026

Date: September 14, 2006

The National Labor Relations Board (NLRB), which improperly obligated its fiscal year 2005 appropriation for severable services commencing in fiscal year 2006, may not remedy the improper obligation by modifying the contract's period of performance to a previous fiscal year. NLRB's expired appropriations are available only to adjust obligations properly incurred during fiscal year 2005. NLRB must adjust its accounts to record the obligation against its fiscal year 2006 appropriation.

Matter of: Legal Services Corporation—Lease with Friends of Legal Services Corporation

File: B-308037

Date: September 14, 2006

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1. Congress established the Legal Services Corporation (LSC) as a private, nonprofit corporation with broad investment authority and discretion conferred by the Legal Services Corporation Act and the District of Columbia Nonprofit Corporation Act. As such, LSC was authorized to create a second private, nonprofit corporation, and to lease property from that corporation. Both transactions were consistent with the statutory purpose of LSC under the Legal Services Corporation Act.

2. By law, LSC is not a federal agency and its officers and employees are not officers or employees of the United States for the purposes of the Antideficiency Act. 42 U.S.C. § 2996d(e)(1). As violations of the

Antideficiency Act are predicated upon an obligation of federal funds by an officer or employee of the United States government, LSC's transactions are not subject to the Antideficiency Act.

Matter of: Navy—Reenlistment Gifts

File: B-307892

Date: October 11, 2006

Navy has authority under 10 U.S.C. § 2261 to use its appropriated funds to purchase and present sailors with small gifts (valued at no more than $50) in order to recognize and commemorate enlistment and reenlistment, but must first promulgate regulations and assure that any recruiting gift programs that it implements are consistent with those regulations. The authority provided by section 2261 terminates on December 31, 2007.

Matter of: Department of Interior—Royalty-in-Kind Oil and Gas Preferences

File: B-307767

Date: November 13, 2006

Section 342(j) of the Energy Policy Act of 2005, 42 U.S.C. § 15902(j), does not authorize the Secretary of the Interior to dispose of in-kind royalty oil and gas at a discount to fair market value. Section 342(b)(3)(A) requires the Secretary to sell all royalty oil and gas taken in kind at not less than fair market value. We agree with the Department of the Interior that the phrase "grant a preference" in section 342 does not mean to grant a discount to fair market value where the same section requires sales or transfers to be at not less than market value and there is no indication that Congress intended "preference" to include a discount to fair market value.

Matter of: NOAA—Reimbursing Mileage for Commuting Expenses for On-Call Emergencies

File: B-307918

Date: December 20, 2006

The National Oceanic and Atmospheric Administration may not use its appropriations to reimburse employees for the mileage traveled between their residences and the agency's warehouse when performing after-hours, on-call emergency services on behalf of the government because 31 U.S.C. § 1344(a)(1) specifically prohibits using appropriated funds to provide government employees with transportation between their homes and places of employment, unless otherwise authorized by law.

Matter of: Federal Motor Carrier Safety Administration—Retention of Court-Ordered Restitution

File: B-308476

Date: December 20, 2006

The Federal Motor Carrier Safety Administration (FMCSA) has no authority to retain the amounts of an award of criminal restitution that a federal district court ordered to be paid to FMCSA. The miscellaneous receipts statute, 31 U.S.C. § 3302(b), requires that absent specific authority, federal agencies must deposit money received for the government into the Treasury as miscellaneous receipts. Although GAO recognizes a limited exception for certain amounts that constitute repayments, the restitution awarded here may not be characterized as such. Therefore, FMCSA must deposit money constituting the restitution award into the general fund of the Treasury.
