



Office of the General Counsel

B-260606

July 25, 1997

The Honorable Michael F. DiMario
Public Printer
U.S. Government Printing Office

Dear Mr. DiMario:

You have requested our opinion concerning the use of balances credited to the Government Printing Office's (GPO's) revolving fund established under 44 U.S.C. § 309. Specifically, you ask whether you may use balances in the fund that you refer to as "fiduciary" funds to meet the normal operating expenses of GPO. The "fiduciary" funds consist of balances for such items as advances from customers, accrued salaries and leave, and estimated incentives and lump-sum leave payments for expected early retirements.

In the past, GPO has experienced significant cash shortages in its revolving fund due to increasing costs, which it was unable to pass on to its customers. These shortages threatened GPO's ability to fund its daily operating costs. You advise that auditors informed you that money that GPO has traditionally restricted as "fiduciary" funds can be used to cover the costs of daily operations. You are concerned that using "fiduciary" funds to pay for operating expenses may conflict with the holding in a 1992 Comptroller General decision, 71 Comp. Gen. 224 (1992). In that decision the Comptroller General concluded that the National Technical Information Service (NTIS) could not use funds advanced by customers except to cover expenses "directly related to services performed or to be performed" for those customers.

GPO finances most of its operations out of its revolving fund. The fund

"is available, without fiscal year limitation, for--

"the operation and maintenance of the Government Printing Office
(except for those programs of the Superintendent of Documents which
are funded by specific appropriations)"

44 U.S.C. § 309(a). The statute further states that:

"The fund shall be--

"(1) reimbursed for the cost of all services and supplies furnished, including those furnished other appropriations of the Government Printing Office . . . ; and

"(2) credited with all receipts including sales of Government publications, waste, condemned, and surplus property and with payments received for losses or damage to property."

44 U.S.C. § 309(b).

The enabling statute further requires that Congress approve GPO's annual budget for expenditures from the revolving fund. 44 U.S.C. § 309(c). Thus, the Legislative Branch Appropriations Act, 1997 provides as follows:

"The Government Printing Office is hereby authorized to make such expenditures, within the limits of funds available and in accord with the law . . . as may be necessary in carrying out the programs and purposes set forth in the budget for the current fiscal year for the 'Government Printing Office revolving fund'"

Pub. L. No. 104-197, 110 Stat. 2394 at 2410. Since GPO's annual budget indicates that it finances almost all its operations through the revolving fund, the fund "is analogous to an agency's annual appropriation for salaries and expenses under which all necessary expenses of an agency can be paid." B-216943, March 21, 1985.

By the terms of its enabling statute, the GPO revolving fund is available to meet the operating expenses of the GPO. 44 U.S.C. § 309(a). The revolving fund is a single fund consisting of all income received by GPO for services and goods it provides to other agencies and for sales of publications. Although GPO has administratively divided the fund into several accounts, it may move budgetary resources among these accounts to the extent they are not already obligated.

According to your submission, GPO restricts balances in the fund, reserving them for certain purposes. One category of restricted cash is "Fiduciary Funds," which at the time of your submission consisted of Advances From Customers for Sales of Publications and Printing and Binding Work, Estimated Incentive Pay for Early Retirement, Estimated Lump Sum Annual Leave for Early Retirees, Accrued Salaries, Wages & Withholdings, and Accrued Annual Leave. Your submission indicated that the advances from customers are of two types--deferred revenue, i.e., customer orders that have been placed but not yet filled, and depositor accounts, i.e., customer advances for orders that may be placed in the future.

In your letter you expressed concern that GPO's use of customer advances to cover operating expenses would be contrary to the holding of the Comptroller General in 71 Comp Gen. 224 (1992), and accordingly that this practice might violate the Antideficiency Act, 31 U.S.C. § 1341(a)(1). In the cited decision the Comptroller General decided that the NTIS could not use funds advanced by customers except for expenses "directly related to services performed or to be performed." 71 Comp. Gen. 224. The decision in that case was based on the language of the statute that created the special account out of which NTIS operated. That statute provided that:

"payments for work or services performed or to be performed . . . shall be deposited in a special account or accounts which may be used to pay directly the costs of such work or services, to repay or make advances to appropriations or funds which do or will initially bear all or part of such costs, or to refund excess funds when necessary "

15 U.S.C. § 1526 (emphasis added). We held that this language permitted NTIS to use customer advances that represented payment for subscriptions to meet the cost of the subscription. However, advances to cover possible future subscriptions were not payments for services "performed or to be performed" and thus were not available to cover NTIS operations.

GPO's revolving fund statute differs significantly from the NTIS statute. The GPO revolving fund is credited with receipts from many sources, not just with payments for work or services performed or to be performed. Further, the GPO revolving fund is available for the operation and maintenance of GPO, not just to pay the direct costs of work or services performed.

Nonetheless, the underlying rationale of the NTIS decision does apply to the amounts which customers have advanced to GPO in anticipation of orders to be placed in the future. These amounts represent funds that GPO holds as a custodian for its customer. They do not represent reimbursements "for the cost of all services and supplies furnished" (44 U.S.C. § 309(b)(1)), and they are not "receipts" that may be credited to the revolving fund (44 U.S.C. § 309(b)(2)) before they are earned. GPO may not treat these advances as budget authority to support its operations until the customer places a proper order for goods or services to be provided by GPO.

Although OMB Circular A-34 is addressed to Executive departments and agencies, and technically does not apply to the GPO revolving fund, it does state the proper criterion for determining whether reimbursements to a revolving fund may be considered budgetary resources against which obligations may lawfully be charged. Circular A-34 states:

"In the case of reimbursable work involving goods and services provided to Federal Government accounts, budgetary resources

available for obligation from reimbursements are comprised of earned reimbursements and unfilled customer's orders. An earned reimbursement is the amount representing orders that have been filled. As with an earned reimbursement, an unfilled order is available for obligation. It is emphasized that there must be an order and a valid obligation from the ordering account before such reimbursable work creates budgetary resources available for obligation. For example, an advance from a Federal Government account without an order does not constitute budgetary resources available for obligation. Throughout the year these amounts are adjusted to the extent that orders are filled, cancelled, or new orders are received."

OMB Circular A-34, § 31.4, at page III-2 (1994) (emphasis added; bold and italic font in original omitted)¹.

With regard to the remaining amounts that are listed as fiduciary funds, the "Accrued Salaries, Wages and Withholdings" and the "Accrued Annual Leave" represent funds that have been obligated for the stated purposes. They may not be obligated again to meet GPO's daily operating expenses. On the other hand, the "Estimated Incentive Pay for Early Retirement" represent funds that have been set aside as a reserve for the possible payment of incentives to early retirees. Since the employees have not yet opted for early retirement they are not entitled to an incentive, and therefore the funds are not obligated. It follows that these funds are available to meet GPO's operating expenses.

We conclude that the "fiduciary" funds in the GPO revolving fund are available to meet daily operating expenses as follows:

Advances from Customers: Depositor Accounts	These are not yet earned.	Not Available
Advances from Customers: Deferred Revenue	These are reimbursements for orders placed.	Available
Estimated Incentive Pay for Early Retirement	These represent reserves but are not obligated	Available

¹OMB Circular A-34 has similar rules for handling reimbursements involving goods and services provided to the public except that the amount available for obligation is limited to the amount of advances actually received by the revolving fund. Id.

Accrued Salaries, Wages and Withholdings	These funds are obligated	Not Available
Accrued Annual Leave	These funds are obligated	Not Available

Sincerely yours,

Robert P. Murphy
General Counsel

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DIGEST

Government Printing Office may use so-called "fiduciary" funds in its revolving fund to meet its daily operating costs to the extent it has earned those funds and has not already obligated them for another purpose. Advances from government customers that represent orders placed but not yet filled have been "earned" and are thus available to support GPO operations. However, advances from government customers that are in anticipation of orders to be placed in the future are not earned are not available to GPO.