



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-266063

January 19, 1998

The Honorable Pete V. Domenici
Chairman
Committee on the Budget
United States Senate

The Honorable Frank Lautenberg
Ranking Minority Member
Committee on the Budget
United States Senate

This report follows up on our report entitled Budget Issues: Inventory of Accounts With Spending Authority and Permanent Appropriations, 1996 (GAO/AIMD-96-79), issued on May 31, 1996. The report responded to the Committee's request that we update our 1987 inventory of accounts with spending authority and permanent appropriations (commonly referred to as "backdoor spending authority"). The report provided information for each of the 558 budget accounts that agencies identified as having backdoor spending authority. As stated in the report, we could not verify the accuracy of 53 accounts that provided backdoor spending authority as claimed by the agency. The report identified these accounts by marking the legal citation with an asterisk.

Since the issuance of the report we have resolved the status of each of the 53 accounts. We were able to verify that 33 of the accounts have backdoor spending authority. In 28 of the accounts the agency provided a correct legal citation. With respect to the remaining 5 accounts, based on subsequent discussion with agency officials, we agree that the original information provided us concerning these 5 accounts' backdoor spending authority is correct. We determined that the remaining 20 accounts did not possess backdoor spending authority. We so advised each of the General Counsels for the respective agencies.

This report presents each of the 53 accounts as follows: Table I contains the 20 accounts that should be deleted from the inventory. Table II contains the 28 accounts with the correct legal citation for the agency's backdoor authority. Table III contains the remaining 5 accounts which we now agree have backdoor spending authority. The page number referenced at the beginning of each account entry in each of the three tables is the page on which the account appears in the May 1996

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GAO Inventory of Accounts report. This letter should be used as an supplement to the original report. If you have any questions regarding this additional information please call Carlos Diz of my staff at 202-512-8256.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert P. Murphy".

Robert P. Murphy
General Counsel

Table I: Accounts that should be deleted from the Inventory of Accounts

Account with Contract Authority:

Page 79, Office of Personnel Management, Office of Personnel Management Government Payment for Annuitants, Employee Life Insurance, Account Number 24-0500, 5 USC § 8708(d)(1),

An official at the Office of Personnel Management agreed that the account does not contain contract authority.

Account with Borrowing Authority:

Page 80, Department of Education, Office of Postsecondary Education, College Housing Loans, Account Number 91-4250, 20 USC § 1132d

According to an official at the Department of Education, the citation previously given was incorrect; no borrowing has occurred in this account in several decades. The account was converted into a liquidating account under the Credit Reform Act, 2 U.S.C. § 661f. Liquidating accounts are excluded from our inventory because their back door authority exist solely because of the Credit Reform Act. See Inventory of Accounts With Spending Authority and Permanent Appropriations, 1996 at page 168 (GAO/AIMD-96-79).

Permanent Appropriations:

Page 94, Department of Defense--Military, Operation and Maintenance, Kaho'olawe Island Restoration Fund, Account Number 17-5185, Pub. L. 103-139, § 10001 et seq., 107 Stat. 1480 (1993)

The law establishing this account states that amounts appropriated are authorized to remain available until expended. This language does not create a permanent appropriation.

Page 94, Department of Defense--Military, Operation and Maintenance, Defense Cooperation, Account Number 97-5187, 107 Stat. 1781 [10 U.S.C. § 2608]

The law establishing this account states that "Funds in the Defense Cooperation Account shall not be made available for obligation or expenditure except to the extent and in the manner provided in subsequent appropriation Acts." This language does not create a permanent appropriation.

Table I: Accounts that should be deleted from the Inventory of Accounts

Permanent Appropriations:

Page 97, Department of Health and Human Services, Indian Health Service, Indian Health Services, Account Number 75-0390, Pub. L. 94-482

An official at the Department of Health and Human Services agreed that the account does not contain a permanent appropriation.

Page 98, Department of Housing and Urban Development, Management and Administration, Office of Federal Housing Enterprise Oversight, Account Number 86-5272, Pub. L. 102-550, section 1313(a)

An official at the Department of Housing and Urban Development agreed that the account does not contain a permanent appropriation.

Page 98, Department of Housing and Urban Development, Housing Programs, General and Special Risk Program Account, Account Number 86-0200, 12 USC §§ 1715z-3(b), 1735c(f)

An official at the Department of Housing and Urban Development agreed that the account does not contain a permanent appropriation.

Page 102, Department of the Interior, United States Fish and Wildlife Service, Cooperative Endangered Species Conservation Fund, Account Number 14-5143, 16 USC §§ 1531-1543

An official at the Department of Interior agreed that the account does not contain a permanent appropriation.

Page 102, Department of the Interior, United States Fish and Wildlife Service, North American Wetlands Conservation Fund, Account Number 14-5241, Pub. L. 101-233; 16 USC §§ 703-711, 715

An official at the Department of Interior agreed that the account does not contain a permanent appropriation.

Table I : Accounts that should be deleted from the Inventory of Accounts

Permanent Appropriations:

Page 103, Department of Justice, Radiation Exposure Compensation, Radiation Exposure Compensation Trust Fund, Account Number 15-8116, 104 Stat. 920 [Pub. L. 101-426, 104 Stat. 920 , Pub. L. 101-510, 104 Stat. 1485]

The law establishing this account authorizes the appropriation of such sums as may be necessary to carry out the purposes of the Trust Fund. Any amounts appropriated are authorized to remain available until expended. This language does not create a permanent appropriation.

Offsetting Collections:

Page 116, Executive Office of the President, Executive Residence At the White House, Operating Expenses, Account Number 11-0210, 3 USC §§ 105, 110

Technically, this account does not contain offsetting collections authority and should be deleted from the inventory. The Office of Management and Budget's position is that the authority for offsetting collections is contained in 3 U.S.C. § 105(d) and that the White House has historically included "reimbursable activities" in this account. In B-277244, June 17, 1997, our Office advised that it disagreed with this position. In our opinion, 3 U.S.C. § 105(d) is an authorization of appropriations to the President for certain purposes. Moreover, there is nothing in the language of section 105(d) that expressly authorizes the deposit of offsetting collections to any current appropriation as a means of financing official or unofficial activities. Although section 105(d) does not provide this statutory authority for "reimbursable activities", our office has not objected to the historical practice of the Executive Residence at the White House of using available appropriations to cover expenses immediately and later determine their character (official, political or personal in nature), "collect" the appropriate amount, and "refund" the amount to the credit of the account charged with the payments. Section 110 relates to the domestic manufacture, preservation and donation of White House furnishings.

Page 138, Department of Defense--Military, Revolving and Management Funds, William Langer Jewel Bearing Plant Revolving Fund, Account Number 97-4093, 10 USC §§ 2208, 2535

An official at the Department of Defense agreed that the account does not contain offsetting collections authority.

Table I : Accounts that should be deleted from the Inventory of Accounts
Offsetting Collections :

Page 140, Department of Education, Departmental Management, Office for Civil Rights, Account Number 91-0700, 31 USC § 1535

An official at the Department of Education agreed that the account does not contain offsetting collections authority .

Page 140, Department of Education, Departmental Management, Program Administration, Account Number 91-0800, 31 USC § 1535

An official at the Department of Education agreed that the account does not contain offsetting collections authority .

Page 140, Department of Education, Departmental Management, Office of Inspector General, Account Number 91-1400, 31 USC § 1535

An official at the Department of Education agreed that the account does not contain offsetting collections authority .

Page 140, Department of Education, Office of Postsecondary Education Higher Education Facilities Loans and Insurance, Account Number 91-0240 20 USC § 1132d

This is now a Credit Reform Act Account which is excluded from our inventory. See Scope and Methodology, Inventory of Accounts With Spending Authority and Permanent Appropriations, 1996 at page 168 (GAO/AIMD-96-79).

Page 146, Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Substance and Mental Health Services, Account Number 75-1362, Pub. L. 98-621, 98 Stat. 3369

An official at the Department of Health and Human Services agreed that the account does not contain offsetting collections authority

Table I : Accounts that should be deleted from the Inventory of Accounts

Offsetting Collections :

Page 147, Department of Housing and Urban Development, Housing Programs Homeowner HIP Assistance Fund, Account Number 86-4043, 12 USC § 1715z(c)(3) (A)

An official at the Department of Housing and Urban Development agrees that the account does not contain offsetting collections authority :

Page 147, Department of Housing and Urban Development, Housing Programs, Flexible Subsidy Fund, Account Number 86-4044, 12 USC 1715z-1a

An official at the Department of Housing and Urban Development agreed that the account does not contain offsetting collections authority .

Page 154, Department of Transportation, Coast Guard, Research, Development, Test, and Evaluation, Account Number 69-0243, Pub. L. 101-380, 104 Stat. 484

The law cited, the Oil Pollution Act, does not contain offsetting collections authority. The offsetting collections authority for this account has been contained in the annual appropriations acts for the Coast Guard and as such does not constitute backdoor spending authority.

Table II: Accounts in the Inventory of Accounts that should have changes made to the legal citation

Accounts with contract authority:

Page 78, Department of Transportation, Federal Aviation Administration, Grants-In-Aid for Airports (Airport and Airway Trust Fund), Account Number 69-8106

The legal citation should read: 49 USC § 47104

Page 78, Department of Transportation, Federal Highway Administration, Highway-Related Safety Grants, Account Number 69-8019

The legal citation should read: Pub. L. 102-240, § 1003, 105 Stat. 1918

Accounts with permanent appropriations:

Page 96, Department of Health and Human Services, Centers for Disease Control and Prevention, Disease Control, Research, and Training, Account Number 75-0943

The legal citation should read: 15 USC §§ 3710a(b), 3710b, 3710c(a)

Page 97, Department of Health and Human Services, Food and Drug Administration, Salaries and Expenses, Account Number 75-9911

The legal citation should read: 15 USC §§ 3710a(b), 3710b, 3710c(a)

Page 99, Department of the Interior, Bureau of Land Management, Miscellaneous Permanent Payment Appropriations, Account Number 14-9921

The legal citation should read: Ch. 375, 65 Stat. 252 (1951); 42 USC § 6508; Pub. L. 96-586, 94 Stat. 3381 (1980); Pub. L. 103-66, § 13983, 107 Stat. 682

Page 99, Department of the Interior, Bureau of Land Management, Permanent Operating Funds, Account Number 14-9926

The legal citation should read: 43 USC § 1762(c); Pub. L. 98-473, § 320, 98 Stat. 1874;

Pub. L. 103-66, §§ 10001, 10002, 107 Stat. 402-403

Table II: Accounts in the Inventory of Accounts that should have changes made to the legal citation

Accounts with permanent appropriations:

Page 99, Department of the Interior, Bureau of Land Management, Miscellaneous Trust Funds,
Account Number 14-9971

The legal citation should read: 43 USC §§ 315h, 315i, 759, 761, 1721(a), (b), 1737(c)

Page 100, Department of the Interior, Geological Survey, Operation and Maintenance of Quarters, Account Number 14-5055

The legal citation should read: PL 98-473, § 320, 98 Stat. 1874

Page 102, Department of the Interior, United States Fish and Wildlife Service, Sport Fish Restoration, Account Number 14-8151

The legal citation should read: Pub. L. 82-136, 65 Stat 262 (1951)

Page 102, Department of the Interior, United States Fish and Wildlife Service, Miscellaneous Permanent Appropriations, Account Number 14-9923

The legal citation should read: Ch. 896, 64 Stat. 693 (1950)

Page 103, Department of Justice, Immigration and Naturalization Service, Immigration Legalization, Account Number 15-5086

The legal citation should read: 8 USC § 1101, see 8 USC §§ 1356(m) and 1455

Page 103, Department of Justice, Immigration and Naturalization Service, Immigration User Fee, Account Number 15-5087

The legal citation should read: 8 USC §§ 1356(d), (f), (h)

Table II : Accounts in the Inventory of Accounts that should have changes made to the legal citation

Accounts with permanent appropriations:

Page 103: Department of Justice, Immigration and Naturalization Service, Immigration Land Border Inspection Fee, Account Number 15-15-5089

The legal citation should read: 8 USC § 1356(q)

Page 104, Department of State, Administration of Foreign Affairs, Payment to the Foreign Service Retirement and Disability Fund, Account Number 19-0540

The legal citation should read: 22 USC § 4062

Page 104, Department of State, Administration of Foreign Affairs, Foreign Service Retirement and Disability Fund, Account Number 19-8186

The legal citation should read: 22 USC § 4045

Page 103, Department of State, Administration of Foreign Affairs, Miscellaneous Trust Funds, Account Number 19-9971

The legal citation should read: 22 USC § 2697

Page 104, Department of Transportation, Coast Guard, Payment of Claims, Account Number 69-8312

The legal citation should read: 33 USC §§ 2712(a)(4), 2752(b)

Page 104, Department of Transportation, Coast Guard, Emergency Fund, Account Number 69-8313

The legal citation should read: 33 USC §§ 1321, 2752(b)

Page 105, Department of Transportation, Maritime Administration, Ocean Freight Differential, Account Number 69-1751

The legal citation should read: Pub. L. 100-202, 101 Stat. 1329-27

Table II : Accounts in the Inventory of Accounts that should have changes made to the legal citation

Accounts with offsetting collections:

Page 135, Dept. of Defense--Military, Operation and Maintenance, Defense Health Program, Account Number 97-0130

The legal citation should read: 10 USC § 1079a

Page 142, Dept. of Energy, Energy Programs, Clean Coal Technology, Account Number 89-0235

The legal citation should read: Pub. L. 99-190, 99 Stat. 1254; Pub. L. 100-202, 101 Stat. 1329-243; Pub. L. 100-446, 102 Stat. 1811-1813; Pub. L. 100-121, 103 Stat. 731

Page 143, Dept. of Energy, Energy Programs, Alternative Fuels Production, Account Number 89-5180

The legal citation should read: 42 USC § 5915, note

Page 155, Dept. of Transport., Federal Aviation Administration, Facilities and Equipment (Airport and Airway Trust Fund), Account Number 69-8107

The legal citation should read: Pub. L.104-50, 109 Stat. 441, 31 USC §§ 6505, 9701

Page 155, Dept. of Transport., Federal Aviation Administration, Research, Engineering and Develop. (Airport and Airway Trust Fund), Account Number 69-8108

The legal citation should read: Pub. L. 104-50, 109 Stat. 441, 31 USC §§ 6505, 9701

Page 158, Dept. of Veterans Affairs, Departmental Administration, National Cemetery System, Account Number 36-0129

The legal citation should read: 5 USC § 5911(c)

Table II : Accounts in the Inventory of Accounts that should have changes made to the legal citation

Accounts with offsetting collections:

Page 159, Dept. of Veterans Affairs, Veterans Health Admin., Medical Care, Account Number 36-0160

The legal citation should read: 5 USC §§ 5911(c) and 38 USC 8153(b)
Page 162, Small Business Admin., Small Business Administration, Salaries and Expenses, Account Number 73-0100

The legal citation should read: 15 USC § 634(12)

Page 162, Small Business Admin., Small Business Administration, Business Assistance Trust Fund, Account Number 73-8466

The legal citation should read: 15 USC § 636(k)(2)

Table III: Accounts with backdoor spending authority

Accounts with authority to borrow:

Page 80, Legislative Branch, Architect of the Capitol, Judiciary Office Building Development and Operations Fund, Account Number 01-4518, 40 USC §§ 1201-1208

Although the law does not explicitly provide borrowing authority, Congress provided the Architect with the necessary authority to develop and construct a building without authorizing or appropriating funds for that purpose. Such so-called "lease-backed financing" is tantamount to borrowing authority.

Account with bartering authority:

Page 86, Department of Energy, Power Marketing Administration, Operation and Maintenance, Southeastern Power Administration, Account Number 89-0302, 16 USC § 825s

Accounts with permanent appropriations:

Page 92, Department of Agriculture, Agricultural Research Service, Miscellaneous Contributed Funds, Account Number 12-8214, 7 USC §§ 450a, 450b

Page 105, Department of Transportation, Maritime Administration, Gifts and Bequests, Account Number 69-8503, 49 USC § 326

Account with offsetting collections authority:

Page 125, Department of Commerce, United States Travel and Tourism Administration, Salaries and Expenses, Account Number 13-0700, 31 USC § 9701; 15 USC §§ 1525-1526
