

Obligation of Appropriations

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A. Introduction: Nature of an Obligation

You, as an individual, use a variety of procedures to spend your money. Consider the following transactions:

- You walk into a store, make a purchase, and pay at the counter with cash, check, or debit card.
- You move to another counter and make another purchase with a credit card. No money changes hands at the time, but you sign a credit form which states that you promise to pay upon being billed.
- You call the local tree surgeon to remove some ailing limbs from your favorite sycamore. He quotes an estimate and you arrange to have the work done. The tree doctor arrives while you are not at home, does the work, and slips his bill under your front door.
- You visit your family dentist to relieve a toothache. The work is done and you go home. No mention is made of money. Of course, you know that the work wasn't free and that the dentist will bill you.
- You now visit your family lawyer to sue the dentist and the tree surgeon. The lawyer takes your case and you sign a contingent fee contract in which you agree that the lawyer's fee will be one-third of any amounts recovered.

Numerous other variations could be added to the list but these are sufficient to make the point. The first example is a simple cash transaction. The legal liability to pay and the actual disbursement of money occur simultaneously. The rest of the examples all have one essential thing in common: You first take some action which creates the legal liability to pay—that is, you “obligate” yourself to pay—and the actual disbursement of money follows at some later time. The obligation occurs in a variety of ways, such as placing an order or signing a contract.

The government spends money in much the same fashion except that it is subject to a variety of statutory restrictions. The simple “cash transaction” or “direct outlay” involves a simultaneous obligation and disbursement and represents a minor portion of government expenditures. The major portion of appropriated funds are first obligated and then expended. The subsequent disbursement “liquidates” the obligation. Thus, an agency “uses” appropriations in two basic ways—direct expenditures (disbursements) and obligations. There is no legal requirement for you as

an individual to keep track of your “obligations.” For the government, there is.

The concept of “obligation” is central to appropriations law. As will be demonstrated in the discussion below, this is because of the principle, one of the most fundamental, that an obligation must be charged against the relevant appropriation in accordance with the rules relating to purpose, time, and amount. The term “available for obligation” is used throughout this publication to refer to availability as to purpose, time, and amount. This chapter will explore exactly what an obligation is.

It would be nice to start with an all-inclusive and universally applicable definition of “obligation.” However, because of the immense variety of transactions in which the government is involved, GAO has defined “obligation” only in the most general terms and has instead analyzed on a case-by-case basis the nature of the particular transaction at issue to determine whether an obligation has been incurred. [B-192282, Apr. 18, 1979](#); [B-116795, June 18, 1954](#).

The most one finds in the decisions are general statements referring to an obligation in such terms as “a definite commitment which creates a legal liability of the Government for the payment of appropriated funds for goods and services ordered or received.” [B-116795, June 18, 1954](#). *See also* [B-300480.2, June 6, 2003](#); [B-272191, Nov. 4, 1997](#); [B-265901, Oct. 14, 1997](#); [21 Comp. Gen. 1162, 1163 \(1941\)](#) (circular letter); [B-222048, Feb. 10, 1987](#); [B-82368, July 20, 1954](#); [B-24827, Apr. 3, 1942](#). From the earliest days, the Comptroller General has cautioned that the obligating of appropriations must be “definite and certain.” [A-5894, Dec. 3, 1924](#).

Another definition of an “obligation” that one finds in the decisions takes a slightly broader perspective:

“A legal duty on the part of the United States which constitutes a legal liability or which could mature into a legal liability by virtue of actions on the part of the other party beyond the control of the United States . . .”

[42 Comp. Gen. 733, 734 \(1963\)](#).

Thus, in very general and simplified terms, an “obligation” is some action that creates a legal liability or definite commitment on the part of the government, or creates a legal duty that could mature into a legal liability

by virtue of an action that is beyond the control of the government. Payment may be made immediately or in the future. GAO, *A Glossary of Terms Used in the Federal Budget Process*, [GAO-05-734SP](#) (Washington, D.C.: September 2005), at 70. See also *McDonnell Douglas Corp. v. United States*, 37 Fed. Cl. 295, 301, order modified, 39 Fed. Cl. 665 (1997); OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, §§ 20.3, 20.5 (June 21, 2005).

An advance of funds to a working fund¹ does not in itself serve to obligate the funds. See [B-180578-O.M.](#), Sept. 26, 1978. The same result holds for funds transferred to a special “holding account” established for administrative convenience. [B-118638](#), Nov. 4, 1974 (appropriations for District of Columbia Public Defender Service under control of the Administrative Office of the U.S. Courts are not obligated by transfer to a “Judiciary Trust Fund” established by the Administrative Office).

The typical question on obligations is framed in terms of when the obligation may or must be “recorded,” that is, officially charged against the spending agency’s appropriations. Restated, what action is necessary or sufficient to create an obligation? This is essential in determining what fiscal year to charge, with all the consequences that flow from that determination. It is also essential to the broader concern of congressional control over the public purse.

Before proceeding with the specifics, two general points should be noted. First, an obligation arises when the definite commitment is made, even though the actual payment may not take place until a future fiscal year. [B-300480.2](#), June 6, 2003; 56 Comp. Gen. 351 (1977); 23 Comp. Gen. 862 (1944). Second, for appropriations law purposes, the term “obligation” includes both matured and unmatured commitments. A matured commitment is a legal liability that is currently payable. An unmatured commitment is a liability which is not yet payable but for which a definite commitment nevertheless exists. For example, a contractual liability to pay for goods which have been delivered and accepted has “matured.” The liability for monthly rental payments under a lease is largely unmatured although the legal liability covers the entire rental period. Both types of liability are “obligations.” The fact that an unmatured liability may be

¹ A working fund account is established to receive advance payment from other agencies or accounts. 14 Comp. Gen. 25 (1934). For an example, see 10 U.S.C. § 2208, which authorizes working capital funds in the Department of Defense.

subject to a right of cancellation does not negate the obligation. [A-97205, Feb. 3, 1944](#), at 9–10.²

A recent decision illustrates this point. In [B-300480, Apr. 9, 2003](#), GAO determined that the Corporation for National and Community Service (Corporation), the parent body of the AmeriCorps national service program, incurred a legal liability for the award of AmeriCorps national service educational benefits at the time it entered into a grant agreement to provide educational benefits to AmeriCorps participants. Participants in the AmeriCorps program who successfully completed a required term of service earned a national service educational award that could be used to pay for post-secondary education. The Corporation awarded grants to state service commissions, which awarded subgrants to the nonprofit groups—the entities that actually enrolled the AmeriCorps participants. When the Corporation awarded a grant to a state service commission, it entered into a binding agreement authorizing the state service commissions to provide grant awards to a specified number of new participants in the AmeriCorps program. The Corporation argued that it did not incur an obligation for an education award until the time of enrollment because the Corporation could modify the terms and conditions of a grant, including suspension of enrollment, prior to the enrollment of all positions initially approved in a grant. GAO disagreed and explained that:

“The fact that the government may have the power to amend unilaterally a contract or agreement does not change the nature or scope of the obligation incurred at time of award. Were it otherwise, every government contract that permits the government to terminate the contract for the convenience of the government (48 C.F.R. § 49.502), or to modify the terms of the contract at will (48 C.F.R. §§ 52.243-1, 243-2, 243-3), would not be an obligation of the government at time of award. Long-standing practice and logic both of the Congress (31 U.S.C. § 1501, 41 U.S.C. § 5) and the accounting officers of the government ([B-234957, July 10, 1989](#), [B-112131, Feb. 1, 1956](#)) have rejected such a view.”

² An “unmatured liability” as described in this paragraph is different from a “contingent liability” as discussed in section C of this chapter.

[B-300480, Apr. 9, 2003](#). GAO concluded that because the Corporation had taken an action that could mature into a legal liability for the education benefits by virtue of actions taken by the grantee and participants, not the Corporation, the Corporation incurred an obligation at the time of grant award. *Id.* Subsequently, GAO issued a second decision, [B-300480.2, June 6, 2003](#), which elaborated upon and affirmed the April decision.

B. Criteria for Recording Obligations (31 U.S.C. § 1501)

The overrecording and the underrecording of obligations are equally improper. Both practices make it impossible to determine the precise status of the appropriation and can lead to other adverse consequences. Overrecording (recording as obligations items that are not) is usually done to inflate obligated balances and reduce unobligated balances of appropriations expiring at the end of a fiscal year. Underrecording (failing to record legitimate obligations) may result in violating the Antideficiency Act. 31 U.S.C. § 1341.³ A 1953 decision put it this way:

“In order to determine the status of appropriations, both from the viewpoint of management and the Congress, it is essential that obligations be recorded in the accounting records on a factual and consistent basis throughout the Government. Only by the following of sound practices in this regard can data on existing obligations serve to indicate program accomplishments and be related to the amount of additional appropriations required.”

[32 Comp. Gen. 436, 437 \(1953\)](#). See also GAO, *Policy and Procedures Manual for Guidance of Federal Agencies*, title 7, § 3.5.A. (Washington, D.C.: May 18, 1993) (hereafter GAO-PPM).

The standards for the proper recording of obligations are found in 31 U.S.C. § 1501(a), originally enacted as section 1311 of the Supplemental Appropriation Act, 1955, Pub. L. No. 83-663, 68 Stat. 800, 830 (Aug. 26, 1954). A Senate committee has described the origin of the statute as follows:

“Section 1311 of the Supplemental Appropriation Act of 1955 resulted from the difficulty encountered by the House

³ For further discussion of the Antideficiency Act, see Chapter 6, section C.

Appropriations Committee in obtaining reliable figures on obligations from the executive agencies in connection with the budget review. It was not uncommon for the committees to receive two or three different sets of figures as of the same date. This situation, together with rather vague explanations of certain types of obligations particularly in the military department[s], caused the House Committee on Appropriations to institute studies of agency obligating practices.

* * * * *

“The result of these examinations laid the foundation for the committee’s conclusion that loose practices had grown up in various agencies, particularly in the recording of obligations in situations where no real obligation existed, and that by reason of these practices the Congress did not have reliable information in the form of accurate obligations on which to determine an agency’s future requirements. To correct this situation, the committee, with the cooperation of the General Accounting Office and the Bureau of the Budget, developed what has become the statutory criterion by which the validity of an obligation is determined. . . .”⁴

Thus, the primary purpose of 31 U.S.C. § 1501 is to ensure that agencies record only those transactions which meet specified standards for legitimate obligations. [71 Comp. Gen. 109 \(1991\)](#); [54 Comp. Gen. 962, 964 \(1975\)](#); [51 Comp. Gen. 631, 633 \(1972\)](#); [B-192036, Sept. 11, 1978](#).⁵

Subsection (a) of 31 U.S.C. § 1501 prescribes specific criteria for recording obligations. The subsection begins by stating that “[a]n amount shall be

⁴ Senate Committee on Government Operations, *Financial Management in the Federal Government*, S. Doc. No. 87-11, at 85 (1961).

⁵ Although 31 U.S.C. § 1501 does not expressly apply to the government of the District of Columbia, GAO has expressed the view that the same criteria should be followed. [B-180578, Sept. 26, 1978](#). This is because the proper recording of obligations is the only way to assure compliance with 31 U.S.C. § 1341, a portion of the Antideficiency Act, which does expressly apply to the government of the District of Columbia. District of Columbia Self-Government and Governmental Reorganization Act (so-called “Home Rule” Act), Pub. L. No. 93-198, § 603(e), 87 Stat. 774, 815 (Dec. 24, 1973).

recorded as an obligation of the United States Government only when supported by documentary evidence” and then goes on to specify nine criteria for recording obligations. Note that the statute requires “documentary evidence” to support the recording in each instance. In one sense, these nine criteria taken together may be said to comprise the “definition” of an obligation.⁶

If a given transaction does not meet any of the criteria, then it is not a proper obligation and may not be recorded as one. Once one of the criteria is met, however, the agency not only may but must at that point record the transaction as an obligation. While 31 U.S.C. § 1501 does not explicitly state that obligations must be recorded as they arise or are incurred, it follows logically from an agency’s responsibility to comply with the Antideficiency Act. GAO has made the point in decisions and reports in various contexts. *E.g.*, [B-302358](#), Dec. 27, 2004; [72 Comp. Gen. 59](#) (1992); [65 Comp. Gen. 4, 6](#) (1985); [B-242974.6](#), Nov. 26, 1991; [B-226801](#), Mar. 2, 1988; [B-192036](#), Sept. 11, 1978; [A-97205](#), Feb. 3, 1944, at 10; GAO, FGMSD-75-20 (Washington, D.C.: Feb. 13, 1975) (untitled letter report); GAO, *Substantial Understatement of Obligations for Separation Allowances for Foreign National Employees*, B-179343, (Washington, D.C.: Oct. 21, 1974), at 6.

It is important to emphasize the relationship between the existence of an obligation and the act of recording. Recording evidences the obligation but does not create it. If a given transaction is not sufficient to constitute a valid obligation, recording it will not make it one. *E.g.*, [B-197274](#), Feb. 16, 1982 (“reservation and notification” letter held not to constitute an obligation, act of recording notwithstanding, where letter did not impose legal liability on government and subsequent formation of contract was within agency’s control). Conversely, failing to record a valid obligation in no way diminishes its validity or affects the fiscal year to which it is properly chargeable. *E.g.*, [B-226782](#), Oct. 20, 1987 (letter of intent, executed in fiscal year 1985 and found to constitute a contract, obligated fiscal year 1985 funds, notwithstanding agency’s failure to treat it as an obligation). *See also* [63 Comp. Gen. 525](#) (1984); [38 Comp. Gen. 81, 82–83](#) (1958).

The precise amount of the government’s liability should be recorded as the obligation where that amount is known. However, where the precise amount is not known at the time the obligation is incurred, an obligation

⁶ S. Doc. No. 87-11, at 86.

amount must still be recorded on a preliminary basis. How to determine this amount is discussed in section B.1.f of this chapter. See also OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, § 20.5 (June 21, 2005) for guidance on how to record obligation amounts in certain situations. As more precise data on the liability becomes available, the obligation must be periodically adjusted, that is, the agency must deobligate funds or increase the obligational level as the case may be. 7 GAO-PPM § 3.5.D; [B-300480, Apr. 9, 2003](#).

Adjustments to recorded obligations, like the initial recordings themselves, must be supported by documentary evidence. The use of statistical methods to make adjustments “lacks legal foundation if the underlying transactions cannot be identified and do not support the calculated totals.” [B-236940, Oct. 17, 1989](#); GAO, *Financial Management: Defense Accounting Adjustments for Stock Fund Obligations Are Illegal*, [GAO/AFMD-87-1](#) (Washington, D.C.: Mar. 11, 1987), at 6.

A related concept is the allocation of obligations for administrative expenses (utility costs, computer services, *etc.*) between or among programs funded under separate appropriations. There is no rule or formula for this allocation apart from the general prescription that the agency must use a supportable methodology. Merely relying on the approved budget is not sufficient. See GAO, *Financial Management: Improvements Needed in OSMRE’s Method of Allocating Obligations*, [GAO/AFMD-89-89](#) (Washington, D.C.: July 28, 1989). An agency may initially charge common-use items to a single appropriation as long as it makes the appropriate adjustments from other benefiting appropriations before or as of the end of the fiscal year. 31 U.S.C. § 1534; [70 Comp. Gen. 601 \(1991\)](#). The allocation must be in proportion to the benefit. [70 Comp. Gen. 592 \(1991\)](#).

Further procedural guidance may be found in OMB Circular No. A-11, at § 20.5; the Treasury Financial Manual; and title 7 of GAO’s *Policy and Procedures Manual for Guidance of Federal Agencies*. For the most part, the statutory criteria in 31 U.S.C. § 1501(a) reflect standards that had been developed in prior decisions of the Comptroller General over the years. See, e.g., [18 Comp. Gen. 363 \(1938\)](#); [16 Comp. Gen. 37 \(1936\)](#). The remainder of this section will explore the nine specific recording criteria.

1. Section 1501(a)(1):
Contracts

Subsection (a)(1) of 31 U.S.C. § 1501 establishes minimum requirements for recording obligations for contracts. Specifically, there must be documentary evidence of—

“(1) a binding agreement between an agency and another person (including an agency) that is—

“(A) in writing, in a way and form, and for a purpose authorized by law; and

“(B) executed before the end of the period of availability for obligation of the appropriation or fund used for specific goods to be delivered, real property to be bought or leased, or work or service to be provided.”

As seen in Chapter 5, the general rule for obligating fiscal year appropriations by contract is that the contract imposing the obligation must be made within the fiscal year sought to be charged and must meet a *bona fide* need of that fiscal year. *E.g.*, [B-272191, Nov. 4, 1997](#); [B-235086, Apr. 24, 1991](#); [37 Comp. Gen. 155 \(1957\)](#). This discussion will center on the timing of the obligation from the perspective of 31 U.S.C. § 1501(a)(1).

Subsection (a)(1) actually imposes several different requirements—

- a binding agreement;
- in writing;
- for a purpose authorized by law;
- executed before the expiration of the period of obligational availability; and
- a contract calling for *specific* goods, real property, work, or services.

a. Binding Agreement

An agreement must be legally binding (offer, acceptance, consideration, made by authorized official). As stated in a 1991 decision:

“The primary purpose of section 1501(a)(1) is to ‘require that there be an *offer* and *acceptance* imposing liability on

both parties.’ 39 Comp. Gen. 829, 831 (1960). Hence the government may record an obligation under section 1501 only upon evidence that both parties to the contract willfully express the intent to be bound.”

71 Comp. Gen. 109, 110 (1991) (emphasis in original). To be binding, however, an agreement does not have to be the final “definitized” contract. The legislative history of subsection (a)(1) makes this clear. The following excerpt is taken from the conference report:

“Section 1311(a)(1) precludes the recording of an obligation unless it is supported by documentary evidence of a binding agreement between the parties as specified therein. It is not necessary, however, that the binding agreement be the final formal contract on any specified form. The primary purpose is to require that there be an offer and an acceptance imposing liability on both parties. For example, an authorized order by one agency on another agency of the Government, if accepted by the latter and meeting the requirement of specificity, *etc.*, is sufficient. Likewise, a letter of intent accepted by a contractor, if sufficiently specific and definitive to show the purposes and scope of the contract finally to be executed, would constitute the binding agreement required.”⁷

The following passage from 42 Comp. Gen. 733, 734 (1963) remains a useful general prescription:

“The question whether Government funds are obligated at any specific time is answerable only in terms of an analysis of written arrangements and conditions agreed to by the United States and the party with whom it is dealing. If such analysis discloses a legal duty on the part of the United States which constitutes a legal liability or which could mature into a legal liability by virtue of actions on the part of the other party beyond the control of the United States, an obligation of funds may generally be stated to exist.”

⁷ H.R. Rep. No. 83-2663, at 18 (1954), *quoted in* B-118654, Aug. 10, 1965.

In [35 Comp. Gen. 319 \(1955\)](#), and [59 Comp. Gen. 431 \(1980\)](#), the Comptroller General set forth the factors that must be present in order for a binding agreement to exist for purposes of 31 U.S.C. § 1501(a)(1) with respect to contracts awarded under competitive procedures:

- Each bid must have been in writing.
- The acceptance of each bid must have been communicated to the bidder in the same manner as the bid was made. If the bid was mailed, the contract must have been placed in the mails before the close of the fiscal year. If the bid was delivered other than by mail, the contract must have been delivered in like manner before the end of the fiscal year.
- Each contract must have incorporated the terms and conditions of the respective bid without qualification. Otherwise, it must be viewed as a counteroffer and there would be no binding agreement until accepted by the contractor.

To illustrate, where the agency notified the successful bidder of the award by telephone near the end of fiscal year 1979 but did not mail the contract document until fiscal year 1980, there was no valid obligation of fiscal year 1979 funds. [59 Comp. Gen. 431 \(1980\)](#). See also *Goldberger Foods v. United States*, 23 Cl. Ct. 295, 302–303, *aff'd*, 960 F.2d 155 (Fed. Cir. 1992); [B-159999-O.M., Mar. 16, 1967](#); [B-235086, Apr. 24, 1991](#); [35 Comp. Gen. 319 \(1955\)](#). A document is considered “mailed” when it is placed in the custody of the Postal Service (given to postman or dropped in mailbox or letter chute in office building); merely delivering the document to an agency messenger with instructions to mail it is insufficient. [59 Comp. Gen. 431, 433 \(1980\)](#); [B-235086, Apr. 24, 1991](#). Similarly, there was no recordable obligation of fiscal year 1960 funds where the agency erroneously mailed the notice of award to the wrong bidder and did not notify the successful bidder until the first day of fiscal year 1961. [40 Comp. Gen. 147 \(1960\)](#). It is important to note that, in the above cases, the obligation was invalid only with respect to the fiscal year the agency wanted to charge. The agency could still proceed to finalize the obligation but would have to charge funds current in the subsequent fiscal year.

A mere request for additional supplies under a purchase order with no indication of acceptance of the request does not create a recordable obligation. [39 Comp. Gen. 829 \(1960\)](#). Similarly, a work order or purchase

order may be recorded as an obligation only where it constitutes a binding agreement for specific work or services. [34 Comp. Gen. 459 \(1955\)](#).

A “letter of intent” is a preliminary document that may or may not constitute an obligation. At one extreme, it may be nothing more than an “agreement to agree” with neither party bound until execution of the formal contract. *E.g.*, [B-201035, Feb. 15, 1984](#), at 5. At the other extreme, it may contain all the elements of a contract, in which event it will create binding obligations. The crucial question is whether the parties intended to be bound, determinable primarily from the language actually used. *Saul Bass & Associates v. United States*, 505 F.2d 1386 (Ct. Cl. 1974). For a good example of a letter of intent creating contractual obligations, see [B-226782, Oct. 20, 1987](#).

A letter of intent which amounts to a contract is also called a “letter contract.” In the context of government procurement, it is used most commonly when there is insufficient time to prepare and execute the full contract before the end of the fiscal year. As indicated in the legislative history quoted earlier, a “letter of intent” accepted by the contractor may form the basis of an obligation if it is sufficiently specific and definitive to show the purpose and scope of the contract. [21 Comp. Gen. 574 \(1941\)](#); [B-127518, May 10, 1956](#). Letters of intent should be used “only under conditions of the utmost urgency.” [33 Comp. Gen. 291, 293 \(1954\)](#). Under the Federal Acquisition Regulation (FAR), letter contracts may be used—

“when (1) the Government’s interests demand that the contractor be given a binding commitment so that work can start immediately and (2) negotiating a definitive contract is not possible in sufficient time to meet the requirement. However, a letter contract should be as complete and definite as feasible under the circumstances.”

48 C.F.R. § 16.603-2(a) (2005).

The amount to be obligated under a letter contract is the government’s maximum liability under the letter contract itself, without regard to additional obligations anticipated to be included in the definitive contract or, restated, the amount necessary to cover expenses to be incurred by the contractor prior to execution of the definitive contract. The obligation is recorded against funds available for obligation at the time the letter contract is issued. [34 Comp. Gen. 418, 421 \(1955\)](#); [B-197274, Sept. 23, 1983](#);

[B-197274, Feb. 16, 1982](#); [B-127518, May 10, 1956](#). *See also* FAR, 48 C.F.R. §§ 16.603-2(d), 16.603-3(a).

Once the definitive contract is executed, the government's liability under the letter contract is merged into it. If definitization does not occur until the following fiscal year, the definitive contract will obligate funds of the latter year, usually in the amount of the total contract price less an appropriate deduction relating to the letter contract. [B-197274, Sept. 23, 1983](#). The cited decision, at page 5, specifies how to calculate the deduction as follows:

“The definitized contract then supports obligating against the appropriation current at the time it is entered into since it is, in fact, a *bona fide* need of that year. The amount of the definitized contract would ordinarily be the total contract cost less either the actual costs incurred under the letter contract (when known) or the amount of the maximum legal liability permitted by the letter contract (when the actual costs cannot be determined).”

Letter contracts should be definitized within 180 days, or before completion of 40 percent of the work to be performed, whichever occurs first. FAR, 48 C.F.R. § 16.603-2(c). Also, letter contracts should not be used to record excess obligations as this distorts the agency's funding picture. *See* GAO, *Contract Pricing: Obligations Exceed Definitized Prices on Unpriced Contracts*, [GAO/NSIAD-86-128](#) (Washington, D.C.: May 2, 1986).

b. Contract “in Writing”

Although the binding agreement under 31 U.S.C. § 1501(a)(1) must be “in writing,” the “writing” is not necessarily limited to words on a piece of paper. The traditional mode of contract execution is to affix original handwritten signatures to a document (paper) setting forth the contract terms. Change is in the winds, however, and traditional interpretations are being reassessed in light of advancing computer technologies. In 1983, GAO's legal staff, in an internal memorandum to one of GAO's audit divisions, took note of modern legal trends and advised that the “in writing” requirement could be satisfied by computer-related media which produce tangible recordings of information, such as punch cards, magnetic cards, tapes, or disks. [B-208863\(2\)-O.M., May 23, 1983](#).

Eight years later, the Comptroller General issued his first formal decision on the topic, [71 Comp. Gen. 109 \(1991\)](#). The National Institute of Standards and Technology (NIST) asked whether federal agencies could use certain

Electronic Data Interchange (EDI) technologies to create valid contractual obligations for purposes of 31 U.S.C. § 1501(a). Yes, replied the Comptroller, as long as there are adequate safeguards and controls to provide no less certainty and protection of the government's interests as under a "paper and ink" method. The decision states:

"We conclude that EDI systems using message authentication codes which follow NIST's Computer Data Authentication Standard . . . or digital signatures following NIST's Digital Signature Standard, as currently proposed, can produce a form of evidence that is acceptable under section 1501."

71 Comp. Gen. at 111. In 2000, Congress enacted the Electronic Signatures in Global and National Commerce Act,⁸ which confirmed the legality of digital signatures in any transaction in or affecting interstate or foreign commerce. Section 101(a) of the act provides:

"In General.—Notwithstanding any statute, regulation, or other rule of law . . . with respect to any transaction in or affecting interstate or foreign commerce—

(1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and

(2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation."

While there may be some room for interpretation as to what constitutes a "writing" for purposes of 31 U.S.C. § 1501(a)(1), the writing, in some acceptable form, must exist. Under the plain terms of the statute, an oral agreement may not be recorded as an obligation. In *United States v. American Renaissance Lines, Inc.*, 494 F.2d 1059, 1062 (D.C. Cir.), *cert. denied*, 419 U.S. 1020 (1974), the court found that 31 U.S.C.

⁸ Pub. L. No. 106-229, § 101(a), 114 Stat. 464 (June 30, 2000).

§ 1501(a)(1) “establishes virtually a statute of frauds” for the government⁹ and held that neither party can judicially enforce an oral contract in violation of the statute.

However, the Court of Claims and its successors, the Claims Court and United States Court of Federal Claims, have taken the position that 31 U.S.C. § 1501(a)(1) does not bar recovery “outside of the contract” where sufficient additional facts exist for the court to infer the necessary “meeting of minds” (contract implied-in-fact). *Narva Harris Construction Corp. v. United States*, 574 F.2d 508 (Ct. Cl. 1978); *Johns-Manville Corp. v. United States*, 12 Cl. Ct. 1, 19–20 (1987). Cf. *Kinzley v. United States*, 661 F.2d 187 (Ct. Cl. 1981) (documentary evidence of employment of persons sufficient to support oral employment contract for purposes of 31 U.S.C. § 1501(a)(7)). In *Pacord, Inc. v. United States*, 139 F.3d 1320 (9th Cir. 1998), the court relied on *Narva Harris Construction Corp.* in holding that, even though the Federal Acquisition Regulation (FAR) generally requires contracts to be in writing,¹⁰ an oral contract may be enforced if the plaintiff “can establish sufficient facts, beyond a mere oral agreement, for the court to infer the existence of an implied-in-fact contract.” *Pacord*, 139 F.3d at 1323.

These would be examples of subsequently imposed liability where the agency did not record—and lawfully could not have recorded—an obligation when the events giving rise to the liability took place. If a contractor received a judgment in this type of situation, the obligational impact on the contracting agency would depend on whether the case was subject to the Contract Disputes Act. If the Act applies, the judgment would be payable initially from the permanent judgment appropriation (31 U.S.C. § 1304), to be reimbursed by the agency from currently available appropriations. See 41 U.S.C. §§ 612(a)–(c); [B-252754, Oct. 6, 1994](#). If the Act does not apply, the judgment would be paid from the judgment

⁹ A “statute of frauds” is a law requiring contracts to be in writing in order to be enforceable. Most, if not all, states have some version of such a statute. Strictly speaking, as the Comptroller General has noted, there is no federal statute of frauds. [39 Comp. Gen. 829, 831 \(1960\)](#). See also [55 Comp. Gen. 833 \(1976\)](#).

¹⁰ The FAR defines “contracts” as including “all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing.” This provision also provides that “[i]n writing, writing, or written means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.” 48 C.F.R. § 2.101 (2005).

appropriation without reimbursement, and there would thus be no obligational impact on the agency.

In [B-118654, Aug. 10, 1965](#), GAO concluded that a notice of award signed by the contracting officer and issued before the close of the fiscal year did not satisfy the requirements of 31 U.S.C. § 1501(a)(1) where it incorporated modifications of the offer as to price and other terms which had been agreed to orally during negotiations. The reason is that there was no evidence in writing that the contractor had agreed to the modifications. GAO conceded, however, that the agency's argument that there was documentary evidence of a binding agreement for purposes of section 1501(a)(1) was not without merit. In view of this and since the agency was in the process of changing its contracting procedures to assure adequate documentary evidence of both the offer and the acceptance, we did not insist on any appropriation adjustments.

In a 1977 decision, however, GAO concluded that a signed contract that included ambiguous terms relating to pricing might not be defeated where the ambiguity was resolved by telephone conversations that were incorporated by reference into an award letter, even though there was no written record of the conversations showing agreement by both parties. The Comptroller General concluded that the potential defect in any event would not afford a basis for a third party (in this case a protesting unsuccessful offeror) to object to the contract's legality. 56 Comp. Gen. 768, 775 (1977).

c. Requirement of Specificity

The statute requires documentary evidence of a binding agreement for *specific* goods or services. An agreement that fails this test is not a valid obligation.

For example, a State Department contract under the Migration and Refugee Assistance Program establishing a contingency fund "to provide funds for refugee assistance by any means, organization or other voluntary agency as determined by the Supervising Officer" did not meet the requirement of specificity and therefore was not a valid obligation. [B-147196, Apr. 5, 1965](#).

Similarly, a purchase order which lacks a description of the products to be provided is not sufficient to create a recordable obligation. [B-196109, Oct. 23, 1979](#). In the cited decision, a purchase order for "regulatory, warning, and guide signs based on information supplied" on requisitions to be issued did not validly obligate fiscal year 1978 funds where the requisitions were not sent to the supplier until after the close of fiscal year

1978. *See also* 70 Comp. Gen. 481 (1991) (advances to establish an imprest fund to finance unspecified future cash payments do not meet the statutory requirements for recording obligations).

d. Invalid
Award/Unauthorized
Commitment

Where a contract award is determined to be invalid, the effect is that no binding agreement ever existed as required by 31 U.S.C. § 1501(a)(1) and therefore there was no valid obligation of funds. 38 Comp. Gen. 190 (1958); B-157360, Aug. 11, 1965. As discussed in Chapter 5, section B.6, under more recent authorities the original obligation is not extinguished for all purposes, and those amounts originally obligated remain available post-expiration to fund a valid “replacement contract.” 70 Comp. Gen. 230 (1991); 68 Comp. Gen. 158 (1988). Where the invalidity is determined under a bid protest, which will presumably cover most such instances, the extended availability described in the GAO decisions is statutorily defined as 100 days after the final ruling on the protest. 31 U.S.C. § 1558(a). Thus, cases like 38 Comp. Gen. 190 must be regarded as modified to this extent. Of course, amounts originally obligated do not survive post-expiration for anything other than a valid replacement contract. B-270723, Apr. 15, 1996.

Where the Comptroller General awards bid preparation costs to a successful protester under authority of 31 U.S.C. § 3554(c), payment should be charged to the agency’s procurement appropriations current at the time GAO issued its decision. If the agency must verify the amount of bid preparation costs to which the protester is entitled prior to payment, the agency should record an estimated obligation, using GAO’s decision as the obligating document. Upon verification, the obligation is adjusted up or down as necessary, on the basis of the documents submitted by the protester to substantiate the amount. B-199368.4, Jan. 19, 1983 (nondecision letter).

Claims against the government resulting from unauthorized commitments raise obligation questions in two general situations. If the circumstances surrounding the unauthorized commitment are sufficient to give rise to a contract implied-in-fact, it may be possible for the agency to ratify the unauthorized act. If the ratification occurs in a subsequent fiscal year, the obligation is chargeable to the prior year, that is, the year in which the need presumably arose and the claimant performed. B-208730, Jan. 6, 1983. However, before an agency chooses to ratify the obligation, it first must assure that sufficient prior year unobligated funds remain available to cover the ratification. *Id.*; B-290005, July 1, 2002. If ratification is not available for whatever reason, the only remaining possibility for payment is a *quantum meruit* recovery under a theory of contract implied-in-law. The

quantum meruit theory permits payment in limited circumstances even in cases where there was no valid obligation, for example, where the contractor has made partial delivery operating under what he believed to be a valid contract. [B-303906, Dec. 7, 2004](#); [B-251668, May 13, 1993](#); [B-118428, Sept. 21, 1954](#). *See also* 67 Comp. Gen. 507 (1988). The obligational impact is the same as for ratification—payment is chargeable to the fiscal year in which the claimant performed. [B-210808, May 24, 1984](#); [B-207557, July 11, 1983](#).

e. Variations in Quantity to Be
Furnished

In some types of contracts, the quantity of goods to be furnished or services to be performed may vary. The quantity may be indefinite or it may be stated in terms of a definite minimum with permissible variation. Variations may be at the option of the government or the contractor. The obligational treatment of this type of contract depends on the exact nature of the contractual liability imposed on the government.

Before proceeding, it is important to define some terms. A *requirements contract* is one in which the government agrees to purchase all of its needs for the particular item or service during the contract period from the contractor, and the contractor agrees to fill all such needs. Federal Acquisition Regulation (FAR), 48 C.F.R. § 16.503(a) (2005); *Modern Systems Technology Corp. v. United States*, 979 F.2d 200, 206 (Fed. Cir. 1992); *Torncello v. United States*, 681 F.2d 756, 761 (Ct. Cl. 1982). An *indefinite-quantity contract* is one in which the contractor agrees to supply whatever quantity the government may order, within limits, with the government under no obligation to use that contractor for all of its requirements. FAR, 48 C.F.R. § 16.504(a); *Hemet Valley Flying Service Co. v. United States*, 7 Cl. Ct. 512, 515–16 (1985); *Mason v. United States*, 615 F.2d 1343, 1346 n.5 (Ct. Cl.), *cert. denied*, 449 U.S. 830 (1980); [B-302358, Dec. 27, 2004](#). Under either type of contract, the government orders specific quantities from time to time by issuing a document variously termed a work order, task order, delivery order, *etc.*

In a requirements contract, the government must state a realistic estimated total quantity. An agency may obtain its estimate from records of previous requirements and consumption, or by other means, and should base the estimate on the most current information available. FAR, 48 C.F.R. § 16.503(a)(1); [B-190855, Mar. 31, 1978](#); [B-188426, Sept. 20, 1977](#). It is not legally necessary that requirements contracts place a minimum or a maximum limit upon the estimated requirements. [B-256312, June 6, 1994](#); [B-226992.2, July 13, 1987](#). *See also* *Unlimited Enterprises, Export-Import, Inc.*, ASBCA No. 34825, 88-3 BCA ¶ 20,908 (1988). However, the FAR

provides that “[t]he contract shall state, if feasible, the maximum limit of the contractor’s obligation to deliver and the Government’s obligation to order.” 48 C.F.R. § 16.503(a)(2). Needs must relate to the contract period. [21 Comp. Gen. 961, 964 \(1942\)](#).

If, in the exercise of good faith, the anticipated requirements simply do not materialize, the government is not obligated to purchase the stated estimate or indeed, if no requirements arise, to place any orders with the contractor beyond any required minimum. [47 Comp. Gen. 365, 370 \(1968\)](#). See also *Appeal of Shepard Printing*, GPOBCA No. 37-92 (1994); *AGS-Genesys Corp.*, ASBCA No. 35302, 89-2 BCA ¶ 21,702 (1989); *World Contractors, Inc.*, ASBCA No. 20354, 75-2 BCA ¶ 11,536 (1975). The contractor assumes the risk that nonguaranteed requirements may fall short of expectations, and has no claim for a price adjustment if they do. *Medart, Inc. v. Austin*, 967 F.2d 579 (Fed. Cir. 1992); [37 Comp. Gen. 688 \(1958\)](#). If, however, the government attempts to meet its requirements elsewhere, including the development of in-house capability, or if failure to place orders with the contractor for valid needs is otherwise found to evidence lack of good faith, liability will result. *E.g.*, *Rumsfeld v. Applied Companies, Inc.*, 325 F.3d 1328 (Fed. Cir.), *cert. denied*, 540 U.S. 981 (2003); *Torncello*, 681 F.2d at 768–69; *Cleek Aviation v. United States*, 19 Cl. Ct. 552 (1990); *Appeal of MDP Construction, Inc.*, ASBCA No. 49527, 96-2 BCA ¶ 28,525 (1996); *Viktoria Transport GmbH & Co.*, ASBCA No. 30371, 88-3 BCA ¶ 20,921 (1988); *California Bus Lines*, ASBCA No. 19732, 75-2 BCA ¶ 11,601 (1975); *Henry Angelo & Sons, Inc.*, ASBCA No. 15082, 72-1 BCA ¶ 9356 (1972); [B-182266, Apr. 1, 1975](#).

An indefinite-quantity contract, under current regulations, must include a minimum purchase requirement which must be more than nominal. FAR, 48 C.F.R. § 16.504(a)(2); [B-302358, Dec. 27, 2004](#). An indefinite-quantity contract without a minimum purchase requirement is regarded as illusory and unenforceable. It is no contract at all. *Torncello*, 681 F.2d at 761; *Mason*, 615 F.2d at 1346 n.5; *Howell v. United States*, 51 Fed. Cl. 516 (2002); *Rice Lake Contracting, Inc. v. United States*, 33 Fed. Cl. 144, 152–53 (1995); *Modern Systems Technology Corp. v. United States*, 24 Cl. Ct. 360 (1991). Apart from the specified minimum, the government is free to obtain its requirements from other contractors. *Government Contract Services, Inc.*, GSBCA No. 8447, 88-1 BCA ¶ 20,255 (1987); *Alta Construction Co.*, PSBCA No. 1395, 87-2 BCA ¶ 19,720 (1987).

An indefinite-delivery, indefinite-quantity (IDIQ) contract is a form of an indefinite-quantity contract. As with other indefinite quantity contracts, an

IDIQ contract must require the government to order, and the contractor to furnish, at least a stated minimum quantity of supplies or services. FAR, 48 C.F.R. § 16.504(a). While the agency may place orders at any time during a fixed period, actual delivery dates during that period are undefined. After award of an IDIQ contract, the government places task or delivery orders with the contractor (or contractors) as the government's needs become definite. [B-302358, Dec. 27, 2004](#). IDIQs have historically provided a way to expeditiously fill certain government needs. *See* GAO, *Contract Management: Few Competing Proposals for Large DOD Information Technology Orders*, NSIAD-00-56 (Washington, D.C.: Mar. 20, 2000), at 5.

What does all this signify from the perspective of obligating appropriations? As we noted at the outset, the obligational impact of a variable quantity contract depends on exactly what the government has bound itself to do. A fairly simple generalization can be deduced from the decisions: In a variable quantity contract (requirements or indefinite-quantity), any required minimum purchase must be obligated when the contract is executed; subsequent obligations occur as work orders or delivery orders are placed, and are chargeable to the fiscal year in which the order is placed. [B-302358, Dec. 27, 2004](#).

Thus, in a variable quantity contract with no guaranteed minimum—or any analogous situation in which there is no liability unless and until an order is placed—there would be no recordable obligation at the time of award. [B-302358, Dec. 27, 2004](#); [B-259274, May 22, 1996](#); 63 Comp. Gen. 129 (1983); 60 Comp. Gen. 219 (1981); 34 Comp. Gen. 459, 462 (1955); [B-124901, Oct. 26, 1955](#) (“call contract”).¹¹ Obligations are recorded as orders are placed.

The same approach applies to a contract for a fixed quantity in which the government reserves an option to purchase an additional quantity. The contract price for the fixed quantity is an obligation at the time the contract is entered into; the reservation of the option ripens into an obligation only if and when the government exercises the option. [19 Comp. Gen. 980 \(1940\)](#). *See also* [B-287619, July 5, 2001](#) (for medical services provided through civilian contracted care, DOD's legal liability for at-risk payment is determined by the fixed price established by the contract and should be recorded at the time DOD executes the contract, and again when it executes any subsequent options).

¹¹ As cases such as 63 Comp. Gen. 129 illustrate, there can be many variations on the basic indefinite-quantity theme.

An application of these concepts also can be found at [B-192036, Sept. 11, 1978](#). The National Park Service entered into a construction contract for the development of a national historic site. Part of the contract price was a “contingent sum” of \$25,000 for “Force Account Work,” described in the contract as miscellaneous items of a minor nature not included in the bid schedule. No “Force Account Work” was to be done except under written orders issued by the contracting officer. Since a written order was required for the performance of work, no part of the \$25,000 could be recorded as an obligation unless and until such orders were issued and accepted by the contractor. That portion of the master contract itself which provided for the Force Account Work was not sufficiently specific to create an obligation.

In a 1955 case, the Army entered into a contract for the procurement of lumber. The contract contained a clause permitting a 10 percent overshipment or undershipment of the quantity ordered. This type of clause was standard in lumber procurement contracts. The Comptroller General held that the Army could obligate the amount necessary to pay for the maximum quantities deliverable under the contract. [34 Comp. Gen. 596 \(1955\)](#). Here, the quantity was definite and the government was required to accept the permissible variation.

In another 1955 case, the General Services Administration had published in the Federal Register an offer to purchase chrome ore up to a stated maximum quantity. Formal agreements would not be executed until producers made actual tenders of the ore. The program published in the Federal Register was a mere offer to purchase and GSA could not obligate funds to cover the total quantity authorized. Reason: there was no mutual assent and therefore no binding agreement in writing until a producer responded to the offer and a formal contract was executed. [B-125644, Nov. 21, 1955](#).

So-called “level of effort” contracts are conceptually related to the “variation in quantity” cases. In one case, the Environmental Protection Agency entered into a cost-plus-fixed-fee contract for various services at an EPA facility. The contractor’s contractual obligation was expressed as a “level of effort” in terms of staff-hours. The contractor was to provide up to a stated maximum number of direct staff-hours, to be applied on the basis of work orders issued during the course of the contract. Since the government was obligated under the contract to order specific tasks, the contract was sufficiently definitive to justify recording the full estimated contract amount at the time of award. [B-183184, May 30, 1975](#). *See also*

58 Comp. Gen. 471, 474 (1979); B-199422, June 22, 1981 (nondecision letter).

f. Amount to Be Recorded

As noted previously, where the precise amount of the government's liability is defined at the time the government enters into the contract that is the amount to be recorded. For example, in the simple firm fixed-price contract, the contract price is the recordable obligation. The possibility that the contractor may not perform up to the level specified in the contract does not provide a basis for recording less than the full contract price as the obligation. However, for many types of obligations, the precise amount of the government's liability cannot be known at the time the liability is incurred. As summarized in our preliminary discussion of 31 U.S.C. § 1501(a), some initial amount must still be recorded. The agency should then adjust this initial obligation amount up or down periodically as more precise information becomes available.¹²

GAO decisions, as well as GAO's *Policy and Procedures Manual for Guidance of Federal Agencies*,¹³ indicate that, in general, the agency should use its best estimate to record the initial amount where the amount of the government's final liability is undefined. *E.g.*, 56 Comp. Gen. 414, 418 (1977); 50 Comp. Gen. 589 (1971). Section 3.5.D of the *Manual* further provides that, where an estimate is used, the basis for the estimate and the computation must be documented.

For example, in 50 Comp. Gen. 589, GAO considered the accounting procedures used by the Administrative Office of the United States Courts (Administrative Office) with respect to paying court-appointed attorneys in federal criminal cases. GAO held that at the time of appointment of such attorneys a contractual obligation was created on the part of the government to pay the reasonable costs of the representation, although the exact amount of such obligation remained to be determined. Such obligations must, therefore, be charged against the appropriations current

¹² This discussion addresses the amount to be recorded when the amount of the liability is undefined, and is not to be confused with a discussion of contingent liabilities. For example, for an indefinite-delivery, indefinite-quantity contract, any liability in excess of the government's minimum commitment, as defined in the contract, is a contingent liability—that is, contingent on the government placing future orders with the contractor. For that reason, at the time the government enters into the contract, the government has no liability above the minimum specified in the contract, and thus incurs no obligation for future orders. We discuss contingent liabilities in section C of this chapter.

¹³ Title 7, § 3.5.D (Washington, D.C.: May 18, 1993).

at the time of appointment. *Id.* at 590–91. The proper procedure for charging these obligations was described as follows:

“[U]pon the appointment of an attorney by the court, a copy of the order of appointment is sent to [the Administrative Office] for the purpose of estimating the obligation to be charged against the current appropriation. This estimate made by [the Administrative Office] is based on past average costs per case and the fact that the [Criminal Justice Act] sets dollar limits on the amount of compensation a court-appointed attorney may receive.”

Id. at 589. The appropriation account current at the time of appointment was thus charged until the voucher reflecting the actual costs was approved (which could occur in a subsequent fiscal year), at which point the estimated amounts were adjusted accordingly.¹⁴

Decisions dealing with certain kinds of contract obligations provide more specific rules. Under a fixed-price contract with escalation, price redetermination, or incentive provisions, the amount to be obligated initially is the fixed price stated in the contract or the target price in the case, for example, of a contract with an incentive clause. [B-255831, July 7, 1995](#); [34 Comp. Gen. 418 \(1955\)](#); [B-133170, Jan. 29, 1975](#); [B-206283-O.M., Feb. 17, 1983](#). Thus, in an incentive contract with a target price of \$85 million and a ceiling price of \$100 million, the proper amount to record initially as an obligation is the target price of \$85 million. [55 Comp. Gen. 812, 824 \(1976\)](#). *See also McDonnell Douglas Corp. v. United States*, 39 Fed. Cl. 665 (1997). The agency must increase or decrease the amount recorded (*i.e.*, the target price) to reflect price revisions at the time such revisions are made or determined pursuant to the provisions of the contract. [34 Comp. Gen. at 420–21](#). When obligations are recorded based on a target price, the agency should establish appropriate safeguards to guard against violations of the Antideficiency Act. This usually means the administrative reservation of sufficient funds to cover potential liability.

¹⁴ The decision in [50 Comp. Gen. 589](#) is offered here as an example of a methodology for estimating obligations. Beginning with fiscal year 1977 the Judiciary has received no-year appropriations to pay court appointed attorneys. *See* Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1977, Pub. L. No. 94-362, title IV, 90 Stat. 937, 953 (July 14, 1976); Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, div. B, title III, 118 Stat. 2809, 2892 (Dec. 8, 2004).

[B-255831, July 7, 1995](#); 34 Comp. Gen. at 420–21; [B-206283-O.M., Feb. 17, 1983](#).

The two recent decisions involving the Corporation for National and Community Service, discussed previously in section A of this chapter, held that the Corporation must record the government’s full liability under the grant at the time of grant award. [B-300480, Apr. 9, 2003](#), *aff’d*, [B-300480.2, June 6, 2003](#). Under the grant agreements involved, the Corporation agreed to fund a specified number of AmeriCorps program participants. This number could be converted into a precise dollar amount. Thus, the Corporation incurred an obligation to pay the maximum dollar amount if the grantee fully performed under the grant agreement and enrolled the specified number of participants. While the grantee might ultimately fail to enroll the number of participants called for in the grant agreement, the extent of the grantee’s performance under the grant was entirely within the grantee’s control. The decisions rejected contentions by the Corporation and the Office of Management and Budget that the initial grant obligation should be recorded on the basis of estimates that reflected past experience. As the April 9, 2003 decision observed:

“For purposes of identifying the amount of the Corporation’s obligation at grant award . . . the grantee and subgrantee, by their actions in enrolling participants, ultimately control the amount of the Corporation’s liability. If the amount of liability of the government is under the control of the grantee, not the Corporation, the government should obligate funds to cover the maximum amount of the liability. *See, e.g.*, [B-238581, Oct. 31, 1990](#); [B-197274, Sept. 23, 1983](#).¹⁵

In this regard, the result in the two 2003 decisions is really no different from the obligation rule that applies to a simple fixed-price contract. There, the government incurs a firm obligation to pay a specified amount provided, of course, that the contractor fully performs under the contract. The possibility that the contractor may not perform up to the level

¹⁵ Subsequently, Congress passed legislation clarifying the method by which the Corporation should record obligations, authorizing the Corporation to record as an obligation an estimate based on a formula that takes into consideration historical rates of enrollment in the program. Pub. L. No. 108-45, § 2(b), 117 Stat. 844 (July 3, 2003). *See also* 149 Cong. Rec. S8163–64 (2003) (statement of Sen. Bond).

specified in the contract does not provide a basis for recording less than the full contract price as the obligation.

g. Administrative Approval of Payment

In some instances, a liability does not arise until the agency formally reviews and approves a payment. In these instances, of course, the agency should not record an obligation for payment until it approves the payment. (The review and approval here refers to a process in addition to the normal review and approval of the voucher by a certifying and disbursing officer that is always required.) For example, under Internal Revenue Service (IRS) regulations, IRS has no financial liability to its informants until it has evaluated the worth of the information and assessed and collected any underpaid taxes and penalties stemming from that information. It is at this point that an appropriate IRS official determines that a reward should be paid and its amount, and it is at this point that IRS incurs a recordable obligation. [B-137762.32, July 11, 1977](#).

In [46 Comp. Gen. 895 \(1967\)](#), GAO approved the then Veterans Administration's (VA) practice of recording obligations for fee-basis outpatient treatment of eligible veterans at the time the agency administratively approved the vouchers. VA had established a review and approval process to determine whether the government should accept liability; therefore, no obligation arose until that time. *See also* [B-133944, Jan. 31, 1958](#); [B-92679, July 24, 1950](#).

GAO followed [46 Comp. Gen. 895](#) in a decision concerning the Defense Department's TRICARE health care program, [B-287619, July 5, 2001](#). The decision concluded that the Defense Department did not incur a liability for the costs of medical services provided under the so-called "pass through" arrangement of the TRICARE program until the Department processed and approved a claim—that is, until the Department determined that the beneficiary was eligible to receive treatment, the services provided were allowable, and the amount billed was proper. Thus, claims-approval was the appropriate time at which to record an obligation.

By way of contrast, the obligation for the expenses of a court-appointed attorney under the Criminal Justice Act of 1964 (CJA) arises at the time of appointment, not later when the expenses are approved, because of the terms of the Act. [50 Comp. Gen. 589 \(1971\)](#). Under section 2 of the CJA, as amended, 18 U.S.C § 3006A, the court's order of appointment establishes contractual liability, even though the exact amount of the obligation is not determinable until the attorney's payment voucher is approved. The court's review of the voucher is intended only to ensure the reasonableness of the

expenses incurred. Thus, GAO held that payment must be charged to the funds available for the fiscal year in which the appointment was made. Beginning with fiscal year 1977 the Judiciary has received no-year appropriations to pay court appointed attorneys. *See* Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1977, Pub. L. No. 94-362, title IV, 90 Stat. 937, 953 (July 14, 1976); Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, div. B, title III, 118 Stat. 2809, 2892 (Dec. 8, 2004).

h. Miscellaneous Contractual Obligations

The core issue in many of the previously discussed cases has been when a given transaction ripens into a recordable obligation, that is, precisely when the “definite commitment” occurs. Many of the cases do not fit neatly into categories. Rather, the answer must be derived by analyzing the nature of the contractual or statutory commitments in the particular case.

A 1979 case dealt with a lease arrangement entered into by the Peace Corps in Korea. Under a particular type of lease recognized by Korean law, the lessee does not make installment rental payments. Instead, the lessee makes an initial payment of approximately 50 percent of the assessed valuation of the property. At the end of the lease, the lessor is required to return the entire initial payment. The lessor makes his profit by investing the initial payment at the local interest rate. Since the lease is a binding contractual commitment and since the entire amount of the initial payment may not be recoverable for a number of reasons, GAO found it improper to treat the initial payment as a mere advance or an account receivable (as in the case of travel advances) and thus not reflected as an obligation. Rather, the amount of the initial payment must be recorded as an obligation chargeable to the fiscal year in which the lease is entered into, with subsequent returns to be deposited in the Treasury as miscellaneous receipts. [B-192282, Apr. 18, 1979.](#)

Several cases deal with court-related obligations. For example, the obligation for fees of jurors, including retroactive increases authorized by 28 U.S.C. § 1871, occurs at the time the jury service is performed. [54 Comp. Gen. 472 \(1974\)](#). See also the discussion of attorney fee payments in section B.1.g of this chapter. The recording of obligations for land commissioners appointed to determine just compensation in land condemnation cases was discussed in [B-184782, Feb. 26, 1976](#), and [56 Comp. Gen. 414 \(1977\)](#).¹⁶ The rules derived from these decisions are as follows:

- The obligation occurs at the time of appointment and is chargeable to the fiscal year of appointment if a specific case is referred to the commission in that fiscal year.
- Pendency of an action will satisfy the *bona fide* needs rule and will be sufficient to support the obligation even though services are not actually performed until the following fiscal year.
- Appointment of a “continuous” land commission creates no obligation until a particular action is referred to it.
- An amended court order increasing the compensation of a particular commissioner amounts to a new obligation and the full compensation is chargeable to the appropriation current at the time of the amended order.
- A valid obligation occurs under the above principles even though the order of appointment does not expressly charge the costs to the United States because, under the Constitution, the costs cannot be assessed against the condemnee.

i. Interagency Transactions

It is not uncommon for federal agencies to provide goods or services to other federal agencies. Section 1501 addresses these interagency transactions in two places. Subsection (a)(3) addresses interagency orders

¹⁶ Beginning with fiscal year 1978, the appropriation to compensate land commissioners was switched from the Justice Department to the Judiciary and since then has been a no-year appropriation. See the appropriation entitled “Fees of Jurors and Commissioners” in the Judiciary Appropriation Act, 1978, Pub. L. No. 95-86, title IV, 91 Stat. 419, 434–35 (Aug. 2, 1977), and in the Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, div. B, title III, 118 Stat. 2809, 2892–93 (Dec. 8, 2004). We retain the above summary here to illustrate the analysis and because it may have use by analogy in similar situations.

required by law. We discuss these transactions in section B.3 of this chapter. Subsection (a)(1) addresses the obligational requirements of all other interagency transactions: “a binding agreement between an agency and another person (*including an agency*)” (emphasis added). To distinguish these other transactions from those required by law, these transactions are often referred to as “voluntary orders.” This section discusses voluntary orders. Because voluntary orders are covered by section 1501(a)(1), obligations for many voluntary orders are recorded in the same manner as for contracts. However, the authority that governs the interagency transaction, not contract practices, determines the obligational treatment of a voluntary order.

(1) Economy Act agreements

A major source of authority for voluntary interagency agreements is the Economy Act, 31 U.S.C. §§ 1535, 1536. An Economy Act agreement is recorded as an obligation of the ordering agency at the time the ordering agency enters into the agreement.¹⁷ However, Economy Act agreements are subject to one additional requirement. Under 31 U.S.C. § 1535(d), if the ordering agency obligated a fixed-year appropriation, the ordering agency must deobligate the obligation at the end of the fiscal year to the extent that the performing agency has not incurred an obligation, that is, (1) has not provided the requested item to the ordering agency, (2) has not performed the requested service, or (3) has not entered into a valid contract with another person to provide the requested item or service to the ordering agency. [39 Comp. Gen. 317 \(1959\)](#); [34 Comp. Gen. 418, 421–22 \(1955\)](#). It was, for example, improper for the Library of Congress to use annual funds transferred to it under Economy Act agreements and not obligated by it prior to the end of the fiscal year to provide services in the following fiscal year. GAO, *Financial Audit: First Audit of the Library of Congress Discloses Significant Problems*, [GAO/AFMD-91-13](#) (Washington, D.C.: Aug. 22, 1991). The reason for this requirement is to prevent the Economy Act from being used to extend the obligational life of an appropriation

¹⁷ The determination of whether an interagency agreement is “binding” for purposes of recording under 31 U.S.C. § 1501(a)(1) is made in the same manner as if the contract were with a private party—examining precisely what the parties have “committed” themselves to do under the terms of the agreement. However, an agreement between two government agencies cannot be legally “enforced” against a defaulting agency in the sense of compelling performance or obtaining damages. Enforcement against another agency is largely a matter of comity and good faith. Thus, the term “binding” in the context of interagency agreements reflects the undertakings expressed in the agreement without regard to the legal consequences (or lack thereof) of nonperformance.

beyond that provided by law. [31 Comp. Gen. 83, 85 \(1951\)](#). The deobligation requirement of 31 U.S.C. § 1535(d) does not apply to obligations against no-year appropriations. [39 Comp. Gen. 317, 319 \(1959\)](#). For more background information on obligation and deobligation under the Economy Act, see Chapter 15, section B.1; [B-302760, May 17, 2004](#); [B-288142, Sept. 6, 2001](#); and [B-301561, June 14, 2004](#) (nondecision letter).

(2) Non-Economy Act agreements

Where the agreement is based on some statutory authority other than the Economy Act, the recording of the obligation is still governed by 31 U.S.C. § 1501(a)(1). However, the deobligation requirement of 31 U.S.C. § 1535(d) does not apply. In this situation, the obligation will remain payable in full from the appropriation initially charged, regardless of when performance occurs, in the same manner as contractual obligations generally, subject, of course, to the *bona fide* needs rule and to any restrictions in the legislation authorizing the agreement. *E.g.*, [B-302760, May 17, 2004](#) (interagency agreement pursuant to 2 U.S.C. § 141(c) for renovation of loading dock); [B-289380, July 31, 2002](#) (interagency agreement pursuant to the section 27(g) of the Consumer Product Safety Act, 15 U.S.C. § 2076(g)); [B-286929, Apr. 25, 2001](#) (interagency agreement pursuant to what is now 40 U.S.C. § 322 for implementation of a declassification information management system); [51 Comp. Gen. 766 \(1972\)](#) (interagency agreement pursuant to section 303(a) of the former Manpower Development and Training Act of 1962, 42 U.S.C. § 2613(a) (1964) for training of air traffic controllers). Thus, it is necessary to determine the specific statutory authority supporting the interagency agreement in order to properly obligate a requesting agency's appropriation. The following examples illustrate these principles.

The National Park Service (NPS) of the Department of Interior entered into a series of agreements during fiscal year 1998 with the National Resource Conservation Service of the Department of Agriculture to obtain soil surveys at various NPS locations. Each agreement delineated specific tasks organized in two or three phases across several fiscal years, culminating in the publication of a final soil survey report for each location. GAO concluded that the agreements were entered into primarily under the authority of 16 U.S.C. § 460l-1(g) and thus were not subject to the deobligation requirement of 31 U.S.C. § 1535(d). However, since NPS provided insufficient information for GAO to determine whether the

agreements were for severable or nonseverable services for purpose of complying with the *bona fide* needs rule,¹⁸ GAO returned the case to NPS in order to make the requisite determinations and adjust its accounts accordingly. [B-282601, Sept. 27, 1999.](#)

The Administrative Office of United States Courts and the General Services Administration entered into an agreement during fiscal year 1976 for design and implementation of an automated payroll system that was authorized by 40 U.S.C. § 759 (1976) (a provision of law that has since been repealed), rather than the Economy Act. The work was to be performed during fiscal years 1976 and 1977. Since the agreement met the requirements of 31 U.S.C. § 1501(a)(1), it was properly recordable as a valid obligation against fiscal year 1976 funds and was not subject to 31 U.S.C. § 1535(d). [55 Comp. Gen. 1497 \(1976\).](#)

The Army Corps of Engineers entered into agreement with Department of Housing and Urban Development (HUD) to perform flood insurance studies pursuant to orders placed by HUD. Since the agreement presumably required the Corps to perform as HUD placed the orders, a recordable obligation would arise when HUD placed an order under the agreement. Since the agreement was authorized by the National Flood Insurance Act,¹⁹ rather than the Economy Act, funds obligated by an order would remain obligated even though the Corps did not complete performance (or contract out for it) until following the fiscal year. [B-167790, Sept. 22, 1977.](#)

(3) “Binding agreement” requirement

Regardless of whether the Economy Act or other interagency transaction authority governs the transaction, a voluntary interagency order is recordable under 31 U.S.C. § 1501(a)(1) only if it constitutes a binding agreement that meets the other criteria of that subsection. If it does, the applicability or nonapplicability of 31 U.S.C. § 1535(d) then becomes relevant. If it does not, an obligation arises only when the performing agency has completed the work or has awarded contracts to have the work done. [See 59 Comp. Gen. 602 \(1980\); 39 Comp. Gen. 829 \(1960\); 34 Comp. Gen. 705, 708 \(1955\); 23 Comp. Gen. 88 \(1943\); B-193005, Oct. 2, 1978;](#)

¹⁸ See Chapter 5, section B for a discussion of the *bona fide* needs rule.

¹⁹ 42 U.S.C. § 4101(A) (1970 and Supp. V 1975).

[B-180578-O.M., Sept. 26, 1978](#). For example, Military Interdepartmental Procurement Requests (MIPR) are viewed as authorized by the Economy Act. An MIPR is considered a binding agreement for obligation purposes under 31 U.S.C. § 1501(a)(1). It is subject to the deobligation requirement of 31 U.S.C. § 1535(d) and is thus ultimately chargeable to appropriations current when the performing component incurs valid obligations. [59 Comp. Gen. 563 \(1980\)](#); [34 Comp. Gen. 418, 422 \(1955\)](#).

In [B-193005, Oct. 2, 1978](#), GAO considered the procurement of crude oil for the Strategic Petroleum Reserve. The Federal Property and Administrative Services Act of 1949²⁰ authorized the General Services Administration (GSA) to procure materials for other federal agencies as well as to delegate such authority. GSA delegated the authority to procure fuel commodities to the Secretary of Defense, who redelegate the authority to the Defense Fuel Supply Center (DFSC). Thus, the Department of Energy (DOE) could procure oil through the DFSC in a non-Economy Act transaction. An order placed by DOE with DFSC prior to the expiration of the period of availability of the appropriation to be charged could be recorded as an obligation against such appropriation under 31 U.S.C. § 1501(a)(1) if it constituted a “binding agreement.” Further, the appropriation that was obligated would remain available to liquidate contracts awarded by DFSC. This result would have been precluded by 31 U.S.C. § 1535(d) had the transaction been governed by the Economy Act.

In [59 Comp. Gen. 602 \(1980\)](#), GAO considered the procedure by which the then Bureau of Alcohol, Tobacco, and Firearms (ATF) ordered “strip stamps” from the Bureau of Engraving and Printing. (These are the excise tax stamps one sees pasted across the caps of liquor bottles.) GAO reviewed pertinent legislation and concluded that ATF was not “required by law” to procure its strip stamps from the Bureau of Engraving and Printing. Since individual orders were not binding agreements, it was immaterial in one important respect whether the order was governed by the Economy Act or some other law; in neither event could ATF’s funds remain obligated beyond the last day of a fiscal year to the extent an order remained unfilled. Funds could be considered obligated at the end of a fiscal year only to the extent that stamps were printed or in process or that the Bureau of Engraving and Printing had entered into a contract with a third party to provide them.

²⁰ Ch. 288, 63 Stat. 377 (June 30, 1949).

(4) Orders from stock

The obligational treatment of orders for items to be delivered from stock of the requisitioned agency derives from [32 Comp. Gen. 436 \(1953\)](#). An order for items to be delivered from stock is a recordable obligation if (1) it is intended to meet a *bona fide* need of the fiscal year in which the order is placed or to replace stock used in that fiscal year²¹ and (2) the order is firm and complete. To be firm and complete, the order must request prompt delivery of specific available stock items for a stated consideration and must be accepted by the supplying agency in writing. “Available” means on hand or routinely on order. However, acceptance is not required for common-use stock items which are on hand or on order and will be delivered promptly.

Materials which are specially manufactured or otherwise created for a particular purpose in order to satisfy an order are not “stock.” [44 Comp. Gen. 695 \(1965\)](#). Likewise, an order for an item not stocked by the requisitioned agency (or, if out of stock, not routinely on order) is not a recordable obligation until the requisitioned agency purchases the item or executes a contract for it. The reason is that such an order does not mature into a binding agreement until the requisitioned agency executes the order or purchases the item(s) needed to fill it; before then, it is merely an offer subject to acceptance by the requisitioned agency’s performance. [B-193005, Oct. 2, 1978](#). The basic rules in this area were established by [34 Comp. Gen. 705 \(1955\)](#).

Although the foregoing rules were developed prior to the enactment of 31 U.S.C. § 1501(a)(1), they continue to govern the recording of obligations under that statute. [34 Comp. Gen. 705](#); [34 Comp. Gen. 418, 422 \(1955\)](#).

(5) Project orders

Historically, “project orders” refer to orders authorized by 41 U.S.C. § 23,²² which provides:

²¹ The fact that the replacement stock will not be used until the following year will not defeat an otherwise valid obligation. See [73 Comp. Gen. 259 \(1994\)](#); [44 Comp. Gen. 695 \(1965\)](#).

²² The Coast Guard has virtually identical authority in 14 U.S.C. § 151.

“All orders or contracts for work or material or for the manufacture of material pertaining to approved projects heretofore or hereafter placed with Government-owned establishments shall be considered as obligations in the same manner as provided for similar orders or contracts placed with commercial manufacturers or private contractors, and the appropriations shall remain available for the payment of the obligations so created as in the case of contracts or orders with commercial manufacturers or private contractors.”²³

GAO has interpreted this statute, which was derived from earlier appropriation act provisions for the military departments appearing shortly after World War I,²⁴ as applying only to transactions between the military departments and establishments owned by the Defense Department for work related to military projects. [72 Comp. Gen. 172, 173 \(1993\)](#); [B-95760, June 27, 1950](#). Thus, the decision in [72 Comp. Gen. 172](#) held that the Economy Act, rather than 41 U.S.C. § 23, applies to Defense Department transactions with other federal agencies, in this case a Department of Defense request for research assistance from the Library of Congress.

A project order is a valid and recordable obligation when the order is issued and accepted, regardless of the fact that performance may not be accomplished until after the expiration of the fiscal year. [1 Comp. Gen. 175 \(1921\)](#); [B-135037-O.M., June 19, 1958](#). The statute does not, however, authorize the use of the appropriations so obligated for the purpose of replenishing stock used in connection with the order. [A-25603, May 15, 1929](#). The requirement of specificity applies to project orders the same as any other recordable obligations under 31 U.S.C. § 1501(a)(1). [B-126405, May 21, 1957](#).

Since a project order is not an Economy Act transaction, the deobligation requirement of 31 U.S.C. § 1535(d) does not apply. [34 Comp. Gen. 418, 422 \(1955\)](#). *See also* [16 Comp. Gen. 752 \(1937\)](#). Also, unlike the Economy Act,

²³ The term “approved projects,” as used in 41 U.S.C. § 23, has no special meaning. It refers simply to “projects that have been approved by officials having legal authority to do so.” [B-171049-O.M., Feb. 17, 1972](#).

²⁴ Thus 41 U.S.C. § 23 predates enactment of § 1311 of the Supplemental Appropriations Act of 1955, now codified at 31 U.S.C. § 1501, and, like the Economy Act, provides an early statutory authority to obligate an appropriation on the basis of an interagency transaction.

41 U.S.C. § 23 does not authorize advance payment. Thus, advance payment for project orders is not authorized unless permitted by some other statute. [B-95760, June 27, 1950.](#)

2. Section 1501(a)(2):
Loans

Under 31 U.S.C. § 1501(a)(2), a recordable obligation exists when there is documentary evidence of “a loan agreement showing the amount and terms of repayment.”

A loan agreement is essentially contractual in nature. Thus, to have a valid obligation, there must be a proposal by one party and an acceptance by another. Approval of the loan application must be communicated to the applicant within the fiscal year sought to be charged, and there must be documentary evidence of that communication. [B-159999-O.M., Mar. 16, 1967.](#) Where a loan application is made in one fiscal year and approval is not communicated to the applicant until the following fiscal year, the obligation is chargeable to the later year. *Id.*; [B-159999-O.M., Dec. 14, 1966.](#)

Telegraphic notification of approval of a loan application where the amount of the loan and terms of repayment are thereby agreed upon is legally acceptable. [B-159999-O.M., Dec. 14, 1966.](#)

To support a recordable obligation under section 1501(a)(2), the agreement must be sufficiently definite and specific, just as in the case of section 1501(a)(1) obligations. To illustrate, the United States and the government of Brazil entered into a loan agreement in 1964. As a condition precedent to any disbursement under the agreement, Brazil was to furnish a statement covering utilization of the funds. The funds were to be used for various economic and social development projects “as may, from time to time, be agreed upon in writing” by the governments of the United States and Brazil. While the loan agreement constituted a valid binding contract, it was not sufficiently definite or specific to validly obligate fiscal year 1964 funds. The basic agreement was little more than an “agreement to agree,” and an obligation of funds could arise only when a particular “utilization statement” was submitted and approved. [B-155708-O.M., Apr. 26, 1965.](#)

Prior to fiscal year 1992, the amount to be recorded in the case of a loan was quite simple—the face amount of the loan. From the budgetary perspective, however, this was undesirable because the obligation was indistinguishable from any other cash outlay. By disregarding at the obligational stage the fact that loans are supposed to be repaid, this treatment did not reflect the true cost to the government of direct loan

programs. Congress addressed the situation in the Federal Credit Reform Act of 1990 (FCRA), Pub. L. No. 101-508, § 13201, 104 Stat. 1388, 1388-609 (Nov. 5, 1990), codified at 2 U.S.C. §§ 661–661f). The general approach of the FCRA is to require the advance provision of budget authority to cover the subsidy portion of direct loans (in recognition of the fact that not all loans are repaid), with the non-subsidy portion (the portion expected to be repaid) financed through borrowings from the Treasury. The Office of Management and Budget has issued detailed instructions for implementing the FCRA's requirements that appear in OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, part 5 (June 21, 2005).²⁵

The FCRA defines “direct loan” as “a disbursement of funds by the Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest.” 2 U.S.C. § 661a(1). A “direct loan obligation” is “a binding agreement by a Federal agency to make a direct loan when specified conditions are fulfilled by the borrower.” *Id.* § 661a(2). The “cost” of a direct loan is the estimated long-term cost to the government, taking into consideration disbursements and repayments, calculated on a net present value basis at the time of disbursement. *Id.* § 661a(5).

Unless otherwise provided by statute, new direct loan obligations may be incurred only to the extent that budget authority to cover the subsidy costs is provided in advance. 2 U.S.C. § 661c(b). Under this provision, the typical appropriation will include both an appropriation of budget authority for the subsidy costs and a program ceiling (total face amount of loans supportable by the cost appropriation). The appropriation is made to a “program account.” When a direct loan obligation is incurred, its cost is obligated against the program account. *See generally* OMB Cir. No. A-11, at § 185.10. The actual funding is done through a revolving, nonbudget “financing account.” Loan repayments are credited to the financing account. *See generally* OMB Cir. No. A-11, at § 185.11. The overobligation or overexpenditure of either the loan subsidy or the credit level supportable by the enacted subsidy violates the Antideficiency Act. *See* OMB Cir. No. A-11, at § 145.3.

²⁵ The FCRA applies to new direct loan obligations incurred on or after October 1, 1991. The budgetary and obligational treatment of guaranteed and insured loans is discussed in Chapter 11, section B.

3. Section 1501(a)(3): Interagency Orders Required by Law

The third standard for recording obligations, 31 U.S.C. § 1501(a)(3), is “an order required by law to be placed with [a federal] agency.”

Subsection (a)(3) means exactly what it says. An order placed with another government agency is recordable under this subsection only if it is required by statute or statutory regulation to be placed with the other agency. The subsection does not apply to orders that are merely authorized rather than required. [34 Comp. Gen. 705 \(1955\)](#).

An order required by law to be placed with another agency is not an Economy Act transaction. Therefore, the deobligation requirement of 31 U.S.C. § 1535(d) does not apply. [35 Comp. Gen. 3, 5 \(1955\)](#). The fact that the work will be performed in the next fiscal year does not defeat the obligation as long as the *bona fide* need test is met. [B-302760, May 17, 2004; 59 Comp. Gen. 386 \(1980\)](#); [35 Comp. Gen. 3](#). Also, the fact that the work is to be accomplished and reimbursement made through use of a revolving fund is immaterial. [35 Comp. Gen. 3](#); [34 Comp. Gen. 705](#).

A common example of “orders required by law” is printing and binding to be done by the Government Printing Office (GPO). [44 U.S.C. § 501](#).²⁶ The rule is that a requisition for printing services may be recorded as an obligation when placed if (1) there is a present need for the printing and (2) the requisition is accompanied by copy or specifications sufficient for GPO to proceed with the job.

Thus, a requisition by the Commission on Fine Arts for the printing of “Sixteenth Street Architecture, Volume I” placed with GPO in fiscal year 1977 and accompanied by manuscript and specifications obligated fiscal year 1977 funds and was chargeable in its entirety to fiscal year 1977, notwithstanding that the printing would be done in the following fiscal year. [59 Comp. Gen. 386 \(1980\)](#). However, a requisition for U.S. Travel Service sales promotional literature placed with GPO near the end of fiscal year 1964 did not obligate fiscal year 1964 funds where no copy or manuscript was furnished to GPO until fiscal year 1965. [44 Comp. Gen. 695 \(1965\)](#). For other printing cases illustrating these rules, see [29 Comp. Gen. 489 \(1950\)](#); [23 Comp. Gen. 82 \(1943\)](#); [B-154277, June 5, 1964](#); [B-123964](#),

²⁶ See [B-300192, Nov. 13, 2002](#), regarding the constitutionality of this and related statutory provisions.

[Aug. 23, 1955; B-114619, Apr. 17, 1953; B-50663, June 30, 1945; B-35807, Aug. 10, 1943; B-34888, June 21, 1943.](#)

After an agency certifies that it requires the services of GPO, the Public Printer is required to furnish an estimate of the cost of the services to the ordering agency, which then may make a requisition for performance from GPO. The estimate is the amount that the ordering agency should obligate against its appropriation and establishes a ceiling that GPO may not exceed without first providing the ordering agency a new estimate and obtaining a requisition from an authorized official of the ordering agency. 44 U.S.C. §§ 1102(c), 1103. Thus GPO was not authorized to exceed its estimate of \$14,000 and incur expenses amounting to \$304,334 without first notifying and obtaining the approval of an authorized official of the requisitioning agency, in this case the Environmental Protection Agency. [B-259208, Mar. 6, 1996](#). Further, the printing estimate alone, even if written, is not sufficient to create a valid and recordable obligation unless it is accompanied by the placement of an order. [B-182081, Jan. 26, 1977, *aff'd*, B-182081, Feb. 14, 1979](#). In the cited decision, there was no valid obligation before the ordering commission went out of existence and its appropriations ceased to be available for further obligation. Therefore, there was no appropriation available to reimburse GPO for work done under the invalid purported obligation.

GPO is required by law to print certain congressional materials such as the Congressional Record, and receives a “Printing and Binding” appropriation for this purpose. For items such as these where no further request or authorization is required, a copy of the basic law authorizing the printing and a copy of the appropriation constitute the obligating documents. [B-123964, Aug. 23, 1955](#).

Another common “order required by law” situation is building alteration, management, and related services to be performed by the General Services Administration. For example, a job order by the Social Security Administration for building repairs validly obligated funds of the fiscal year in which the order was placed, by virtue of subsection (a)(3), notwithstanding that GSA was unable to perform the work until the following fiscal year. [35 Comp. Gen. 3 \(1955\)](#). See also [B-158374, Feb. 21, 1966](#). However, this result assumes compliance with the *bona fide* need concept. Thus, an agreement for work incident to the relocation of Federal Power Commission employees placed in fiscal year 1971 did not validly obligate fiscal year 1971 funds where it was clear that the relocation was not required to, and would not, take place, nor would the space in question

be made tenantable, until the following fiscal year. [B-95136-O.M., Aug. 11, 1972](#). Orders placed with GSA are further discussed in [34 Comp. Gen. 705 \(1955\)](#).

As noted earlier, GAO has expressed the view that the recording criteria of 31 U.S.C. § 1501(a) should be followed in evaluating obligations of the government of the District of Columbia. Thus, orders by a department of the District of Columbia government for repairs and improvements which are required by statute or statutory regulation to be placed with the District of Columbia Department of General Services and performed through use of the Repairs and Improvements Working Fund create valid obligations when the orders are placed. [B-180578-O.M., Sept. 26, 1978](#).

4. Section 1501(a)(4):
Orders without
Advertising

The fourth recording standard in 31 U.S.C. § 1501(a)(4) is—

“an order issued under a law authorizing purchases without advertising

(A) when necessary because of a public exigency;

(B) for perishable subsistence supplies; or

(C) within specific monetary limits.”

Subsection (a)(4) is limited to statutorily authorized purchases without advertising in the three situations specified. The subsection must be self-explanatory as there appear to be no Comptroller General decisions under it.

5. Section 1501(a)(5):
Grants and Subsidies

The fifth recording standard in 31 U.S.C. § 1501(a)(5) requires that the obligation be supported by documentary evidence of a grant or subsidy payable:

“(A) from appropriations made for payment of, or contributions to, amounts required to be paid in specific amounts fixed by law or under formulas prescribed by law;

“(B) under an agreement authorized by law; or

“(C) under plans approved consistent with and authorized by law.”

The recording statute refers to grants and subsidies although federal assistance may be characterized in many ways. See Chapters 10 and 11, respectively, for a more comprehensive discussion of the concepts of federal assistance in the form of grants and cooperative agreements and federal assistance in the form of guaranteed and insured loans.

a. Grants

In order to properly obligate an appropriation for an assistance program, some action creating a definite liability against the appropriation must occur during the period of the obligational availability of the appropriation. In some situations, the obligating action under section 1501(a)(5) involves a discretionary action by an agency of awarding a grant that is evidenced by a grant agreement. The particular document will vary and may be in the form of an agency’s approval of a grant application or a letter of commitment. See [B-289801, Dec. 30, 2002](#); [39 Comp. Gen. 317 \(1959\)](#); [37 Comp. Gen. 861, 863 \(1958\)](#); [31 Comp. Gen. 608 \(1952\)](#); [B-128190, June 2, 1958](#); [B-114868.01-O.M., Mar. 17, 1976](#).

Generally, in order to properly obligate federal assistance funds, there must be some action to establish a firm commitment on the part of the United States. This commitment must be unconditional. [50 Comp. Gen. 857, 862 \(1971\)](#). There must be documentary evidence of the grant award and this requirement is not satisfied by the mere reservation or earmarking of amounts in accounting records for the purpose of having them available should an application for a grant be submitted and approved. *Champaign County, Illinois v. United States Law Enforcement Assistance Administration*, 611 F.2d 1200 (7th Cir. 1979); [B-126372, Sept. 18, 1956](#). Finally, the award terms must be communicated to the official grantee, and where the grantee is required to comply with certain prerequisites, such as putting up matching funds, the prerequisite must also be accepted by the grantee during the period of availability of the grant funds.

An illustration of this latter requirement is [B-220527, Dec. 16, 1985](#). The Economic Development Administration made an “offer of grant” to a Connecticut municipality that would have required a substantial outlay of funds by the municipality. The offer was accepted by a town official who had no authority to accept the grant. By its own municipal ordinance, only the town council could accept a grant offer. By the time the town marshaled the resources to fulfill its obligations under the grant and the unauthorized acceptance was ratified by the town council, the federal

funds had expired for obligational purposes. GAO held that no valid grant obligation on the part of the government had ever been made. *See also* [B-164990, Jan. 10, 1969](#), finding an attempted obligation invalid where the program legislation required approval of a proposed grant by the state governor and he had not yet agreed, even though the award instruments had already been executed.

Applying the above principles, the Comptroller General found that a document entitled “Approval and Award of Grant” used by the Economic Development Administration was sufficient for recording grant obligations under the local public works program because it “reflects the Administration’s acceptance of a grant application; specifies the project approved and the amount of funding; and imposes a deadline for affirmation by the grantee.” [B-126652, Aug. 30, 1977](#). Once the appropriation has been properly obligated, performance by the grantee and the actual disbursement of funds may extend beyond the period of obligational availability. [B-300480, Apr. 9, 2003, *aff’d*, B-300480.2, June 6, 2003](#); [B-289801, Dec. 30, 2002](#); 31 Comp. Gen. 608, 610 (1952); 20 Comp. Gen. 370 (1941); [B-37609, Nov. 15, 1943](#); [B-24827, Apr. 3, 1942](#); [B-124374-O.M., Jan. 26, 1956](#).

If the above requirements are not met, then the appropriation is not obligated. Thus, the Comptroller General determined that the attempted obligation was invalid in [B-164990, Sept. 6, 1968](#), where the grantee corporation was not in existence when the obligation was recorded. Also, the relevant program legislation must be examined to see if there are any additional requirements.

In other situations, the obligating action for purposes of 31 U.S.C. § 1501(a)(5)(A) may take place by operation of law under a statutory formula grant or by virtue of actions authorized by law to be taken by others that are beyond the control of the agency (even when the precise amount of the obligation is not determined until a later time). When this occurs, the documentary evidence used to support the accounting charge against the appropriation is a reflection of, not the creation of, the obligation under the particular law and usually is generated subsequent to the time that the actual obligation arose. [63 Comp. Gen. 525 \(1984\)](#); [B-164031\(3\).150, Sept. 5, 1979](#). Thus where an agency is required to allocate funds to states on the basis of a statutory formula, the formula establishes the obligation to each recipient rather than the agency’s allocation since, if the allocation is erroneous, the agency must adjust the

amounts paid each recipient. [41 Comp. Gen. 16 \(1961\)](#); [B-164031\(3\).150](#), Sept. 5, 1979.

The rules for deobligation and reobligation of assistance funds are the same as for other obligations generally. Program legislation in a given case may, of course, provide for different treatment. For example, [B-211323](#), Jan. 3, 1984, considered a provision of the Public Works and Economic Development Act of 1965²⁷ under which funds apportioned to states remained available to the state until expended. Under that particular provision, funds deobligated as the result of a cost underrun could be reobligated by the state, without fiscal year limitation, for purposes within the scope of the program statute. For a discussion of obligation and deobligation of funds under the now defunct Comprehensive Employment and Training Act (the predecessor of the Job Training Partnership Act) in the context of the Impoundment Control Act, see [B-200685](#), Apr. 27, 1981.

b. Subsidies

There have been relatively few cases dealing with the obligational treatment of subsidies, although the principles should parallel those for grants since they both derive from 31 U.S.C. § 1501(a)(5). This may be explained by the fact that some courts when confronted with the necessity to determine the meaning of “subsidy” (when used in a statute that does not define the word) have done so in a manner that is remarkably similar to the commonly used definitions of a grant. (See the discussion of grants in Chapter 10, section B). Thus a subsidy has been defined as “a grant of public funds or property by a government to a private person to assist in establishment or support of an enterprise deemed advantageous to public...” *In re Hooper’s Estate*, 359 F.2d 569, 575–76 (3rd Cir.), cert. denied sub. nom., 385 U.S. 903 (1966). See also *Satellite Broadcasting & Communications Ass’n of America v. FCC*, 146 F. Supp. 2d 803, 829–30 (E.D. Va.), aff’d, 275 F.3d 337 (4th Cir. 2001), cert. denied, 536 U.S. 922 (2002); *Kennecott Copper Corp. v. State Tax Commission*, 60 F. Supp. 181 (D. Utah 1944) rev’d, 150 F.2d 905 (10th Cir. 1945), aff’d, 327 U.S. 573 (1946); *Los Angeles County v. State Department of Public Health*, 322 P.2d 968, 973 (Cal. App. 2nd Dist. 1958).

The few GAO decisions in this area treat subsidies in a manner similar to grants for obligational purposes. In [50 Comp. Gen. 857 \(1971\)](#) GAO considered legislation authorizing the former Federal Home Loan Bank Board to make “interest adjustment” payments to member banks. The

²⁷ 42 U.S.C. § 3153 (1976 and Supp. IV 1980).

payments were designed to adjust the effective rates of interest charged by member banks on short- and long-term borrowing, the objective being to stimulate residential construction for low- and middle-income families. Funds were appropriated to the Board for this purpose on a fiscal year basis. GAO concluded that an obligation arose for purposes of 31 U.S.C. § 1501(a)(5) when a Federal Home Loan Bank made a firm and unconditional commitment in writing to a member institution, provided that the commitment letter included a reasonable expiration date. The funds would have to be deobligated to the extent that a member institution failed to execute loans prior to the specified expiration date.

In [65 Comp. Gen. 4 \(1985\)](#), GAO advised the Department of Education that mandatory interest subsidies under the Guaranteed Student Loan Program should be recorded as obligations on a “best estimate” basis as they arise, even if the recordings would exceed available budgetary resources. Since the subsidies are not discretionary obligations but are imposed by law, there would be no Antideficiency Act violation. The decision overruled an earlier case ([B-126372, Sept. 18, 1956](#)) which had held that the recording of obligations for mail rate subsidies to air carriers could be deferred until the time of payment. 65 Comp. Gen. at 8 n.3.

In [64 Comp. Gen. 410 \(1985\)](#), GAO considered obligations by the Department of Housing and Urban Development for operating subsidies to state public housing authorities for low-income housing projects. Under the governing statute and regulations, the amount of the subsidy was determined upon HUD’s approval of the state’s annual operating budget, although the basic commitment stemmed from an annual contribution contract. HUD’s practice, primarily for states whose fiscal year coincides with that of the federal government, was to record the obligation on the basis of an estimate, issued in a letter of intent. GAO found this to be legally permissible, but cautioned that HUD was required to adjust the obligation up or down once it approved the operating budget.

A 1983 decision, [B-212145, Sept. 27, 1983](#), discusses the use of estimates subject to subsequent adjustment for the recording of obligations for payments in lieu of taxes under 31 U.S.C. §§ 6901–6906.

From the perspective of the recording of obligations, these two decisions—64 Comp. Gen. 410 and B-212145—are simply applications of the general principle, previously noted, that best estimates should be recorded when more precise information is not available, subject to later adjustment.

For additional discussion see Chapter 5, section B.10, relating to the application of the *bona fide* needs rule to grants and cooperative agreements and Chapter 10 relating to the obligation of appropriations for grants.

6. Section 1501(a)(6):
Pending Litigation

The sixth standard for recording obligations is “a liability that may result from pending litigation.” 31 U.S.C. § 1501(a)(6).

Despite its seemingly broad language, subsection (a)(6) has very limited application. Most judgments against the United States are paid from a permanent indefinite appropriation, 31 U.S.C. § 1304. Accordingly, since the expenditure of agency funds is not involved, judgments payable under 31 U.S.C. § 1304 have no obligational impact on the respondent agency.

Not all judgments against the United States are paid from the permanent judgment appropriation. Several types are payable from agency funds. However, the mere fact that a judgment is payable from agency funds does not make it subject to subsection (a)(6). Thus far, the Comptroller General has applied subsection (a)(6) in only two situations—land condemnation (35 Comp. Gen. 185 (1955)) and certain impoundment litigation (54 Comp. Gen. 962 (1975)). In land condemnation proceedings, the appropriation is obligated when the request is made to the Attorney General to institute the proceedings. 34 Comp. Gen. 418, 423 (1955); 34 Comp. Gen. 67 (1954); 17 Comp. Gen. 664 (1938); 4 Comp. Gen. 206 (1924). In impoundment litigation, the Comptroller General has held that when the impounded balance is obligated under subsection (a)(6) as a liability which might result from the pending litigation, the balance so obligated may be used without further appropriation action. 54 Comp. Gen. 962.

However, with limited exceptions, pending litigation itself does not create an obligation against the United States for purposes of section 1501(a)(6). *Rochester Pure Waters District v. EPA*, 960 F.2d 180, 186 (D.C. Cir. 1992) (citing 35 Comp. Gen. 185 and 54 Comp. Gen. 962). The plaintiff in *Rochester* sought an injunction to restore appropriated funds that Congress had rescinded pending adjudication of a claim the plaintiff was pursuing against the Environmental Protection Agency that would have been payable from the rescinded funds. The court held that it lacked statutory or constitutional authority to grant the requested relief.

As stated in 35 Comp. Gen. at 187, subsection (a)(6) requires recording an obligation in cases where the government is definitely liable for the

payment of money out of available appropriations and the pending litigation is for the purpose of determining the amount of the government's liability. Thus, for judgments payable from agency appropriations in other than land condemnation and impoundment cases, the standard of 35 Comp. Gen. 185 should be applied to determine whether an obligation must be recorded.

In cases where a judgment will be payable from agency funds but recording is not required, 35 Comp. Gen. 185 suggested that the agency should nevertheless administratively reserve sufficient funds to cover the contingent liability to avoid a possible violation of the Antideficiency Act. *Id.* at 187. While the administrative reservation may still be a good idea for other reasons, the majority of more recent cases (cited and summarized in Chapter 6, section C.2.f under the heading "Intent/Factors Beyond Agency Control") have taken the position that overobligations resulting from court-ordered payments do not violate the Antideficiency Act.²⁸

It should be apparent that the preceding discussion applies to money judgments—judgments directing the payment of money. 62 Comp. Gen. 527 (1983); 61 Comp. Gen. 509 (1982). In some types of litigation, a court may order an agency to take some specific action. While compliance will result in the expenditure of agency funds, this type of judgment is not within the scope of 35 Comp. Gen. 185. While we have found no cases, it seems clear from the application of 31 U.S.C. § 1501(a) in other contexts that no recordable obligation would arise while this type of litigation is still "pending."

7. Section 1501(a)(7):
Employment and Travel

Under 31 U.S.C. § 1501(a)(7), obligations are recordable when supported by documentary evidence of "employment or services of persons or expenses of travel under law," which covers a variety of loosely related obligations.

²⁸ Apart from the considerations discussed here, pending litigation as well as potential litigation and other legal claims, may require disclosure as a contingent liability in an agency's financial statements. See generally Federal Accounting Standards Advisory Board, *Accounting for Liabilities of the Federal Government*, SFFAS No. 5, ¶¶ 33, 35–42 (Dec. 20, 1995), as amended by SFFAS No. 12 (December 1998), available at www.fasab.gov/codifica.html (last visited September 15, 2005).

a. Wages, Salaries, Annual
Leave

Salaries of government employees, as well as related items that flow from those salary entitlements such as retirement fund contributions, are obligations at the time the salaries are earned, that is, when the services are rendered. [B-303961, Dec. 6, 2004](#); [B-302911, Sept. 7, 2004](#); [B-287619, July 5, 2001](#); [24 Comp. Gen. 676, 678 \(1945\)](#). For example, in [38 Comp. Gen. 316 \(1958\)](#), the Commerce Department wanted to treat the salaries of employees performing administrative and engineering services on highway construction projects as part of the construction contract costs. Under this procedure, the anticipated expenses of the employees, salaries included, would be recorded as an obligation at the time a contract was awarded. However, the Comptroller General held that this would not constitute a valid obligation under 31 U.S.C. § 1501. The employee expenses were not part of the contract costs and could not be obligated before the services were performed.

Section 1501(a)(7) is not limited to permanent federal employees. It applies as well to persons employed in other capacities, such as temporary or intermittent employees or persons employed under a personal services contract. In *Kinzley v. United States*, 661 F.2d 187 (Ct. Cl. 1981), for example, the court found various agency correspondence sufficient compliance with subsection (a)(7) to permit a claim for compensation for services rendered as a project coordinator. Unlike subsection (a)(1), the court pointed out, subsection (a)(7) does not require a binding agreement in writing between the parties, but only documentary evidence of “employment or services of persons.” *Id.* at 191.

For persons compensated on an actual expense basis, it may be necessary to record the obligation as an estimate, to be adjusted when the services are actually performed. Documentation requirements to support the obligation or subsequent claims are up to the agency. *E.g.*, [B-217475, Dec. 24, 1986](#).

When a pay increase is granted to wage board employees, the effective date of the increase is governed by 5 U.S.C. § 5344. This effective date determines the government’s liability to pay the additional compensation. Therefore, the increase is chargeable to appropriations currently available for payment of the wages for the period to which the increases apply. [B-287619, July 5, 2001](#); [39 Comp. Gen. 422 \(1959\)](#). This is true regardless of the fact that appropriations may be insufficient to discharge the obligation and the agency may not yet have had time to obtain a supplemental appropriation. The obligation in this situation is considered “authorized by

law” and therefore does not violate the Antideficiency Act. 39 Comp. Gen. at 426.

Annual leave status “is synonymous with a work or duty status.” 25 Comp. Gen. 687 (1946). As such, annual leave obligates appropriations current at the time the leave is taken. *Id.*; 50 Comp. Gen. 863, 865 (1971); 17 Comp. Gen. 641 (1938). Except for employees paid from revolving funds (25 Comp. Gen. 687), or where there is some statutory indication to the contrary (B-70247, Jan. 9, 1948), the obligation for terminal leave is recorded against appropriations for the fiscal year covering the employee’s last day of active service. 25 Comp. Gen. at 688; 24 Comp. Gen. 578, 583 (1945).

Bonuses such as performance awards or incentive awards obligate appropriations current at the time the awards are made. Thus, for example, where performance awards to Senior Executive Service officials under 5 U.S.C. § 5384 were made in fiscal year 1982 but actual payment had to be split between fiscal year 1982 and fiscal year 1983 to stay within statutory compensation ceilings, the entire amount of the awards remained chargeable to fiscal year 1982 funds. 64 Comp. Gen. 114, 115 n. 2 (1984). The same principle would apply to other types of discretionary payments; the administrative determination creates the obligation. *E.g.*, B-80060, Sept. 30, 1948.

Employees terminated by a reduction in force (RIF) are entitled by statute to severance pay. 5 U.S.C. § 5595. Severance pay is obligated on a pay period by pay period basis. Thus, where a RIF occurs near the end of a fiscal year and severance payments will extend into the following fiscal year, it is improper to charge the entire amount of severance pay to the fiscal year in which the RIF occurs. B-200170, July 28, 1981.

GAO reached a different result in B-200170, Sept. 24, 1982. The United States Metric Board was scheduled to terminate its existence on September 30, 1982. Legislative history indicated that the Board’s fiscal year 1982 appropriation was intended to include severance pay, and no appropriations had been requested for fiscal year 1983. Under these circumstances, severance payments to be made in fiscal year 1983 were held chargeable to the fiscal year 1982 appropriation. A contrary result would have meant that the fiscal year 1982 funds would expire, and Congress would have had to appropriate the same funds again for fiscal year 1983.

b. Compensation Plans in Foreign Countries

By statute, the State Department is required to establish compensation plans for foreign national employees of the Foreign Service in foreign countries. The plans are to be “based upon prevailing wage rates and compensation practices . . . for corresponding types of positions in the locality of employment,” to the extent consistent with the public interest. 22 U.S.C. § 3968(a)(1).

Under subsection (b) of 22 U.S.C. § 3968, other government agencies are authorized to administer foreign national employee compensation programs in accordance with the applicable provisions of the Foreign Service Act. This provision, for example, authorized the Defense Department to establish a pension and life insurance program for foreign national employees in Bermuda, provided that it corresponded to prevailing local practice. [40 Comp. Gen. 650 \(1961\)](#).

Section 3968(c) of title 22, United States Code, authorizes the Secretary of State to prescribe regulations for local compensation plans applicable to all federal agencies. To the extent this authority is not exercised, however, the statute does not otherwise require that a plan established by another agency conform to the State Department’s plan. An agency establishing a local plan should, to the extent not regulated by State, coordinate with other agencies operating in the locality. [40 Comp. Gen. at 652](#). (As a practical matter, two agencies operating in the same locality should not develop substantially different plans, assuming both legitimately reflect prevailing local practice.)

To the extent the authority of 22 U.S.C. § 3968 is exercised in a given country, the obligational treatment of various elements of compensation may vary from what would otherwise be required. For example, Colombian law provides for the advance payment of accrued severance pay to help the employee purchase or make improvements on a home. Thus, under a compensation plan for foreign national employees in Colombia, severance pay would be recorded as an obligation against the fiscal year appropriation current at the time of accrual. [B-192511, Feb. 5, 1979](#).

While 22 U.S.C. § 3968 authorizes compensation plans based on local practice, it does not permit automatic disregard of all other laws of the United States. Thus, under the Colombian severance pay program noted above, if the employee subsequently is terminated for cause or otherwise loses eligibility, the agency must proceed with collection action under the Federal Claims Collection Act, local practice to the contrary notwithstanding. [B-192511, June 8, 1979](#). Similarly, accrued severance pay

retains its status as United States funds up to actual disbursement and is therefore subject to applicable fiscal and fund control requirements. [B-199722, Sept. 15, 1981](#) (severance pay plan in Jordan).

In several foreign countries, foreign nationals employed by the United States are entitled to be paid a “separation allowance” when they resign, retire, or are otherwise separated through no fault of their own. The allowance is based on length of service, rate of pay at time of separation, and type of separation. Unlike severance pay for federal employees, these separation allowances represent binding commitments which accrue during the period of employment. As such, they should be recorded as obligations when they are earned rather than when they are paid. GAO, FGMSD-76-25 (Washington, D.C.: Oct. 17, 1975); FGMSD-75-20 (Washington, D.C.: Feb. 13, 1975); *Substantial Understatements of Obligations for Separation Allowances for Foreign National Employees*, B-179343, (Washington, D.C.: Oct. 21, 1974). (These three items are GAO reports, the first two being untitled letter reports.) See also [B-226729, May 18, 1987](#); [B-192511, Feb. 5, 1979](#).

c. Training

The obligation for training frequently stems from a contract for services and to that extent is recordable under subsection (a)(1) rather than subsection (a)(7) of 31 U.S.C. § 1501. The rules for training obligations are summarized in Chapter 5, section B.5.

d. Uniform Allowance

The Federal Employees Uniform Act, 5 U.S.C. § 5901, authorizes a uniform allowance for each employee required by statute or regulation to wear a uniform. The agency may furnish the uniform or pay a cash allowance. Where an agency elects to pay an allowance, the obligation arises when the employee incurs the expense and becomes entitled to reimbursement. Thus, the appropriation chargeable is the one currently available at the time the employee makes the expenditure or incurs the debt. [38 Comp. Gen. 81 \(1958\)](#).

e. Travel Expenses²⁹

The obligation of appropriations for expenses relating to travel was an extremely fertile area and generated a large number of decisions before 31 U.S.C. § 1501 was enacted. The cases seem to involve every conceivable permutation of facts involving trips or transactions covering more than one

²⁹ This section does not apply to travel incident to employee transfers. The rules for employee transfers are set forth separately in section B.7.g of this chapter.

fiscal year. The enactment of 31 U.S.C. § 1501 logically prompted the question of how the new statute affected the prior decisions. It did not, replied the Comptroller General. Thus, the starting point is that subsection (a)(7) incorporates prior GAO decisions on obligations for travel. [35 Comp. Gen. 183 \(1955\)](#); [34 Comp. Gen. 459 \(1955\)](#).

The leading case in this area appears to have been [35 Comp. Gen. 183](#), which states the pertinent rules. The rules for travel may be summarized as follows: The issuance of a travel order in itself does not constitute a contractual obligation. The travel order is merely an authorization for the person specified to incur the obligation. The obligation is not incurred until the travel is actually performed or until a ticket is purchased, provided in the latter case the travel is to be performed in the same fiscal year the ticket is purchased. [35 Comp. Gen. at 185](#). A 1991 decision, [70 Comp. Gen. 469](#), reaffirmed the principle that the expenses of temporary duty travel are chargeable to the fiscal year or years in which they are actually incurred.

Some of the earlier cases in this evolutionary process are as follows:

- Where tickets are purchased in one fiscal year and the travel is performed in the following fiscal year, the obligation is chargeable to the year in which the travel is performed, even though early purchase of the tickets may have been necessary to assure reservations. [27 Comp. Gen. 764 \(1948\)](#); [26 Comp. Gen. 131 \(1946\)](#).
- A “continuous journey” involving more than one segment obligates funds of the fiscal year in which the ticket was purchased, as long as the trip starts in that same fiscal year. However, procurement of transportation en route is a new obligation. Similarly, a round-trip ticket obligates funds at the time of purchase as long as the trip starts in the same fiscal year. However, if the return portion of the ticket cannot be used and a separate return ticket must be purchased, a new obligation is created. [26 Comp. Gen. 961 \(1947\)](#); A-36450, May 27, 1931.
- Per diem incident to official travel accrues from day to day. Per diem allowances are chargeable to appropriations current when the allowances accrue (*i.e.*, when the expenditures are made). Thus, where travel begins in one fiscal year and extends into the next fiscal year, the per diem obligation must be split along fiscal year lines, even though the cost of the travel itself may have been chargeable in its entirety to the prior fiscal year. [23 Comp. Gen. 197 \(1943\)](#).

- Reimbursement on a mileage basis is chargeable to the fiscal year in which the major portion of the travel occurred. If travel is begun sufficiently prior to the end of a fiscal year to enable the employee to complete a continuous journey before the close of the fiscal year, the obligation is chargeable entirely to that year. However, if the travel is begun so late in the fiscal year that the major portion of it is performed in the succeeding fiscal year, it is chargeable to appropriations for the succeeding year. [9 Comp. Gen. 458, 460 \(1930\)](#); [2 Comp. Dec. 14 \(1895\)](#).
- Where (1) an employee is authorized to travel by privately owned vehicle at not to exceed the constructive cost of similar travel by rail, (2) the trip starts in one fiscal year and extends into the following fiscal year, and (3) the journey would have been completed in the prior year had rail travel been used, the travel expense is chargeable to the fiscal year in which the travel began. [30 Comp. Gen. 147 \(1950\)](#).

Other cases involving obligations for travel expenses are: [16 Comp. Gen. 926 \(1937\)](#); [16 Comp. Gen. 858 \(1937\)](#); [5 Comp. Gen. 1 \(1925\)](#); [26 Comp. Dec. 86 \(1919\)](#); [B-134099, Dec. 13, 1957](#); [A-30477, Apr. 20, 1939](#); [A-75086, July 29, 1936](#); [A-69370, Apr. 10, 1936](#).

f. State Department: Travel
Outside Continental United
States

By virtue of 22 U.S.C. § 2677, appropriations available to the State Department for travel and transportation outside the continental United States “shall be available for such expenses when any part of such travel or transportation begins in one fiscal year pursuant to travel orders issued in that year, notwithstanding the fact that such travel or transportation may not be completed during that same fiscal year.” This provision appeared in appropriation acts starting in 1948 and was subsequently made permanent and codified. It has the effect of excluding State Department travel or transportation outside the continental United States from some of the earlier decisions. The authority is permissive rather than mandatory. [42 Comp. Gen. 699 \(1963\)](#).

Section 2677 of title 22 applies to temporary duty travel as well as travel incident to change of duty station. [71 Comp. Gen. 494 \(1992\)](#). In either case, expenses are chargeable to the year in which the travel is ordered as long as some travel-related expense is also incurred in that year, even though the physical travel may not begin until the following year. *Id.* Travel-related expenses in this context include miscellaneous incidental expenses such as inoculations and passports as long as they are not incurred at a time so far removed from the actual travel as to question their legitimacy as incident to the travel. [30 Comp. Gen. 25 \(1950\)](#). The statute

also permits charging the prior year for expenses incurred under amended travel orders issued in the subsequent fiscal year as long as some part of the travel or transportation began in the prior fiscal year. [29 Comp. Gen. 142 \(1949\)](#).

The statute does not permit retroactive charging of an expired appropriation. Thus, the Comptroller General found it improper to issue a travel authorization in one fiscal year designating the succeeding fiscal year as the appropriation to be charged, and then, at the start of the succeeding fiscal year, cancel the authorization and replace it with a new authorization retroactively designating the prior year. [42 Comp. Gen. 699 \(1963\)](#).

g. Employee
Transfer/Relocation Costs

A government employee transferred to a new duty station is entitled to various allowances, primarily travel expenses of the employee and his or her immediate family, and transportation and temporary storage of household goods. 5 U.S.C. § 5724. In addition, legislation enacted in 1967, now found at 5 U.S.C. § 5724a, authorized several types of relocation expenses for transferred employees. Specifically, they are: (1) per diem allowance for employee's immediate family en route between old and new duty station; (2) expenses of one house-hunting trip to new duty station; (3) temporary quarters allowance incident to relocation; (4) certain expenses of real estate transactions incurred as a result of the transfer; and (5) a miscellaneous expense allowance.

The leading case on the obligation of employee transfer expenses is [64 Comp. Gen. 45 \(1984\)](#). The rule is that “for all [reimbursable] travel and transportation expenses of a transferred employee, the agency should record the obligation against the appropriation current when the employee is issued travel orders.” *Id.* at 48. This treatment applies to expenses stemming from employee transfers; it does not apply to expenses stemming from temporary duty. [70 Comp. Gen. 469 \(1991\)](#).

The rule of [64 Comp. Gen. 45](#) applies to obligations for extensions of temporary quarters subsistence expenses—the obligation is chargeable to the year in which the transfer order was issued. [64 Comp. Gen. 901 \(1985\)](#). It also applies to dislocation allowances payable to members of the armed services incident to a permanent change of station move. [67 Comp. Gen. 474 \(1988\)](#).

Agencies have discretionary authority under 5 U.S.C. § 5724c to contract with private firms for arranging the purchase of a transferred employee's old residence. Since this service is wholly discretionary and in no way an

“entitlement,” the agency’s obligation to a relocation firm stems from its contract with the firm, not from the employee’s transfer. Thus, the obligation under one of these arrangements occurs when a purchase order under the contract is awarded. [66 Comp. Gen. 554 \(1987\)](#). Since the obligation is evidenced by a written contract, it would be recorded under 31 U.S.C. § 1501(a)(1).

The decision at [64 Comp. Gen. 45](#) overruled prior inconsistent decisions such as [28 Comp. Gen. 337 \(1948\)](#) (storage) and [B-122358, Aug. 4, 1976](#) (relocation expenses under 5 U.S.C. § 5724a). In assessing the impact of 64 Comp. Gen. 45, however, care must be taken to determine precisely what has been overruled and what has not. For example, since 64 Comp. Gen. 45 dealt with reimbursable expenses, prior decisions addressing the transportation of household goods shipped directly by the government presumably remain valid.³⁰

Also, [35 Comp. Gen. 183 \(1955\)](#) should not be regarded as overruled, notwithstanding language to the contrary in 64 Comp. Gen. 45. There are two reasons for this. First, 35 Comp. Gen. 183 was not limited to employee transfers, but dealt with travel in other contexts as well, situations not involved in the 1984 decision. Second, 35 Comp. Gen. 183 states, at page 185:

“It may be stated, however, that we have no objection to recording tentatively as obligations the estimated cost of transportation to be purchased and reimbursements therefor to be earned, including reimbursements for transportation of household effects, within the current fiscal year at the time the travel orders are actually issued where it is administratively determined desirable in order to avoid certain additional accounting requirements; but all estimated amounts for travel and related expenses so recorded should be adjusted to actual obligations periodically . . . ”

This is not very different from the holding of [64 Comp. Gen. 45](#).

³⁰ If the government ships the goods, the obligation occurs when a carrier picks up the goods pursuant to a government bill of lading. If separate bills of lading are issued covering different segments of the shipment, each bill of lading is a separate and distinct obligation. *E.g.*, [31 Comp. Gen. 471 \(1952\)](#).

8. Section 1501(a)(8):
Public Utilities

Under 31 U.S.C. § 1501(a)(8), a recordable obligation arises when there is documentary evidence of “services provided by public utilities.”³¹

Government agencies are not required to enter into contracts with public utilities when charges are based on rates that are fixed by regulatory bodies. However, contracts may be used if desired by the utility or the agency. GAO, *Policy and Procedures Manual for Guidance of Federal Agencies*, title 7, § 6.2.C.5 (Washington, D.C.: May 18, 1993).

If there is a contract, monthly estimates of the cost of services to be performed, based on past experience, may be recorded as obligations. If there is no contract, obligations should be recorded only on the basis of services actually performed. [34 Comp. Gen. 459, 462 \(1955\)](#). *See also* [B-287619, July 5, 2001](#); [B-259274, May 22, 1996](#).

A statute relating to obligations for public utility services is 31 U.S.C. § 1308. Under this law, in making payments for telephone services and for services like gas or electricity where the quantity is based on metered readings, the entire payment for a billing period which begins in one fiscal year and ends in another is chargeable to appropriations current at the end of the billing period. If the charge covers several fiscal years, 31 U.S.C. § 1308 does not apply. A charge covering several fiscal years must be prorated so that the charge to any one fiscal year appropriation will not exceed the cost of service for a 1-year period ending in that fiscal year. [19 Comp. Gen. 365 \(1939\)](#). GAO has construed this statute as applicable to teletypewriter services as well. [34 Comp. Gen. 414 \(1955\)](#).

The General Services Administration is authorized to enter into contracts for public utility services for periods not exceeding 10 years. 40 U.S.C. § 501(b)(1)(B).³² A contract for the procurement of telephone equipment and related services has been held subject to this provision even where the provider was not a “traditional” form of public utility. [62 Comp. Gen. 569 \(1983\)](#). Noting that the concept of what constitutes “public utility service”

³¹ Prior to the 1982 recodification of title 31, United States Code, section 1501(a)(7) included public utilities as well as employment and travel expenses. The recodification logically separated public utilities into a new subsection since it is unrelated to the other items. Thus, pre-1982 materials refer to eight subsections whereas there are now nine.

³² The military departments have authority to enter into utility service contracts for up to 50 years in connection with the conveyance of a utility system from the department to the service provider. *See* 10 U.S.C. § 2688(c)(3).

is flexible, the decision emphasized that the nature of the product or service provided rather than the nature of the provider should govern for purposes of 40 U.S.C. § 501(b)(1)(B). 62 Comp. Gen. at 575. The decision also concluded that GSA is not required to obligate the total estimated cost of a multiyear contract under 40 U.S.C. § 501(b)(1)(B), but is required to obligate only its annual costs. 62 Comp. Gen. at 572, 576.

9. Section 1501(a)(9):
Other Legal Liabilities

The final standard for recording obligations, 31 U.S.C. § 1501(a)(9), is documentary evidence of any “other legal liability of the Government against an available appropriation or fund.” This is sort of a catch-all category designed to pick up valid obligations which are not covered by 31 U.S.C. §§ 1501(a)(1)–(a)(8). 34 Comp. Gen. 418, 424 (1955).

Thus far, the decisions provide very little guidance on the types of situations that might be covered by subsection (a)(9). The few decisions that mention subsection (a)(9) generally cite it in conjunction with one of the other subsections and stop short of a definitive statement as to its independent applicability. *See, e.g.*, 54 Comp. Gen. 962 (1975) (impoundment litigation); B-192511, Feb. 5, 1979 (severance pay plan under 22 U.S.C. § 3968).

Another case, although not specifically citing subsection (a)(9), pointed out a situation that would seemingly qualify under that subsection: estimates of municipal tax liabilities on United States property located in foreign countries, based on tax bills received in prior years. 35 Comp. Gen. 319 (1955).

Thus, subsection (a)(9) must be applied on a case-by-case basis. If a given item is a legal liability of the United States, if appropriations are legally available for the item in terms of purpose and time, and if the item does not fit under any of the other eight subsections, then subsection (a)(9) should be considered.

C. Contingent
Liabilities

Up to this point in Chapter 7, we have discussed obligations: what they are and how and when to record them. As pointed out in the previous sections of this chapter, the core attribute of an obligation recordable under 31 U.S.C. § 1501 is that it creates a definite legal liability on the part of the federal government. While the precise amount of the liability may be undefined initially, an “obligational event,” reflecting a definite liability,

may occur even though the amount of the liability at that time is undefined. A “contingent liability” is fundamentally different. In contrast to a definite liability, a contingent liability does not create an obligation unless and until the contingency materializes.

Contingent liabilities take different forms depending on the circumstances. However, whatever form it takes, a contingent liability by definition lacks the definiteness that is essential to the concept of an obligation. Thus, GAO defines a “contingent liability” generically as “[a]n existing condition, situation, or set of circumstances that poses the *possibility* of a loss to an agency that will ultimately be resolved when one or more events occur or fail to occur.”³³

Contingent liabilities are not recordable as obligations under section 1501 of title 31.³⁴ Rather, a contingent liability ripens into a recordable obligation for purposes of section 1501 only if and when the contingency materializes. *E.g.*, 62 Comp. Gen. 143, 145–46 (1983); 37 Comp. Gen. 691–92 (1958); GAO, *Policy and Procedures Manual for Guidance of Federal Agencies*, title 7, § 3.5.C (Washington, D.C.: May 18, 1993) (hereafter GAO-PPM).

The contingent liability poses somewhat of a fiscal dilemma. On the one hand, it is by definition (and absent special statutory treatment) not sufficiently definite to support the recording of an obligation. Yet on the other hand, sound financial management may dictate that it somehow be recognized. Indeed, if completely disregarded, a contingent liability could mature into an actual liability and result in an Antideficiency Act violation. Agencies have a legal obligation to take reasonable steps to avoid situations in which contingent liabilities become actual liabilities that result in Antideficiency Act violations. This may include the

³³ GAO, *A Glossary of Terms Used in the Federal Budget Process*, [GAO-05-734SP](#) (Washington, D.C.: September 2005), at 35 (emphasis added).

³⁴ Outside the framework of 31 U.S.C. § 1501, however, Congress has provided special treatment for certain contingent liabilities in order to better capture their budgetary impact. Most notably, the Federal Credit Reform Act of 1990, 2 U.S.C. §§ 661–661, changed the normal budgetary treatment of loans and loan guarantees by establishing that for most programs, loan guarantee commitments cannot be made unless the Congress has appropriated budget authority in advance to cover their estimated losses (known as “credit subsidy costs”). See Chapter 11, section B, for a detailed discussion of the budgetary and obligational treatment of loan and loan guarantee programs under the Federal Credit Reform Act.

“administrative reservation” or “commitment” of funds, as well as taking other actions to prevent contingencies from materializing.³⁵

For example, in [B-238201, Apr. 15, 1991](#), the General Services Administration (GSA) was faced with a contingent liability that could become an actual liability. GSA was engaged in litigation concerning an Illinois statute authorizing the taxation of government property purchased under an installment contract. GSA had entered into arrangements to purchase buildings in Illinois on an installment basis, so there was a potential for tax liability, including back taxes, which would be assessed if the Illinois statute was upheld. Since the litigation was extending over fiscal years and the outcome was in doubt, GSA accrued amounts from the fiscal years involved as loss contingencies for the potential tax liability. GAO agreed with GSA’s approach and stated:

“Because the underlying legal liability of the Government has yet to be established, the potential tax liability of the [property] is not sufficiently definite to be recorded as an obligation. However, GSA has not actually obligated funds for this purpose, . . . Instead, in terms of fiscal operations, it is possible for GSA officials to have recorded the potential liability as a commitment through the budgetary account ‘Commitments Available for Obligation’ in the Standard General Ledger. This accounting procedure reflects allotments or other available funds which were earmarked in anticipation of a potential obligation and is used for purposes of effective financial planning.”

Id. See also [35 Comp. Gen. 185, 187 \(1955\)](#) (GAO recommended reserving funds as a means to avoid potential Antideficiency Act violations from contingent liabilities involving pending litigation in cases where it was believed that claims against the government were meritorious).

In addition to the obligational accounting treatment of contingent liabilities, agencies need to be aware of the financial accounting treatment of contingent liabilities. Contingent liabilities may be sufficiently important to warrant recognition in a footnote to pertinent financial statements. [62 Comp. Gen. 143, 146 \(1983\)](#); [37 Comp. Gen. at 692](#). See also Federal

³⁵ See 7 GAO-PPM § 3.5.F; [B-238201, Apr. 15, 1991](#) (nondecision letter).

Accounting Standards Advisory Board, *Accounting for Liabilities of the Federal Government*, SSFAS No. 5, ¶¶ 35–42 (Dec. 20, 1995), as amended by SSFAS No. 12 (December 1998) (provides guidance on the appropriate accounting treatment of contingent liabilities in financial statements).

D. Reporting Requirements

When 31 U.S.C. § 1501 was originally enacted in 1954,³⁶ it required each agency to prepare a report each year on the unliquidated obligations and unobligated balance for each appropriation or fund under the agency's control. The reports were to be submitted to the Senate and House Appropriations Committees, the (then) Bureau of the Budget, and GAO. GAO was often asked by the appropriations committees to review these reports.

After several years of reviewing reports, the appropriations committees determined that the requirement had served its purpose, and Congress amended the law in 1959 to revise and relax the reporting procedures. The current reporting requirements are found at 31 U.S.C. §§ 1108(c) and 1501(b).

Under 31 U.S.C. § 1108(c), each agency, when submitting requests for appropriations to the Office of Management and Budget, must report that “the statement of obligations submitted with the request contains obligations consistent with section 1501 of this title.” See 39 Comp. Gen. 422, 425 (1959). The reports must be certified by officials designated by the agency head. OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, § 51.1 (June 21, 2005). The certification must be supported by adequate records, and the agency must retain the records and certifications in such form as to facilitate audit and reconciliation. Officials designated to make the certifications may not redelegate the responsibility.³⁷

The conference report on the original enactment of 31 U.S.C. § 1501 specified that the officials designated to make the certifications should be persons with overall responsibility for the recording of obligations, and “in

³⁶ See Pub. L. No. 83-663, § 1311(b), 68 Stat. 800, 830 (Aug. 26, 1954).

³⁷ See GAO, *Policy and Procedures Manual for Guidance of Federal Agencies*, title 7, § 3.8.A (Washington, D.C.: May 18, 1993) (hereafter GAO-PPM).

no event should the designation be below the level of the chief accounting officer of a major bureau, service, or constituent organizational unit.”³⁸

The person who makes certifications under 31 U.S.C. § 1108(c) is not a “certifying officer” for purposes of personal accountability for the funds in question. Although he or she may be coincidentally an “authorized certifying officer,” the two functions are legally separate and distinct. [B-197559-O.M., May 13, 1980.](#)

The statute does not require 100 percent verification of unliquidated obligations prior to certification. Agencies may use statistical sampling. [B-199967-O.M., Dec. 3, 1980.](#)

In the case of transfer appropriation accounts under interagency agreements, the certification official of the spending agency must make the certifications to the head of the advancing agency and not to the head of the spending agency. 7 GAO-PPM § 3.8.A.

Finally, 31 U.S.C. § 1501(b) provides that any statement of obligations furnished by any agency to the Congress or to any congressional committee “shall include only those amounts that are obligations consistent with subsection (a) of this section.”

E. Deobligation

The definition of the term “deobligation” is an agency’s cancellation or downward adjustment of previously incurred obligations. Deobligated funds may be reobligated within the period of availability of the appropriation. For example, annual appropriations may be reobligated in the fiscal year for which the funds were appropriated, while multiyear or no-year appropriated funds may be reobligated in the same or subsequent fiscal years.³⁹ Deobligations occur for a variety of reasons. Examples are:

- Liquidation in amount less than amount of original obligation. *E.g.*, [B-207433, Sept. 16, 1983](#) (cost underrun); [B-183184, May 30, 1975](#)

³⁸ H.R. Rep. No. 83-2663, 18 (1954), quoted in *Financial Management in the Federal Government*, S. Doc. No. 87-11, 88 (1961), and in [50 Comp. Gen. 857, 862 \(1971\)](#).

³⁹ See GAO, *A Glossary of Terms Used in the Federal Budget Process*, [GAO-05-734SP](#) (Washington, D.C.: September 2005), at 44 and 85.

(agency called for less work than maximum provided under level-of-effort contract). *See also* [B-286929, Apr. 25, 2001](#).

- Cancellation of project or contract.
- Initial obligation determined to be invalid.
- Reduction of previously recorded estimate.
- Correction of bookkeeping errors or duplicate obligations.

In addition, deobligation may be statutorily required in some instances. An example is 31 U.S.C. § 1535(d), requiring deobligation of appropriations obligated under an Economy Act agreement to the extent the performing agency has not incurred valid obligations under the agreement by the end of the fiscal year. See section B.1.i of this chapter for a further discussion of recording obligations in Economy Act transactions.

For the most part, there are no special rules relating to deobligation. Rather, the treatment of deobligations follows logically from the principles previously discussed in this and preceding chapters. Thus funds deobligated within the original period of obligational availability are once again available for new obligations just as if they had never been obligated in the first place. Naturally, any new obligations are subject to the purpose, time, and amount restrictions governing the source appropriation. Funds deobligated after the expiration of the original period of obligational availability are not available for new obligations. [B-286929, Apr. 25, 2001](#); [64 Comp. Gen. 410 \(1985\)](#); [52 Comp. Gen. 179 \(1972\)](#). They may be retained as unobligated balances in the expired account until the account is closed, however, and are available for adjustments in accordance with 31 U.S.C. § 1553(a).

A proper and unliquidated obligation should not be deobligated unless there is some valid reason for doing so. Absent a valid reason, it is improper to deobligate funds solely to “free them up” for new obligations. To do so risks violating the Antideficiency Act. For example, where a government check issued in payment of some valid obligation cannot be promptly negotiated (if, for example, it is returned as undeliverable), it is improper to deobligate the funds and use them for new obligations. [15 Comp. Gen. 489 \(1935\)](#); [A-44024, Sept. 21, 1942](#). (The two cited decisions deal with provisions of law which have since changed, but the thrust of the decisions remains the same.) The Antideficiency Act violation would occur

if the payee of the original check subsequently shows up and demands payment but the funds are no longer available because they have been reobligated and the account contains insufficient funds. This does not preclude an agency from exercising flexibility in the use of its appropriations so long as the agency does not risk an Antideficiency Act violation. [B-272191, Nov. 4, 1997](#).

Under some programs, an agency provides funds to an intermediary which in turn distributes the funds to members of a class of beneficiaries. The agency records the obligation when it provides, or legally commits itself to provide, the funds to the intermediary. It is undesirable for many reasons to permit the intermediary to hold the funds indefinitely prior to reallocation. Unless the program legislation provides otherwise, the agency may establish a reasonable cutoff date at which time unused funds in the hands of the intermediary are “recaptured” by the agency and deobligated. GAO recommended such a course of action in 50 Comp. Gen. 857 (1971). If recapture occurs during the period of availability, the funds may be reobligated for program purposes; if it occurs after the period of availability has ended, the funds expire absent some contrary direction in the governing legislation. *Id.*; *Dabney v. Reagan*, No. 82 Civ. 2231-CSH (S.D.N.Y. Mar. 21, 1985).

Congress may occasionally by statute authorize an agency to reobligate deobligated funds after expiration of the original period of availability. This is called “deobligation-reobligation” (or “deob-reob”) authority. Such authority exists only when expressly granted by statute. Deobligation-reobligation authority generally contemplates that funds will be deobligated only when the original obligation ceases to exist and not as a device to effectively augment the appropriation. See [B-173240-O.M., Jan. 23, 1973](#). Also, absent statutory authority to the contrary, “deob-reob” authority applies only to obligations and not to expenditures. Thus, repayments to an appropriation after expiration of the original period of obligational availability are not available for reobligation. [B-121836, Apr. 22, 1955](#).

