THE DEFENSE DEPARTMENT'S ILLEGAL MANIPULATION OF APPROPRIATED FUNDS

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT EFFICIENCY, FINANCIAL MANAGEMENT AND INTERGOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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THE DEFENSE DEPARTMENT'S ILLEGAL MANIPULATION OF APPROPRIATED FUNDS

THURSDAY, JULY 26, 2001

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT EFFICIENCY, FINANCIAL MANAGEMENT AND INTERGOVERNMENTAL RELATIONS,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. Stephen Horn (chairman of the subcommittee) presiding.

Present: Representatives Horn, Schakowsky, and Owens.

Staff present: J. Russell George, staff director and chief counsel; Bonnie Heald, director of communications; Henry Wray, senior counsel; Scott Fagan, assistant to the subcommittee; Chris Barkley, staff assistant; Davidson Hulfish, Samantha Archey, Fred Ephraim, Fariha Khaliq, and Christopher Armato; interns; Michelle Ash, minority counsel; and Jean Gosa, minority assistant clerk.

Mr. HORN. The Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations will come to order.

Congress spends enormous time and effort each year enacting appropriations. However, we spend too little time looking at what actually happens to those appropriations once they are implemented. Too often we just assume that congressional intent is carried out. Today's hearing will show that this is not always true.

We will examine and receive today a report from the General Accounting Office, and the General Accounting Office, as we all know, is headed by a very able Comptroller General, and when we refer to the report, it will be GAO, not always General Accounting Office. This report is on how the Department of Defense manipulates the balances of appropriations years after the accounts have been closed in order to free up money beyond the limits that Congress has imposed.

Although this deals with an arcane subject, the GAO report provides dramatic proof that the mischief can often be found in the details. GAO auditors found that, in 1 year alone, the Defense Department came up with $615 million in potential extra funding through what the General Accounting Office terms "illegal or otherwise improper" adjustments to old appropriations balances. If these findings represent a typical year, the Department of Defense may have used those bogus "adjustments" to conjure up billions of dollars in back-door spending.

This is not a new issue. Long ago, Congress suspected that the Department of Defense was abusing old appropriations. Indeed, legislation initiated by the Committee on Government Reform's predecessor, the Committee on Government Operations, was enacted in 1990 to stop abuses. However, as this report clearly demonstrates, the Department of Defense has failed to comply with the law, and the Department's manipulation of old appropriations balances has continued largely unabated.

Today's hearing will examine three issues: First, how did these abuses happen? General Accounting Office auditors found improprieties that involved flagrant violations of basic legal requirements and financial management practices that ignore principles taught in Accounting 101. To cite just one example, the Department of Defense shifted $38 million in payment charges to appropriations that had not even been enacted into law at the time the payments were made. We have invited the key managers who were involved in these transactions to testify today. We intend to get to the bottom of this one way or the other.

Second, we want to know why these abuses persist. The General Accounting Office report shows that the Department of Defense uses ridiculously complex accounting codes that serve no apparent purpose and invite data entry errors. For example, the Department requires separate payment codes for bubble gum, Tootsie Rolls, and balloons that were purchased for a child care center party.

In a 1997 report, the General Accounting Office stated that it was "imperative" to fix the Defense Department's "complex and convoluted [contract payment] process." The new GAO report states that these problems, "for the most part, still exist today." In fact, the Department of Defense uses systems, policies, and practices that virtually have built-in features that cause violations of the law. The Department of Defense has known about some of these defects in the systems over the years, and no one has really done very much to correct them. These abuses have to end.

Finally, we want to examine how these abuses can be stopped once and for all. You have got a new administration. You can start from ground zero and move through all of these systems. The GAO offers some good recommendations, but its past reports have fallen on deaf ears. There are encouraging signs that the new administration is intent on resolving the Department of Defense's daunting financial management problems, and it needs to follow through on those with concrete actions.

In closing, I want to acknowledge that this GAO report is the result of a joint request of this subcommittee and the House Budget Committee, chaired by a very able person, Representative Jim Nussle of the Budget Committee, who couldn't be with us today. However, he has submitted a written statement that, without objection, will be in the hearing at this point in the record.

[The prepared statement of Hon. Stephen Horn follows:]

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Opening Statement
Chairman Stephen Horn
Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations
July 26, 2001

A quorum being present, the Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations will come to order. Congress spends enormous time and effort each year enacting appropriations. However, we spend too little time looking at what actually happens to those appropriations once they are enacted. Too often, we just assume that congressional intent is carried out. Today's hearing will show that is not always true.

We will receive and examine today a General Accounting Office (GAO) report on how the Department of Defense manipulates the balances of appropriations years after the accounts have been closed in order to free up money beyond the limits that Congress imposed.

Although this deals with an arcane subject, the GAO report provides dramatic proof that the mischief can often be found in the details. GAO auditors found that, in one year alone, the Defense Department came up with $615 million in potential extra funding through what the GAO termed "illegal or otherwise improper" adjustments to old appropriations balances. If these findings represent a typical year, the Department of Defense may have used these bogus "adjustments" to conjure up billions of dollars in backdoor spending.

This is not a new issue. Long ago, Congress suspected that the Department of Defense was abusing old appropriations. Indeed, legislation initiated by the Committee on Government Reform's predecessor, the Committee on Government Operations, was enacted in 1990 to stop those abuses. However, as this report clearly demonstrates, the Department of Defense has failed to comply with the law, and the department's manipulation of old appropriation balances has continued largely unabated.

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GAO auditors found improprieties that involved flagrant violations of basic legal requirements and financial management practices that ignore principles taught in "Accounting 101." To cite just one example, the Department of Defense shifted $38 million in payment charges to appropriations that had not even been enacted into law at the time the payments were made. We have invited the key managers who were involved with these transactions to testify today. We intend to get to the bottom of this.

Second: We want know why these abuses persist. The GAO report shows that the Department of Defense uses ridiculously complex accounting codes that serve no apparent purpose and invite data-entry errors. For example, the department requires separate payment codes for bubble gum, Tootsie Rolls, and balloons that had been purchased for a child-care center party.

In a 1997 report, the General Accounting Office stated that fixing the Defense Department's "complex and convoluted [contract payment] process" was "imperative." The new GAO report states that those problems "for the most part, still exist today." In fact, the Department of Defense uses systems, policies, and practices that virtually have built-in features that cause violations of the law. The Department of Defense has known about some of these defects in its systems for years, but did nothing to correct them. These abuses must end.

Finally, we want to examine how these abuses can be stopped -- once and for all. The GAO offers some good recommendations, but its past reports have fallen on deaf ears. There are encouraging signs that the new Administration is intent on resolving the Department of Defense's daunting financial management problems, but it needs to follow through with concrete actions.

In closing, I want to acknowledge that this GAO report is the result of a joint request by this subcommittee and the House Budget Committee. Representative Jim Nussle, the fine Chairman of the Budget Committee, could not be with us today. However, he has submitted a written statement that I would like to enter into the record if there is no objection.

I welcome our witnesses today, and look forward to their testimony.

Statement for the Record by Budget Committee Chairman Jim Nussle
Hearing on DOD's Canceled Appropriations Accounts
Committee on Government Reform, Subcommittee on Government Efficiency
July 26, 2001

I would like to thank Chairman Horn for holding this hearing on Department of Defense canceled appropriation accounts. The idea for the hearing originated in a joint request by the Subcommittee on Government Efficiency and the Budget Committee to the General Accounting Office to review DOD's adjustment of closed accounts. What the GAO found was that the Pentagon had opened up canceled accounts far more often than any other agency of government, and moved a far greater volume of dollars as well.

What is more troubling is that over $600 million in "adjustments" should not have been made, and that over $150 million of that sum violated appropriations laws. This is particularly ironic in view of the fact that DOD's rationale for making the adjustments in the first place was to "correct payment errors."

DOD's canceled account problem is, however, merely the tip of the iceberg. It is a visible symptom of the Department's long-standing problems with financial management. In his testimony before the Committee on the Budget on 17 February 2000, Comptroller General David M. Walker said: " . . . [N]o major part of DOD is able to pass the test of an independent financial statement audit. Many have trouble just putting together a financial statement, much less having an audited financial statement. . . . The continuing financial management problems have real consequences for program management and resource allocation. For instance, DOD cannot properly account for billions of dollars of basic transactions, leaving the agency vulnerable to the misuse of appropriated funds."

Poor financial management systems and processes lie at the heart of many of the Department's seemingly intractable problems in areas such as acquisition and inventory, because the financial management system is intended to link budgets with expenditures, track the inventory of hardware that is bought and disposed of, and correctly record contract changes and other transactions.

For many years, GAO has criticized the Pentagon's inventory management for stockpiling years worth of supply of obsolete or unneeded items while critical spare parts shortages remained unaddressed. And such poor inventory control is not merely wasteful, it is dangerous: an Inspector General investigation of hundreds of thousands of defective chemical suits found that a dangerous situation was made worse because different lots of chemical suits – some good, some defective – were commingled, a violation of Federal accounting procedures. As a result, it became even more difficult to isolate the problem; this exposed military personnel to grave risk in the event of an emergency. The IG commented: "When responding to an urgent call for chemical protective suits in a chemical or biological emergency, there would be a heightened risk of screening errors."

But such errors are nearly inevitable given the daunting complexity and needless fragmentation of current financial management. Previous GAO testimony before the Budget Committee on DOD financial management included a graphic example of the complexity of the problem: an Army operations and maintenance code that is 65 digits long. It was a mystery why the Pentagon thought a code had to be more than seven times longer than the 9-digit Social Security Number, which can account for more than 260 million American citizens. And if that Army code represented a spare part, that did not mean an identical Navy spare part would have had the same code. Finally, the fact that DOD personnel often have to manually "key in" such data means there is a considerable risk of clerical errors.

The new management team at the Department of Defense appears to understand this situation. In Congressional testimony, Secretary Rumsfeld stated this about DOD's financial management systems: "They're not capable of providing the kinds of financial management information that any large organization would normally have," adding that they would take "years" to put right: "The waste, the inefficiency, the distrust that results from the way it functions will over time, I fear, erode public support to the detriment of the country."

To its credit, the administration has added a $100 million initiative to the fiscal year 2002 budget to begin the process of fixing DOD's financial management systems. But this initiative must be a sustained, multi-year effort, and the objective of a "clean audit," while vitally necessary, is only an interim goal. The final goal is to give DOD managers accurate and timely information on a day-to-day basis – in other words, to make DOD's financial operations transparent and responsive.

In conclusion, I applaud Chairman Horn for holding this hearing on a critical aspect of DOD financial management. Congress cannot conduct meaningful oversight of executive branch operations without an assurance that appropriations law is being adhered to. And, as I have said, poor finance and accounting procedures in DOD have real-world implications that can endanger our service personnel. I look forward to this hearing not only laying out the facts, but also providing solutions.

Mr. HORN. I welcome our witnesses today and look forward to your testimony. I now yield for an opening statement to the ranking member, Ms. Schakowsky, the gentlewoman from Illinois.

Ms. SCHAKOWSKY. Mr. Chairman, I thank you for holding this hearing. However, I must say that I am disappointed that we have to meet once again to review why the Department of Defense cannot get its financial house in order.

At our hearing on the consolidated financial statement on March 30th of this year, we learned that most agencies received "clean" or "qualified" audit opinions, while DOD received a disclaimer. DOD's books were so fraught with error that an audit could not even be accomplished. Then at our financial management oversight hearing on May 8, 2001, we heard that DOD was the biggest culprit of financial mismanagement. Today we find that DOD is violating the law. This is not to mention the two hearings in March 2001 of the Subcommittee on National Security, Veterans Affairs, and International Relations, on which I serve, on "Vulnerabilities to Waste, Fraud and Abuse," which found that DOD was the most vulnerable of the Federal agencies. Or the hearings held by you, Mr. Chairman, and your Democratic predecessors for well over a decade chronicling the serious financial mismanagement at DOD.

Today we will hear from the General Accounting Office that DOD is illegally or improperly using its closed appropriations accounts. Specifically concerned with DOD abuse, Congress passed a law, as the chairman mentioned, in 1990 that states that appropriations accounts close 5 years after the last year in which the money was available for obligation. Yet, DOD seems to have ignored this law and has continued to use these closed accounts.

Let me just mention one such illegal use. In 1999, DOD adjusted a 1992 account for $79 million. Unfortunately, that 1992 account closed in 1998 and never should have been touched. The law states that if DOD needed to make a payment on the 1992 account, it should have spent 1999 dollars, not 1992 dollars that were no longer available.

This blatant abuse of appropriations accounts is just one more example of DOD's longstanding financial management problem. Until DOD establishes the necessary systems, procedures, policies, and controls, and takes necessary managerial actions, we will continue to hear about such missteps.

I don't know what it is going to take to give top-level DOD personnel a wakeup call. GAO has explained that DOD's prospects for the future do not look favorable. In GAO's High-Risk Series Update, they state:

"After having performed hundreds of reviews of major weapons systems over the last 20 years, we have seen many of the same problems recur—cost increase, schedule delays, and performance shortfalls. These problems have proven resistant to reform in part because underlying incentives have not changed."

Mr. Chairman, because of its sheer size and the magnitude of money involved, one would think that DOD would have the most updated systems and controls in place, and yet, it has the worst. I can only hope that DOD will not have to stand before this committee a fourth time this year because of financial mismanagement. I further hope that all Members of the House will join me

in opposing the Department of Defense's budget. Until DOD gets its financial house in order, it should not be rewarded with an increase. Thank you.

[The prepared statement of Hon. Janice D. Schakowsky follows:]

STATEMENT OF REPRESENTATIVE JANICE SCHAKOWSKY
SUBCOMMITTEE ON GOVERNMENT EFFICIENCY, FINANCIAL MANAGEMENT AND INTERGOVERNMENTAL RELATIONS
HEARING ON THE DEPARTMENT OF DEFENSE'S
USE OF CLOSED APPROPRIATIONS ACCOUNTS
JULY 26, 2001

Mr. Chairman, I thank you for holding this hearing. However, I must say that I am disappointed that we have to meet once again to review why the Department of Defense (DOD) cannot get its financial house in order.

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Mr. HORN. I thank you, and we will now move to the witnesses. I want to let you know a little bit of how this subcommittee works. One is, it is an investigating subcommittee. We will ask you to approve and affirm the oath for not only the ones at the table, but the assistants behind the ones at that table. The clerk will take down who are the assistants behind, so we don't have to go give the oath to somebody whispering in your ear, and we will just do it once.

When your name is called, the statement, the written statement, automatically goes into the record. Don't worry about it; it just goes in, and what we would like you to do is give us a summary of that statement. The staff and some of us have read through all that, and we would like to get sort of the essence of these problems and then we would like to have a dialog of the members on both sides of the aisle to see if we can get to solving some of these problems with you.

[Witnesses sworn.]

Mr. HORN. We have 1, 11 sworn in.

We will start with our friends from the General Accounting Office, Mr. Jeffrey Steinhoff, the Managing Director, Financial Management and Assurance, of the U.S. General Accounting Office. Mr. Steinhoff.

STATEMENTS OF JEFFREY C. STEINHOFF, MANAGING DIRECTOR, FINANCIAL MANAGEMENT AND ASSURANCE, U.S. GENERAL ACCOUNTING OFFICE; THOMAS R. BLOOM, DIRECTOR, DEFENSE FINANCE AND ACCOUNTING SERVICE, DEPARTMENT OF DEFENSE; JO ANN BOUTELLE, DIRECTOR OF COMMERCIAL PAY SERVICES, DEFENSE FINANCE AND ACCOUNTING SERVICE, DEPARTMENT OF DEFENSE, COLUMBUS, OH; TINA W. JONAS, DEPUTY UNDER SECRETARY OF DEFENSE FOR FINANCIAL MATTERS, DEPARTMENT OF DEFENSE; AND MAJOR GENERAL EVERETT G. ODGERS, COMPTROLLER, HEADQUARTERS AIR FORCE MATERIEL COMMAND, WRIGHT PATTERSON AIR FORCE BASE, OHIO

Mr. STEINHOFF. Mr. Chairman, Ranking Member Schakowsky, I'm pleased to be here today to discuss DOD's use of canceled appropriations under the 1990 Account Closing Act. At the outset I want to make clear that the problems I will highlight today predate the current DOD Comptroller and his team, who have pledged to deal with the serious financial management problems that have plagued DOD for decades.

The 1990 act resulted because of serious abuses in the use of old, expired appropriations, principally by DOD. Under the 1990 act, once an appropriation has been expired for 5 years, it closes, and all remaining balances are canceled. It cannot be used for any purpose. Agencies may in only limited circumstances adjust accounting records for closed accounts—to correct clear-cut accounting errors. But, frankly, that should not happen very often, which, unfortunately is a big problem in DOD and largely why we're here today.

From the enactment of the 1990 law through the end of fiscal year 1999, DOD reopened 333 closed accounts valued at $26 billion, and between fiscal year 1997 and fiscal year 2000 made adjustments totaling about $10 billion to those accounts. By comparison,

all other Federal agencies combined reopened only 21 closed accounts valued at only $5 million. We audited $2.2 billion, or over 80 percent, of DOD's reported $2.7 billion in fiscal year 2000 adjustments to closed accounts. The fact that DOD made $2.7 billion of adjustments in fiscal year 2000 alone shows a lack of adequate control over appropriations, which is one of the most fundamental financial management requirements.

Compounding this problem, DOD had not put in place the systems, controls, and managerial attention needed to properly comply with the 1990 law. As a result, $615 million of the $2.2 billion we audited, or 28 percent, were illegal or otherwise improper. For $108 million, the appropriation had already canceled when the disbursement was made, a clear violation of the Account Closing Act.

For $38 million, the appropriation charge had not yet been enacted when the disbursement was made, which violates the Account Closing Act as well as other appropriations law. For another $364 million, the payments had originally been charged to correct appropriations and, therefore, did not meet the limited criteria to adjust a closed account. And, yet, for another $105 million, there was not sufficient documentation to support the adjustment that was made. Those were improper as well.

Now let me share several examples of what we found. Ms. Schakowsky mentioned one earlier that involved the $79 million that was associated with the C–17. In this case the account had closed 4 months before the payment was made, and by moving that payment back to a closed account, it was a clear violation of the 1990 act. It was, therefore, illegal.

For the second example, I've got a posterboard here that tries to explain this. These transactions are very complex. This is simpler than some of the others. When you collect money related to a canceled appropriation, you have a recovery. Let's say you overpaid a contractor and it led to recovery of funds related to a closed account. You are supposed to return those moneys to the Treasury Department. They go into what's called miscellaneous receipts. They then are under congressional control. That money is not available for agency use. In this case DOD had a recovery related to a closed appropriation account. They bypassed that appropriation account and credited that to an open account, meaning that was money that was free to spend.

In another case, in order to pay a $685,000 invoice, DOD made $590 million of adjustments to closed accounts, $210 million of which did not meet the criteria for adjusting a closed account. I mention this because you see the magnitude of the accounting transactions that go on. They had a payment they couldn't make to an open account, and to try to reconcile that payment, they had to go through a very complex, convoluted process that resulted in manyfold more in terms of adjustments than the initial transaction.

We found that DOD became aware in 1996 that there were deficiencies in its account reconciliation system that could result in violations of the Account Closing Act. Although at the time DOD projected that the cost to fix the system was only $24,460, nothing was done until May 2001, and only as a result of our review. In addition, DOD contracting officials issued contract modifications that

directed that oldest funds be used first, a practice that was followed regardless of whether the appropriation had canceled, and it was intended to use unspent funds from canceled appropriations.

Overall, our audit results provide another reminder of how broken DOD's management systems are today and why 8 of GAO's 23 high-risk areas pertain to DOD. I'm using the term management systems to decribe the problem, not financial management systems, because 80 percent of the information that Mr. Bloom and his team need to do their job comes from non-accounting systems. So we're talking about an overall management system issue.

Our report contains a number of recommendations, including the need to immediately reverse the $615 million of adjustments that violated the Account Closing Act. In the short-term there must be accounting discipline to avoid similar problems going forward and personal accountability for any future breakdowns. The buck must clearly stop somewhere. An effective monitoring and accountability system must be in place.

For the long-term—and this is the big challenge—there is an overarching need for fundamental financial management reform as part of a total transformation of DOD's overall business systems and operations. I am pleased that the Secretary and the Comptroller have stated their intention to do so and that plans are being developed to transform DOD's financial management systems. Ms. Jonas, here today, is really charged with achieving that.

We need to look at the systems, policies, and procedures. I've got a couple of other posterboards here that I think I used last May, when I had the privilege of testifying before the subcommittee, and that the chairman alluded to in his opening remarks. You have a very complex set of accounting codes in DOD, but making it even tougher is that first two digits shown on the poster board under the caption "A-C-R-N." You have multiple ACRNs on many contracts.

One example in our report mentioned a $2.1 million payment that required the contractor to submit billing that had 487 pages in order to spread the $2.1 million to 267 ACRNs. It's just a very difficult job for the Comptroller's operation to perform. It's a convoluted, broken process.

The second posterboard I have here is the infamous spider chart that speaks volumes about DOD's contract and vendor pay system. This is DOD's chart. I want to make that clear. This is what they're saying is the environment they're trying to move away from. I think recognizing a problem is very important, and here they clearly recognize it.

I'll point to that one system up in the top lefthand corner, MOCAS. That's the system that was involved heavily in a lot of the transactions that we reviewed as part of this audit for the subcommittee. And to show you the challenge, the first letter, "M," represents mechanization. That was a high-tech word in around 1960–61, when this system came on line. So DOD is working with a system that's close to 40 years old. Maybe it never worked that well in the beginning. There's no real documentation for it, and it's just a difficult challenge. It's a world-class issue that they're facing today, and we're hopeful there will be, what I call, total transformation. The Comptroller General has spoken about this a couple

of times, and DOD is going to have to look at the entire business process from stem to stern.

Mr. Chairman, Ms. Schakowsky, this concludes my summary remarks. I will be pleased, when we get to the question-and-answer, to respond to any questions you have.

[NOTE.—The GAO report entitled, "Canceled DOD Appropriations, $615 Million of Illegal or Otherwise Improper Adjustments," GAO–01–697, may be found in subcommittee files, or by calling (202) 512–6000.]

[The prepared statement of Mr. Steinhoff follows:]

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations, Committee on Government Reform, House of Representatives

For Release on Delivery
Expected at
10 a.m. Thursday,
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CANCELED DOD APPROPRIATIONS

$615 Million of Illegal or Otherwise Improper Adjustments

Statement of Jeffrey C. Steinhoff
Managing Director
Financial Management and Assurance

GAO-01-994T

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me here today to discuss the Department of Defense's (DOD) adjustments to canceled appropriation accounts. Our related report,[1] issued today and developed at the request of this Subcommittee and the House Budget Committee, describes DOD's problems in establishing the requisite systems, controls, and managerial attention to properly account for its disbursements. My testimony today will summarize the detailed findings included in our report.

In 1990, the Congress changed the law governing the use of appropriation accounts because it determined that controls over them were not working.[2] Committee reports and other statements relating to the legislation show that members of the Congress were concerned that the Congress had inadequate control over the expenditure of hundreds of millions of dollars of expired appropriations, particularly at DOD. Without adequate control, the Congress was concerned that agencies could disburse money in amounts and for purposes that it had not approved. The 1990 law was intended to improve congressional control by providing that, 5 years after the expiration of the period of availability of a fixed-term appropriation, the appropriation account be closed and all remaining balances canceled. After closing, the appropriation account could no longer be used for obligations or expenditures for any purpose.

Because agencies need to keep accurate records, they may, in limited circumstances, adjust accounting records pertaining to closed accounts to correct unrecorded or improperly charged disbursements. To justify such an adjustment, an agency must have sufficient documentation for each proposed adjustment to show that it clearly meets each of the following three criteria:

- the disbursement was made when the appropriation account to be charged was available to cover the disbursement,
- the agency either did not record the disbursement when it was made or charged it to the wrong appropriation account at that time, and

[1] *Canceled DOD Appropriations: $615 Million of Illegal or Otherwise Improper Adjustments* (GAO-01-697, July 26, 2001).

[2] National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510, dated November 1990).

- the proposed adjustment will result in the disbursement being charged to the proper appropriation account.

From the enactment of the 1990 law through September 30, 1999, DOD requested that the Department of the Treasury (Treasury) make adjustments affecting 333 closed accounts valued at $26 billion. By comparison, during the same period, all other federal agencies combined requested that Treasury make adjustments affecting only 21 closed accounts valued at $5 million.

According to DOD, adjustments affecting closed appropriation accounts during fiscal year 2000 exceeded $2.7 billion. Amid concerns over the magnitude of DOD adjustments affecting closed appropriation accounts and whether they complied with the 1990 account closing law, you and the Chairman of the House Budget Committee asked that we review the adjustments. Our review focused primarily on large dollar value adjustments made during fiscal year 2000, representing $2.2 billion (81 percent) of the $2.7 billion of DOD's reported closed appropriation account adjustments made during fiscal year 2000.

Illegal or Otherwise Improper Adjustments

Our review of $2.2 billion of DOD's fiscal year 2000 adjustments affecting closed appropriation accounts found that about $615 million (28 percent) of the adjustments were illegal ($146 million) or otherwise improper ($469 million). As shown in table 1, these adjustments to closed accounts should not have been made for four reasons.

Table 1: Fiscal Year 2000 Illegal or Otherwise Improper Adjustments

(Dollars in millions)

Problem with adjustment	Adjustment amount
Appropriation already canceled when disbursement was made	$107.7
Appropriation not yet enacted when disbursement was made	38.2
No adjustment was necessary	364.0
Insufficient documentation	104.9
Total	**$614.8**

The following is an explanation of each of the four categories of adjustment problems.

Appropriation Already Canceled

The 1990 account closing law specifically provides that closed appropriation accounts are not available for expenditures. We found that about $108 million of the adjustments resulted in charging appropriation accounts that had closed before the disbursements were made. These adjustments produced the same result as if DOD had made expenditures from and charged closed appropriation accounts at the time the disbursements were made. Therefore, these adjustments violated the 1990 account closing law. For example, in December 1999, the Defense Finance and Accounting Service (DFAS) Columbus Center recorded an adjustment that changed $79 million of disbursements from charges against fiscal years 1993 through 1995 research and development appropriations to charges against a fiscal year 1992 research and development appropriation. According to documentation in the contract files, the adjustment was to correct previous disbursing errors by redistributing the payments in accordance with the payment terms specified in the contract. The payment terms of the contract specified that payments should be made using "oldest funds first." Under this instruction, payments should be charged to the oldest appropriation cited on the contract until the obligated balance has been exhausted for that appropriation. Subsequent payments are then charged to the next oldest available appropriation, and so on, until all the funds are used up or the contract is complete. Making the adjustment that charged the $79 million disbursement to the closed fiscal year 1992 research and development account used up the unspent balances in that appropriation account and freed up funds on still open 1993 through 1995 research and development appropriation accounts for other disbursement charges.

We found that charging the $79 million of disbursements to the fiscal year 1992 research and development appropriation was illegal because the disbursements were made in February 1999—4 months after the fiscal year 1992 research and development appropriation account had closed on September 30, 1998. DFAS Columbus officials agreed that the adjustment violated the 1990 law and should not have been made. Our report, issued today, includes several additional examples of this type of illegal adjustment.

Appropriation Not Yet Enacted

Under 31 U.S.C. 1502 (a), an appropriation may be used to pay only those expenses properly incurred during the appropriation's period of availability. However, we found that over $38 million of the closed appropriation account adjustments resulted in charging disbursements to appropriation accounts that had not yet been enacted at the time the disbursements were actually made. For example, in January 2000, a total

of $21 million of disbursements charged to fiscal years 1989 and 1990 appropriations were changed to charges against fiscal years 1998 and 1999 missile procurement appropriations. Since the actual disbursements were for expenses that were incurred before the fiscal years 1998 and 1999 appropriations were enacted, charging disbursements to these two appropriations violated 31 U.S.C. 1502 (a).

Further, included in the $21 million were $9.9 million in overpayments, which the contractor identified as a return of funds that were paid from the fiscal years 1988 through 1990 appropriations. These appropriations were canceled at the time the overpayments were returned. As discussed in our companion report, the 1990 law requires that the collection of canceled funds be deposited into the Treasury as miscellaneous receipts. However, we found that instead of forwarding the overpayments to the Treasury, DFAS Columbus redistributed the $9.9 million to current and expired appropriations that were funding the still-open contract. In discussing these errors with responsible DOD officials, they agreed that the $21 million adjustment and the $9.9 million redistribution were incorrect and should not have been made. According to the officials, they plan to reverse the adjustments and determine what actions are required to correct the accounting records, including returning the $9.9 million to the Treasury.

No Adjustment Necessary

Closed account adjustments totaling $364 million were improper because the initial payments had been charged to the correct appropriations and should not have been adjusted. DOD made these adjustments during contract reconciliations to try to correct errors in recording disbursements made under the contracts. Generally, these reconciliations were initiated if DOD could not pay invoices because other disbursements had been erroneously recorded against the wrong appropriations funding contracts. For example, in November 1999, DFAS Columbus received an invoice from a contractor for $685,000. DFAS Columbus could not pay the contractor because there were not sufficient funds available in the cited accounting line to pay the invoice. As a result, DFAS Columbus reconciled the fiscal year 1988 contract, which resulted in over $590 million of adjustments affecting closed appropriation accounts. Our review of these found that $210 million of the adjustments should not have been made because the actual disbursements—some of which were made over 10 years earlier—were initially recorded correctly. As a result of this process to free up sufficient funds to pay the $685,000 invoice, DFAS Columbus made improper adjustments affecting the closed accounts. Thus, the

reconciliation resulted in at least $210 million of accounting errors that did not exist before the reconciliation took place.

Insufficient Documentation

To adjust its records, an agency must have sufficient documentation to show that the adjustment is legal and changed an incorrect charge to a correct one. However, neither DOD nor we could find sufficient documentation in DOD's accounting and contract records to support about $105 million of closed appropriation account adjustments. For example, in June 2000, DFAS Columbus made an adjustment that changed over $2.4 million of disbursements from charges against a fiscal year 1993 appropriation that had not yet been canceled to a fiscal year 1992 appropriation that had been canceled. According to the contract files, the adjustment was to correct a previous disbursing error. However, in reviewing the contract files for this adjustment, neither DOD nor we could identify the original invoice or other supporting documentation to show which appropriation should have been charged for the goods or service. We considered these types of unsupported adjustments improper because DOD must be able to provide documentation to show that the adjustments are legal and that they changed incorrect charges to correct ones. DOD is researching these transactions further to determine if additional documentation can be located to support the adjustments.

Lack of Fundamental Controls

DOD's contract reconciliation process lacked the controls necessary to ensure that adjustments to closed appropriation accounts were proper. For example, system deficiencies in DOD's Contract Reconciliation System (CRS) significantly contributed to many of the illegal closed account adjustments.[3] Specifically, CRS did not compare the actual disbursement date with the appropriation being adjusted to ensure that the adjustment met certain appropriation law requirements. DOD had been aware of the system deficiency since at least 1996, but took no action to upgrade CRS until we brought this problem to its attention. DOD officials could not tell us why they had not taken action to correct the problem, which they estimated would have cost $24,460 to fix in 1996. Had CRS been upgraded to make this comparison in 1996 when the programming defect was first identified, the $146 million of illegal adjustments made during fiscal year 2000 may not have occurred.

[3]CRS is an automated reconciliation system that has been used since 1995 by DFAS Columbus to perform contract reconciliations and to correct errors.

We also noted that DOD contracting officers were using contract modifications and other methods of communications to instruct DFAS Columbus to charge disbursements to older appropriation accounts without regard to whether adjustments would result in charging disbursements to appropriations that had been canceled. This practice, when combined with the deficiencies in CRS, resulted in some improper adjustments.

Large Number of Adjustments Exemplify DOD's Long-standing Financial Management Problems

Finally, the remaining $1.6 billion (72 percent) of the $2.2 billion of adjustments we reviewed were adequately documented corrections of errors that DOD had made over the years and, therefore, were not illegal or improper. They do, however, exemplify the broad-based, high-risk problems associated with the accuracy of DOD's payment and accounting process. As we have previously reported, DOD has long-standing, serious problems with its ability to accurately account for and report on payments to contractors, which in these cases resulted in $2.7 billion in adjustments to closed appropriation accounts in fiscal year 2000 alone. Such issues have led us to report on the DOD's financial management as an area of high risk since 1995.[4] DOD acknowledges that it has major problems with its accounting and reporting of disbursements and has various ongoing initiatives aimed at resolving them.

In conclusion, Mr. Chairman, DOD circumvented the provisions in the account closing law that were intended to strengthen the Congress' control over the amounts and purposes for which appropriated funds were spent. DOD was aware of the limitations the account closing law placed on the availability of canceled appropriations and that the law was enacted because of previous abuses by DOD's use of old appropriations. DOD also knew that a major system used to control its use of appropriations allowed for disbursements to be charged inconsistent with that law. However, it did nothing to fix the system, although it estimated the cost to do so to be minimal.

[4] GAO has designated government operations and programs as "high risk" because of either their greater vulnerabilities to waste, abuse, and mismanagement or major challenges associated with their economy, efficiency, or effectiveness. See *Major Management Challenges and Program Risks: Department of Defense* (GAO-01-244, Jan. 2001) and *High-Risk Series* (GAO-01-263, Jan. 2001).

Our companion report on these issues includes recommendations that address the need for DOD to immediately reverse and correct the $615 million of closed account adjustments we identified as illegal or otherwise improper and to take action to strengthen its policies, procedures, and controls over closed appropriation account adjustments. To the extent DOD is unable to make proper correcting adjustments because insufficient balances remain in the correct accounts, we are also recommending that DOD investigate and report on these adjustments, as required by the Antideficiency Act, 31 U.S.C. 1351, and implementing guidance.

In the longer term, DOD will need to resolve its financial management problems, including the lack of leadership and accountability that have been the subject of numerous reports and recommended corrective actions over the years. The Secretary and the Comptroller of DOD have stated their intention to vigorously pursue financial management reform and plans are being developed to transform DOD's financial management systems and practices.

Mr. Chairman, this concludes my formal statement. I would be pleased to answer any questions that you or other members of the Subcommittee may have.

Contact and Acknowledgements

For future contacts regarding this testimony, please contact Jeffrey C. Steinhoff at (202) 512-2600. Individuals making key contributions to this testimony include Bertram J. Berlin, Dennis B. Fauber, Jeffrey A. Jacobson, Mary Jo Lewnard, Larry W. Logsdon, Keith E. McDaniel, Michael S. Peacock, and Harold P. Santarelli.

Mr. HORN. I thank the gentleman. We will now move through the panel and hold questions until we complete the presentations. Our next witness is Thomas R. Bloom, the Director, Defense Financial and Accounting Service of the Department of Defense. Mr. Bloom.

Mr. BLOOM. Good morning, Mr. Chairman and Congresswoman Schakowsky. My name is Tom Bloom and I'm the Director of the Defense Finance and Accounting Service. With me is JoAnn Boutelle, who is Director of Commercial Pay Services for DFAS in Columbus. I welcome this opportunity to discuss with you the complex process of contract reconciliation and the GAO's recent review of adjustments made with that process.

DFAS has made some significant mistakes, and we recognize and generally agree with GAO that there have been, and to a lesser degree still are, procedural, systemic weaknesses in our contract reconciliation process, these shortcomings in the recording of adjustments to accounts that may be improper or illegal, as noted by the GAO in their report. We are taking specific, positive actions to ensure that, in partnership with our customers, we do the right things in the contract pay and reconciliation process.

DFAS makes various types of payments on large, complex, multiyear contracts. DFAS-Columbus disbursed approximately $280 billion on contracts during the 1997–2000 fiscal year timeframe. The payments are recorded against various appropriations in fiscal years that fund the specific contract. Contract closure, changes in liquidation rates, or revisions to overhead rates are just a few examples of acquisition business practices that result in adjustments to previous payments.

The contract file and payment history are subsequently reconciled. The duration of many of these contracts is extensive and more information becomes available during the life of those contracts. At the time of reconciliation the payment is validated against information current at the time of reconciliation. It must be noted that often new or additional information is used during the reconciliation process that was not available at the time of the original payment. Adjustments are made as a result of the reconciliation process to ensure that the payments match the contract terms and conditions.

Reconciliations are performed by DFAS, other DOD personnel, and support contractors. DFAS-Columbus adjusted approximately $25 billion in disbursements during the 1997–2000 fiscal year timeframe that resulted from contract reconciliations.

We agree with the GAO recommendations for DFAS. Let me now address the specific actions and steps we at DFAS have taken to ensure accounting adjustments made during the reconciliation process are sound.

First, we have revised our procedures to ensure that adjustments are posted only to appropriations that are available at the time that a payment was originally made.

Second, we have conducted mandatory training for personnel involved in the reconciliation process to ensure that they clearly understand not only the adjustments procedures, but the appropriations law as well.

Third, we have changed our contract reconciliation system to install changes that recognize and prohibit adjustments to fiscal year appropriations that have been canceled or not yet enacted at the time of the original payment. One of the systems is up and running as of May; the other system's change will be finished in September.

Fourth, we're directing our accounting personnel to post all adjustments regardless of appropriation balances and take the appropriate action to report apparent violations of the Antideficiency Act to the military service or DOD agency involved. We will work cooperatively with our DOD and service customers to provide them the necessary information for their review or investigations, as appropriate.

These actions we have put in place will give us a check-and-balance process to ensure that adjustments resulting from the reconciliation process meet sound and prudent financial management practices. We are monitoring compliance with these requirements to ensure that invalid adjustments are identified and reversed, and we're taking a very aggressive stance in DFAS. When we find problems, we're addressing them very quickly. For instance, recently, we found some duplicate payments that were made. We immediately shut down the system and will not start it back up until we have discovered why this is happening and make sure that it doesn't happen in the future.

We recognize the importance to our customers and to the American taxpayer of having reliable, credible financial information, and this obviously includes the proper recording of adjustments resulting from reconciliation actions on contracts. Mr. Chairman and Congresswoman Schakowsky, I assure you that the military and civilian employees of DFAS are accountable for their actions and, as their leader, I am the most accountable. We seek only to provide the best service. Our uniformed members and American taxpayers deserve nothing less. I assure you that we will make the necessary adjustments to our financial records and systems, and we have already examined our processes and put into place preventative measures that we will continually monitor.

That concludes my remarks. Ms. Boutelle and I will be happy to answer any questions you all might have. Thank you.

[The prepared statement of Mr. Bloom follows:]

STATEMENT OF THOMAS R. BLOOM

DIRECTOR

DEFENSE FINANCE AND ACCOUNTING SERVICE

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON GOVERNMENT REFORM

SUBCOMMITTEE ON GOVERNMENT EFFICIENCY, FINANCIAL MANAGEMENT

AND INTERGOVERNMENTAL RELATIONS

ON
GAO REPORT ON CANCELED DOD APPROPRIATIONS

JULY 26, 2001

Good morning Mr. Chairman, Congresswoman Schakowsky and members of the Subcommittee. My name is Tom Bloom and I am the Director of the Defense Finance and Accounting Service. With me is JoAnn Boutelle who is the Director of Commercial Pay Services for DFAS. I welcome the opportunity to discuss with you the complex process of contract reconciliation and the GAO's recent review of adjustments made during that process.

I would like to start by giving you a general picture of the size of our responsibility and operations. DFAS is the largest finance and accounting operation in the world. On an annual basis we pay approximately 5.4 million military members, civilians, retirees, and annuitants; issue approximately $288 billion in disbursements; execute some 100 million accounting transactions; pay approximately 14 million invoices and over 5 million travel payments. Our mission is to provide responsive, professional finance and accounting services for the Department of Defense. We take pride in what we do.

We recognize and generally agree with GAO that there have been, and, to a lesser degree, still are procedural and systemic weaknesses in our contract reconciliation process. These shortcomings resulted in the recording of adjustments to accounts that may be improper or illegal as noted by GAO in their report. We are taking specific, positive actions to ensure that, in partnership with our customers, we do the right things in the contract payment and reconciliation process.

DFAS makes various types of payments on large, complex, multi-year contracts. DFAS-Columbus disbursed approximately $280 billion on contract payments during the FY 1997 – FY 2000 timeframe. The payments are recorded against the various appropriations and fiscal years that fund the specific contract. Contract closure, changes to liquidation rates, or revisions to overhead rates are just a few examples of acquisition business practices that result in adjustments to previous payments. The contract file and the payment history are subsequently reconciled. The duration of many of these contracts is extensive and more information becomes available during the life of the contract. At the time of reconciliation, the payment is validated against information current at the time of reconciliation. It must be noted that often new or additional information is used during the reconciliation process that was not available at the time of the original payment. Adjustments are made as a result of the reconciliation process to ensure that the payments match the contract terms and conditions. Reconciliations are performed by DFAS, other DOD personnel, and support contractors. DFAS-Columbus adjusted approximately $25 billion of disbursements during the period FY 1997 – FY 2000 that resulted from contract reconciliations.

We agree with the GAO recommendations for DFAS. Let me now address the specific actions and steps we at DFAS have taken to ensure accounting adjustments made during the contract reconciliation process are sound.

First, we have revised our procedure to ensure that adjustments are posted only to appropriations that were available at the time the payment was originally made. Second,

we have conducted mandatory training for personnel involved in the reconciliation process to ensure they clearly understand adjustment procedures and that appropriation integrity is maintained. Third, we have changed our contract reconciliation system to install changes that recognize and prohibit proposed adjustments to fiscal year appropriations that were canceled or not yet enacted at the time of the original payment. One of these system changes (affecting canceled appropriations) is already implemented. The other change (addressing appropriations not yet enacted) is under development and will be ready for implementation in September, 2001. Fourth, we have directed our accounting personnel to post all required adjustments, regardless of appropriation balances, and take appropriate actions to report apparent violations of the Antideficiency Act to the Military Service or DoD Agency involved. We will work cooperatively with our DoD and Service customers to provide them with the necessary information for their review or investigation as appropriate.

With these actions, we have put into place a "check and balance" process to ensure that adjustments resulting from the reconciliation process meet sound and prudent financial management practices. We are monitoring compliance with these requirements to ensure that invalid adjustments are identified and reversed.

We recognize the importance to our customers and to the American taxpayer of having reliable, credible financial information. This includes the proper recording of adjustments resulting from reconciliation actions on contracts.

Mr. Chairman and Congresswoman Schakowsky, I assure you that we, the military and civilian employees of DFAS, are accountable for our actions. We seek only to provide the best service. Our uniformed members and the American taxpayers deserve nothing less. I assure you we will make the necessary adjustments to the financial records. We have already examined our processes and put into place preventive measures that we will continually monitor. That concludes my remarks and JoAnn Boutelle and I will be happy to answer your questions.

Mr. HORN. We thank you, and we will now move on to Ms. Boutelle, who is the Director, Commercial Pay Services, Defense Finance and Accounting Service. Now are you simply backing Mr. Bloom up or——

Ms. BOUTELLE. Yes, sir.

Mr. HORN. You didn't have a written statement?

Ms. BOUTELLE. No, sir.

Mr. HORN. OK. We will have our next witness then, and that is Ms. Jonas. She is the Deputy Under Secretary of Defense for Financial Management, Tina W. Jonas. Please proceed.

Ms. JONAS. Thank you, Mr. Chairman and Ranking Member Schakowsky. I appreciate the opportunity to come before you and discuss financial management reform within the Department of Defense, and specifically the recent General Accounting Office report on canceled DOD appropriations.

Let me tell you that the Secretary of Defense and the Under Secretary of Defense Comptroller and I realize that the Department's financial management weaknesses are a very serious matter that must be addressed through comprehensive reform. Fundamental changes are required to reassure Congress and the American people that we are good stewards of the resources entrusted to us, and this is a priority of the Secretary, the Comptroller, and it is my highest priority.

In order to accomplish some of those changes, the Secretary recently established a Department-wide financial management modernization program to develop a DOD enterprise architecture. When implemented, that architecture will provide a blueprint that will guide the building of an integrated financial management system that will help prevent inappropriate financial transactions. The fiscal year 2002 DOD budget includes a request for funding to begin this critical modernization effort, and we hope that the Congress will support that effort.

With regard to the specific concerns in the GAO report, I must emphasize that the Department's policies are consistent with current statutes. Obviously, if the policies had been adhered to, the issues addressed in the GAO report would not have occurred. Unfortunately, they did occur, and we are performing a high-level review Department-wide to determine what processes and policies need to be changed, and this will include, as Tom has already mentioned, an internal review of the specific processes at the Department's DFAS accounting service, and where we've identified current weaknesses, we are moving out to correct them. For example, we have provided additional training to 200 DFAS personnel, and we are making required policy changes, modifying automated systems, and will take individual personnel actions where appropriate.

In closing, Mr. Chairman, let me again stress that the Secretary and the Comptroller take these financial management weaknesses very seriously and are committed to aggressive financial management reform. We look forward to continuing to work with this committee and with other interested Members of Congress and look forward to your support of our reform efforts, and would be happy to answer any further questions.

[The prepared statement of Ms. Jonas follows:]

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STATEMENT OF MS. TINA JONAS

DEPUTY UNDER SECRETARY FOR FINANCIAL MANAGEMENT

DEPARTMENT OF DEFENSE

BEFORE THE

HOUSE COMMITTEE ON GOVERNMENT REFORM

SUBCOMMITTEE ON GOVERNMENT EFFICIENCY, FINANCIAL MANAGEMENT AND INTERGOVERNMENTAL RELATIONS

ON

DEPARTMENT OF DEFENSE FINANCIAL MANAGEMENT REFORM

July 26, 2001

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Statement of Ms. Tina Jonas
Deputy Under Secretary of Defense (Financial Management)
Before the House Committee on Government Reform
Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations
26 July 2001

Mr. Chairman and Members of the Committee, I appreciate the opportunity to come before you and discuss financial management reform within the Department of Defense, and specifically the recent General Accounting Office (GAO) report on cancelled DoD appropriations.

Let me begin by telling you that the Secretary of Defense and the Under Secretary of Defense (Comptroller) and I realize that the Department's financial management weaknesses are a very serious matter and that they must be addressed through a comprehensive reform effort. Fundamental changes are required to reassure the Congress and the American people that we are good stewards of the resources entrusted to us. That is a priority of this Secretary, this Comptroller and it is also my highest priority.

In order to accomplish those changes, the Secretary recently established a Department-wide Financial Management Modernization Program to develop a Department of Defense enterprise architecture. When implemented, that architecture will provide a blueprint that will guide the building of an integrated financial management system that will help prevent inappropriate financial transactions. The FY 2002 DoD budget includes a request for funding to begin this critical modernization effort and we hope that the Congress will support that effort.

With regard to the specific concerns in the GAO report, I must emphasize that the Department's policies currently in our Financial Management Regulation are consistent with current statutes. Obviously, if the policies had been adhered to, the issues addressed in the GAO report would not have occurred.

Consequently, we are performing a high level review of Department-wide issues and processes to determine what changes are needed. This will include an internal review of the specific processes at the Defense Finance and Accounting Service. Additionally, where identified weaknesses exist, we are moving out to correct them. For example, we have provided additional training to approximately 200 Defense Finance and Accounting Service personnel, and we are making the required policy changes, modifying automated systems, and will take individual personnel actions where appropriate.

In closing, Mr. Chairman, let me again stress that the Secretary and the Comptroller take these financial management weaknesses very seriously and are committed to aggressive financial management reform. We look forward to continuing to work with this subcommittee and with other interested members of Congress and look forward to your continued support of our reform efforts. I would be happy to answer any further questions that you may have.

Mr. HORN. We thank you, and now we will start in on the questioning. I would like to ask just a few questions of Mr. Steinhoff.

Your report recommends the Defense Department, in essence immediately, reverse the illegal and improper adjustments that you identified. The report also says the Defense Department must "immediately fix" the system contract modification problems and inadequate policies and procedures identified in the report and which contribute to the abuses. How long has the Department been aware of your findings and recommendations?

Mr. STEINHOFF. As we performed our work, we did provide information to the Department regarding the 268 transactions audited, of which we questioned 154. So the times will vary from 3 to 6 to 8 months for those. Our draft report, with our full portfolio of recommendations, was provided to the Department about 2 months ago.

Mr. HORN. What is the GAO's idea of months and half-years and all the rest? Because we are moving into another cycle now. What kind of expectations should we have from the Department of Defense on how fast they clean up this situation?

Mr. STEINHOFF. I think you must view this from both the long- and short-term perspective. In the short-term, I think it's very important that DOD put in place what I call a system of accountability. They're still going to have that overall poor system environment I mentioned in my opening statement. But what DOD has to do in the short-term is to very effectively carry out the range of actions things Mr. Bloom mentioned. There needs to be strict accountability and oversight during this short-term until there's clear proof that things are under control, that people are actually effectively doing these things.

I would recommend things like approvals at various levels for a large dollar adjustment transaction; the $79 million transaction for example. There also has to be periodic monitoring. There has to be constant reinforcement. It can't be told to people once or twice what is expected.

In addition, it will be important to have periodic reporting in this initial stage, both internally and to the Congress. I don't mean in perpetuity. We don't need another report, but at least until there's some feeling this is under control, reporting information such as the amounts and nature of adjustments, the status of actions to address underlying problems, and information on interim enhancements would enhance accountability. Another important control would be periodic audit.

I know that we've been asked by this subcommittee and the House Budget Committee to do a followup review for fiscal year 2001, and we will review the actions DOD has taken to address our recommendations. But I think maybe periodic audit by the IG after that is warranted, until you find out that this is really stabilized. Continuing congressional oversight is very, very important, knowing that this is important to Congress is a catalyst for action.

Mr. HORN. Mr. Bloom, how much work has been done on this? When did you first see the GAO recommendations, and what have you done about it?

Mr. BLOOM. Well, I first was briefed on the GAO recommendations on April 12. I believe that there were members of my staff

who had been briefed prior to that. When I was briefed, I was obviously concerned and immediately asked my staff what had we done and what were we doing at that point. At that point we had already implemented a fair number of manual controls—some of the approvals that Mr. Steinhoff talked about, trying to really pinpoint accountability on the manual process.

They were also working at that time on systems' fixes, and I don't want to say that systems' can fix everything; they can't. You have to have good people, diligent people, doing the right things, trained people. So we took steps to train our folks in appropriations law. We've been bookkeepers for too long and not accountants, and many of our folks have the title of accountant and we've got to earn that and we've got to act like accountants. So we're training our people. We're professionalizing our workforce. We're adding the systems changes and adding accountability.

Mr. HORN. Could you tell me to what degree is the Columbus operation of your group—we know that for about 6 years that they have always been one of the biggest headaches we have seen. Now to what degree have you straightened out the DFAS-Columbus? You have referred to it, and I believe GAO referred to it.

Mr. BLOOM. I think you're absolutely right, Columbus has been a problem for years. One of the steps that I took soon after taking this job, I think it was February 2000, I changed the scope of responsibility, essentially broke that huge, that mammoth organization out there into two pieces, and then I changed executives. At that time JoAnn Boutelle came on board. She had actually been a deputy for a short time before that, but the most significant part, the contract pay part, this part we put JoAnn in charge. We think that's a significant positive thing. It's now the size that can be managed, and I believe I've got the right executive and she's moving to make sure that we've got the right managers.

Mr. HORN. I now ask my ranking member here for 6 minutes or so. We will alternate, and then Major Owens will be next.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman. I have to tell you this infuriates me. I think the American people, if they really knew about this, would be infuriated as well.

In 1996 we eliminated an entire welfare program which amounted to about $13 billion a year total for the whole program, Aid to Families with Dependent Children, because of perceived problems with that program. And, yet, if I am understanding correctly, since 1990, $26 billion has been allocated from these closed accounts. Is that right, Mr. Steinhoff?

Mr. STEINHOFF. Actually, that was the value of the accounts opened by DOD. I don't think there's a precise number. For the last 4 years there's been $10 billion.

Ms. SCHAKOWSKY. OK.

Mr. STEINHOFF. But it's a very large number.

Ms. SCHAKOWSKY. It's a very large number.

Mr. STEINHOFF. It's a very large number.

Ms. SCHAKOWSKY. I mean, imagine, we have these huge debates about the National Endowment for the Arts. $100 million total is what are in budgets like that. So I think this is very, very significant. Besides, when we consider how this money could be spent even within DOD—and we are fighting to provide our men and

women in uniform with adequate living standards, etc.—this is positively infuriating.

What I am trying to understand is how rapidly we are moving toward correcting this. My understanding now is that the law has been broken repeatedly, but a violation of the act includes not sending over a report that a violation has occurred. Now the GAO sent its draft report to DOD 2 months ago, and I should note that DOD failed to respond to the GAO draft. Has the DOD yet sent a violation report to the President and the Congress? Has anyone been disciplined due to findings in the GAO report? Has anyone been disciplined under the Antideficiency Act since 1990, when the law was passed?

Ms. JONAS. Ranking Member Schakowsky, you're referring to the Antideficiency Act and whether or not there was a potential violation of that. There have been violations that have been reported. I have the Deputy CFO, Nelson Toye, with me. He may be able to have the number in his head. But, to date right now, we do not know specifically whether an ADA violation occurred. Part of what the Comptroller has ordered is an internal review of both the DFAS personnel and the Air Force personnel specifically with respect to that $79 million transaction. We're very concerned about that.

Obviously, I alluded to making adjustments to or taking appropriate personnel actions. If there's any indication that an ADA violation occurred, we will get that to OMB, to the President, to the Congress, as soon as we know about it. So we're working to understand what happened on the transaction. The Air Force may want to comment on their specific investigation to date on the $79 million, but we're very concerned, as you are, about potential violation.

Ms. SCHAKOWSKY. But a violation report has not been sent yet because it is still being——

Ms. JONAS. Not to my knowledge, no. I have only been here a couple of months.

Ms. SCHAKOWSKY. And I am only in my second term, but all of us have to take responsibility——

Ms. JONAS. Agree.

Ms. SCHAKOWSKY [continuing]. To the American taxpayers for things that have happened, even if it may not have been under our watch exactly.

And in reference to that, you say in your testimony that we are going to develop a new Department of Defense enterprise architecture and that it will help prevent inappropriate financial transactions. I want to tell you something: Unless we are told something better than we think this will help to prevent these kinds of illegal—not just inappropriate but now we are hearing illegal—transactions, that is just not going to make it. It seems to me that you have to promise better than trying to help prevent these kinds of things.

Ms. JONAS. I think the word "help" there is—Jeffrey has responded to this; this is a multifaceted problem. Systems can do so much, and we need to make appropriate enhancements, modernize these. We mentioned the MOCAS system that is over 40 years old. What has not happened in the past is there's never been money devoted to actually modernizing these systems that are antiquated

and cause the multiple transactions that increase the likelihood of errors, etc.

But, to your other point, we intend to take swift, aggressive action, you know, hold our managers accountable. This is also a people, procedures, and policy issue. We fully agree with you; it's the systems—you can't blame everything on the systems. So we have to take a multifaceted approach to this financial management problem, and we intend to do so.

Ms. SCHAKOWSKY. The GAO in the High-Risk Series Update that I had quoted says that, "These problems have proven resistant to reform, in part, because underlying incentives"—incentives—"have not been changed." So what are the incentives that need to change? Because it feels to me like that gets to more than systems, but maybe even a culture that needs to be changed. I don't know.

Mr. STEINHOFF. A lot of the challenge that the Department faces is a cultural challenge. DOD is largely a stovepiped operation with each service operating in their own way. You have stovepipes within services. You have OSD that has a different set of responsibilities. It's very rare, if ever, they ever do something in a joint manner. That accounting code I showed you earlier on the poster board was for one service. For the other two services, it's a different accounting code.

There has really been no one focal point that is in charge for broad reform. There are certain elements that the Comptroller General, David Walker, has outlined that are very, very key. Transformation has to come from the top and, as I said earlier, we're most encouraged by at least the words so far from the Secretary. It has to come from the top. It has to include re-engineering, not just fixing what's wrong now, because the basic system is broken, but re-engineering the system, thinking outside the box, breaking down those stovepipes, changing the way folks behave on a day-to-day basis, and having something like a board of directors who would make corporate-type decisions over how DOD is going to operate in the financial acquisition personnel, and logistics worlds, all the way down the line.

When I spoke earlier about 8 of the 23 high-risk areas, I could have focused on just the one, financial management, but I view these as all being intertwined. It's one set of management processes, and they haven't been viewed in that way in the past. I'm hopeful they're being viewed that way today.

Mr. HORN. The gentleman from New York, Major Owens.

Mr. OWENS. Thank you very much, Mr. Chairman.

Is there now going to be—well, let me just backtrack. Does West Point have any courses in accounting? There is some place where you draw on your personnel, personnel capable of handling this kind of mega-accounting job. Is that part of your system? Do you have a place to draw the human beings from who are going to be the accountants and the managers of the system?

Mr. BLOOM. We have an aggressive training approach, and we're implementing an aggressive recruitment approach.

Mr. OWENS. Well, what does that mean? You get your supply of bookkeepers and accountants from the same place as the rest of the marketplace?

Mr. BLOOM. Yes.

Mr. OWENS. But there's no place where you are training people and spending money for grants and really preparing them for this kind of accounting?

Mr. BLOOM. We actually are. We have a significant training budget, and we do do a significant amount of training in-house. I think last year we spent over $50 million training our folks. So we're focusing on it. We need to bring our folks up not just one notch, but probably two or three notches, through education, through training, and through better recruitment of folks.

Mr. OWENS. Are you comfortable that there is now a pipeline being established which will guarantee that you will have the people you need? Are you competing with private industry in a way that you are always going to have amateurs and new people; in terms of the personnel problems, they will always be there because there is no definitive pipeline that you have control of a set of incentives? What is the top salary for an accountant?

Mr. BLOOM. At a GS–13 level, I believe it's in the $75,000, $65,000-$75,000, depending on what part of the country——

Mr. OWENS. And you are competing with Wall Street and everyone else who has——

Mr. BLOOM. And it is tough, but, you know, there are folks who like the idea of serving their country and doing the right thing. We haven't exploited that to the extent that we can and will.

Mr. OWENS. Well, we have been in business for a long time, haven't we?

Mr. BLOOM. We have.

Mr. OWENS. Billions and billions of dollars; it is not a small agency. In previous years this committee has dealt with small agencies like the Department of Agriculture, which had $14 billion in uncollected loans out there, but their budget is nothing like yours. When you make a mistake, a 1 percent set of mistakes is huge, and on and on it goes.

My problem is that we have not approached the problem with maximum assigned high priority to it: the training, the development of a system, like a few things here computers could have done. Now you have done it, I hope. There are certain things you can do with computers. I am sure you will do all those things or have done them, but I did hear somebody say that the system had not been funded properly. Can we assume it has been funded properly now to do the things you have to do, which are obvious, with computers, the things that are fixed and not human errors, not personnel-related? You have done those things now?

Ms. JONAS. Well, the modifications that Tom was discussing with respect to these particular transactions, I think part of that has been completed. The additional part will be complete by September 30. The type of system architecture that I was discussing in my testimony is a really long-term problem, and it has to do with making the systems—you saw the current environment chart that GAO put up, and I actually think that expresses very well the kind of difficult challenge we have. But integrating these systems so that we don't have the multiple transactions and the potential for error, that's the long-term phase and that's why we've included funding in the budget to try to do that integrated architecture. They call

it an architecture, a blueprint for how systems and transactions will work.

Mr. OWENS. Mr. Steinhoff, do these agencies talk to each other about these problems at all? Four years ago, I think there were reports that the CIA had lost in its accounting system $2 billion. A few weeks after that, they said, no, it's not $2 billion; it's $4 billion. Part of that related to the satellite reconnaissance systems and things which overlap with the Department of Defense. I assume that the CIA went to work correcting their problem 4 years ago, and the Department of Agriculture some time ago, when we had them here. Maybe they went to work, I hope, to correct their problem. Is there some kind of Federal across-the-board attention to the fact that management of finances ought to have a high priority and there ought to be things that are done on an ongoing basis systematic about all Federal agencies?

Mr. STEINHOFF. There are several mechanisms in place today. There's a chief financial officers' council, which was established under the CFO Act, where the CFO's meet I think roughly once a month. They also have various committees. There's the Joint Financial Management Improvement Program, which I now chair, which meets on governmentwide issues. You have the group in OMB, the Controller who under the CFO Act heads the Office of Federal Financial Management that spearheads financial management across the board. If you look at solving the kind of problems faced in DOD, I believe they are unique. Their setup is unique. The type of environment they're in is very, very unique. But there are those forums for sharing.

I also will expand a little bit on the earlier issue you raised on human capital. That's a real crisis today. You got right to the nexus of one of the most important management challenges. Across government, in every area, this is something that will perhaps be cataclysmic at some point in time. Just talking about the accounting area—and this is a problem not just in government, but for private sector accounting—the number of accounting students at the college level has dropped by about 40 percent in the last couple of years. Kids really don't get excited about being a career accountant, I guess, and they're looking to more exciting things in life. This is becoming a real crisis.

Mr. OWENS. There is a really big, serious issue about a government initiative to guarantee you have the people to do the recordkeeping——

Mr. STEINHOFF. Yes.

Mr. OWENS [continuing]. Financial recordkeeping. I once headed an agency for New York City which had a mere $80 million a year to spend. Three-quarters of the problems and the crises that I was confronting from time to time related to fiscal recordkeeping, you know.

Mr. STEINHOFF. Yes.

Mr. OWENS. So do we need—it is far-fetched to say at West Point—do we need some major federally funded effort if not to establish our own academy, but to guarantee that there are incentives, scholarships, fellowships, and ways to get a ready supply of people who can manage these kinds of things? Because, as you said before, the whole welfare program could have run on your errors.

Needless to say—the CIA lost track of $4 billion—what we could have done with that.

Mr. STEINHOFF. You basically have to deal with a range of human capital initiatives that are now being considered. People have to use their existing authorities better than they do today. In addition, I think the Congress is considering a number of actions with respect to human capital.

Also, Mr. Bloom may or may not agree here, but earlier he mentioned bookkeepers versus accountants. To the extent DOD can turn around its system it can move away from having as many bookkeepers or as many people trying to reconcile transactions. When one of every $3 of transactions is correcting or adjusting a previous transaction, when you have systems that require you to enter a transaction multiple times, and when you're entering literally millions of transactions unnecessarily, you end up having just an army of accounting clerks.

Mr. OWENS. Yes.

Mr. STEINHOFF. And you want to move toward fewer of those and many more people with high-end accounting and financial analysis skills, so that you're making the necessary analysis.

Mr. OWENS. My time is up, but I want to thank you, Mr. Chairman, for calling this hearing. Again, you are right on target in terms of many basic needs we have in terms of management. Thank you.

Mr. HORN. I thank the gentleman.

Let me get into this. We have some very able people here as executives with a very good background. I am going to start with you, Mr. Bloom.

You have been the Chief Financial Officer at both the Department of Commerce and General Services Administration. What is the difference you see between those two agencies and what you are confronted with in the Department of Defense, and what could you tell us on that? The reason I ask that is, when we got into the Y2K bit back in 1996, 1997, 1998, and all that, I also got into some of the accounting. I said at the time that, if Secretary Forrestal, the first Secretary of Defense, had just wiped out every accounting system he had there and get a system that would work—and how many accounting operations do you have, how many different ones? Maybe Ms. Jonas can help us on that.

Mr. BLOOM. Well, let me start with, the first question is the comparison between the Department of Commerce and GSA and what we have at DOD. There are a couple of striking things that, frankly, caught me by surprise when I got here 2 years ago. You can talk about the size and you can read about how big DOD is, but until you've actually experienced it, this is a monolith. This is huge. So neither GSA or Commerce were anywhere near the size and complexity.

The other thing is that some of the contracts that we're dealing with go back to the seventies, the early seventies and the mid-seventies. So we're dealing with very long-term, very large projects. The longer something exists, it's almost geometric how errors can occur, and we keep these contracts going for years and years.

You know, as a former Inspector General, I kind of believe that if a contract is over 5 years, you ought to rewrite it. Now that

causes the acquisition community heartache, I'm sure, because I'm looking at it from just an accounting standpoint. It might be interesting to hear what they would have to say about something like that.

The other thing, since the contracts are so big and so long, are progress payments. We make progress payments along the way. That makes it increasingly more difficult and complex. I'm not trying to make excuses, sir, but it does make it more complex, and the sheer size and the stovepipes. You know Jeff Steinhoff mentioned the stovepipes. It isn't just the Air Force or the Navy who do things differently from one another; we do things differently in different parts of those services. So the question that you asked, how many kinds of different accounting groups are there out there, while there is one DFAS and we took a bold step 11 years ago to form DFAS, that was really just half of it. There are literally—and I guess I'd ask Nelson Toye—hundreds of other accounting functions out there in the services, in the defense agencies, and lots of room for consolidation and standardization.

Ms. JONAS. Mr. Chairman, I would just add, the systems which we called non-financial feeder systems, which incorporate all the service systems that they use for inventory and every other system, I think there are about 200 that we have identified so far, and we're not positive that that's the bottom of the barrel. In fact, one of the efforts that we're currently looking at is getting a better inventory of these systems. It is enormous. It is just going to be a huge problem.

We have to have the information. The data that flows from those non-financial feeder systems must be accurate as well. Tom's just got the financial end of it, but the data that flows into it has to be accurate in order to have integrity. I think we have our hands full, and that's why we had to go to a blueprint, or what they call an enterprise architecture, to just get a handle on what are we talking about in terms of the systems that are required to give the kind of trustworthy data that we need. Our budget request is about $100 million for 2002 to begin this. So it's a fairly sizable amount that the Secretary has set aside to try to address this very serious problem.

Mr. HORN. Well, I think, as everybody knows, we have a real problem in terms of human infrastructure, not just the machines, and we're losing thousands of people from the services, from the civilian side. I would hope that in this administration every single political appointee goes to some college so that they can make a speech as to the opportunities that one has. You never get the chance that you have in the services. They have more responsibility and they are responsible for millions of dollars worth of equipment and all the rest. We ought to make that challenge in some of the people that are graduated, both undergraduates and graduates. I would hope we would work that system and try to say, you know, 10,000 people are leaving; we need 20,000 maybe or 15,000 to solve some of this.

Ms. JONAS. Dr. Zakheim has been out, he has his doctorate and he is a very strong supporter of education, and we will take every opportunity, Mr. Chairman, Jeff has raised, and the Comptroller General has raised, with Secretary of Defense Rumsfeld many of

these issues—in fact, did so, I think, last Friday. So we are very attentive to the issues that GAO is raising, and we're glad that they are raising them. It gives us the opportunity to try to address them.

Mr. HORN. You are one of us on Capitol Hill. So how did it shock you when you went over there——

Ms. JONAS. Yes, you're right, Mr. Chairman.

Mr. HORN [continuing]. Since you were handling appropriations?

Ms. JONAS. I worked on the health care accounts for Mr. Young and that was a shock. They had similar issues and problems. So I was somewhat aware of what I was walking into.

Mr. HORN. Well, you should know all the ins and outs then.

Ms. JONAS. Not all.

Mr. HORN. And maybe in a couple more months you'll know all of the Defense Department's ins and outs.

So what is the best way we can say to solve this problem now? Is it just putting people on it, Mr. Bloom, or what? What do you think? How can we get a plan moving to solve this thing?

Mr. BLOOM. We need a holistic approach. I grew up in Detroit, and I was a goalie in hockey as a kid. My job at Defense is kind of as a goalie. I am the last line of defense. But that isn't—we need to get the whole team working together. We need to get the forwards and the centers and the defensemen, and that's the acquisition community; it's the FM community throughout DOD. We all need to be working together on this. We haven't done a great job, frankly, of working together and taking the holistic approach. Certainly this report is going to help get our attention and force us to do that, to work more as a team, so that we're not relying on just one part of the team to make sure that the wrong things don't happen.

Mr. HORN. Well, if you don't mind, General, I would like General Odgers to come forward so we can get a feeling for what goes on in the Air Force and how that relates to the overall defense situation. You've got a lot of talented people that go into the Air Force. I just wondered, what do you see as the kind of talent you are getting to help you in accounting situations and general housekeeping and administration, and whether your people coming out of ROTC, or whatever, can you get talented people to deal with that?

General ODGERS. Mr. Chairman, Ms. Schakowsky, I am Major General Everett Odgers, and I am the Director of Financial Management and Comptroller for Air Force Materiel Command—in lay terms, I'm the Chief Financial Officer. We're the parent command for the centers where most of these activities took place that are detailed in the GAO report.

We do have a very difficult time recruiting and retaining qualified financial management personnel. We have teams we send out to the universities annually to recruit people, bring them into what we call our PALACE Acquire Program, which is a 3-year training program, to take their accounting and financial management degrees and grow them into useful Federal Government employees for our accounting and financial purposes. That program works very well, but it clearly does not bring on nearly the people that we need.

As we work through all of the workforce issues that we have within the Department of Defense and in the Air Force, we continue to strive to find qualified people. It's an extremely difficult process. We are in competition with private industry, and it is very stiff competition. In many cases they win at some of the bigger and more prestigious universities where we would like to draw talent from, sir.

Mr. HORN. Do you lose a lot of people after your 2 or 3 years of helping them through college and this kind of thing?

General ODGERS. Our experience in the more lucrative employment markets, such as the area around Hanscom Air Force Base, Boston, MA, and Los Angeles near the Space and Missile Center, and areas such as that, we are in stiff competition and we tend to lose these people either to contractors who are working for us in some way or to private industry, sir.

Mr. HORN. What can we do about it, anything else?

General ODGERS. We have worked with the Air Force, our command has, in workforce-shaping initiatives to find ways to better recruit people, through legislation or other activities, to offer bonuses to people as we recruit them so we can become more competitive with private industry and draw the talent that we need, sir.

Mr. HORN. Let me move back to Mr. Bloom. I want to focus on following two specific cases. One adjustment charged fiscal year 1998 and 1999 appropriations for $21 million in payments that were made before these appropriations had been enacted into law. This is an obvious violation of the law and common sense. I wonder what you can tell me about this and the $21 million, and where is it now?

Mr. BLOOM. It was just a mistake. JoAnn may be able to give more details. No excuse, sir.

Mr. HORN. Ms. Boutelle is the Director, Commercial Pay Services, Defense Finance and Accounting Service.

Ms. BOUTELLE. Yes, sir, and we receive adjustments from the services as well as from the staff that we have at Columbus performing reconciliations and from contractors. The particular one you're addressing, the $21 million, came in from the Air Force, and I would have to defer to General Odgers for any specifics on those adjustments. I can tell you that, where DFAS was wrong was that when those adjustments did come in and fed through our contract reconciliation system, we did not have an edit in place to catch them and bring them to someone's attention. That is one of the system fixes that we are working on.

Mr. HORN. General, what about that $21 million in payments that were made before these appropriations had been enacted into law?

General ODGERS. Sir, clearly, the actions that were taken, the recommendations that were made by the Air Force people for those transactions were in error. We are in the process of correcting those entries, and as we do that, we go through looking at all of the ancillary accounts that are involved in this to determine whether there are any problems that will arise such as a negative account where we would have to go into an Antideficiency Act investigation. Clearly, we were in error. The internal controls that were

in place, the management actions that should have taken place, did not occur, sir, and we need to fix that.

Mr. HORN. Now is that going to be fixed within the Air Force or is it going to be fixed within the Department of Defense?

General ODGERS. We obviously are going to work with the Department of Defense, but on the Air Force's part we recognize that we need to take some very rapid action. We are very concerned. We consider this a significant setback in our work toward CFO compliance, as you've had hearings on this subject in prior years, sir.

We have launched an intensive training program for our program managers, financial management people, contracting people, the contractors who work with us in this area, for our reconciliation agents, the people who sign off on many of the modifications. We want to go out and give them intensive training modeled after the New Start process that we went through last year after we ran into some very serious problems there. So we plan on going out, launching that program in the month of August, to give them refresher training in accounting for appropriations, particularly where canceled year funds are involved, to assure everyone understands the law and how the law operates.

In the longer term we need to work with the Defense Acquisition University to try to get more accounting and fiscal law information into their courses for the financial managers, program managers, and acquisition people, and we are establishing, working with Mr. Speer, who is the Principal Assistant Deputy Secretary of the Air Force for Financial Management, limits for approval of these types of transactions, where up to $1 million the program manager has to sign off on them; from $1 million to $10 million, the center or installation comptroller will have to sign off; $10 million to $25 million comes to my office at the major command, and $25 million and above will have to come to the Air Force. This is a process that we have for some other things. It works very well, and we think putting this in place for some period of time at least will get the system back under control, so that we will know what is happening out there, sir.

Mr. HORN. In terms of the professionals and the support service on the financial side of the Air Force, how many do you have that are civilian? How many are Air Force?

General ODGERS. Uniformed members, sir?

Mr. HORN. Yes.

General ODGERS. In my command—and I can only speak for Air Force Materiel Command; I do represent about 28 percent of the total Air Force—35 percent of the civilian population, and 15 percent of the military population, sir.

Mr. HORN. Now on the military side, if you have somebody that is really lousing things up, you can either not promote them or you can do a number of things.

General ODGERS. Correct.

Mr. HORN. But you don't really have much power on the civilian side, I would guess.

General ODGERS. Sir, if in the process of investigating a transaction or some other activity that took place, if, in fact, it pointed to an impropriety or someone creating some illegal act, then there are administrative procedures that we certainly can take. The com-

mander has the prerogative to deal with these people through administrative punishment up to and including dismissal from the service, sir, if it's serious enough.

Mr. HORN. Well, would you say that you have better sanctions with the uniformed services than you have with the non-uniformed?

General ODGERS. I would not agree with that totally, if I might, sir, phrase it that way.

Mr. HORN. Sure.

General ODGERS. We have equal ability to investigate any impropriety that occurs. Obviously, the military justice system is significantly different than it is on the civil service side, but both of those provide us the opportunity to prosecute people if, in fact, that is necessary—much swifter and quicker perhaps on the military side.

Mr. HORN. When I go through the military side, I often remember that it used to be master sergeants and chief petty officers that could have easily fixed that up, and if they didn't, they had usually two books going anyhow. So whatever happened to those people? [Laughter.]

General ODGERS. I don't know, sir. We've lost a lot of them, I know that.

Mr. HORN. Yes. Don't you wish we had them, right?

General ODGERS. Yes, sir.

Mr. HORN. OK, one more example now, Mr. Bloom: The second adjustment resulted in shifting to other accounts $210 million in payments that had been charged correctly in the first place. In other words, this adjustment managed to convert $210 million of the correct charges into accounting errors. How are we going to handle that one?

Mr. BLOOM. Well, again, in the short-run, we need to look at every one of those transactions and figure out why we did it, why it got by us. In the long-run, having better managers, having better trained people and the systems enhancements—I mean, not only were these unnecessary, but they were costly. In other words, it costs us more money to do the wrong thing, and from an efficiency standpoint that was bad. It's really the same tack. We just need to be better accountants. We need to do a better job, sir.

Mr. HORN. I am going to yield the rest of the questions to the gentlewoman from Illinois, Ms. Schakowsky.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman. Unfortunately, I think I have more questions than time, but I do want to make a couple of points.

Ms. Jonas, your predecessor reported, I guess to the Armed Services Committee, or it was said to them that the DOD can't account for $40 to $50 million each and every day. That is a lot of money. You talked about $50 million for training in a year. That is a lot of money, too. But to not be able to account for that much money is completely and totally unacceptable. I look at that spiderweb and it doesn't surprise me that people, regardless of pay, might be reluctant to step into the middle of that. I mean, who would want to be in a systems environment that looks anything like that? Yes, maybe you could put that up. I mean, I don't know what salary would encourage me to step into that.

The way I deal with spiderwebs is I knock them out. And trapped in that spiderweb are billions and billions of taxpayer dollars right there. Now that is an insult to the spider no doubt, and in this case probably a lot of spiders that are in there creating that web, but, clearly, we need to do that.

But the question—and everyone acknowledges that, but it's always in—I don't know what you call that part of speech—"We are working toward," "We are in the process of." If we were to call you back in 3 months, what could we expect is going to be different from what has happened? Anyone can answer that.

Ms. BOUTELLE. Well, I can say from the DFAS-Columbus systems problem that there were—what—35 of the transactions that were in that illegal category, where we adjusted to an appropriation that was canceled at the time or not enacted. The system changes, we put in one that went in in May and that has fixed the backward move. Now there's a few little problems with it that we're working to resolve.

And then the fix to——

Ms. SCHAKOWSKY. That is a scary thought, but OK, fix them.

Ms. BOUTELLE. We are. We are.

Ms. SCHAKOWSKY. Those little mistakes end up being $21 million here and $40 million there.

Ms. BOUTELLE. Absolutely. Then the fix for the moving-forward adjustments, that's the one that the developers are programming and will be testing and have that in place by the end of September. So these 35 transactions that got through will be caught and will not be allowed to go through. So in 3 months we will definitely be able to tell you those fixes are in the system.

The other thing that we're doing, we have trained a lot of the reconcilers that are government employees as well as contractors on appropriation law and on the specifics of these situations. We plan on having the rest of them trained by the end of September, so that they will also be knowledgeable. Hopefully, then, with the system fixes as well as the knowledge, we won't find reoccurrences of these problems.

General ODGERS. Ma'am, if I might add to that?

Ms. SCHAKOWSKY. Yes.

General ODGERS. Working with Ms. Boutelle, the actions that we're putting in place, I would like to believe that once we get the process in place where these actions have to be certified by people above the program office, she won't see very many of them and her systems won't have to catch them.

Ms. SCHAKOWSKY. And that will be when?

General ODGERS. That will be immediately. So 3 months of now, the number of transactions that she sees that are improper should not exist. I mean, they will not be there.

Ms. SCHAKOWSKY. Mr. Steinhoff.

Mr. STEINHOFF. I think in 3 months you'll see a number of the short term actions that I referred to in my opening statement to deal with this immediate problem that led to the illegal and improper transactions. Your spiderweb will still be alive and well. It will be alive and well for a number of years. This is a world-class challenge. Ms. Jonas mentioned the systems architecture for all the business systems in Defense. I think you're talking somewhere on

the order of 7 years or more before they're able to really get their systems in shape. That's just a very rough guesstimate.

Ms. SCHAKOWSKY. Ms. Jonas, how does that number sound to you?

Ms. JONAS. The Secretary of Defense wants us to have this done in 6 years.

Ms. SCHAKOWSKY. OK.

Ms. JONAS. But I don't know that's possible, but we must strive to make clear near-term—within, you know, less than a decade—processes.

Mr. STEINHOFF. And the holistic approach that Mr. Bloom mentioned before is really what is needed because, if you look back over time, the road in Defense is littered with billions and billions of dollars of systems development efforts that were well-intended going in with high hopes, and they just didn't work real well. In part it was because they were done in a stovepiped manner without a clear set of blueprints for how they fit in with something else. So this transformation that the Secretary is beginning is very important, and the control over those appropriations for systems and the wise spending of the moneys will be very important to make his 6-year goal.

Ms. SCHAKOWSKY. And I think, Mr. Chairman, your efforts to continually engage in this kind of oversight activity is equally important to make sure that it is clear to everyone that someone is watching. Thank you very much, Mr. Chairman.

Mr. HORN. Well, thank you and we appreciate the questions you have asked, and we will make sure you ask a lot of others in the months to come.

I might add that wonderful chart of the General Accounting Office could conceivably come out of the papers of science and administration and Grykunus' chart, for those of you that read those books in the thirties, forties, and fifties, but it is a geometric move and it is very difficult to take those and figure them out.

We've got to find a way to stop this practice, and I hope that the people from the Department of Defense will really focus on this because I am going to hold a hearing about 3 months from now on this and see how far you have come. Closed accounts should be closed accounts. If any one of us wrote bad checks, they would bounce. If we intentionally wrote those bad checks, we would land in jail. That apparently doesn't apply to the government's largest agency. Over and over, Congress receives reports of departments and agencies violating Federal financial management laws and nothing seems to happen. Likewise, nothing changes.

There is another law on the books, as Ms. Jonas notes, called the Antideficiency Act, and it is not enforced often. It is time to re-examine them now.

We will send you some questions we would like for both the minority and the majority. So we would like to know where you are, and then 3 months from now we will be back here.

I want to thank all of you for coming. I want to thank our staff: J. Russell George, right behind me, the staff director/chief counsel; Bonnie Heald, next to him, director of communications; Henry Wray, on my left, senior counsel in putting this together; Scott Fagan, assistant to the subcommittee; Chris Barkley, staff assist-

ant; Davidson Hulfish, Samantha Archey, and Fred Ephraim, interns; and a hard-working young intern, Fariha—it is Fariha's last day with the subcommittee as an intern. Where is she? There you are. Thank you. She is one of our best interns. And then Christopher Armato, another intern.

And the minority staff: Michelle Ash, the minority counsel; Jean Gosa, minority clerk. And Geri Lyda, the court reporter.

Thank you very much, and we are adjourned for 3 months.

[Whereupon, at 11:30 a.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

The 1990 law did not specifically authorize adjustments to closed accounts, and initially the Treasury Department rejected DOD's attempts to adjust them. However, GAO issued a legal opinion holding that DOD could make such adjustments in limited circumstances. The GAO opinion was controversial. Senator Grassley strongly disagreed with it. He regarded adjustments to closed accounts as a "gimmick to circumvent the law and make another end run around Congress." He warned that permitting such adjustments created a loophole that would allow DOD to continue to spend hundreds of millions of dollars "through the back door," thereby avoiding the appropriations process.

Attached is a Congressional Record excerpt from 1994 that provides background on this issue.

trying to enhance his security while he is in this war zone. While the Ambassador can carry out some of his duties from Vienna, he is still the Ambassador to Bosnia and must have the ability to represent the United States in Sarajevo on a fairly regular basis.

I believe that it is in the United States interest to have a presence in Sarajevo on a more regular basis consistent with reasonable security requirements. The United States recognizes and has established diplomatic relations with Bosnia and Herzegovina. While administration policy has been to push aside the issue of the war in Bosnia as much as possible, we cannot let our representation and presence in Bosnia suffer the same fate.

Therefore, I hope that those responsible for this matter in the State Department will interpret this amendment as a big hint and move forward with providing the Ambassador immediately with armored vehicles, a reliable communications capability, and at the very least, a semipermanent facility for which he can operate in Sarajevo, and where he can take shelter if he gets stuck there during periods of intensified fighting. Let's not forget that the situation in Sarajevo is unpredictable; the Ambassador may intend to go in for a day, but find that the airport is closed only an hour later—we're not talking about the Washington-New York shuttle.

I thank the managers for working with us on language that is acceptable to the Foreign Relations Committee.

Mr. KERRY. Madam President, if I may just clarify for the record, the Senator from North Carolina was absolutely correct that there are technical amendments in the group of en bloc amendments. But there are also amendments of substance that both sides have agreed on that are in these en bloc amendments. So I think, for the record, for anybody wondering, all of the amendments are amendments that have been cleared on both sides and that would have been passed by voice vote.

Madam President, with respect to the bill we have been on up until now, the State authorization bill, there will be votes Tuesday beginning at 10 o'clock in the morning and we will be here to work on amendments as of 1 o'clock on Monday. So for those people who are on the list who have amendments that need to be disposed of before the deadline on Tuesday evening, we will be working Monday at 1 o'clock with votes to occur starting at 10 o'clock in the morning on Tuesday.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER The absence of a quorum has been suggested. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Madam President, I ask unanimous consent to speak as if in the morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE AMICUS CURIAE BRIEF IN UNITED STATES VERSUS KNOX

Mr. GRASSLEY. Madam President, I wanted to bring my colleagues up to date on the status of an amicus brief that many of us will file in the case of United States versus Knox.

On November 4, all 100 of us voted for a resolution that Senator ROTH and I offered that expressed the sense of the Senate that the Government's Supreme Court brief in the Knox case failed to reflect congressional intent in enacting the Child Protection Act of 1984.

Knox, a repeat offender under this statute, had purchased videos that portrayed young, scantily clad girls in provocative poses. In the resolution, we rejected the Government brief's newly found focus on the intent of the victim, rather than the pornographer's intent as reflected in the video.

We also rejected the Government's requirement that the child be nude or that the pubic area be discernible.

We rejected that brief because it is very clear that it was contrary to the intent of the 1984 act. And if it was not so clear, we would not have approved a reaffirmation of that 1984 statute by a vote of 100 to zero, in turn rejecting the Government's newfound interpretation of that 1984 statute.

Following the unanimous vote on the resolution, Senator HEFLIN and I have coordinated the filing of an amicus brief in the third circuit, where the Knox case is now pending.

The court has granted permission for Members of Congress to file such a brief, and has allowed additional interested Members to join the brief. Currently, more than 150 Members of Congress have agreed to appear on the brief, including 33 Senators.

As evidence of the nonpolitical nature of the brief, the Members include Democrats and Republicans, liberals, moderates, and conservatives, northerners and southerners. All of these diverse Members agree that the Justice Department has flouted congressional intent.

And they know that unless Members of Congress appear in the case and argue the original intent of the statute, then no one else will, since the Government decided to go a different direction in their interpretation of the law.

Child pornography is a serious evil. The sexual exploitation of children that necessarily occurs in its production leaves lifelong scars on these young people. These potential victims deserve the protection of strong laws, and Congress has passed tough legislation against these practices. And we recognized that the harm to children does not exist only where the child herself intends to act lasciviously or is nude.

I simply cannot understand why the Government has taken the same side as the child pornography offender in this case. And 150 other Members of Congress, both Republican and Democrat, agree.

We have continued to add Members to our brief, as the court order granting us leave to appear in the case permits additional Members to be added until the brief is filed. Just within the last 2 days, two more Senators have had their names added. Pending procedural motions in the case mean that the brief will be filed soon, perhaps in only a few weeks.

Nonetheless there is still time for additional colleagues to join the brief that reflects the position all of us took on November 4, on the sense-of-the-Senate resolution when 100 to zero, we reaffirmed the original 1984 interpretation of that statute.

So I urge additional Senators to join the brief before the Third Circuit in Pennsylvania. And I urge them to do this to further the purpose of the original anti-child-pornography statute passed in 1984: Because we wanted to protect the children of America.

M ACCOUNTS

Mr. GRASSLEY. Madam President, I will address another point, something that I addressed over a long period of time—last year, at least—the breakdown of discipline and integrity in financial management within the Government. I suppose there are problems all the way through Government on this. But I have been spending most of my time speaking about the breakdown of such discipline and integrity in fiscal management specifically within the Defense Department. So, today, speaking further on that, and more specifically to what I feel is incorrect action the General Accounting Office has taken. I want to direct some criticism dealing with the Department of Defense but this time toward the Comptroller General, Mr. Charles Bowsher.

I would have to say over a long period of time I have been very complimentary of things that Mr. Bowsher has done. He cooperated with me on a great number of things. He has been very helpful to the Congress as a whole in making sure that the taxpayers' dollars are well spent. But in this particular instance I have to disagree with what Mr. Bowsher has said.

My concerns about Mr. Bowsher and GAO's decision flow directly from that decision to reopen the Department of Defense, or DOD, M accounts. I am fearful the GAO decision will further the breakdown of discipline and integ-

rity in the fiscal management within our Government. And, of all Government officials, I think the Comptroller General should be in the forefront of enhancing fiscal management of Government. I feel until this decision I have not disagreed very often with Mr. Bowsher.

I would like to divide my presentation on Mr. Bowsher's decision into two parts.

Today, I would like to address the legal issues surrounding the decision.

Then next week I would like to focus on one technical aspect of the decision that I find particularly offensive.

To refresh your memory, Madam President, DOD had stashed $50 billion in expired appropriations in a slush fund known as the M accounts. This money had accumulated over three or four decades. This money had no fiscal year identify and was being used to cover cost overruns and other unauthorized activities beyond the purview of Congress.

So Congress took steps in 1990 to close down the secret bank account. Congress passed a law that phased out the M accounts over a 3-year period. The last M account was closed on September 30, 1993.

Early last year, I heard some Pentagon bureaucrats were planning a last-ditch raid on the M accounts.

They were seeking approval from the Comptroller General to draw substantial sums of money from M accounts that had been closed by a 1990 law that we passed.

The Army wanted to recover $130 million that it said was inadvertently canceled due to a clerical error.

I would like to meet the clerk who misplaced the decimal point and accidentally canceled $130 million in Army budget authority.

The DOD plan causes me concern, Madam President, and it still causes me concern because they can go ahead now under this GAO ruling.

To begin with, why would DOD turn to the Comptroller General for relief from a law passed by Congress?

I think there is an obvious answer.

The bureaucrats in the Pentagon were hoping to use a legal gimmick to circumvent the law and make another end run around Congress.

The Air Force had previously launched a similar probe, seeking relief from the M account law, but Congress threw cold water on that idea.

DOD figured the General Accounting Office [GAO] was easier than Congress. And they are right about that.

The Army's $130 million request was to be a test case—like the camel's nose under the tent. A green light from the Comptroller General on the $130 million could open the flood gates.

The Air Force is waiting in the wings with a request for another $200 to $300 million of clerical error and maybe more.

That is the word on the street. I do not know about the Navy.

So on March 25, 1993, I wrote to Mr. Bowsher to inquire about how he intended to proceed with the DOD request to reopen the M accounts. The M accounts had been closed by act of Congress. It took 6 long months to get an answer.

Then Mr. Bowsher did exactly what I was afraid he would do.

He gave the Pentagon the green light to reenter the magic vault or M accounts.

Madam President, I do not understand Mr. Bowsher's decision.

He cites legal authority but none of it withstands scrutiny.

Madam President, the main source of my concern is Mr. Bowsher's decision paper entitled "Department of the Treasury Request for Opinion on Account Closing Provisions of the Fiscal Year 1991 National Defense Authorization Act." The report is identified, for anybody who wants to read it, by the number B-251287 and is dated September 29, 1993.

Madam President, I ask unanimous consent to print my letter and the GAO documents in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, March 25, 1993.

Hon. CHARLES A. BOWSHER,
Comptroller General, U.S. Government Accounting Office, Washington, DC.

DEAR MR. BOWSHER: I am writing to raise questions about your review of the Department of the Treasury's request to exempt the Department of Defense (DOD) from certain provisions of the "M" account reform act of 1990—Sections 1045 and 1406 of Public Law 101-510.

At DOD's request, the Treasury Department is seeking approval and authority to use "administrative procedures" to draw substantial sums of money—at least $130 million and probably much more—from "M" accounts that have been cancelled and closed by law.

The Treasury Department has asked you to render an opinion on this matter, based on the authority vested in your office by 31 USC 1552 and 31 USC 3526. The request is contained in a letter dated October 27, 1992.

Mr. Bowsher, I am somewhat baffled by the Treasury Department's request, since the department readily admits that there is no authority in the law to do what DOD wants done.

The Treasury Department's letter clearly suggests that the "plain language" of the "M" account reform act leaves no room for "administrative discretion" to resolve DOD's money problem. The Treasury Department letter correctly points out that the balances involved have been cancelled, deobligated, withdrawn, and are no longer available. And, as Treasury points out, the law does contain a safety valve designed specifically to address the DOD's problem. If there are indeed legitimate obligations that are properly charged to accounts that have been closed under the current law, then Section 1405 (b)(7) provides for the use of current appropriations to meet those obligations. The Treasury Department concludes with this assessment:

"The law does not provide for the adjustment or restoration of amounts cancelled or withdrawn based on clerical mistakes or errors in reporting; nor does it provide for administrative correction, after the fact, of cancellations or withdrawals which resulted from clerical mistakes or errors in reporting * * *"

Mr. Bowsher, I think the Treasury Department's interpretation of the law is entirely correct. The intent of the law is crystal clear. There is no ambiguity in the law whatsoever. The accounts in question have been cancelled and closed. The balances in those accounts have been wiped off the books. They are gone. There is nothing in the law that would permit DOD or Treasury to reopen those accounts. And certainly, there is no authority in the law to establish "a pass through account mechanism"—as proposed by Treasury—that would allow for adjustments after accounts were closed due to sloppy bookkeeping procedures.

Furthermore, if DOD had complied fully with the "M" account legislation and audited those accounts and determined which obligations were valid and supported by documentary evidence as required by 31 USC 1501, the Pentagon would not be in this fix today.

Now, Mr. Bowsher, how does DOD find itself in this predicament? How could DOD erroneously cancel $130 million in valid, unliquidated obligations—due to a "clerical error"? As you know so well, this is not the result of a "clerical error." It is the result of sloppy bookkeeping—pure and simple. Disbursements and obligations are not being recorded in accounting books in a timely manner. The delay between the time an obligation is incurred and recorded can be measured in days. It can be months and even years. The process of recording obligations should be nothing more than a technical accounting function, but at the Pentagon, it has become highly politicized—and for good reason. The failure to record obligations in a timely way has become a way of avoiding and concealing Antideficiency Act violations.

It is exactly this kind of problem that gave rise to the "M" account reform act. Sloppy bookkeeping, overobligations, and Antideficiency Act violations seem to be a way of life at the Pentagon. In my mind, this is unacceptable and must not be tolerated.

I would like to urge you not to authorize the Treasury to reopen "M" accounts that have been cancelled and closed by law. I would like to be informed of your final decision on this matter.

Your consideration would be appreciated.

Sincerely,

CHARLES E. GRASSLEY,
U.S. Senator.

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, DC, September 29, 1993.

Hon. CHARLES E. GRASSLEY,
U.S. Senate.

DEAR SENATOR GRASSLEY: This responds to your March 25, 1993 letter regarding a request of the Department of the Treasury for our opinion on the account closing rules in section 1405 of the fiscal year 1991 National Defense Authorization Act. Pub. L. No. 101-510, 104 Stat. 1675 (1990). Specifically, Treasury asked whether it has the authority to restore canceled appropriation account balances in order to correct reporting and accounting errors.

Enclosed is our decision of today, B-251287, which advises that Treasury may not restore

canceled appropriation account balances. A narrow exception to this rule allows for restoration of canceled balances where an obvious clerical mistake has been made. The decision also concludes that Treasury may adjust canceled appropriation account balances in order to record a disbursement that was made prior to cancellation. The recordation of the disbursement is neither a new obligation of, nor an expenditure from, the canceled account, but is merely an accounting adjustment to reflect the liquidation of an obligation that was incurred prior to cancellation. We share your concerns about the bookkeeping practices of the Department of Defense, and recommend, in the decision, that the Secretary of the Treasury establish reasonable time limits for the correction of reporting errors resulting from obvious clerical mistakes and for the matching of disbursements with canceled obligations.

We would be happy to meet with you or your staff to discuss this decision further. Ms. Amy Shimamura of our Office of the General Counsel can arrange such a meeting. Her telephone number is (202 512-5644.

Sincerely yours,

MILTON J. SOCOLAR,
Acting Comptroller General of the United States.

DECISION

Matter of Department of the Treasury Request for Opinion on Account Closing Provisions of the Fiscal Year 1991 National Defense Authorization Act.

File: B-251287.

Date: September 28, 1993.

DIGEST

1. Under the fiscal year 1991 National Defense Authorization Act, canceled merged appropriation account balances may not be restored. 31 U.S.C. §1551 note. However, if the Department of the Treasury is presented with convincing evidence that a reporting error has occurred as a result of an obvious clerical mistake, it may restore such balances to correct the mistake. We recommend that Treasury establish reasonable time limits within which agencies must submit requests for correction of errors.

2. Under the fiscal year 1991 National Defense Authorization Act, canceled appropriation account balances are not available for obligation or expenditure for any purpose. 31 U.S.C. §§1552(a), 1555. The Department of the Treasury, however, may record a disbursement made before cancellation as a payment. Recording the disbursement is neither a new obligation of, nor an expenditure from, a canceled account, but is merely an accounting entry to reflect the liquidation of an obligation before cancellation.

DECISION

The Department of the Treasury (Treasury) requests our opinion on questions raised by the Department of Defense (DOD) regarding the account closing provisions of section 1405(b) of the fiscal year 1991 National Defense Authorization Act (Act), Pub. L. No. 101-510, 104 Stat. 1675 (1990), codified at 31 U.S.C. §1551 note. Treasury asks two specific questions. First, Treasury asks whether it may restore either unobligated or obligated appropriation account balances that were canceled due to reporting errors or clerical mistakes. We conclude that Treasury may do so.

Second, Treasury asks whether it may record as a payment from a canceled account a disbursement made prior to cancellation of the account. Treasury may do so. Since the liquidation of the obligation eliminates the budget authority, leaving nothing to be canceled, recording the disbursement is neither a new obligation of, nor an expenditure from, a closed account. It is merely an accounting entry to reflect the liquidation of an obligation validly incurred and liquidated prior to cancellation.

BACKGROUND

Treasury's question arise from two different situations. In the first situation, the Department of the Army (Army) submitted to Treasury a year-end statement (S.F. 2108) for fiscal year 1991, certifying its balances to be withdrawn and canceled. The Army advises that it mistakenly included approximately $130 million in valid, unliquidated obligations in its listing of unobligated merged surplus authority balances that were canceled under section 1405(b)(3) of the Act. This mistake involves Army procurement appropriations for fiscal years 1983, 1984, 1985, and 1986. The Army has asked the Treasury to restore the $130 million to its "M" account.

The second situation involves delays in year-end reporting with respect to "cross-disbursing" transactions, that is, transactions where one DOD component makes payments for another. Many DOD disbursing officers make payments on obligations of other DOD components as well as of their own component. Inherent in this practice is a time delay between the date of payment and the date on which the activity holding the obligation receives notification of payment. The time delay is exacerbated when the disbursing activity makes an accounting error, for example, by charging the payment to the wrong appropriation account.[1] These cross-disbursing payment issues take on added significance when payments are associated with "M" or expired account balances nearing cancellation dates.

DOD and Treasury note that if the disbursing activity fails to notify the activity holding the obligation in due course, the budget authority supporting the paid obligation may be canceled by operation of law. 31 U.S.C. §§1551 note, 1552(a), leaving only current appropriations available to cover obligations and adjustments to obligations of canceled appropriation accounts. 31 U.S.C. §§1551 note, 1553.

Under prior law, obligated balances of an appropriation account, 2 years after expiration of the account for purposes of obligation, were merged with the obligations of like appropriation accounts from prior fiscal years into what came to be called merged or "M" accounts. 31 U.S.C. §1552 (1988), amended by section 1405(a) of National Defense Authorization Act for 1991, Pub. L. No. 101-510, 104 Stat. 1675. Similarly, the unobligated balances of expired accounts were combined with the unobligated balances of like accounts for prior fiscal years in merged surplus authority accounts. *Id.* To the extent an agency needed additional authority to cover adjustments to obligations or previously unrecorded obligations in the "M" accounts, the agency could restore unobligated amounts from the merged surplus authority accounts to the "M" accounts. *Id.* The merged accounts were available to adjust obligations without fiscal year limitations.

In 1990, Congress determined that the controls over the use of appropriations were not effective and that DOD, in particular, was expending funds from these accounts without sufficient assurance that authority for such expenditures existed or in ways that the Congress did not intend.[2] To correct these defects, Congress enacted the account closing provisions in the fiscal year 1991 National Defense Authorization Act.[3]

The Act eliminates merged accounts and extends an expired appropriation account's fiscal year identity to 5 years, after which time the account closes. 31 U.S.C. §§1551 note, 1552(a). Section 1405(b)(3) of the Act canceled merged surplus authority accounts on December 5, 1990. Section 1405(b)(4) of the Act canceled, on March 5, 1991, merged obligated balances of budget authority that had been in "M" accounts more than 5 years. Under section 1405(b)(4), any remaining "M" account balances are to be canceled by September 30, 1993.

DISCUSSION

As a general rule, Treasury may not restore balances canceled under sections 1405(b)(3), 1405(b)(4), and 1405(b)(6). This proposition flows naturally from Congress's decision to "cancel," that is, to nullify or invalidate, the unobligated balances in the merged surplus authority (section 1405(b)(3)) and the obligated balances in the "M" accounts (sections 1405(b) (4) and (6)). Although the operative language of section 1405(b)(6), entitled the "Cancellation of closed obligated balances," does not use the verb "cancel" to achieve the stated result, it achieves the same result by specifying that "[a]mounts so deobligated and withdrawn may not be restored." Thus, the restoration of canceled unobligated balances would be inconsistent with the Act.

This does not mean that Treasury cannot restore amounts so as to correct obvious reporting and clerical errors. We have long held, for example, that Treasury may transfer from the general fund to the correct appropriation account amounts improperly deposited into the general fund. *See, e.g.*, 45 Comp. Gen. 724, 726 (1966); 3 Comp. Gen. 782 (1924); 2 Comp. Gen. 529, 531 (1923); 12 Comp. Dec. 733, 735-36 (1906). The Comptroller of the Treasury explained the rationale underlying this principle: "Taking [the improperly deposited amount] from the Treasury and placing it to the credit in the Treasury of the appropriation to which it belongs violates neither the Constitution nor any other law, but simply corrects an error by which it was placed to the unappropriated surplus instead of to the appropriation to which it belongs." 12 Comp. Dec. at 735. We think the same principle applies here.

In this sense, the Treasury's adjustments of the accounting records does no more than place the funds back into the account where they otherwise belong. As the Supreme Court observed in a related situation, in "would be unrealistic * * * to require congressional authorization before a data processor who misplaces a decimal can 'undo' an inaccurate transfer of Treasury funds." *Republic National Bank of Miami v. United States*, —— U.S. ——, 113 S. Ct. 554, 561 (1992).

We wish to emphasize, however, that Treasury's authority to correct the accounts relates only to obvious clerical errors such as misplaced decimals, transposed digits, or transcribing errors that result in inadvertent cancellations of budget authority, and is not meant to serve as a palliative for deficiencies in DOD's accounting systems. The current record does not provide any indication of the type of mistake at issue here. Only if the Army is able to provide Treasury with convincing evidence that the mistake here falls within the coverage of the above decisions may Treasury adjust Army's accounting records to restore budget authority needed to correct the mistake. One of the very reasons for the new account closing procedures was the inadequacy of DOD's past

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Footnotes at end of article.

accounting of "M" account obligations. *See, e.g.*, H.R. Rep. No. 665, 101st Cong., 2d Sess. 2262 ("not all claims against the M accounts are valid"). We have recently reported on a number of accounting problems in the Army and Air Force which indicate that DOD's accounting for current appropriations is also inadequate. For example, in a report examining the Army's financial statement for fiscal years 1992 and 1991, we were unable to express an opinion on the reliability of the financial statements for those fiscal years because of the Army's accounting systems inadequacies and failure to adhere to DOD and Army financial policies.[4] In another report, we found that five Air Force Air Logistics Centers had inaccurate account balances totalling $512 million due to, among other things, paying a contractor too much, charging the wrong appropriation account, or processing information on obligation, payment, or collection transactions inaccurately or incompletely.[5]

In our view, the type of clerical errors that Treasury can correct should typically manifest themselves soon after an account is closed. The passage of time only magnifies the difficulty inherent in reconstructing the facts needed to establish the error. Therefore, we recommend that Treasury establish reasonable time limits within which agencies must submit requests for correction of reporting errors resulting from obvious clerical mistakes.[6]

Turning to the second question, Treasury may adjust canceled appropriation account balances to record disbursements made before cancellation of expired accounts. The restriction in section 1552(a) of title 31, United States Code, codifying section 1405(a)(1) of the Act, does not apply because recording the disbursement results in neither a new obligation of, nor an expenditure from, the canceled appropriation account. The liquidation of the obligation eliminates the underlying budget authority, leaving nothing to be canceled. It completes the transaction and discharges the government's liability. The recording of the disbursement made prior to cancellation of the expired account is simply an accounting entry to reflect the completion of the transaction before cancellation of the expired account. We see no reason why DOD and Treasury should not record these disbursements for canceled "M" account or expired account balances.[7]

Accordingly, if DOD is able to establish to the satisfaction of the Treasury that a validly recorded obligation in a canceled appropriation account was liquidated before cancellation, then Treasury may adjust the canceled appropriation account balance to reflect the disbursement. If a disbursement that was made before cancellation of an appropriation account cannot be matched with a recorded obligation of a canceled account, but DOD can establish to the satisfaction of Treasury that the disbursement represents payment of a valid unrecorded obligation otherwise properly chargeable against the canceled appropriation account, then Treasury may adjust the canceled account balance to reflect the disbursement. Of course, if there is insufficient budget authority available in the canceled account to cover the disbursement, DOD should determine whether there was a reportable violation of the Antideficiency Act, 31 U.S.C. §1341.

We recommend that if the Secretary of Defense cannot match disbursements with obligations of canceled appropriation accounts within time limits established by Treasury,[8] the Secretary determine the reason for DOD's inability to do so, and take appropriate action to correct the problem.

FOOTNOTES

[1] We have reported that the Navy's Standard Accounting and Reporting System which annually accounts for nearly $57 billion, or 57 percent, of the Navy's overall budget, contained $12.3 billion in unmatched disbursements as of February 15, 1992. In that report, we stated that unmatched disbursements were largely caused by lax compliance with existing guidance, procedural requirements, and internal controls. GAO Report to the Acting Secretary of the Navy, "FINANCIAL MANAGEMENT—Navy Records Contain Billions in Unmatched Disbursements," GAO/AFMD-93-21 (June 1993).

[2] GAO Report to Congressional Committees, "FINANCIAL MANAGEMENT—Agencies' Actions to Eliminate "M" Accounts and Merged Surplus Authority," GAO/AFMD-93-7 (April 1992).

[3] H.R. Rep. No. 665, 101st Cong., 2d Sess. 2262-63 (1990).

[4] GAO Report to the Congress, "FINANCIAL AUDIT—Examination of the Army's Financial Statements for Fiscal Years 1992 and 1991," GAO/AIMD-93-1 (June 1992).

[5] GAO Report to the Chairman, Subcommittee on Defense, Committee on Appropriations, House of Representatives, "FINANCIAL MANAGEMENT—Air Force Records Contain $512 Million in Negative Unliquidated Obligations," GAO/AFMD-89-78 (June 1989).

[6] Pursuant to section 4220.60 of the Treasury Financial Manual (TFM), treasury requires the submission of year-end closing reports by deadlines specified in TFM Bulletins.

[7] The alternative of using current appropriations, provided by sections 1405(a)(1) and 1406(b)(7) of the Act, 31 U.S.C. §§1551 note, 1553(b)(1), would not be appropriate here because under those sections current appropriations are only available for obligations and adjustments to obligations that would have been chargeable to canceled balances. Obligations that were liquidated by disbursements made prior to cancellation are no longer obligations of the canceled account. The use of current appropriations to liquidate paid obligations would result in a double charge to budget authority.

[8] With available technology, DOD should have no difficulty reconciling its year-end expenditures with obligations in time for inclusion in year-end closing reports required by Treasury.

Mr. GRASSLEY. First, Mr. Bowsher's decision authorizes DOD to regain access to M accounts that have been closed by law.

If the Department can present convincing evidence that valid obligations were accidentally canceled because of a clerical error, Mr. Bowsher is willing to reopen the doors to the Magic Vault—but just a crack, he promises. Not very much, just for $130 million clerical error. How many more will we have?

Second, Mr. Bowsher's decision authorizes the DOD to continue recording obligations and disbursements against closed M accounts—but only if the transactions were made prior to cancellation of those accounts.

Third, Mr. Bowsher's decision authorizes DOD to monkey with the M accounts indefinitely.

Mr. Bowsher's decision lacks a sound foundation in law. I am referring, of course, again to the 1990 M account reform law embodied in sections 1405 and 1406 of Public Law 101-510, the law that we passed in 1990 that canceled all M account authority. The intent of the law is crystal clear. There is no ambiguity in the law whatsoever: No more slush fund in the honey pot, period.

I believe that the legal analysis underlying Mr. Bowsher's decision in this M account case OK'ing a $130 million clerical error to be paid for is flawed for two reasons.

The first is that the M account reform legislation canceled account balances and provided no basis whatsoever for reopening them. This clear statutory directive supersedes existing discretionary authority to reopen accounts to correct clerical errors. There is nothing in the law that leaves an opportunity to go back and replace a missing decimal point or a lost number. Again, that is a $130 million clerical error that was a misplaced decimal.

Next, the authority cited by the GAO is weak. The only authority that the Comptroller General gives is a handful of previous rulings by the Comptroller General and two paragraphs of dicta from Justice Blackmun's opinion in the Republic National Bank of Miami versus United States. That opinion was joined by only two other Justices. Instead, six Justices wrote concurrently to express their disagreement with the part of the opinion cited as authority for the General Accounting Office's decision.

Here is the legal basis for this, I want to emphasize. The Comptroller General used previous Comptroller General opinions and then dicta in a statement by a Supreme Court Justice that was a minority view, a 6-to-2 decision. It does not seem to me, regardless of how distinguished Justice Blackmun might be, that the discussion in any way reaches the situation at hand as a basis for a legal determination for the Comptroller General to approve a $130 million clerical error. I think it is a decision made in the sand that will not stand up to authority.

Furthermore, I think the decision is unnecessary. The M account reform law contains a safety valve specifically designed to address the Department of Defense's money problem. If the obligations in question are legitimate and if they are properly chargeable to accounts that have been closed by law, then the Department of Defense is authorized under section 1405(b)(7) to use current appropriations to pay the bills.

So I am baffled and somewhat disturbed by Mr. Bowsher's decision allowing them to go elsewhere for $130 million. In frustration, I requested a meeting with Mr. Bowsher. The meeting took place on November 4, 1993, in my office. It was attended by the Acting Comptroller General, Mr. Milton Socolar, who made the decision in Mr. Bowsher's absence. But I can assure you that Mr. Bowsher is backing up Mr. Socolar 100 percent. The meeting with Mr. Socolar deepened very much my frustration. The meeting did nothing to address my concerns and to answer my questions.

In a final attempt to clarify and resolve the issue, I went back both to Mr. Bowsher and Mr. Socolar with three specific questions. These letters are dated November 9, 1993, and I ask unanimous consent to print this correspondence, as well as the responses from the

General Accounting Office, in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, November 9, 1993.

Hon. CHARLES A. BOWSHER,
Comptroller General, U.S. General Accounting Office, Washington, DC.

DEAR MR. BOWSHER: I am writing to express concern about Mr. Socolar's recent decision giving the Department of Defense (DOD) continued access to certain "M" accounts that were closed by law.

A copy of Mr. Socolar's decision is attached for your review. It is dated September 29, 1993. I understand that you were "traveling on the west coast" on that date. In your absence, the decision was approved and signed by Mr. Socolar.

I thought, perhaps, that you might either be unaware of Mr. Socolar's decision or maybe you just have not had a chance to review it.

I am troubled by Mr. Socolar's decision and question its legal foundation. The opinion fails to address the question of why the M account reform law does not clearly eliminate any discretion to reopen closed accounts because of a clerical error, and fails to cite any binding legal authority in support of this broad discretionary authority vested in the Treasury.

I shared those same concerns with Mr. Socolar during a meeting in my office on October 4th and repeated them in a letter to him dated today. A copy is attached for your information.

Would you be kind enough to examine Mr. Socolar's decision on the M accounts and let me know whether you agree with his conclusions in their entirety.

Your cooperation in this matter would be appreciated.

Sincerely,

CHARLES E. GRASSLEY,
U.S. Senator.

U.S. SENATE,
Washington, DC, November 9, 1993.

Mr. MILTON J. SOCOLAR,
Acting Comptroller General, U.S. General Accounting Office, Washington, DC.

DEAR MR. SOCOLAR: I am writing to follow up on our meeting of November 4th, concerning Department of Defense (DOD) M accounts.

First, I would like to thank you for your willingness to review the evidence the Army will be submitting to the Department of the Treasury to prove that $180 million in budget authority was accidentally canceled due to clerical error. You agreed to report back to me within two weeks on the results of that review. I appreciate your offer and look forward to seeing your end product.

I also hope you will scrutinize other similar requests with equal vigor, because I keep hearing the Air Force has $200 to $300 million in "obvious clerical errors" that it is ready to present to the Treasury now that your decision has been rendered.

Second, I am not convinced that your decision of September 29, 1993, that Treasury/DOD can reopen accounts canceled pursuant to the M account reform act where there have been clerical or transcription errors, is supported by law. I find your analysis flawed for two reasons:

(1) M account reform legislation clearly cancels account balances without providing any basis for reopening them. This clear statutory directive supersedes any otherwise existing discretion to reopen accounts for clerical errors (refer to Section 1405 of Public Law 101-510).

(2) Even if the M account reform law does not supersede otherwise existing discretion to correct clerical errors, the authority you provide for your contention that such discretion does exist is weak. Your only authority for this proposition is a handful of previous decisions of the Comptroller General and two paragraphs of dicta from Justice Blackmun's opinion in Republic National Bank of Miami v. United States, a portion of the opinion of which only three justices joined. Indeed, six justices wrote concurrently to express their disagreement with the part of the opinion you cite as authority for your position. Moreover, the discussion by Justice Blackmun does not reach the situation at hand. This is not merely a situation involving an "inaccurate transfer" . . . "where money intended for one account was accidentally deposited in another." And in the M account situation, there is clear Congressional authority that the accounts cannot be reopened, even for clerical errors.

Mr. Socolar, I urge you to clarify and reveal the basis you found in the M account statute or other binding legal authority for concluding that Treasury/DOD retain authority to reopen the M accounts to correct clerical errors.

Third, I fear that your decision gives DOD continued access to the M accounts for an indefinite period of time.

Your decision directs the Secretary of the Treasury to "establish reasonable time limits" for the correction of obvious clerical mistakes and for matching expenditures with obligations.

Mr. Socolar, I do not understand why you failed to recommend reasonable time limits for recording financial transactions.

As the Acting Comptroller General, you should know what constitutes a "reasonable" period of time for recording obligations and expenditures. Is it 5 days, a month, 6 months, or 3 years? I would like to have a specific answer to the question.

Fourth, I would like to have your advise and assistance in drafting legislation to end the widespread practice of not recording obligations and expenditures as they occur.

The failure to record obligations and expenditures in the books has led to a very dangerous situation. DOD could have up to $50 billion in "unmatched disbursements"—checks or payments that cannot be matched with or linked to obligations.

A multi-billion dollar pool of unmatched disbursements—from a Pentagon bureaucrat's point of view—has many of the advantages of another slush fund. It can be used to hide illegal and unauthorized payments.

As your office has reported in the recent past, this could mean that "fraudulent or erroneous payments may have occurred without being detected or disbursements have exceeded appropriation and other legal limits," that is, a violation of the Anti-Deficiency Act (see AFMD-93-21, page 1).

The inability to match disbursements with obligations led directly to your decision on the M accounts, and it is one of the main reasons why your auditors cannot audit the government's books—like those of the Defense Business Operations Fund (DBOF). The continuing inability to match disbursements with obligations means that the government does not know which bills have been paid or how much money remains in the various appropriations accounts to cover emerging obligations. It means DOD has lost control over the peoples' money. It means DOD does not know how the money is being spent. Financial management at the Pentagon is nonexistent.

I hope you will help me fix the problem. Now, what is the best way to do it?

Should we try to beef up Section 3528 of Title 31? If "certifying officials" were doing their jobs, as defined in Section 3528, all necessary accounting hookups would be made or established prior to payment. Unrecorded obligations and unmatched disbursements would not exist. Why are "certifying officials" failing to carry out their responsibilities under the law? Or is there a better way to accomplish that goal?

I hope you will help me craft some remedial legislation. In doing this, we will need to work with the Governmental Affairs Committee and Mr. Hamre in the Pentagon.

Your assistance in these matters would be appreciated.

Sincerely,

CHARLES E. GRASSLEY,
U.S. Senator.

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, DC, December 22, 1993.

Hon. CHARLES E. GRASSLEY,
U.S. Senate.

DEAR SENATOR GRASSLEY: Thank you for your letter of November 9, 1993 expressing concerns about our decision of September 29, 1993 (B-251287). You are particularly concerned that by allowing the Department of the Treasury to correct obvious clerical errors in Department of Defense year-end reports on canceled merged balances, we are making additional budget authority available to DOD.

By separate letter of today's date, Milton Socolar is responding to your specific concerns about the decision. As he explains in his letter to you, our decision does not provide the Department of Defense (DOD) with any more budget authority than is otherwise would have.

I share your desire to see significant improvement in the accuracy and reliability of DOD's financial management systems. As you know, our reports have repeatedly highlighted the numerous problems at DOD in need of corrective action. Your continued interest and attention to these issues is vital if we are to make progress in solving these problems.

I look forward to working with you on these important issues in the future. If I can be of further assistance, please do not hesitate to contact me.

Sincerely yours,

CHARLES A. BOWSHER,
Comptroller General of the United States.

SPECIAL ASSISTANT TO THE COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, DC, December 22, 1993.

Hon. CHARLES E. GRASSLEY,
U.S. Senate.

DEAR SENATOR GRASSLEY: This responds to your letter of November 9, 1993, regarding our decision of September 29, 1993 (B-251287), that the Department of the Treasury may correct obvious clerical errors in agency year-end reports on canceled merged balances. In your letter, you question the legal basis for our conclusion that the Treasury may correct clear mistakes in the year-end reports. You also express concern that our decision would allow the Department of Defense (DOD) to reopen closed merged ("M") accounts and to have continued access to the

"M" accounts for an indefinite period of time.

Because section 1405 of the National Defense Authorization Act for Fiscal Year 1991, Pub. L. No. 101-510, 104 Stat. 1675 (1990), canceled the merged balances, you are not persuaded that there is any basis to reopen them, even to correct mistakes. You are also concerned about the adequacy of the authorities we cited to support our decision, particularly our quotation of dicta from Justice Blackmun's decision in Republic National Bank of Miami v. United States, U.S. , 13 S. Ct. 554, 561 (1992).

Treasury's adjustment of the accounting records to correct obvious errors does not, in our view, offend section 1405. As we explained in our decision, we and the Comptroller of the Treasury before us have recognized the authority of the Treasury to correct mistakes without obtaining legislation. See, e.g., 45 Comp. Gen. 724, 730 (1966); 3 Comp. Gen. 762 (1924); 2 Comp. Gen. 599, 601 (1923); 12 Comp. Dec. 733, 735-36 (1906). This view is consistent with the judicial practice of relieving parties from the consequences of accidental mistakes, for example, by reforming legal instruments to accurately reflect the true state of facts or the parties' true agreement. See 27 Am. Jur. 2d, Equity §§ 28-35 (1966); 66 Am. Jur. 2d, Reformation of Instruments, §§48, 77 (1973).

Moreover, the purpose served by such corrections is a salutary one, namely, to correct errors in order that the accounts, in this case the canceled merged balances, accurately reflect the account balances. To prevent abuse, we carefully circumscribed this authority, limiting its use to cases of obvious clerical errors supported by convincing evidence.

With respect to your comments concerning our use of Justice Blackmun's remark in Republic National Bank of Miami v. United States, above, we agree that the passage quoted was dicta and, as you point out, that only two other justices joined this part of Justice Blackmun's opinion. We still think that the nub of Justice Blackmun's observation holds true, namely, that you should not need an act of Congress to correct an obvious clerical error. The separate opinion of the Court did not dispute this principle; rather, they felt it was not relevant to the facts of the dispute at hand. See Republic National Bank of Miami v. United States, U.S. , 113 S. Ct. 554, 562, fn. (1992) (Opinion of Chief Justice Rehnquist).

It is important to recognize that our decision does not provide the Department of Defense with any more budget authority. To the extent that there are corrections of reporting errors resulting in restoration of canceled unobligated balances to canceled "M" accounts, no additional budget authority is created or provided. All obligated balances in the "M" accounts involved in our September 29 decision were canceled on September 30, 1993. The disbursement of any obligation that should have been, but erroneously was not, carried in the "M" accounts prior to cancellation will come out of current funds. The only effect of our decision derives from the fact that charges to current appropriations for obligations of canceled merged balances are limited to the unobligated balances of the original appropriation account available for the same purpose. National Defense Authorization Act for fiscal year 1991, Pub. L. No. 101-510, 104 Stat. 1680, §1405(b)(7) (1990) (codified at 31 U.S.C. §1551 note). Consequently, in order to know how much current authority is available to cover old obligations, there needs to be an accurate rendering of the balances in the old accounts.

We understand that the Department of the Army does not intend to submit its request for correction of the alleged $130 million certification error in its year-end report. With regard to the Department of the Air Force errors that you mention in your letter, to date the Air Force has not submitted a request for correction to Treasury. Additionally, under Treasury's proposed instructions implementing our decision, agencies will be allowed to request correction of mistakes in the accounts canceled on September 30 on only one occasion. Treasury would require agencies to submit their requests for correction by May 1, 1994, and to provide convincing evidence of the clerical error. Since, as we stated in our decision, the type of clerical errors that Treasury can correct should typically manifest themselves soon after the account is closed, we have informally suggested to Treasury staff that 5 months may be longer than necessary to allow for the correction of obvious errors.

We share your concern about the failure of the agencies to record obligations and expenditures as they occur and agree that this practice has exacerbated the problem of unmatched disbursements. We think, however, that current law adequately requires the agencies to record these obligations and expenditures. For example, 31 U.S.C. §1501 and 1108 contemplate that each agency will record all valid obligations of the government and certify to the accuracy of its obligations in its budget submission to the President and the Congress. Additionally, under 44 U.S.C. §3101, each federal agency head is required to make and preserve records containing adequate and proper documentation of its essential transactions in order to protect the legal and financial rights of the government. Further, under the Financial Managers' Financial Integrity Act, 31 U.S.C. §3512, and the Chief Financial Officers Act, 31 U.S.C. §901 et seq., agencies are required to establish systems of internal accounting and administrative controls which provide management with reasonable assurance that obligations are in compliance with applicable laws, and revenues and expenditures are properly accounted for and recorded to permit the preparation of accounts and reliable financial reports.

We think the statutes are clear with regard to the requirement for the proper recording of obligations and expenditures. What we think needs improvements is the execution of the requirement of these statutes. The reports cited in our decision point out the failure of DOD's accounting systems to meet these statutory requirements. For example, one of the reports found that the Navy has $12.3 billion in unmatched disbursements in its Standard Accounting and Reporting System. The problem there was not caused by the lack of statutory guidance, but rather was caused by the Navy's failure to comply with existing guidance, procedural requirements, and internal controls. We recommended that the Assistant Secretary of the Navy (Financial Management) enforce existing regulations and procedures which require the proper resolution of this problem.[1]

We think the Department's Chief Financial Officer must take the appropriate steps to address DOD's failure to record its obligations and expenditures and that other problems we all know exist. In this regard, continued oversight by the Congress and the audit community is the more effective response.

We trust that you will find this information useful.

Sincerely yours,

MILTON J. SOCOLAR,
Special Assistant to the Comptroller General.

Mr. GRASSLEY. Madam President, my questions to Mr. Bowsher were as follows: What was the legal authority for the decision to open the M accounts? And, second, how long will the Department of Defense have access to the M accounts beyond the statutory deadline already passed as of September 30, 1993? Last, what kind of remedial legislation is needed to address these issues in the future if, as I stated, the 1990 law that gives the Department of Defense authority to come to Congress, if there has been a clerical error, does not fill the needs of the Department of Defense?

I did receive an answer to that letter on December 22, 1993. The letters from Mr. Bowsher and Mr. Socolar did not help to bring the issue into sharper focus. What is the legal authority for allowing the Department of Defense to regain access to M accounts shut down 3 years ago? What is the authority for allowing the Department of Defense to draw on account balances that have been canceled by law? Both Mr. Bowsher and Mr. Socolar go to great lengths to deny the decision does what it is really designed to do: Help the Department of Defense get more money out of the back door. This is what Mr. Bowsher and Mr. Socolar said:

Our decision does not provide the Department of Defense with any more budget authority.

Madam President, that is flat wrong. All of the fuss and all of the maneuvering tells me that money is indeed the issue. More money is at stake. The $130 million sought by the Army, that was a misplaced decimal, a clerical error, has been canceled by law. It is gone, it is wiped off the books. But that is $130 million more that was spent not appropriated by Congress.

Now Mr. Bowsher has dredged up an obscure legal gimmick to reauthorize that $130 million in the Army budget authority that was canceled by law. If that happens, then we are talking new budget authority; absolutely new budget authority without a bill passing Congress because the old budget authority was canceled by Congress.

So, Madam President, Mr. Bowsher is creating more budget authority. I think Mr. Bowsher made a bad decision. Unless Mr. Bowsher is able to identify a solid legal foundation to support his decision, he should withdraw the authority to reopen the M accounts. And if we do not get this settled with a more justified approach by the Comptroller General, I hope we in this body for future clerical errors, whether they are $130 million clerical

[1] GAO Report to the Acting Secretary of the Navy, "FINANCIAL MANAGEMENT—Navy Records Contain Billions in Unmatched Disbursements", GAO/AFMD-93-21 (June 1993).

errors, more or less, that we will reject them as we rejected such a request that was made under the 1990 law to the Congress of the United States, because anything short of doing that is just simply, through the back door, giving the Department of Defense the authority to spend hundreds of millions of dollars of more money.

I yield the floor.

MORNING BUSINESS

Mr. KERRY. Madam President, I ask unanimous consent that the Senate now be in a period for morning business, with Senators permitted to speak therein for up to 10 minutes each.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER (Mr. MATHEWS). The Senator from New York.

CONSIDERATION OF PUBLIC AND REGULATORY POLICY—MADISON GUARANTY

Mr. D'AMATO. Mr. President, today eight members of the Senate Banking Committee have sent a letter to Chairman RIEGLE, a letter which I am not only going to read, but ask it be printed in the RECORD.

I ask unanimous consent that that letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, January 28, 1994.

Hon. DONALD W. RIEGLE,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Notwithstanding the recent appointment of a special counsel to investigate potential criminal wrongdoing in connection with Madison Guaranty, a failed savings and loan, the constitutional responsibility of Congress to consider the serious questions of public and regulatory policy raised by this controversy remains.

Last December Senator D'Amato requested Committee action with respect to this issue. In the intervening time, numerous questions that fall within our Committee's legislative and oversight jurisdiction have gone unanswered. A review of the limited information that is publicly available indicates a variety of germane issues that command the Committee's attention. We believe that the Banking Committee would be derelict in its duty if it does not address important issues, such as:

Is the RTC continuing its investigations into Madison and what is the status of any such investigation? How is it that the RTC was able to prepare criminal referrals as early as October 1992, but is unable to follow-up with a civil proceeding? Will the RTC complete any current investigations prior to the expiration of the statute of limitations one month from now?

Did the RTC act as quickly and effectively as possible to ensure that the Madison bailout cost the taxpayers as little as possible?

Did the principal shareholders or officers of Madison direct Madison resources into other business ventures in which they were involved?

What caused the break-down of the FDIC's procedures for detecting and addressing conflicts-of-interest when the Rose Law Firm was retained to sue Frost and Co.?

Why did the FDIC agree to settle its $50 million case against Frost and Co. for $1 million, an amount that is allegedly less than the limit of the firm's malpractice insurance coverage?

This Committee has a solid and proud record of addressing concerns relating to the safety and soundness of insured depository institutions. We believe the Committee has the duty to review thoroughly these and other relevant issues and to obtain information that will be useful as the Committee continues to consider new legislative initiatives and to improve the existing legislative framework to ensure the protection of depositors and taxpayers.

In the light of this, pursuant to Rule 26.3 of the Standing Rules of the Senate, we request that you convene a special meeting of the Senate Committee on Banking, Housing and Urban Affairs to enable the full Committee to consider appropriate Committee action in connection with Madison. We believe the Committee must exercise its jurisdiction and examine the circumstances and events surrounding Madison's operations and failure.

Sincerely,

PHIL GRAMM,
CONNIE MACK,
ROBERT BENNETT,
WILLIAM ROTH,
ALFONSE D'AMATO,
CHRISTOPHER BOND,
LAUCH FAIRCLOTH,
PETE DOMENICI.

Mr. D'AMATO. Mr. President, before I tell you why the eight Republicans on the Banking Committee took this extraordinary action, I would like to discuss another issue pertaining to Madison Guaranty.

We have on two previous occasions, January 11 and January 25, requested that the RTC—that is the body responsible for any civil investigation—tell us when the statute of limitations expires on civil actions against Madison, and we have received nothing but shocking delays and still no official response to our request for this basic information.

The first letter was dated January 11; the last one January 25. My staff has been in constant contact and, indeed, we were promised a response yesterday.

As of this afternoon, we still have no response from the RTC. We still have not learned when the statute of limitations runs out on Madison and Whitewater. What we have here is shocking inaction. Now we learn—and we were told this only by telephone, and it was supposedly going to be confirmed by a letter to us the day before yesterday—and then it was promised to us yesterday, and then it was promised to us today—that the civil statute of limitations could possibly expire as soon as February 28. It appears quite possible that little, if anything, is being done to protect the taxpayers' and to punish the wrongdoers, or bring about a recovery of taxpayers' money.

During this critical period, valuable time has been lost, and this must stop.

Mr. President, the clock is ticking. The statute of limitations is running out. And I have to suggest to you that this is a coverup by the RTC, which deliberately refuses to tell us when the statute of limitations is running out.

Now, they have had this matter for a number of years. There has been intense interest and scrutiny and if their attorneys are doing anything, I cannot believe that they could not tell us within the last 2 weeks when the statute of limitations on civil liability runs out. And when they ignore the statute of limitations, justice is denied. Indeed, if it is February 28, we have a right to know. If it is March, we have a right to know. If it is August, we have a right to know. We also have a right to know what, if anything, is being done.

That brings me to the other reason for his statement. The Republican members of the Banking Committee wrote a letter to Chairman RIEGLE. Once before, I requested that the Banking Committee conduct hearings. Now, since I made that request, I must point out special counsel has been appointed, but special counsel is going to look only into criminal matters. Possible civil actions that would toll the statute is not a matter that the special counsel is reviewing. If the RTC continues to conduct itself as it has, what we are going to face is a situation where the statute of limitation has run out, there has been no attempt to toll the statute by way of a voluntary agreement. The people are going to be denied the truth and taxpayers are going to be denied the ability to recover any moneys to which they might be entitled. It was that which prompted all of the Members on the Republican side to join in this letter to Chairman RIEGLE.

Let me read it to you:

Dear Mr. Chairman: Notwithstanding the recent appointment of a special counsel to investigate potential criminal wrongdoing in connection with Madison Guaranty, a failed savings and loan, the constitutional responsibility of Congress to consider the serious questions of public and regulatory policy raised by this controversy remains.

Last December Senator D'AMATO requested committee action with respect to this issue. In the intervening time, numerous questions that fall within our committee's legislative and oversight jurisdiction have gone unanswered. A review of the limited information that is publicly available indicates a variety of germane issues that command the committee's attention. We believe that the Banking Committee would be derelict in its duty if it does not address important issues such as:

Is the RTC continuing its investigation into Madison and what is the status of any such investigation?

Mr. President, if I may interject a comment here. That is a very simple, forthright request. We do not get any answers from the RTC. Certainly the Congress of the United States has an obligation to ascertain this kind of information. The letter goes on: