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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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FEB 21 1974

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see pg. 249

B-132900



The Honorable  
The Secretary of Defense

Dear Mr. Secretary:

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In our reports to Chairman George H. Mahon, House Appropriations Committee, and Congressman Les Aspin on our review of the Army Audit Agency's audit of possible Army violations of the Anti-Deficiency Act (B-132900, September 28, 1973), a copy of which was sent to you, we concluded the following:

- In our opinion, an overobligation occurred in the fiscal year 1970 Military Personnel, Army, appropriations in violation of the Anti-Deficiency Act.

Accordingly, we recommended that you submit a formal report to the President and the Congress as required by the act.

On November 30, 1973, we received a letter from the Assistant Secretary of the Army (Financial Management) commenting on our report. (See enclosure.) In this letter, the Army sets forth its reasons for disagreeing with our conclusion that it violated the Anti-Deficiency Act.

We have reviewed the Army's position on these matters and provide the following comments.

RECORDED OBLIGATIONS OF \$29.8 MILLION  
IN EXCESS OF AMOUNT OMB APPORTIONED

With regard to the amount of \$29.8 million of obligations in excess of the Office of Management and Budget (OMB) apportionments, the Assistant Secretary is of the view that " \* \* \* the purpose of the apportionment process is to control the amount of obligations made during the fiscal year; at the end of the fiscal year, the apportionment has served its purpose and should no longer be considered as limiting proper obligation adjustments; and that the controlling factor after the end of the fiscal year is the amount available in the appropriation." He also states that the purpose of the Anti-Deficiency

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Act is to limit obligations to the amount available in the appropriation, and that the apportionment is merely a device to accomplish that purpose.

We agree that the apportionment device will have served its purpose at the end of the fiscal year in that thereafter no additional obligations properly may be entered into. However, there would be no occasion to disregard such apportionment after the close of the fiscal year, as now urged by the Assistant Secretary, except for the fact that the amount of the obligations entered into during the period of availability of the appropriation exceeded the amount apportioned-- which action is expressly prohibited by paragraph (h) of the Anti-Deficiency Act. This overobligation of the apportionment during the fiscal year must be reported to the President and to the Congress as a violation of the Anti-Deficiency Act.

We agree, however, that under OMB Circular A-34 the apportionment does not preclude the payment of valid obligations after the end of the fiscal year involved where there are adequate funds available in the appropriations. But there would be no necessity for making payments in excess of the apportionments, if the provisions of the Anti-Deficiency Act had been complied with during the fiscal year involved.

### IMPROPER DEOBLIGATION OF \$74.7 MILLION FOR UNUSED STOCKS

Concerning the transfer of the subsistence and clothing stockpiles in Southeast Asia it is our view that if the 1970 appropriation was properly obligated at the time the clothing was withdrawn from the stock fund, such obligation continued to exist until such time as the clothing actually was returned to the stock fund which could not have occurred prior to the time the transfer transaction was recorded; i.e., in fiscal year 1971.

The Assistant Secretary's position is that "Since the end result would have been the same, the timing of the transaction does not appear to be material."

We cannot agree with the Assistant Secretary regarding this point in that, as pointed out in our original report, 10 U.S.C. 2208 provides that proceeds from stock fund credit shall be credited to the current applicable appropriation.

We recognize, as stated by the Assistant Secretary that such credit would, in effect, augment the current appropriation; however, such augmentation occurs under 10 U.S.C. 2208 any time that items purchased in one year are returned to the stock fund in subsequent years.

Concerning the reference by the Assistant Secretary to the intent and policy of the House Appropriations Committee with respect to a consumption-type appropriation, we have examined the 1954 appropriation

hearings, which were informally cited to us, and have found nothing in the matters discussed therein to be comparable to the transaction in question here. If the 1954 appropriation hearings are relied upon as authority for the transaction, question arises as to why such practice was not instituted prior to fiscal year 1971. One of the primary purposes of the original establishment of the stock funds was to place the requisitioning, appropriations on a consumption basis; i.e., only the stock items expected to be consumed during the fiscal year were to be requisitioned during such year and charged to that year's appropriation. But there is nothing in the Law, DOD or Army regulations, any obligating or accounting procedures approved by this Office, or any intent of the Committees on Appropriations of which we are aware, which contemplate annual year-end return of stock items on hand to the stock funds for credit.

CONCLUSION AND RECOMMENDATION

Accordingly, we remain of the view that the actions discussed above constituted violations of the Anti-Deficiency Act.

We therefore restate our recommendation that you submit a formal report to the President and the Congress as required by the Act.

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We would appreciate receiving your comments and being advised of any actions being taken or planned on the matters discussed in this letter.

C3 We are sending copies of this letter today to the Chairman, House Committee on Appropriations; Representatives Les Aspin and J. J. Pickle; the Director, Office of Management and Budget; and the Secretary of the Army.

Sincerely yours,



Comptroller General  
of the United States

Enclosure

DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20310

30 NOV 1973

B-132900

Honorable Elmer B. Staats  
Comptroller General of the  
United States  
Washington, D.C. 20548

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Dear Mr. Staats:

This acknowledges receipt of your communication providing us a copy of your letter to the Chairman of the House Appropriations Committee, dated 28 September 1973, concerning your review of the Army Audit Agency report of possible Army violations of the Anti-Deficiency Act. In the interest of stating the Department's position on the matters covered in that letter, we would like to make the following comments.

In essence, your letter states the opinion that the Army violated the Anti-Deficiency Act by obligating \$104.5 million more than the amount apportioned by the Office of Management and Budget for the fiscal year 1970 Military Personnel, Army appropriation. The total was made up of two separate amounts: (a) obligation adjustments between 30 June 1970 and 30 June 1972 resulting in recorded obligations totalling \$29.8 million more than the apportionment, and (b) an unrecorded obligation of \$74.7 million representing a transfer of funds, which you considered unauthorized, from the fiscal year 1971 appropriation to the fiscal year 1970 appropriation, covering the value of reserve stocks of subsistence and clothing in Southeast Asia.

Your position as to the \$29.8 million of recorded obligations is that the reimbursements received after the end of the fiscal year did not have the effect of increasing the total availability of the appropriation, thus permitting upward obligation adjustments found to be necessary. The letter contends that the amount stated in the apportionment continued to be controlling after the end of the fiscal year. It is the Army view that the purpose of the apportionment process is to control the amount of obligations made during the fiscal year; at the end of the fiscal year, the apportionment has served its purpose and should no longer be considered as limiting proper obligation adjustments; and that the controlling factor after the end of the

Honorable Elmer B. Staats

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fiscal year is the amount available in the appropriation. The wording of the Anti-Deficiency Act makes clear that its purpose is to limit obligations to the amount available in the appropriation, and that the apportionment is merely a device to accomplish that purpose. For example, subsection (a) prohibits expenditures or obligations under any appropriation or fund "in excess of the amount available therein"; and subsection (c) states that appropriations or funds shall be so apportioned as to prevent obligation or expenditure in a manner indicating need for a deficiency or supplemental appropriation. If the position stated in your letter is correct, the only way in which obligation adjustments, exceeding the original apportionment, could be made after the end of the fiscal year would be by obtaining a reapportionment in the increased amount. Under existing procedures of the Office of Management and Budget, it is not possible to obtain such a reapportionment. In fact, section 41.1 of Circular A-34 of the Office of Management and Budget, dated July 1971, states that accounts which have expired for obligation purposes will not be apportioned. Several other sections in that circular make it clear that it does not apply to appropriations no longer available for obligation. Thus, the position taken by you challenges procedures applicable to all executive departments and establishments. One effect of that position, as an example, would be to preclude the payment of increased amounts due under the terms of a contract after the end of the fiscal year, where the payment would exceed the amount of the apportionment. The government would thus be unable to meet its contractual obligations to the contractor and pay him amounts legally due, even though adequate funds were available in the appropriation. The Army does not believe that the intent of the Anti-Deficiency Act was to produce such unfortunate results.

The second point raised by your letter relates to the stockpile of subsistence and clothing in Southeast Asia, valued at \$74.7 million, transferred from the fiscal year 1970 appropriation to the fiscal year 1971 appropriation, with the latter making reimbursement to the 1970 account. The gist of the criticism is that this transaction could not have been accomplished under the stock fund law, since that law requires credits for returned materiel to be made to the current appropriation, and the transfer was made after the end of fiscal year 1970. While it is true that the transfer could not have been made under the stock fund procedure after the end of the fiscal year, the fact remains that the stock fund law did provide a procedure under which the stocks could have been returned for credit before the end of the year. Since the end result would have been the same, the timing of the transaction does not appear to be material. The simple point of this transaction is that the budget for the Military Personnel, Army appropriation was on a consumption basis; use of the stocks in fiscal year 1971 without charge to that year's appropriation would have constituted an augmentation of the amount appropriated by Congress; and the charge to the