YEAR-IN-REVIEW

APPROPRIATIONS LAW FORUM 2009

I. Statutory Construction

Construing Appropriations Language as Permanent Legislation

- *Bureau of Alcohol, Tobacco, Firearms, and Explosives—Prohibition in the 2006 Consolidated Appropriations Act*, B-316510, July 15, 2008

  GAO was asked whether a proviso in the fiscal year 2008 Consolidated Appropriations Act restricting ATF from disclosing data from the Firearms Trace System is permanent law. The proviso directed that "beginning in fiscal year 2008 and thereafter, no funds appropriated under this or any other act may be used to disclose" data contained in the Firearms Trace System database to unauthorized parties. This proviso was similar to one that was enacted as part of a fiscal year 2006 Appropriations Act and that GAO found to be permanent law. B-309704, Aug. 28, 2007. Because appropriations acts are by their nature temporary legislation, GAO stated that provisions in appropriations acts are presumed effective only for the covered fiscal year unless Congress makes clear that they are permanent. In this case, the proviso contained the requisite "words of futurity" that indicate permanence.

  The opinion also addressed the relationship of the fiscal year 2008 proviso to the fiscal year 2006 proviso, both of which are permanent law. The opinion stated that the 2008 proviso specifically authorized disclosure in some circumstances that would not be permitted under the 2006 proviso. Applying applicable canons of statutory construction, GAO concluded that, because it was enacted later in time, the 2008 proviso supersedes the 2006 proviso to the extent that they irreconcilably conflict.

Incorporation by Reference

- *Consolidated Appropriations Act, 2008—Incorporation by Reference*, B-316010, February 25, 2008

  GAO was asked to render an opinion on the legal effect of seven provisions in the Consolidated Appropriations Act of 2008, which incorporated by reference an explanatory statement printed in the Congressional Record.

  GAO noted that although legislative history generally is informational and not legally binding, incorporation by reference is a well-accepted legislative tool where statutory language indicates a clear congressional intent to incorporate by reference, and the referenced material is specifically ascertainable from the legislative language so all know with certainty the duties, terms, and

constraints enacted into law. The language of these provisions directed that amounts be available to agencies "in accordance with the terms and conditions specified in the explanatory statement," for "activities specified in the explanatory statement," or "at a level of 98 percent of the corresponding amounts identified in the explanatory statement."

The references in these seven provisions to the explanatory statement permit the agencies and others to ascertain with certainty the amounts and purposes for which the appropriations enacted by these seven provisions are available. Accordingly, the seven provisions establish the referenced allocations contained within the explanatory statement as legally binding restrictions on the agencies' appropriations. The affected agencies, therefore, are required to obligate and expend the appropriations in accordance with the referenced provisions of the explanatory statement.

Presidential Signing Statements

- Statement of Gary L. Kepplinger, General Counsel, *Presidential Signing Statements: Agency Implementation of Selected Provisions of Law*, GAO-08-553T (Washington, D.C.: Mar. 11, 2008)

  This testimony on presidential signing statements by Gary Kepplinger, GAO's General Counsel, before the Subcommittee on Oversight and Investigations, Committee on Armed Services, House of Representatives, draws from two prior GAO opinions on signing statements. *Presidential Signing Statements Accompanying the Fiscal Year 2006 Appropriations Acts*, B-308603, June 18, 2007; *Presidential Signing Statements—Agency Implementation of Ten Provisions of Law*, B-309928, Dec. 20, 2007. In developing the first opinion, GAO examined all the signing statements accompanying the fiscal year 2006 appropriations acts, identified 160 specific provisions of law to which then President Bush objected, and categorized each provision according to the nature of the President's stated concern. The President's objections to a majority of provisions fell into broad categories, four of which are summarized in the testimony: President's theory of the unitary executive, President's constitutional role, *INS v. Chadha*, and Fifth Amendment.

  In both opinions, GAO examined whether agencies were executing as written certain statutory provisions to which the President objected. In total, GAO examined how 21 agencies executed 29 different provisions of law. GAO determined that in all but 9 cases the agencies had either taken actions to execute the provisions as written, or conditions requiring agency action had not occurred. In the remaining 9 cases, GAO found that the agencies had not executed the provisions as written. GAO did not assess the merits of the President's objections or examine the constitutionality of the provisions to which the President objected. Although GAO found that agencies did not execute 9 provisions as written, we could not conclude that agency noncompliance was the result of the President's signing statements. GAO also

examined the extent to which federal courts have relied on signing statements in their interpretation of federal statutes. GAO found that only in rare instances have courts treated presidential signing statements as authoritative sources of statutory interpretation.

The testimony also discussed the application of GAO's findings to the 2008 National Defense Authorization Act and the President's accompanying signing statement. While GAO's prior work did not involve any provisions in the recently enacted National Defense Authorization Act (NDAA) for fiscal year 2008, three provisions in the NDAA to which the President objected are similar to provisions examined in our earlier opinions. GAO found that agencies had not executed two of these earlier provisions as written. GAO suggested that, given our findings regarding these similar provisions, the Subcommittee might wish to stay abreast of the Department of Defense's implementation of the provisions in the 2008 NDAA to which the President objected in his signing statement.

II. Availability of Appropriations: Purpose

General Operating Expenses

- *Nuclear Regulatory Commission—Availability of Appropriations for Credit Monitoring Services*, B-310865, April 14, 2008

  In this decision, GAO addressed a variation on a question it had addressed in the previous year about the use of an agency's appropriation to pay for credit monitoring services. B-308604, Oct. 10, 2007. GAO stated that, ordinarily, credit monitoring services are personal expenses because the expenditure primarily benefits the individual or employee, not the agency. *Id.* However, in this case, the Nuclear Regulatory Commission (NRC) had asked whether it may use its appropriation for the purchase of credit monitoring services in order to mitigate potential damage resulting from an inadvertent disclosure of an individual's personal information *caused by the agency*.

  GAO found providing such services as a means of mitigating the risk caused by the inadvertent disclosure would be consistent with policies and guidance provided by the Office of Management and Budget. GAO concluded that if the agency determines that such a purchase is necessary under the particular circumstances, consistent with federal law and policy, NRC's appropriation is available to pay for credit monitoring services. Such an expenditure would be consistent with statutory breach notification and mitigation requirements and, notwithstanding any collateral personal benefit to an employee or individual, would be a necessary expense of the agency.

Light Refreshments

- *Forest Service—Light Refreshments for National Trails Day,* B-310023, April 17, 2008

  The issue in this case was whether U.S. Forest Service appropriations were available to provide light refreshments to nongovernmental attendees of its National Trails Day events held at the Chugach National Forest.

  National Trails Day is an annual event sponsored by the American Hiking society, a private nonprofit organization dedicated to promoting hiking. Chugach Forest participates in Trails Day every year. Its participation consists of activities it conducts, not just on Trails Day, but throughout the year. The Forest Service proposed to provide snacks for the Trails Day attendees that it stated would be especially appropriate for hiking (including, for example, apples, raisons, and dried fruit).

  We concluded that the Forest Service appropriations are not available to provide light refreshments for attendees of National Trails Day events. Appropriations are not available to pay for food unless specifically authorized, or unless the agency can demonstrate that such expenditures are an essential, constituent part of accomplishing an authorized agency function. Neither of these conditions is present in this case. Providing light refreshments to attendees of Trails Day does not contribute materially to the accomplishment of an agency function.

Incentives

- *National Telecommunications and Information Administration—Gift Cards for Respondents to the Converter Box Coupon Program Survey*, B-310981, January 25, 2008

  GAO was asked whether the National Telecommunications and Information Administration (NTIA) could use appropriated funds to purchase gift cards for respondents to a survey in an effort to increase the survey response rate. NTIA was responsible for implementing a program to provide vouchers to the public for use towards purchase of analog-to-digital television signal converter boxes, as part of the federal government's transition to all-digital television transmissions. NTIA planned to conduct a pilot program of the voucher program prior to the program's nationwide launch. NTIA intended to ask pilot program participants to complete a survey regarding their experience. NTIA deemed this information essential to the success of the $1.5 billion program. As an incentive, NTIA planned to provide gift cards to electronics stores to all participants who completed a survey.

  GAO determined that NTIA may use appropriated funds to purchase the $25 gift cards. Gift cards are generally a personal expense. In this case, however, a direct connection existed between use of the gift cards and

production of information deemed vital by NTIA to its statutory mission of implementing the converter box program. The amount of the expenditure was modest, and the primary beneficiary of the expenditure is the government. In addition, NTIA was operating under strict time constraints. Under such circumstances, the use of appropriated funds to purchase the gift cards was proper.

Bottled Water

- *Department of the Army—Use of Appropriations for Bottled Water*, B-310502, February 4, 2008

  A disbursing officer requested a decision on whether the U.S. Army Corps of Engineers (Corps) may use appropriations to reimburse employees for the purchase of bottled water for drilling crews working in the remote areas of the Savannah District. Consistent with prior case law, GAO found that the Corps had discretion to use its appropriated funds to purchase bottled water for employees working in these remote areas.

  In reaching the determination, GAO emphasized case law establishing exceptions to the general rule that appropriated funds are not available for personal expenses. Appropriations may be available for purchase of a particular item, otherwise characterized as personal in nature, when the purchase would primarily benefit the government. In applying this rule, GAO has included the purchase of items essential to the health and safety of agency employees in the work place as a purchase that primarily benefits the government. GAO noted that the Occupational Safety and Health Act and Corps policy require that the Corps, as an employer, provide access to potable drinking water for employees working in remote areas as part of maintaining a safe and healthy work environment. The purchase of bottled water in this case fulfilled the agency's duty to provide a safe and healthy environment required under federal law and Corps Policy. GAO explained, however, that it was within the Corps's discretion to determine how best to meet the responsibility of providing potable water, and alternative methods also could be utilized to meet its duties under federal law and agency policy. As long as the Corps administratively determines that bottled water is the best way to provide potable water for drilling crews, GAO had no objection to appropriated funds being used to reimburse the purchase of bottled water.

Transportation Fringe Benefit Programs under 5 U.S.C. § 7905

- *Army—Mass Transit Benefits, Aberdeen Proving Ground*, B-316381, July 18, 2008

  A certifying officer with the United States Army Center for Health Promotion and Preventative Medicine at Aberdeen Proving Ground, Maryland, requested our decision regarding mass transit benefits, specifically, whether the Center

could deny a request for Mass Transit Benefits for Civilians and/or active duty Army personnel for short commuting distances or easy travel conditions existing in and around the Aberdeen post.

An Army officer at the post submitted a claim for mass transit benefits for his home to work commuting expenses on the MARC train. The certifying officer argued that the Mass Transit Fringe Benefits program was created to entice government employees to use mass transit, and thereby reduce traffic congestion and air pollution caused by commuting to and from the workplace in metropolitan areas. The certifying officer suggested that reimbursing for such relatively short commuting distances may represent waste or abuse of government resources. Furthermore, the certifying officer argued that no other civilian employees or active duty Army personnel had claimed mass transportation benefits at the time. The certifying officer asked whether he could deny the request for mass transit benefits in these circumstances.

GAO found that the certifying officer's concerns are answered by the Army's policy implementing the Federal Employees Clean Air Incentives Act, which permits agency heads to reimburse federal employees including members of a uniformed service for certain commuting expenses. 5 U.S.C. § 7905. In implementing 5 U.S.C. § 7905, the Army policy provides that no installation outside the national capital region may restrict the benefit to eligible service members and employees for qualified means of transportation. We found that the policy answers the certifying officer's concerns about the wisdom of permitting benefits for short commuting distances or easy travel conditions or when there is only one participant in the program. Consistent with this policy, a certifying officer at USACHPPM may certify payment for transit benefits for an eligible active duty Army officer, notwithstanding the certifying officer's concerns that the claimant's commuting distance is short and travel conditions are easy.

III. Availability of Appropriations: Amount

Apportionment of Appropriations

- *Forest Service—Apportionment Limitation for Aviation Resources*, B-310108, February 6, 2008

  In this decision, GAO found that the Forest Service violated the Antideficiency Act, 31 U.S.C. § 1517, when it exceeded an apportionment limitation of $100 million for aviation resources to be used for forest fire suppression activities.

  The Office of Management and Budget (OMB) subjected the Forest Service to an annual apportionment limitation of $100 million for aviation resources to be used for fire suppression activities. The limitation of $100 million was set by

OMB in a footnote on the applicable apportionment schedule. In the height of the fire season, the Forest Service exceeded the limitation, but asked whether its actions were justified because of the emergency nature of its firefighting activities. GAO stated that the statutory exception permitting use of appropriations in advance or in excess of an appropriation in emergencies found in the Antideficiency Act was not applicable. The Forest Service had sufficient appropriations. The Forest Service needed an additional apportionment, which could have been increased administratively without approaching the overall appropriation amount.

GAO pointed out that the Forest Service did not avail itself of OMB's emergency procedures for requesting a reapportionment, but instead waited until after the violation to seek a reapportionment. Because OMB could have increased the apportionment to allow the Forest Service to respond to an emergency situation without exceeding its appropriation, the Forest Service was required to attempt to avail itself OMB's apportionment process; no reason was offered for the failure to do so. Under these circumstances, the Forest Service may not exceed the apportionment based on an emergency exception to the Antideficiency Act. GAO stated further that the Forest Service should, in consultation with OMB, review and update its fund control regulations to ensure that apportionments are not exceeded and that it has an effective mechanism for addressing the need for reapportionments based on emergency circumstances.

Application of Fiscal Laws to the U.S. Postal Service

- *United States Postal Service Office of Inspector General—Implementation of Postal Accountability and Enhancement Act Section 603, Part 1*, B-317022, September 25, 2008

  Section 603 of the Postal Accountability and Enhancement Act, Public Law 109-435, authorizes a direct appropriation for the Office of Inspector General (OIG) of the United States Postal Service (USPS) from the Postal Service Fund. This decision responds to questions posed by the USPS Inspector General (IG) concerning the appropriation of funds to OIG and the effect such an appropriation has on statutes that apply to OIG as a component of USPS. Prior to the enactment of the provision, the Postal Service IG's activities were funded from the same account as all other Postal Service activities—the Postal Service Fund, which is a revolving fund with no-year money.

  The first question was whether the broad statutory exemption afforded USPS from federal fiscal laws applied to OIG after it received its own appropriation. Section 410 of title 39 of the United States Code exempts USPS from application of laws "dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds." As such, federal fiscal laws, including the miscellaneous receipts statute and the Antideficiency Act, do not apply to

USPS. Since the OIG is a component of USPS, GAO found that OIG enjoys the same exemption provided by section 410. The authorization to appropriate funds to OIG from the Postal Service Fund did not repeal the exemption.

OIG then asked how it would be funded should Congress not enact an appropriation by the beginning of the fiscal year. During the pendency of any continuing resolution, which is meant to continue government operations until the enactment of a yearlong appropriation, USPS would be expected to continue funding OIG operations from the Postal Service Fund. However, to prevent any confusion, given the new authorization, we encouraged OIG to seek language in any continuing resolution to ensure uninterrupted funding of OIG operations.

Finally, OIG asked whether USPS may supplement OIG's appropriation with additional amounts from the Postal Service Fund. GAO found that USPS would not be so permitted, because Congress had established a level of OIG activity through the appropriation process. Supplementing its funds would interfere with Congress's constitutional power of the purse and would constitute an unauthorized augmentation of OIG appropriations.

Augmentation/Miscellaneous Receipts

- *National Science Foundation—Disposition of False Claims Act Recoveries,* B 310725, May 20, 2008

  In this case, GAO was asked to determine the proper disposition of amounts recovered by the Department of Justice under the False Claims Act. Specifically, GAO examined whether the Inspector General (IG) for the National Science Foundation (NSF), who receives a line item appropriation, could credit to the IG appropriation amounts of the recovery identified as investigation costs.

  As part of its statutory duties, the IG investigates all potential False Claims Act claims for the agency and refers cases to the Department of Justice for litigation. The Department of Justice transmits amounts to the agency along with a breakdown of the recovery. This breakdown identifies amounts obtained to recover the erroneous payment made as a result of the false claim and amounts obtained to recover any additional costs incurred in investigating the fraudulent activity.

  Recovery of these costs cannot be characterized as a repayment of an appropriation—the narrow exception to the miscellaneous receipts rule, 31 U.S.C. § 3302(b). Congress appropriates a specific amount to the IG for costs to carry out its duties under the Inspector General Act of 1978, including investigations of payments made pursuant to a false claim. Crediting the IG appropriation with these amounts without specific statutory authority would allow the IG to operate at a higher level than authorized by Congress.

Recording Obligations

- *Election Assistance Commission—Obligation of Requirements Payments*, B-316915, September 25, 2008

  Generally, under 31 U.S.C. §1501, when entitlement to funds is established by statutory formula for a state, the obligation arises by operation of law and the amount should be recorded. The Help America Vote Act (HAVA) specifies a formula that determines the amount of the payment to each state. At issue here is whether statutory preconditions, which must be met before the Election Assistance Commission (EAC) may distribute funds to states, affect when an obligation is incurred.

  HAVA authorizes the EAC to make payments to states, under a formula, for certain enumerated purposes. A state may only receive funds if it certifies that it has met certain preconditions including *inter alia* that it has filed a state plan, filed an administrative complaint procedure plan, and appropriated matching funds.

  GAO distinguished between the legal obligation and the payment of the obligated amount. Under HAVA, states are eligible for an amount readily determinable by application of an allocation formula. The uncertainty introduced by the preconditions went to when EAC may disburse the obligated amount, not the amount of the obligation, which is set by law, and the EAC has no evaluative role. GAO found that the HAVA funds are amounts "required to be paid" within the meaning of section 1501 and the obligation arose by operation of law.

Recording Obligations—Grant Documents

- *Denali Commission—Overobligation of Apportionment*, B-316372, October 21, 2008

  The Inspector General of the Denali Commission requested our decision on whether the commission violated the Antideficiency Act when it recorded an obligation for a $400,000 grant to the Alaska Department of Commerce, Community and Economic Development because at the time it recorded it, its apportionment was only $164,480.

  In August 2005, the commission sent a Financial Assistance Award document to the Alaska Department for signature. The award document stated that the award "constitutes an obligation of federal funding. By signing . . ., the recipient agrees to comply with the award provisions. . . . If not signed and returned without modification by the recipient within 30 days of receipt, the [commission] may unilaterally terminate this Award."

The Alaska Department misplaced the award document and consequently never returned it to the commission. The commission transmitted a second award document to the department dated December 2, 2005. A department official signed the document and returned copies to the commission. That same day the commission recorded a $400,000 obligation for the grant award against a 3-year appropriation that was available for obligation in fiscal years 2005 through 2007. The Office of Management and Budget (OMB) subsequently advised the commission that it may have violated the Antideficiency Act because in December 2005, when it recorded the obligation, it had an apportionment of only $164,480.

An agency incurs an obligation when it makes a definite commitment that creates a legal liability on the part of the government or takes an action that could mature into a legal liability by virtue of actions on the part of the other party beyond the control of the United States. We held that the language of the Financial Assistance Award provided the basis for the commission to record the obligation. Since the commission had a sufficient apportionment to cover the obligation at the time it transmitted the first award form, it did not violate the Antideficiency Act. However, the commission violated the recording statute, 31 U.S.C. § 11501(a)(5)(B), since it had not recorded an obligation at the time it was incurred.

IV. Liability of Accountable Officers

- *Relief of Accountable Officer at Veterans Medical Center*, B-309267, January 15, 2008

  The Department of Veterans Affairs asked that we relieve the former principal cashier at a medical center for physical losses that occurred during February and March 2001 ($3,280) and January 2003 ($123). The losses were sustained in accounts containing the personal funds that patients turn over to the Veterans Center to be held for safekeeping during the patients' time at the facility.

  Although the money involved in this case was patient money and not government money, a loss of patient funds from a VA hospital while in the custody of the United States is a liability of the government for which an accountable officer may be liable. *See* B-215477, Nov. 5, 1984; B-164896-O.M., Aug. 1, 1968. Whether the losses constitute a single incident or similar incidents depends on the specific factual circumstances of the case at hand. All of the losses involved the same accountable officer and the patient funds account. The losses in 2001 occurred over a relatively brief period of time, about 7 weeks. In the absence of any evidence to the contrary, we find them to be similar incidents. On the other hand, the losses from January 2003 cannot be said to have occurred at about the same time as those from 2001 and thus may not be combined with the 2001 losses.

When there is an unexplained loss, as here, there is a rebuttable presumption of negligence on the part of the accountable officer. In this case GAO found insufficient evidence to rebut the presumption of negligence with regard to the losses in 2001 and denied relief for those patient funds. GAO has delegated the authority to resolve losses of less than $3,000 to the agency in which the loss occurred. B-243749, Oct. 22, 1991. This $3,000 limitation applies to single incidents or the total of similar incidents which occur about the same time and involve the same accountable officer. Thus, the Department of Veterans Affairs has authority to resolve administratively the loss of $123 in patient funds receipts from 2003 in a manner consistent with this decision and our prior decisions.

V. Miscellaneous Topics

Continuing Resolutions

- *Department of Homeland Security—Transfer of Support Function for Principal Federal Officials*, B-316533, July 31, 2008

  GAO was asked whether a fiscal year 2007 appropriations rider prohibiting the Department of Homeland Security from reorganizing was carried forward into fiscal year 2008 by a Continuing Resolution, and if so, whether the department violated the prohibition when it transferred a support function from one unit to another.

  Section 872 of the Homeland Security Act provided the Secretary with authority to reorganize the Department, after advance notice was given to Congress. However in 2007, Congress included a provision in a Supplemental Appropriations Act that prohibited the department from using appropriated funds to exercise the authority provided under section 872. GAO found that the prohibition was applicable to amounts appropriated by the fiscal year 2008 Continuing Resolution because the prohibition, although enacted in 2007, was carried forward under the terms of the fiscal year 2008 Continuing Resolution.

  GAO applied the "plain meaning rule" in construing the terms contained in section 872. This section addressed the authority of the Secretary to "allocate" or "reallocate functions" among the officers of the department or to "establish, consolidate, alter, or discontinue" organizational units. Because of the broad language used, the prohibition applied to the actions taken by the department to alter significant components of the department, actions characterized by the department as completing an "organizational transition." The transfer of the support function from one organizational unit to another constituted a reorganization and thus violated the prohibition.

Property Disposal Authority or User Fee?

- *Federal Aviation Administration—Authority to Auction Airport Arrival and Departure Slots and to Retain and Use Auction Proceeds*, B-316796, September 30, 2008

  This opinion concerns the Federal Aviation Administration's (FAA) legal authority to auction airport and arrival slots. In April and May 2008, the Federal Aviation Administration (FAA) announced plans to auction airport arrival and departure slots at New York City area airports. GAO was asked whether FAA possessed the authority to do so, and if so, whether FAA could retain and use the proceeds from the proposed auctions.

  GAO held that slots do not constitute "property" within the meaning of FAA's property acquisition and disposition authorities, 49 U.S.C. §§ 106 (l)(6) and (n) and 40110(a)(2), and thus FAA does not have the authority to conduct the slot auctions pursuant to those statutes. GAO concluded that FAA's assignment of slots constituted regulatory action and that amounts collected as a result would constitute a user fee. Because FAA lacks explicit statutory authority to charge a fee for the assignment of slots, FAA would necessarily have to rely on the authority of the Independent Offices Appropriations Act, 31 U.S.C. § 9701. However, Congress included an express prohibition against any such new user fees in FAA's 2008 appropriations. Pub. L. No. 110-161, 121 Stat. 1844, 2379 (Dec. 26, 2007).

  Because FAA lacked the authority to conduct the slot auctions, GAO also concluded that FAA could not use or retain auction proceeds. If FAA proceeded with the auction, GAO would raise significant exceptions, under its accounts settlement authority, 31 U.S.C. § 3526, for violations of the "purpose statute," 31 U.S.C. § 1301(a), and the Antideficiency Act, 31 U.S.C. § 1341(a)(1)(A).

Grants Management

- *Election Assistance Commission—Availability of Funds for Purchase of Replacement Voting Equipment*, B-316107, March 19, 2008

  Section 251 of the Help America Vote Act of 2002 (HAVA), 42 U.S.C. § 15401, authorizes the Election Assistance Commission (EAC) to provide payments to states for a variety of enumerated purposes, including procurement of HAVA-compliant voting systems to improve the administration of federal elections. HAVA leaves to the states what type of voting equipment the individual states should use, as long as the equipment complies with HAVA. At issue in this decision was whether under HAVA a state may fund the replacement of HAVA-compliant voting systems, originally purchased with HAVA funds, with a different kind of HAVA-compliant voting system.

HAVA neither expressly authorizes nor prohibits the use of section 251 funds to purchase replacement voting systems. When a given expenditure is neither specifically provided for nor prohibited, an agency's appropriation is available so long as the proposed expenditure bears a reasonable relationship to fulfilling an authorized purpose or function of the agency. We found that EAC's proposed policy to permit such expenses is within EAC's discretion in its exercise of statutory authority under HAVA. EAC's proposed policy is consistent with HAVA's statutory scheme, which does not require or recommend a specific type of voting system, and states are free to choose the type and model of voting equipment that they wish to use, as long as that system meets or exceeds the requirements of HAVA.

Rescission Statistics

- *Updated Rescission Statistics, Fiscal Years 1974–2007*, B-310950, February 14, 2008

  At the request of the Chairman and Ranking Minority Member of the Senate Appropriations Committee, GAO updated a package of statistical data concerning rescissions proposed and enacted since passage of the Impoundment Control Act of 1974. GAO updated its statistics through fiscal year 2007.

  Under the Impoundment Control Act, whenever the President proposes discretionary budget authority for rescission, he must transmit a special message to Congress detailing the amounts, reasons for, and effect of the proposed rescission. Congressional Budget and Impoundment Control Act, Pub. L. No. 93-344, title X, 88 Stat. 297, 332 (July 12, 1974), *codified at* 2 U.S.C. §§ 682–688. Agencies may withhold from obligation budget authority proposed for rescission in a special message for up to 45 legislative days following submission of the special message. 2 U.S.C. § 683(b). If Congress does not pass rescission legislation within this 45-day period, the budget authority must be released. *Id.* The Impoundment Control Act provides a mechanism through which Congress may fast track a vote on a special message. 2 U.S.C. § 688.

  To compile our statistics, we analyzed appropriations, supplemental appropriations, and other acts of Congress enacted in each fiscal year in order to identify rescissions, which are any legislative provisions that eliminate previously enacted and currently available budget authority. We then consulted with staff from the House of Representatives Committee on Appropriations, who are responsible for tracking rescissions. Our statistics differ somewhat from those of the committee staff, who utilize different criteria to identify certain enactments as rescissions. (For example, if Congress "rescinds" funds from one account and in the next paragraph

"appropriates" the same amount to a different account, we consider it reallocated budget authority, not a rescission.)

GAO's statistics are compiled in two tables. The first table shows by fiscal year from 1974 through September 30, 2007: (a) the number and amounts of rescissions proposed by the President, (b) the aggregate number and amount of those proposals enacted by Congress, (c) the aggregate number and amount of rescissions initiated by Congress, and (d) the total number of rescissions enacted and the total amount of budget authority rescinded by Congress, with totals for each category. The second table shows by fiscal year from 1974 through September 30, 2007, by presidential administration, the aggregate number and amount of rescissions proposed and enacted. The tables also display the number and amount of congressional rescissions by administration with totals for each category.