



**Legal Opinion L-2001-01**  
**January 5, 2001**

U.S. Railroad Retirement Board Phone: (312) 751-7139  
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Chicago Illinois, 60611-2092 Web: <http://www.rrb.gov>

**TO** : Kenneth P. Boehne  
Chief Financial Officer

**FROM** : Steven A. Bartholow  
General Counsel

**SUBJECT** : Appropriation; Training; Anti-Deficiency Act

This is in reply to your memorandum of December 21, 2000, regarding two obligations incurred for training for personnel in the Bureau of Information Services. These obligations were examined in a Briefing Paper dated December 19, 2000, by the Office of Inspector General.-I-

The Briefing Paper refers to agreements ("bulk training") for:

\* \* \* 254 training units priced at \$260 each for a total of \$66,040. The agreement was executed using form[s] SF-182. \* \* \* The agreement did not specify the classes to be provided, when classes would take place or who would attend.

The forms SF-182 were executed February 11, 2000, and payment was processed based on the vendor's invoice that same month. \* \* \* Training valued at approximately \$10,000 was still unused at September 30, 2000.

The Briefing Paper also refers to an agreement ("group training;" also "PC SAS training") for:

\* \* \* training services, valued at \$22,000, at RRB headquarters. In addition, the agency agreed to pay up to \$6,000 in related travel expenses incurred by the instructor for a total cost of \$28,000.

Form SF-182 was executed August 16, 2000, and payment was processed based on the vendor's invoice in September. \* \* \* no funds related to the travel expenses were obligated or disbursed during FY 2000.-2-

The training agreement was executed without specifying a date. The class for which the agency had contracted and paid could not take place during FY 2000 because the RRB personnel who were scheduled to receive the training were not available. The class was later scheduled to take place in March 2001.

The Briefing Paper concludes that part or all of these obligations should be charged to fiscal year 2001 appropriations, in which case there may be a violation of the Anti-Deficiency Act. You inquire as to which fiscal year appropriation the costs for training should be charged and, if any of the costs must be charged to fiscal year 2001, whether a reportable violation of the Anti-Deficiency Act may have occurred.

The Briefing Paper states that services generally are chargeable to the appropriation current at the time the services are rendered. The Briefing Paper notes that the Comptroller General has held that the question of whether to charge the appropriation current when the obligation is incurred or the one current when the services are rendered depends on whether the services are "severable" or "entire," and that a single training course is a non-severable service. The Briefing Paper also states that, "individual, severable training classes that begin and end in a single fiscal year should be charged to the appropriation in effect when the training services are rendered."

The Briefing Paper goes on to state that:

The RRB's bulk training agreement was designed to provide individual training classes. Course selection and attendance [were] not specified at the time the SF-182 was issued. This is not an instance in which a single, non-severable course extends across fiscal years. The classes provided under the agreement were scheduled separately for any number of different individuals at a variety of dates and times. At the end of FY 2000, all of the training had not been scheduled.



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The group training services to be provided on-site at RRB headquarters are not severable. However, severability is not an issue since there was no performance under the contract during FY 2000. The RRB did not confirm the availability of its personnel and facilities before entering into the agreement. As a result, the agency was unable to detail the designated staff to training before the end of the fiscal year and the class could not be held during FY 2000.

The two agreements neither restricted contractor performance to FY 2000 nor provide[d] an escape clause for the RRB in the event that all services were not provided during FY 2000.

The Briefing Paper concludes that the cost of the group training agreement and some of the cost of the bulk training agreement should be charged to the RRB's FY 2001 appropriation because they are agreements for severable services and performance actually occurs in FY 2001.

-II-

The time limits on the availability of appropriations are of course one of the chief methods by which Congress controls expenditure. An expenditure made in advance of an appropriation would violate the Anti-Deficiency Act. "One of the fundamental principles of appropriations law is the so-called bona fide needs rule: A fiscal year appropriation may be obligated only to meet a legitimate, or bona fide, need arising in, or in some cases arising prior to but continuing to exist in, the fiscal year for which the appropriation was made."<sup>1</sup> If the obligations entered into by the RRB were for training needed in fiscal year 2000, and if the services were entire and not severable, the costs should be charged to fiscal year 2000.

The Briefing Paper concedes that the group training service to be provided on-site at RRB headquarters are not severable. The issue remaining regarding these services, then, is whether there was a bona fide need for them in fiscal year 2000. Whether there was such a need is a factual determination. The Bureau of Information Services advises that the plan for PC SAS training was to have the training scheduled in fiscal year 2000. "However, there was difficulty in getting the targeted audience together for various reasons [including that] the PC lab was in use, several of the people in the potential audience (both in programs and BIS) were involved in the implementation of the pending legislation (H.R. 4844), and the cost of living (COL) adjustment was coming up."<sup>2</sup>

Although the Briefing Paper bases its conclusion on the fact that none of the group training actually was provided in fiscal year 2000, that fact is only relevant as evidence of the existence of a bona fide need in fiscal year 2000. For example, if the training did not take place in fiscal year 2000 because the RRB employees to be trained were not to be hired until fiscal year 2001, the training could not have been used in fiscal year 2000 and accordingly there would be no bona fide need for the training in that fiscal year. However, the information provided by BIS and quoted above indicates that there was a bona fide need for the training at the time the obligation was incurred, and that it was intended that the training would be provided in fiscal year 2000. Accordingly, it is my opinion that the appropriation for fiscal year 2000 is the correct appropriation to be charged for the cost of the group training.-4-

-III-

In regard to the bulk training, some of which was performed in fiscal year 2000, the Briefing Paper concludes that that training is a severable service so that the cost of that training which occurs in fiscal year 2001 should be charged to fiscal year 2001. Apparently there is no question but that there was a bona fide need for this training in fiscal year 2000, when the obligation for it was incurred.

A contract which is viewed as "entire" is chargeable to the fiscal year in which it was made, notwithstanding that performance may have extended into the following fiscal year. The determining factor for whether services are severable or entire appears to be whether they represent a single undertaking. \* \* \*

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1 GAO/OGC-91-5 Appropriations Law-Vol. I  
2 E-mail dated November 14, 2000, from R W. W to R T. R.



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\*\*\* where the services are continuing and recurring in nature, the contract is severable and the services must be charged to the fiscal year(s) in which they are rendered. \*\*\*<sup>3</sup>

Severable services are those services, such as day-to-day office cleaning, which are ongoing and which cannot be used all at once.

The Briefing Paper concludes that the bulk training services were severable because the classes “were not an instance in which a single, non-severable course extends across fiscal years. The classes provided under the agreement were scheduled separately for any number of different individuals at a variety of dates and times. At the end of FY 2000, all of the training had not been scheduled.”<sup>4</sup>

GAO’s Principles of Federal Appropriations Law<sup>5</sup> states that:

Training tends to be nonseverable. Thus, where a training obligation is incurred in one fiscal year, the entire cost is chargeable to that year, regardless of the fact that performance may extend into the following year. [Citations omitted.] In 70 Comp. Gen. \_\_ (B-238940, February 25, 1991), training which began on the first day of FY 1990 was held chargeable to 1989 appropriations where the training was beyond the agency’s control, and the time between procurement and performance was not excessive. If some particular training were severable (it is not entirely clear when this might be the case), the contract could not cross fiscal year lines and payment would have to be apportioned between the fiscal years in which the training is actually conducted. [Citation omitted.]

It appears to me that the type of training that might be considered severable would be something like a collection of college courses leading to a college degree for an individual, since those courses (to some extent) must be taken in sequence over a substantial period time.<sup>6</sup> Training which is severable might also be routine ongoing training. It does not appear that the bulk training contracted for falls into these categories. The obligation was incurred in February 2000 “to satisfy the bureau’s training needs for fiscal year 2000”<sup>7</sup> and it was intended that the training be used in fiscal year 2000. BIS was then prevented from using all of the training by the end of fiscal year 2000 for a number of unforeseeable reasons. It is not the case, as suggested in the Briefing Paper, that only a “single non-severable course” could extend across fiscal years. What was contracted for was not sequential training or a random store of training to be used when needed, but rather the training needs as a whole for the year in which the obligation occurred. This service is an entire product to be obtained by the RRB and, accordingly, it is not determinative that some of the training occurred in fiscal year 2001.

It is my conclusion, therefore, that all of the costs for the training at issue in the Briefing Paper should be chargeable to the fiscal year 2000 appropriation and that, consequently, there is no violation of the Anti-Deficiency Act.

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3 GAO/OGC-91-5 Appropriations Law-Vol. I

4 What appears to be meant by this last sentence is that by the end of fiscal year 2000 some of the training had not been scheduled (since some of the training had already occurred), not that none of it had been scheduled. Actually almost all of it had either been performed or was scheduled (see e-mail of November 14, 2000, from R W. W to R T. R).

5 GAO/OGC-91-91-5 Appropriations Law-Vol. I

6 See the footnote on page 12 of the Briefing Paper which quotes a hypothetical description of severable training.

7 E-mail of November 14, 2000, from R W. W to R T. R.