

FREQUENTLY ASKED QUESTIONS

- Q. Our agency has a break room where employees may store and prepare food for lunch. Can appropriated funds be used to equip the room with a stove, microwave, sink, and dishwasher? May we use our appropriated funds to purchase items for common use such as dish soap, paper towels, and hand sanitizer?
- A. Red Book chapter 4, section C.5.b(4), discusses the provision of cafeterias and lunch facilities for federal employees, including a number of cases concerning the use of appropriated funds for microwave, refrigerator, and sink purchases. Of note, in B-302993, June 25, 2004, GAO approved the purchase of kitchen appliances for common use by employees in an agency facility but noted that appropriated funds are not available to furnish goods such as coffee and microwave frozen foods to be used in the kitchen area. As for the purchase of common use items such as paper towels, dish soap, or hand sanitizer, consider whether the items are to be used for maintaining a clean and safe workplace. Contact the appropriations law attorneys in your agency to discuss your particular facts in light of GAO case law and your agency's statutory authorities, regulations and policies.
- Q. Can an agency provide refreshments (pastries, coffee, tea, water, juices) for employees who are required to arrive at work earlier than usual to prepare for a work-related event?
- A. The general rule is that food is considered a personal expense for which appropriated funds are not available. Red Book chapter 4, section C.5.b has an extensive discussion of the purchase and provision of food in very limited, specific circumstances. Check out GAO's Food Tree, recently updated and available online, to help apply GAO's case law to your situation. Call your agency's appropriations law attorneys for assistance in determining the answer to your question in light of GAO case law and your agency's statutory authorities, regulations and policies.
- Q. One of our agency employees wants to use candy as an aid to demonstrate to children the migratory patterns of local wildlife. The children, acting as migratory animals, will hunt for the candy "resource" in various places. Can we purchase the candy using appropriated funds?
- A. Red Book chapter 4, section C.5.d, discusses the basic rule that appropriated funds are not available to furnish food or refreshments to nongovernment personnel. You may find useful the discussions in B-302745, July 19, 2004 (U.S. Forest Service appropriations are not available to provide food to local children as part of the Forest Service's "Kids Fishing Day") and B-310023, Apr. 17, 2008 (U.S. Forest Service appropriations are not available to provide refreshments for attendees of National Trails Day events). Two other interesting cases discussing the availability of appropriations for the purchase of food for

nongovernmental personnel include B-304718, Nov. 9, 2005 (Veterans Benefits Administration may use appropriated funds to offer refreshments and light meals as an incentive to maximize the participation by nonemployee veterans and their families in focus groups necessary to fulfill VBA's statutory requirement to "measure and evaluate" its programs to produce information) and B-318499, Nov. 19, 2009 (Navy command that did not identify a specific statutory objective may not use appropriated funds to pay for lunch for nonfederal participants of a focus group on readiness and quality of life issues). Of course, call your agency's appropriations lawyers for help applying GAO case law in light of your particular facts and your agency's statutory authorities, regulations, and policies.

- Q. We are expanding our fitness center. We'd like to purchase exercise DVDs, exercise-related reading material, a TV, DVD player and a Wii game console for use by gym members. Can we use appropriated funds to make the purchases?
- A. Federal agencies are authorized under 5 U.S.C. § 7901 to establish physical fitness programs as a preventive health program. Take a look at Red Book pages 4-247 and 4-248 for a discussion of the use of funds for fitness programs under the statute and the necessary expense rationale. In particular, take a look at both 70 Comp. Gen. 190 (1991), which invokes the statute to justify an agency's fitness program, and 63 Comp. Gen. 296 (1984), which applies a necessary expense analysis to the proposed purchase of exercise equipment by the Bureau of Reclamation. Finally, it's important to discuss with your agency counsel how your question fits into GAO case law and your agency's statutory authorities, regulations, and policies.
- Q. How can my agency accept the services of volunteers? We're in the process of drafting a technical report detailing some cutting edge biomedical research. We'd like to have a number of experts assist the agency with drafting and review but these experts are private-sector employees. Can we accept their volunteered services without violating the prohibition against volunteers?
- A. Under the Antideficiency Act, 31 U.S.C. § 1342, the government "may not accept voluntary services" without specific statutory authority. This is called the "voluntary services prohibition." This statute may seem simple but there are a number of factors that must be considered. Does the agency have other statutory authority permitting the use of voluntary services? Also, GAO case law draws a distinction between prohibited "voluntary services" and permitted "gratuitous services." There is an extensive discussion of the voluntary services prohibition in the Red Book starting on page 6-93. We also discussed this recently in a report concerning FDA. GAO, *Food and Drug Administration: Response to Heparin Contamination Helped Protect Public Health; Controls That Were Needed for Working with External Entities Were Recently Added*, GAO-11-95 (Washington, D.C.: 2010). Because the analysis is so fact-specific and because your agency might have additional policies on this matter, you should contact your agency counsel for further information.

- Q. My agency operates out of fiscal year appropriations. Can we purchase a “lifetime” supply for 2 electronic components that will be obsolete very shortly? Since replacements will not be available, is it permissible for us to make a purchase sufficient to cover several years of requirements?
- A. Under a principle called the “*bona fide* needs rule,” an agency may use a fiscal year appropriation only to meet a legitimate need arising in the fiscal year for which the appropriation was made. A classic example is given on Red Book page 5-13: as the end of the fiscal year approaches, an agency buys a truckload of pencils when it’s clear that, based on current usage, the agency already has years’ worth of pencils in stock. However, the agency may maintain an inventory level so as to avoid the disruption of its operations. You should check with your agency counsel to see whether the purchase of the extra components is necessary to maintain a reasonable inventory level in your circumstances; in addition, your counsel may be aware of agency policies on this issue.
- Q. Our agency is considering hosting a conference in the last week of October, which will be in fiscal year 2012. Can we enter into contracts and obligate funds for conference space in September using fiscal year 2011 money?
- A. Under what we call the “*bona fide* needs rule,” an agency may use a fiscal year appropriation only to meet a legitimate need of the fiscal year for which the appropriation was made. It appears your agency wants to contract for space in the fiscal year before the conference is given. The analysis will depend on several factors. For example, our Red Book has a discussion on the purchase of supplies and services that will be rendered beyond the current fiscal year. See chapter 5, sections B.4 and B.5. The general rule is that the cost of a service is chargeable to the year in which the service will be rendered, though there are exceptions. See, e.g., B-238940, Feb. 25, 1991. You will want to contact your agency counsel for assistance on how to apply the law to the facts in your particular situation.
- Q. I’m looking for guidance on paying for warranties covering more than one year. Our agency is purchasing computer equipment with four-year maintenance warranties. We’re wondering how to fund the warranties. Are extended warranties considered an advance payment for services? The warranty period was not offered as separate years but as a four-year warranty, and the vendor has demanded that we pay for the four-year warranty at the same time we purchase the equipment.
- A. Unless your agency has specific statutory authority otherwise, you cannot make advance payments for services or goods that the government has yet to receive. 31 U.S.C. § 3324. This is called the advance payment prohibition. The rule is discussed in the Red Book beginning on page 5-50. The agreement you’re considering would have to be analyzed to determine whether the advance payment prohibition would apply here. One relevant decision is B-249006, Apr. 6, 1993. It states that some extended warranties may be purchased without violating the advance payment prohibition. One important criterion is whether the so-

called “warranty” is really a contract that contemplates periodic maintenance service, because advance payment for periodic maintenance does violate the advance payment prohibition. You will want to check with your agency counsel to see how to analyze this arrangement to see if it violates the prohibition. In addition, your counsel may be aware of additional agency-specific policies that apply in this situation.

- Q. Can an agency, not an agency’s employee, accept rebates resulting from use of a government purchase card? I’m not talking about free miles for individuals earned from use of a travel card. I’m asking about rebate rewards earned in the agency’s name from use of the agency’s purchase card. Can the agency keep the rebate?
- A. Generally when agencies receive money, they must deposit it into the miscellaneous receipts fund in the Treasury. This is required by the miscellaneous receipts statute, 33 U.S.C. § 3302(b). However, money received as a refund may be credited to the appropriation from which the original payment was made. The Red Book discusses this beginning on page 6-166. Some cases discussing similar issues include 65 Comp. Gen. 600 (1986) (rebates from Travel Management Centers do not need to be deposited into the Treasury as miscellaneous receipts because they are considered adjustments of previous amounts disbursed and therefore qualify as "refunds" under regulations permitting such refunds to be retained by the agency) and B-305402, Jan. 3, 2006 (NASA may not retain proceeds from the sale of demutualization compensation received from its contractor). It’s important to contact your agency counsel for guidance applying GAO case law in light of your agency’s statutory authorities and remember that the appropriate person can request a decision from us if necessary.
- Q. Do you have any decisions on whether a government employee can pay for his own travel due to funding constraints?
- A. We do not have any decisions or opinions that directly address this issue. It’s difficult to address this question hypothetically; it is important to know the facts that give rise to the question. Has the agency issued a travel authorization expecting the employee to travel, but is refusing to pay travel expenses? Or, is the employee traveling to attend a training course for which the agency has decided not to pay, notwithstanding that the agency may benefit from the employee’s training? The factual circumstances are important because the agency must ensure that its actions do not result in a de facto augmentation of agency appropriations. Congress established the limits of the agency’s operations when it appropriated funds for the agency, and the agency cannot find other sources of funds to defray agency expenses that would allow it to operate beyond those limits. The Red Book discusses this principle starting on page 6-162. It’s important to consult your agency counsel for more guidance and remember that the appropriate person can request a decision from us if necessary.