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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-194287

February 26, 1980

The Honorable G. William Miller
The Secretary of the Treasury

AGC 000356

Dear Mr. Secretary:

This is in reply to a letter from Mr. Paul H. Taylor, Fiscal Assistant Secretary, dated February 26, 1979, who under authority delegated by you requests that relief be granted to Mr. Dario A. Pagliai, Commissioner and accountable officer, Bureau of Government Financial Operations, for a \$1,303.20 deficiency involving Government funds. *Req.*

personal name
DLG 03565

The Bureau of Government Financial Operations feels that the negative balance deficiency is the result of two or more data processing errors occurring over a period of several years. This opinion is based on the following background information provided by the administrative report detailing the circumstances which gave rise to the \$1,303.20 deficiency and which accompanies the request for relief.

By provision of the Emergency Farm Mortgage Act of 1933, the Treasurer of the United States became the special agent for the payment of interest and redemption of principal on securities issued by Farm Credit Administration (FCA) institutions. Special agency accounts were instituted by the Treasurer's office to verify that charges for interest and principal agreed with the audit of redeemed obligations by the Bureau of the Public Debt. From 1933 to this date, over \$2 billion of transactions pertaining to FCA securities have been processed through the Treasury's account. Treasury Order No. 229-1, issued on March 11, 1974, established the Bureau of Government Financial Operations (BGFO). Most functions of the Office of the Treasurer of the United States were transferred to the newly created Bureau. As such, the responsibility of maintaining the special agency accounts, including those pertaining to FCA, was assigned to the Government Reports Branch. Several special agency accounts, including the FCA accounts, were discontinued effective October 1, 1974. BGFO was directed to transfer the cash balances maintained for the Farm Credit Banks to the Federal Reserve Bank of New York (FRBNY) in payment of the obligations of the FCA. The final transfer occurred on May 19, 1977.

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The amount transferred to the FRBNY on May 19, 1977, was determined by means of an analysis of obligation and cash balances by the staff of the Government Reports Branch. The administrative report states that:

"The amount transferred, in total and for each Farm Credit Bank, was, to the best of our knowledge, the correct amount. The transfer was fully supported by the Government-wide General Ledger, the special agency subsidiary ledgers, and the control accounts maintained by the Bureau of the Public Debt."

However, it was discovered, subsequent to the final transfer, that the amount transferred to the FRBNY for the Federal Land Banks exceeded the pre-transfer balance in the undisbursed appropriation account trial balance. As a result, a deficiency in the amount \$1,303.20 was created. Although the Governmentwide General Ledger balance was reduced to zero, the deficiency remains in the undisbursed appropriation trial balance as a negative undisbursed balance for the fund symbol of the Federal Land Banks Fund; and the account of the accountable officer, Mr. Pagliai, is therefore deficient by the amount of \$1,303.20. PLS 0397

The Government Reports Branch has attempted to reconcile the special agency ledgers and the undisbursed appropriation account trial balance to determine the cause of the deficiency. Their analysis indicated discrepancies of varying amounts have existed between the two records since at least July 1973. In addition, it has been determined that although the Government Reports Branch did verify FCA balances with the General Ledger and with the Bureau of the Public Debt, the undisbursed appropriation account trial balance was not used to verify the special agency ledgers as required by Treasury Department Circular No. 945 and the Treasury Fiscal Requirements Manual (TFRM 2-3900). The administrative report also notes that all supervisors were aware of this requirement, but, due to employee inadvertence, it was not followed in this case. The alleged data processing errors which BGFO feels caused the \$1,303.20 negative balance, were not discovered because, as the administrative report indicates, the special agency staff of the Government Reports Branch did not reconcile their books to the undisbursed appropriation account trial balance provided to them for that purpose.

This Office has consistently reasoned that an accountable officer is an insurer of the public funds in his custody and is excusable only for loss due to acts of God or the public enemy. B-191440, July 19, 1978. However, while an individual may be held liable as an accountable officer regardless of the presence or absence of negligence, the strict liability of accountable officers has been modified by statute and relief from liability may be granted under the following terms prescribed in 31 U.S.C. § 82a-1 (1976):

"The General Accounting Office is authorized, after consideration of the pertinent findings and if in concurrence with the determinations and recommendations of the head of the department or independent establishment concerned, to relieve any disbursing or other accountable officer or agent * * * charged with responsibility on account of physical loss or deficiency of Government funds, vouchers, records, checks, securities, or papers in his charge, or to authorize the reimbursement, from any appropriation or fund available for purposes of the activity in which the loss or deficiency occurred, of amounts paid subsequent to August 1, 1947, by or on behalf of the officer or agent in restitution of the loss or deficiency, if the head of the department or independent establishment determines (1) that such loss or deficiency occurred while such officer or agent was acting in the discharge of his official duties, or that such loss or deficiency occurred by reason of the act or omission of a subordinate of such officer or agent; and (2) that such loss or deficiency occurred without fault or negligence on the part of such officer or agent. * * * Whenever it is necessary in the opinion of the Comptroller General to restore or otherwise adjust the account of any disbursing or accountable officer or agent or former disbursing or other accountable officer for relief heretofore or hereafter granted under this section, the amount of such relief shall, unless another appropriation is specifically provided therefor, be charged to the appropriation or fund available for the expense of the disbursing or other accountable function at the time the adjustment is effected."

Our construction of this relief statute often requires the exercise of discretion in analyzing various sets of circumstances that are not always governed by any applicable regulatory authority. Where regulations do exist, and a loss of funds is caused by an accountable officer's failure to follow the regulations, this must be considered negligence and relief denied. See generally: 54 Comp. Gen. 112, 116 (1974). Where there are no regulations covering the actions in question, the provisions of the relief statute are applied to determine the presence or absence of negligence. In this instance we will apply a "reasonable care" standard, and even where negligence under that standard exists relief may be granted if such negligence is not the proximate cause of the loss. See: *id.* 115, 116.

On the basis of the present record, notwithstanding the analysis of the BGFO, the deficiency remains unexplained. Generally the fact that an unexplained loss or shortage occurred is, in and of itself, sufficient to raise an inference or presumption of negligence. 48 Comp. Gen. 566 (1969). However, as we have stated, in order to deny relief to an accountable officer, negligence on the part of the officer must be the proximate

cause of the loss. 54 Comp. Gen. 112, 116, supra; and B-182386, April 24, 1975. The administrative report documents instances of apparent negligent administration of accounts evident in the failure to use the undisbursed appropriation account trial balance to verify the special agency ledgers as required by Treasury Department Circular No. 945 and the Treasury Fiscal Requirement Manual (TFRM 2-3900). However, there is nothing in the administrative report before this Office which clearly demonstrates that the subject deficiency was caused by the failure to employ the required reconciliation procedures, or that Mr. Pagliai was directly responsible for the superintendence of such reconciliation procedures. In the event that such negligence could be directly attributed to Mr. Pagliai, we would still not be able to affirmatively assert that this negligence was the proximate cause of the \$1,303.20 deficiency in the undisbursed balance of the fund symbol for the Federal Land Bank Fund.

We therefore concur with the determination submitted by the Department of the Treasury that the deficiency in question occurred by reason of an act or omission by a subordinate of Mr. Pagliai, and that the deficiency occurred without fault or negligence on Mr. Pagliai's part, and grant the relief requested.

In addition we feel that any attempt to establish accountability and assess pecuniary liability against one or several subordinates, as possible custodians not covered by the request for relief, would involve an investigation back to 1973 and thus be potentially unavailing considering the applicable statute of limitations and the conceivably disproportionate expense involved in attempting to recover the amount of the deficiency in question. This would seem especially true in view of the fact that the Farm Credit Administration accounts were discontinued effective October 1, 1974, with the final transfer occurring on May 19, 1977.

Therefore, pursuant to 31 U.S.C. § 82a-1 (1976), the account of Mr. Pagliai may be adjusted, and the deficiency restored, in the amount \$1,303.20 in accordance with the relief granted by this decision.

Sincerely yours,

Harry R. Van Clave

for Milton J. Socolar
General Counsel