



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

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5/15/79



IN REPLY REFER TO: B-194727

OFFICE OF GENERAL COUNSEL

OCT 30 1979

Ms. Margaret M. Ayres
Chief Counsel, Urban Mass
Transportation Administration } AGC00230
Department of Transportation
400 7th Street, S.W.
Washington, D.C. 20590

Dear Ms. Ayres:

PN You have requested guidance as to the manner of response to ~~six~~ Notices of Exception (exceptions). The exceptions relate to the account of Mr. Lewis Keeton, as the Certifying Officer responsible for authorizing improper payments to Mr. William C. Sibert, a former Government employee in the Department of Transportation.

First, you wish to know the type of answer which the Urban Mass Transportation Administration (UMTA) must provide to the exceptions. You suggest that Mr. Keeton's written answer to the exceptions or an updated version would constitute a sufficient response. You refer to conversations with General Accounting Office (GAO) staff concerning the content of the response.

The exceptions represent our finding that each payment was improper. Because a certifying officer's liability for improper payments is that of an insurer, Mr. Keeton is, without more, liable to the United States for the amount of those payments unless it can be shown that the payments were not improper or relief is granted to him.

Accordingly, the exceptions indicate that credit for the amount of payments made to Mr. Sibert will be withheld or a charge will be raised in UMTA's next statement of settlement unless a satisfactory explanation is made or the amount of the loss deposited.

More specifically, if your agency agrees with the exceptions, your reply need only so state. If you disagree, you may offer any reasons that you think the payments were not improper, such as facts not earlier known. Thus, you need not comment on whether Mr. Keeton was negligent nor on the amounts of the exceptions which are apparently not in dispute. With regard to the request Mr. Keeton has made through his attorney for an opportunity

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to make an oral presentation to your Department, whether to permit this, on a formal or informal basis, is entirely within your agency's discretion.

Meanwhile, the appropriate course of action for your agency is to continue to seek to collect the full amount of the excepted payments. To the extent that recovery has been made from the payee, Mr. Sibert, the exceptions may be reduced. As to the remaining balance, you must proceed against Mr. Keeton following the prescribed procedures for collection of claims in favor of the United States. See the Federal Claims Collection Act, 31 U.S.C. §§ 951-953 (1978) and 4 C.F.R. § 102.3 which states that:

"The head of an agency or his designee shall take aggressive action, on a timely basis with effective followup to collect all claims of the United States for money arising out of the activities of, or referred to, his agency . . ."

(Section 5512 of title 5, United States Code, provides a means of collection from the current pay of an accountable officer in arrears to the United States, but we understand that Mr. Keeton is no longer employed by the United States.)

You also request guidance as to the procedure to followup regarding reports of repayments. Title 3, section 64.1, GAO Policy and Procedures Manual, states that the reply to exceptions should include reports of repayments. As to calculating the balance due on each exception for reporting purposes, the consent judgment obtained from Mr. Sibert represents only a potential unrealized value. It cannot be considered repayment at this time since it has not been collected. Any amount collected in the future from Mr. Sibert may be credited against the excepted payments. Regarding amounts previously recovered, we have no objection to consolidating the exceptions to one total, and providing a single response accounting for the \$856,557.72 of excepted payments.

I hope the foregoing has been helpful.

Sincerely yours,

MILTON SOCOLAR

Milton J. Socolar
General Counsel