

January 31, 2012

USE OF PRIOR-YEAR FUNDS FOR NON-RECURRING MAINTENANCE (NRM) PROJECTS

1. PURPOSE: This Veterans Health Administration (VHA) Directive provides policy for the appropriate use of prior-year funds in an expired account in accordance with the Expired Funds Control Act of 1990, Title 31 United States Code (U.S.C.) 1551-1557; Department of Veterans Affairs (VA) Policy Volume II, Chapter 2; VA's Budget Cycle and Fund Symbols; and Public Law 108-199, Consolidated Appropriations Act, 2004, which established appropriation 0162, Medical Facilities, as the appropriation to use for non-recurring maintenance (NRM) projects. *NOTE: The term "NRM projects" includes both projects that meet the criteria for recording in the Construction Asset Management System database and those which have been historically referred to as "station level" projects that do not meet the criteria.*

2. BACKGROUND

a. The enactment of Public Law 101-510 Section 1405(a), known within VA as the "Expired Funds Control Act of 1990" on November 5, 1990, prescribed new rules for expired appropriations in Title 31 U.S.C. Sections 1551 through 1557. This Act extends an expired appropriation's fiscal year (FY) identity to 5 years beyond the current year and permits the recording, adjusting, and liquidating of obligations properly charged to that appropriation. Thus, an adjustment may be made to an existing obligation where the adjustment or contract change is within the scope and an antecedent liability of the original contract. After the 5-year period has lapsed, all obligated and un-obligated balances are canceled and the expired appropriation is closed.

b. For purposes of this Act, the term "contract change" means a change to a contract under which the contractor is required to perform additional work. The change must be within the scope of the original contract, or pursuant to a provision in the original contract. The term does not include adjustments to pay claims or increases under an escalation clause. A change within the scope of the original contract, or made pursuant to a provision in the original contract, is charged against the appropriation at the time the contract was originally executed.

c. If an upward price adjustment occurs and is not severable from the original contract, then an antecedent liability exists. When an antecedent liability exists and is enforced by the contractor, it is to be charged against the appropriation at the time the contract was originally executed, even though the adjustment is necessitated in a subsequent year. A contractually-permissible change, based on an antecedent liability, does not give rise to a new liability since that liability existed at the time the original contract was executed. The subsequent price increase is viewed as reflecting a bona fide need of the year in which funds were obligated for payment of the original contract.

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3. POLICY: In accordance with 31 U.S.C. 1551-1557, it is VHA policy that modifications to existing prior-year obligations for NRM projects may be paid for from prior-year funds in an expired appropriation only when the adjustment or contract change is determined to be within the scope of the original contract or pursuant to a provision in the original contract and an antecedent liability exists. Contract changes that are not within the scope of the original contract, or are not an antecedent liability, must be funded from a current-year appropriation.

4. ACTION

a. **VHA Chief Financial Officer (CFO)**. The VHA CFO, or designee, is responsible for:

(1) Instructing all field facilities to submit requests for additional obligational authority from the prior-year appropriation for NRM projects, using the required form (see Att. A), through the appropriate Veterans Integrated Service Network (VISN) officer to the Office of Financial Management and Accounting Systems (10A3A) “VHA CFO Financial Analyses Shared Mailbox” in Outlook for approval.

(2) Approving the use of prior-year funds for NRM contract amendments deemed by the contracting officer, facility’s CFO, and VISN CFO to be within the scope and an antecedent liability of the original contract up to a cumulative total increase of \$4 million within an expired appropriation.

(3) Tracking cumulative prior-year fund increases for contract changes for each expired appropriation.

(4) Submitting additional requests for obligation increases to the Assistant Secretary for Management (004) for approval, when cumulative increases in a FY for an expired appropriation reach \$4 million.

(5) Preparing notifications to the appropriate Congressional Committees of VHA’s intent to obligate funds when an obligation of funds causes the total increase to an expired appropriation to exceed \$25 million. Pursuant to 31 U.S.C. 1553(c)(2), the notification is submitted by the Secretary of Veterans Affairs not less than 30 days before the obligation exceeding the threshold is made.

b. **VISN Director**. The VISN Director, or designee, is responsible for:

(1) Verifying that the Contracting Officer has made a written determination that the effected change is within the scope and an antecedent liability of the original contract.

(2) Submitting the properly executed and approved Prior-Year Fund Request for NRM Projects (see Att. A) to the “VHA CFO Financial Analyses Shared Mailbox” in Outlook for approval. Properly executed forms must contain signatures of all three approving officials.

NOTE: When submitting requests for approval, a scanned copy of the request (see Att. A), with signatures, is preferable. If scanning capabilities are not available, the request may be submitted

as an attached Microsoft Word document with typed names; however, the email message submitted to the VHA CFO Financial Analyses Shared Mailbox is to be copied to the approving officials whose names are referenced on the request.

(3) Coordinating with the VHA Resource Management Office (10A3B) for transfer of additional prior-year funds, if required by the requesting facility.

c. **Facility Director.** The facility Director, or designee, is responsible for ensuring that:

(1) The facility fiscal staff, in order to facilitate tracking of NRM prior-year obligational adjustments, ensures that all NRM projects' obligations, both new and prior-year obligational adjustments, are obligated under the correct fiscal year appropriation. Beginning with FY 2004, in compliance with the requirements of the three medical care appropriations, all new NRM projects must be obligated under the Medical Facilities appropriation (36_0162).

(2) The request for use of prior-year funds has been certified by the Contracting Officer or Network Contract Manager (NCM) stating that the additional work is within the scope of the original contract and arises based on an antecedent liability in the original contract that is enforceable by the contractor.

(3) All required information for prior-year fund use requiring approval by the VHA CFO (10A3A), is submitted through the VISN CFO using the required form (see Att. A).

(4) There is full-control accounting (see Att. B).

d. **Contracting Officer or NCM.** The Project Contracting Officer or NCM is responsible for the determination as to whether a change that requires additional obligational authority is within the general scope of the original contract and whether the change is required based on an antecedent liability enforceable by the contractor. Contracting officers need to consult with the Contracting Officers Technical Representative before making this determination. *NOTE: Auditors reviewing amendments to NRM projects involving the use of prior-year funds look to the Contracting Officer for adequate documentation to support these determinations.*

e. **Facility Fiscal Officer.** The facility Fiscal Officer is responsible for:

(1) Ensuring that the request to use expired funds includes justifications that specifically address legal elements necessary for approval, such as whether the additional work is based on an antecedent liability in the original contract and meets a bona fide need of the appropriation year.

(2) Ensuring that obligations recorded during year-end spending are supported by adequate documentation prepared while the funds were legally available for obligation.

(3) Ensuring that NRM project obligations and adjustments are funded using the correct FY 36_0162 Medical Facilities appropriation.

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(4) Determining if the required additional funds are available locally or must be obtained from another facility. For example: The original contract was awarded during FY 2008 and obligated under fund - 3680162. First, determine whether funds are available under the original fund obligated by consulting the medical center's Status of Allowance Table (SALT) and entering budget fiscal years (BFYS): 08 and Fund: 0162A1). If funding is not available, the medical center is to review its fund availability in multi-year funds 367/80162 and 368/90162 (BFYS: 07 08 and Fund: 0162B2 and BFYS: 08 09 and Fund: 0162B2) to determine which would have been available for obligation during FY 2008. (See Att B).

(5) If the facility determines additional funds are needed, coordinating with the VISN CFO, and if required, contacting the appropriate budget analyst from the Office of Resources Management (10A3B) to request the additional funds. If funds are requested, 10A3B processes the Transfer of Disbursing Authority (TDA) on-line in Financial Management System (FMS), within 2 business days and notifies the station. Once the additional funds are available on the SALT table, the Prior-Year Fund Request for NRM Projects must be submitted to the Financial Management and Accounting Systems Office (10A3A) for approval.

(6) Submitting requests for use of prior-year funds through the VISN CFO to the VHA CFO (10A3A) for approval.

5. REFERENCES

a. Title 31 U.S.C. 1551-1557.

b. Office of Management and Budget (OMB) Circular No. 11, "Preparation, Submission, and Execution of the Budget," dated July, 2003.

c. Principles of Federal Appropriations Law, Second Edition, Volume 1, Chapter 5.

d. VA Volume II, Chapter 2, VA's Budget Cycle and Fund Symbols.

6. FOLLOW-UP RESPONSIBILITY: The VHA Chief Financial Officer (10A3) is responsible for the contents of this Directive. Questions may be addressed to 202-461-6666.

7. RESCISSION. VHA Directive 2009-068, dated December 14, 2009, is rescinded. This VHA Directive expires January 31, 2017.

Robert A. Petzel, M.D.
Under Secretary for Health

Attachments

DISTRIBUTION: E-mailed to the VHA Publications Distribution List 2/2/2012

ATTACHMENT B

FULL-CONTROL ACCOUNTING

1. All appropriations are subject to the rules of “full control,” which prevent facilities from over-obligating expired appropriations. The facility Fiscal Officer must verify that prior-year funds for the increase are, in fact, available in the appropriate prior-year appropriation at the facility. If not available at the facility, the amount of additional funds required must be identified in the Prior-Year Fund Request for Non-Recurring Maintenance Projects.

2. The first source of funds should be the original account from which the obligation was made. If the funds in the original account are insufficient, then the following chart provides examples of additional sources that may be used to fund a prior-year obligation.

Original Obligation	Alternative Fund Sources
3680162	367/80162 if initial obligation recorded in Fiscal Year (FY) 2008 368/90162 if initial obligation recorded in FY 2008
367/80162	Current FY 0162 if initial obligation recorded in FY 2007 3680162 if initial obligation recorded in FY 2008 368/90162 if initial obligation recorded in FY 2008
X0162	367/80162 if initial obligation recorded in FY 2007 or 2008 3680162 if initial obligation recorded in FY 2008 368/90162 if initial obligation recorded in FY 2008 or FY 2009

3. In using an alternative funding source, e.g., 1-year, 14-month, 24-month, or no-year funds, the alternative funding source must have been available for obligation at the point in time the original obligation was created.