

**ACCOUNTING AND AUDIT POLICY COMMITTEE MEETING
FINAL MINUTES
MARCH 10, 2004**

The meeting was convened at 1:05 PM in room 7C13 of the GAO Building, 441 G St., NW, Washington, DC.

ADMINISTRATIVE MATTERS

• **Attendance**

Present: Ms. Comes, Ms. Geier, Ms. Krell, Messrs. James, Lund (for Sturgill), Maharay, McFadden, Ritchie, Taylor and Zane (for Dingbaum).

Absent: Messrs. Dingbaum, Moraglio and Sturgill.

• **Minutes**

The minutes of January 29, 2004 were previously approved as final, having been circulated by E-mail to members.

• **Project Agenda Status**

Appropriated Debt

Ms. Comes began the discussion by noting that the objective of the meeting was to continue the appropriated debt discussion, which began at the last meeting on January 29, 2004. She also noted that FASAB staffer Monica Valentine had provided the Committee with an updated issue paper along with additional information provided by the agencies involved in the issue. Ms. Comes then turned the discussion over to Jeff Jacobson, FASAB General Counsel, to provide some information on the legal aspects surrounding the issue.

Mr. Jacobson briefly summarized the discussion at the last AAPC meeting regarding whether there were other situations in the Federal government in which the facts and the law were similar to the relationship between the Departments of Energy and Interior. He then referred to specific questions that had been posed by FASAB staff to both the Departments of Energy and Interior, the first of which was, "Please provide to the AAPC specific examples of other Federal programs involving more than one Federal entity in which the legislative framework, the financial transactions between the entities, and the accounting treatment for those transactions are similar to WAPA and the accounting treatment you advocate". Mr. Jacobson stated that after reviewing Energy and Interior's responses, he did not believe that either response provided a clear example of an analogous situation. He noted that there was some discussion about the Government's relationship with private parties as it relates to selling the power to the public and generating fees, but that the issue before AAPC was the accounting treatment between Energy and Interior, not the accounting treatment between the government and the public. He also noted that while one of the responses made analogies to the Government's use of user fees in many

programs. The analogy was not persuasive in resolving the appropriated debt issue at hand. In the case of the user fee analogy funds are appropriated to finance the activities of the program and in turn fees are charged to the public for goods and services provided, but the difference is that there is not a direct correlation between the fees that are collected from the public and remitted to the Treasury and funds that are appropriated from the Treasury. Additionally, the user fee situation does not involve the assessment of interest over time or the rolling over of the amount appropriated from one year to the next.

Mr. Jacobson provided the Committee with a fairly recent Comptroller General's Decision that he thought provided some useful principles for analyzing the appropriated debt issue between Energy and Interior. The Decision involved two Federal agencies [Railroad Retirement Board (RRB) and Treasury]. In this situation Congress appropriated funds to RRB to make up for a short fall in RRB benefits to be paid and the legislation specifically characterized the funds as a "loan". However, the legislation also provided that the funds would be "repaid to the general fund to the extent sums are appropriated for the purpose". Congress never appropriated any funds to the RRB for that purpose. Treasury believed that they should recognize a receivable and RRB should recognize a liability, but RRB disagreed. Treasury asked for a Comptroller General decision and the critical legal issue was whether there was a legal obligation. The GAO legal opinion concluded that there was no legal obligation under the financing scheme established by the Congress for the RRB because the substance of the statutory scheme took all responsibility for "repayment" out of the control of RRB. Mr. Jacobson noted to the Committee that the appropriated debt situation between Energy and Interior may be a "mirror image" (i.e., the exact opposite) of the RRB/Treasury situation in that Congress has specifically directed WAPA to conduct its business and set fees in a manner that would facilitate the repayment of the funds advanced to WAPA by the Reclamation Fund, and that if the fees are sufficient, WAPA not only doesn't have to wait for Congress to pass legislation to repay the Fund but, in fact, is already under a statutory duty to repay the Fund. He also mentioned that the actual timing of the repayment is not specifically tied to the question of legal obligation. Mr. Jacobson then stated that GAO would be available to accept a formal request from one or both of the agencies involved to render a formal legal decision on whether there is a legal obligation between WAPA and the Reclamation Fund. Mr. Jacobson noted that once it is determined whether or not there is a legal obligation, it would be left to the standard setters to determine what and how the obligation would be recognized in the financial statements.

Ms. Comes then asked the Committee members to share any thoughts or opinions they have formed on the issue thus far. Mr. Taylor stated that he still had a problem with the question of the asset and control of the asset. He also posed a question dealing with the call-ability of the receivable and the ramifications if repayment is not made. In addition, he asked a question about Congress' intent of the repayment. Mr. Jacobson stated that after reviewing the related legislation dating back to the early 1900's, Congress had the expectation that rates would be charged by WAPA in a manner that would be sufficient to make the necessary repayments with the understanding that repayments may fluctuate because of the uncertainties involved in selling power to the public. Mr. Taylor specifically asked Mr. Jacobson if he believed that it was Congress' intent to receive payments back from WAPA that were not tied to a set payment schedule but to be flexible in the receipt of payments. Mr. Jacobson stated that he believed that was Congress' intent.

Mr. Lund noted that the fact that FASAB has not yet officially defined “asset” further complicates this issue. He continued by quoting FASB’s “asset” definition that specifically talks about the occurrence of a past event. Mr. Lund stated that he leaned towards Interior’s argument because “the event “ does not occur until the energy fees are due from the power customers. Ms. Comes pointed out that selecting the correct past event was very important when discussing assets as well as liabilities. Her view was that the relevant past event in this issue was the advancing of the funds from Reclamation to WAPA and the “fee-collecting event” only affected the timing of the repayment, but not the obligation to repay.

Mr. Maharay wanted to see a further analysis of the current standards as it relates to the recognition of a liability and an asset. Mr. Ritchie agreed that the Committee was tasked with concentrating on the “substance over form” factors of this issue.

Ms. Comes noted that the staff ‘s objective is to provide a neutral perspective on the issue in order to stay true to the spirit of the AAPC, a volunteer body that voices its views on the issues presented before final decisions are made. She also stated that she believed that it was Congress’ intent for Energy to repay the advance of funds from the Reclamation fund and for Interior to receive this repayment. Thus, she believes the logical accounting is for Energy to recognize a liability and Interior to recognize a receivable. To do otherwise would misstate the financial position of each entity.

Mr. James stated that, based on the information provided, he believes that Energy has a liability to Interior at the time the funds are transferred from the Reclamation Fund to WAPA and an asset has been created for Interior.

Ms. Krell agreed with Mr. James’ statement and further noted that adequate disclosure was also important in this situation because the entities involved are considered “related parties”.

Mr. Ritchie also agreed with Energy’s recognition of liability and Interior’s recognition of a receivable at the time the funds were transferred.

Based on the views expressed by the members Ms. Comes informed the Committee of the next steps for this issue. She noted that staff would draft a technical release exposure draft for review and approval by the Committee before it was released for exposure on the FASAB website.

RECP/EEOICP Issue

Ms. Comes introduced the next issue on the AAPC agenda. She noted that the AAPC Agenda Committee at the January meeting recommended taking up this issue. She also noted that the issue came to the FASAB from the Department of Energy. Ms. Comes then asked FASAB staffer Ms. Valentine to give a brief synopsis of the issue before the discussion began.

Ms. Valentine stated that The Department of Energy (DOE) contacted FASAB for guidance on the accounting and reporting for the Radiation Exposure Compensation Program (RECP) and the Energy Employees Occupational Illness Compensation Program (EEOICP). Both programs

provide for compensation for certain illnesses suffered as a result of work performed related to nuclear weapons and exposure to radiation. (NOTE- RECP claimants do not necessarily have to be a former employee of the federal government--the Act also provided for payments to individuals who contracted illnesses from their presence in the testing areas and downwind areas. That is one small difference in the RECP and EEOICP. EEOICP is only for former federal government employees and contractors.) Both compensation programs are a direct result of nuclear programs conducted by DOE. However, the RECP and EEOICP compensation awards do not come from DOE appropriations and DOE does not administer the programs. Instead, the RECP is administered by DOJ and the EEOICP is administered by DOL, with award amounts for the respective programs provided through permanent, indefinite appropriations. The two programs appear to be very similar, but they are currently accounted for in different ways.

For the EEOICP, DOL records a long-term estimated liability. The liability represents the expected lump sum and estimated medical payments for approved compensation cases and cases filed pending approval, as well as claims incurred but not yet filed. For the EEOICP, DOE records the change in the estimated liability as a cost on the Statement of Net Costs (costs not assigned) and an imputed financing source on the Statement of Changes in Net Position and the Statement of Financing.

For the RECP, DOJ records a liability only to the extent that an award has been accepted by a claimant but has not yet been paid. DOJ does not record a liability for approved claims that have not been accepted by the claimant or for estimated future claims/payments. DOJ-OIG's view is that although this is a government acknowledged event, it is also an exchange transaction because the claimant has to sacrifice value (other available benefits or lawsuits) in order to receive the award. As a result of DOJ's accounting position for RECP, DOE does not report anything for RECP.

DOE believes that the accounting for both programs should be consistent and requested FASAB's position on the issue. DOE believes that the accounting and reporting for the EEOICP is consistent with the accounting standards and provides for a fair presentation of costs and would prefer to account for the RECP in the same manner.

Once Ms. Valentine completed her briefing, Ms. Comes opened the floor for comments from the Committee. Mr. Lund emphasized that since imputed costing was not currently permitted for any transactions outside of those previously specified by OMB, it would not be appropriate for the AAPC to call for any recognition of imputed costs by Energy. It was agreed that the issue of inter-entity costs would not be included in the decisions of the Committee.

Ms. Comes then opened the floor for discussion on whether or not Justice should be recognizing an earlier liability for the RECP. Mr. Taylor noted that this issue as well stems from the question, what is the relevant event for liability recognition. Ms. Comes noted that based on staff's review of the pertinent literature, the relevant event is the existence of the Federal program, which dates back to the actual mining of the uranium and the event that triggers the liability is the exposure to the harmful agents. Ms. Comes also noted that based on the research, staff's view is that the event would be considered a government-related event vs. a government-acknowledged event. She further stated that since the government's actions contributed to the

exposure that would make the event a government-related event and that legal obligation was met when Congress passed the RECA. As one reviews the criteria for liability recognition, a past event has occurred and it is probable because there are existing claimants and it is expected that there will be more. Now the question of measurability is left to be answered. Ms. Comes reminded the Committee of Justice's view on the events and the liability recognition (i.e., DOJ disagrees with staff's assessment of the events and the liability recognition). Mr. Taylor then asked the Chair if it would be possible to hear from DOJ representatives on their views of the events.

Three representatives from DOJ addressed the Committee: Mark Hayes, OIG; Linda Liner, Budget Civil Division, and Heather Pearlman, Trial Attorney for the Civil Division. Mr. Hayes stated that he agreed essentially with Ms. Comes assessment of the situation, however it should be noted that the Federal government through DOJ has successfully defended all litigation brought against the Federal government as it relates to the RECP. Those failed litigations were the vehicle that eventually led to the legislation (RECA). Mr. Hayes stated that there were two primary reasons for DOJ's position on the RECA liability. The first point made by Mr. Hayes was the requirement not to recognize imputed cost other than those specifically outlined in OMB's guidance. The second point made by Mr. Hayes was that DOJ viewed the transaction as an exchange transaction because the claimant has to give up any future rights to bring litigation against the Federal government for the damages suffered. Mr. Hayes then compared the program characteristics and recognition criteria for the RECP to the 9/11 Victims program also administered by DOJ. DOJ's view is that there is no legal liability to pay the claimant until the claimant formally accepts the claim payments.

Several members expressed disagreement with Justice's point that the RECP events led to an exchange transaction because claimants were required to give up rights to future claims. Mr. Ritchie asked why DOJ would not recognize the future liability, given the fact that the historical data was available to estimate the liability.

The majority of the members agreed that the RECP events met the criteria for a government-related event and that the probable criteria were also met given the history of the program to date.

Ms. Liner questioned the reasoning for Justice recognizing a program that it did not initially participate in but was given administrative jurisdiction over the program by Congressional legislation. Mr. Taylor replied by noting that that was the nature of Federal government operations and that Federal entities are often handed programs by Congress that may not necessarily specifically align with the entities' mission.

Mr. Hayes acknowledged all of the comments made by the Committee on the issue and stated that he would take the views of the Committee back to DOJ for reassessment of the liability recognition.

Ms. Liner acknowledged that DOJ did have estimates of the future payments through 2011. Ms. Liner then questioned the recognition of the liability by DOJ versus the Departments of Defense and Energy who were directly involved in the events that lead to the damages suffered. Ms.

Comes agreed that there may be some complexity in the standards as far as where the liability should be recognized when one or more entities were involved in the events that led to the liability and another Federal entity involved in the administration of the payment of the liability. She agreed to look into the question. Ms. Valentine noted some specific language from FASAB Technical Bulletin 2002-1 paragraph 9 (*General Principles*) as relevant to Ms. Liner's question.

Ms. Comes asked the DOJ representatives if they were comfortable enough with the Committee's comments and views on the liability recognition to resolve the issue internally without specific written guidance from the AAPC. Mr. Hayes commented that he would have to discuss that further with other officials in DOJ.

Ms. Comes noted that the next meeting of the AAPC is schedule for April 8, 2004 and that the meeting may be cancelled if the "appropriated debt" ED is in final form before that time.

- **Agenda Committee Report**

None

- **New Business**

None

- **Next Meeting**

The next meeting is scheduled for April 8, 2004.

Adjournment

The meeting was adjourned at 2:10 PM.