

COMPTROLLER GENERAL OF THE UNITED STATES
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National Housing Administrator,
National Housing Agency.

My dear Mr. Blandford:

I have your letter of June 14, 1945, as follows:

"Both Public Law 529, 78th Congress, and Public Law 49, 79th Congress, in making appropriations for the National Housing Agency employ the following language with respect to penalty mail:

"For deposit in the General Fund of the Treasury for costs of penalty mail of the National Housing Agency as required by the act of June 28, 1944, (Public Law 364), ..., said sum to be derived by transfer from the funds of the constituent units of said agency available for administrative expenses as follows: Office of the Administrator, ...; Federal Home Loan Bank Administration, ...; Federal Housing Administration, ...; and Federal Public Housing Authority, ..."

"The question arises as to the effect of this language on amounts transferred by the constituents to the National Housing Agency consolidated appropriation account which are in excess of charges calculated on actual penalty mailings. The estimates for fiscal 1945 penalty mail costs were necessarily based on inadequate data, since no records of actual mailings had been kept by the Post Office Department or the National Housing Agency. On the basis of reports now available for the first three quarters of fiscal 1945 it appears that the estimate of \$299,450 will be substantially in excess of actual charges.

"Acceptance of the literal meaning of the appropriation language would require that any savings from the penalty mail appropriation account would accrue, at the time the appropriation lapses, to the surplus fund of the Treasury. This requirement would be unlike that for any other administrative expense fund of the National Housing Agency as under the established practice unobligated and unexpended balances of administrative expense funds revert to the source from which transferred rather than being covered into the surplus fund of the Treasury. Although with minor exceptions these administrative expense funds for the National Housing Agency are authorized annually by the Congress, they are in no case appropriated directly from the general fund of

the Treasury but from corporate and quasi-corporate funds of the constituents, from revolving funds such as the war housing management funds which are to be covered into the Treasury only in such amounts as are not required for the disposition of war housing, and from portions of lump sum appropriations for war housing under the Lanham Act (P. L. 849, 77th Congress). The language employed for the National Housing Agency penalty mail appropriation was understood to be uniform for all branches of the government affected. It has been called to our attention, however, that the phrase 'not to exceed' was inserted before amounts of many agencies with little regard to the source of funds (whether from appropriations or from authorizations of revolving or capital type funds), and that because of the omission of this phrase from the National Housing Agency language there is a possibility that the unused balance of the appropriation would revert to the surplus fund of the Treasury.

"It is our belief that the Congress did not intend that savings from the amounts authorized for penalty mail would in all cases revert to the surplus fund of the Treasury, but rather that its primary concern was with reducing and controlling the use of penalty mail. The purpose of the law is stated in a paragraph which appears in the reports of committees from both Houses with regard to P. L. 364, 78th Congress, (Reports No. 1011 and 984): 'The whole purpose of this legislation is to restrict the excessive and unnecessary use of the penalty mail privilege by these departments, agencies and independent establishments'. Review of the hearings and reports on the various Acts involved reveals no discussion of the effect of appropriation language on various types of administrative expense funds according to sources. The House Report on P. L. 529, 78th Congress (Report No. 2023), making penalty mail appropriations for fiscal 1945, indicates that the usual administrative expense appropriation direct from the general fund was assumed by the statement: 'The proposition at this stage cannot be said to be much more than one of appropriating money to be deposited right back into the Treasury. Some economy may ensue from the reduction the committee has effected, but neither the statute which occasions the procedure nor the appropriations serve to control the amount and nature of the matter to be mailed, which was the primary purpose of the law'.

"The requirement that funds appropriated for penalty mail be deposited in the general fund of the Treasury provided the desired measure of control appropriate to legislation for the majority of executive departments and agencies. Your recent decision (B-46462 dated January 12, 1945) with respect to the return to the Commodity Credit Corporation and the Federal Farm Mortgage Corporation of unexpended capital funds authorized for administrative expenses appears to follow this reasoning. This decision states: 'The provision requiring that the savings "shall not be diverted to other use but shall be covered into the Treasury" is understood to contemplate the return

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of such funds to the source from which made available; and, since the moneys made available for administrative expenses are derived from the capital funds of the corporations referred to, I think there can be little or no doubt that the Congress did not intend that there be accomplished a reduction in the amount of such capital funds - a result which would necessarily follow from the deposit of such savings in the general fund of the Treasury'.

In the light of these circumstances, the proposition submitted for your approval is that the unused balance of the special penalty mail appropriation account for the National Housing Agency need not be covered into the surplus fund of the Treasury. If your answer to this proposition is in the affirmative it is assumed that the unused balance may be returned to the sources of funds from which it originally came."

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The decision of January 12, 1945, B-46462, cited in your letter ^{adv. 12/12/45} in support of the proposition advanced that "the unused balance of the special penalty mail appropriation account for the National Housing Agency need not be covered into the surplus fund of the Treasury," involved the construction of a specific provision of law relating to the disposition of balances or "savings" of moneys appropriated for a particular purpose. The pertinent appropriation acts now for consideration contain no provision with respect to the unused balances of the appropriations involved; hence, the decision cited has no bearing upon the instant matter.

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The appropriating language both in Public Law 529, approved December 22, 1944, and Public Law 49, approved May 3, 1945, is clear and unambiguous; that is to say, the Congress, for the respective fiscal years 1945 and 1946, appropriated a definite amount for costs of penalty mail of the National Housing Agency for deposit in the general fund of the Treasury, as required by section 2 of the act

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of June 28, 1944. The sources from which such funds were to be derived and the respective amounts thereof were designated specifically, namely, certain of the funds available for administrative expenses of the Office of the Administrator, Federal Home Loan Bank Administration, Federal Housing Administration, and Federal Public Housing Authority. Thus, an appropriation definite in amount and for a purpose not theretofore provided for was made by the Congress. Pursuant to the transfer provision contained in Public Law 529, there were transferred as directed the amounts stated to the appropriation account "8650101 Penalty Mail Costs, National Housing Agency, 1945." If, as indicated in your letter, the entire amount appropriated is not deposited in the miscellaneous receipt account "4400 Costs of Handling Penalty Mail" prescribed by Accounts and Procedures Letter No. 5102, dated July 31, 1944, pursuant to Public Law 364, approved June 28, 1944, relating to the use of the penalty mail privilege, and in the absence of specific direction otherwise by the Congress, the unused balance remaining in the 1945 appropriation account "8650101" will be for carrying to the surplus fund of the Treasury after it "shall have remained upon the books of the Treasury for two full fiscal years," in accordance with the provisions of section 713, Title 31, United States Code.

There has been noted your statement that this "requirement would be unlike that for any other administrative expense fund of the National Housing Agency as under the established practice unobligated and unexpended balances of administrative expense funds

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revert to the source from which transferred rather than being covered into the surplus fund of the Treasury." However, there is an important distinction between the appropriation here involved and funds made available to the National Housing Agency by the Congress for administrative expenses. When providing for such administrative expenses the Congress usually appropriates for administrative expenses "not to exceed" a certain amount of funds then under the control of the National Housing Agency. In other words, although the total amount specified is set up in an appropriate account there has been appropriated only that part of such total amount which it becomes necessary to spend for administrative expenses for the ensuing fiscal year; and it is for that reason that unobligated balances of such funds are for returning to the source or sources whence obtained. 18 Comp. Gen. ⁵⁶⁴~~565~~.

As stated hereinbefore, the amount appropriated for the cost of penalty mail of the National Housing Agency was fixed definitely and unqualifiedly, and I am constrained to hold that there is no authority of law for returning any unused balance thereof to the appropriations from which transferred.

Respectfully,

(Signed) Frank L. Yates

Acting Comptroller General
of the United States.

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