Date       April 27, 2010

To        Directors, Museums, Research Centers, and Offices
          CFO Contacts

cc       Patricia Bartlett, Chief of Staff
          Richard Kurin, Under Secretary for Art, History and Culture
          Alison McNally, Under Secretary for Finance and Administration
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          Virginia Clark, Director, Office of External Affairs
          Evelyn Lieberman, Director of Communications and Public Affairs
          Judith Leonard, General Counsel
          Bruce Dauer, Director, Office of Planning, Management and Budget
          Nell Payne, Director, Office of Government Relations
          Scott Robinson, Director, Office of Sponsored Projects
          Andrew Zino, Comptroller

From       Alice C. Maroni, Chief Financial Officer

Subject      Limitations Associated with Accepting Federal Funds from Government Agencies

Background

The Smithsonian accepts the transfer of federal funds to perform work for government agencies that benefits both parties. The preferred transfer document from the Institution’s perspective is a contract or grant. In the absence of a contract or grant, however, the Institution must be more vigilant about complying with the terms associated with specific authorities cited by agencies seeking to transfer funds to the Smithsonian. Some transfers are done as inter-agency transfers under the Economy Act (31 U.S.C. 1535). When funds are transferred using the authority provided by the Economy Act, the funds transferred are required to retain their time availability limitations. For example, one-year funds transferred to the Smithsonian must be obligated by the Smithsonian before they expire on September 30th of the fiscal year in which the funds are transferred.

Guidance

Going forward, the Office of Sponsored Projects, which negotiates funding agreements with federal agencies on behalf of Smithsonian employees, will clarify with the ordering agency the terms and restrictions that govern the use of federal funds when the Economy Act is cited as the authority to transfer funds.

To maximize the prospects for a successful transfer of funds from a federal agency in support of the Institution’s mission, Smithsonian employees are advised to work closely
with the Office of Sponsored Projects to ensure that prospective funders properly cite authorities other than the Economy Act when they can.

If prospective funders have no option other than the Economy Act as authority for the transfer, Smithsonian employees must consult with the Office of Sponsored Projects prior to acceptance of the funds to ensure that, in circumstances where the Smithsonian is providing the goods or services itself, the period of availability of the funds aligns with the period of Smithsonian performance. This is especially important when funds are transferred to reimburse the Smithsonian for salaries, benefits, and travel. No Economy Act funds can be used for Smithsonian staff-performed work/salaries/travel occurring after the close of the fiscal year cited in the transfer.

If, however, the Smithsonian is not providing the goods or services itself, but instead is contracting with a third party to provide the goods or services, the Smithsonian may legally obligate funds transferred under the Economy Act by entering into the contract before the period of availability of the funds expires. In that circumstance, so long as ordinary fiscal requirements governing the obligation of fiscal year appropriations are satisfied (see FAQs), the third party may provide the goods or services after the period of availability of the funds expires (i.e., after the fiscal year cited in the transfer document ends).

Funds that have been transferred pursuant to the Economy Act that are not legally obligated within the period of availability of the funds for obligation must be returned to the ordering agency at the end of the period regardless of whether the goods or services ordered have been provided.

Any questions concerning this guidance should be directed to Andrew Zino, Comptroller, at 202.633.7244 or zinoa@si.edu, or Scott Robinson, Director of the Office of Sponsored Projects, at 202.633.7113 or robinsons@si.edu.
Frequently Asked Questions

1. What is the Economy Act?

The Economy Act (31 U.S.C. 1535) provides authority to transfer funds from one agency or instrumentality to obtain goods and services from another agency or instrumentality that is in a better position to obtain or provide those goods or services.

2. Why do some federal agencies prefer to transfer funds pursuant to the Economy Act rather than in the form of a grant or a contract?

Frequently, the administrative steps leading up to an Economy Act transfer are less time-consuming or process-intensive than the preparation of a grant or contract. Additionally, not all agencies have grant-making authority.

3. What does it mean to say that federal funds are no longer available for obligation?

Federal appropriations have a set period during which new obligations can be created ranging from one year to "no year" (meaning there is no time limit on the creation of obligations). Once that specified time period has elapsed, no new obligations can be created citing that appropriation.

4. What does it mean to align the availability of the funds provided with the period of performance needed to provide the goods or services ordered?

It means that, when the Smithsonian is performing the work itself (rather than contracting out to a third party), all work done by the Smithsonian in fulfillment of an Economy Act transfer must be done before the period of funds availability expires, including all Smithsonian salaries paid, equipment bought (contracted for), and Smithsonian travel completed.

5. Why do different rules apply when the Smithsonian contracts out to a third party to provide the goods or services ordered?

A contract with a third party is considered a legal obligation for purposes of the Economy Act. By contrast, Smithsonian salaries are not considered legally
obligated until employees perform the work. Please note that contracts with third parties must meet all the ordinary fiscal requirements applicable to contracts with federal funds, including rules governing the obligation of fiscal year appropriations to pay for services to be performed in future fiscal years. For example, a fiscal year appropriation is available only to fulfill a bona fide need of the period of availability for which it was made. A non-severable service is considered a bona fide need at the time the service is ordered, even if the service may be performed in part in a future fiscal year. A severable service, by contrast, is considered a bona fide need at the time the service is rendered, and must be charged to an appropriation current at the time of performance.

6. When funds are transferred to the Smithsonian pursuant to the Economy Act, why is the Smithsonian required to return unobligated funds to the ordering agency if the ordering agency still wants the goods or services ordered?

The transfer of funds based on the authority provided by the Economy Act does not alter the appropriating legislation that sets the period of availability for the funds transferred. The transfer of funds cannot be used to extend the life (or availability) of the funds transferred. The Economy Act requires that unobligated funds be returned to the ordering agency when the period of availability for obligation expires regardless of whether the goods or services ordered have been provided.

7. Will there be new codes for recording in the financial system transfers of funds from government agencies?

Yes. Fund code 100 will no longer be used for this purpose. Starting with fiscal year 2010, there are three new fund codes in ERP to record the transfer of funds from government agencies. Fund 007 is for one-year funds. Fund 127 is for two-year funds. Fund 119 is for no-year funds. The key to establishing the availability of funds is the fund source identified by the ordering agency in the form of the Treasury Appropriation Symbol which OSP will clarify with the ordering agency at the time the agreement is negotiated.