DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

FEB 20 2003

MEMORANDUM FOR DEPUTY CHIEF FINANCIAL OFFICER

SUBJECT: Department of Defense (DoD) Policy and Procedures on Purchase Card Payments

This responds to your memorandum of January 31, 2003, requesting an opinion whether paying a purchase card statement of account before receipt of a reconciled statement and detailed supporting documentation violates 10 U.S.C. 2784(b)(2)(A) and (B). For the reasons described below, this practice does not violate 10 U.S.C. 2784(b)(2)(A) and (B). Whether DoD should continue this practice, however, is a policy decision that should be based on an analysis of the benefits of the practice (fewer late payment penalties and greater rebates) and the risk of overpayments. Our ability to maintain sufficient internal controls to mitigate the risk of loss should be a factor in this analysis.

Current DoD policy requires cardholders and approving officials to complete their review and reconciliation of purchase card accounts in a timely manner to permit forwarding to the certifying officer for payment of the account. That policy, however, also permits certifying officers to certify purchase card statements of account for payment prior to receiving the cardholder and approving official's reconciliation and review documentation, with the further requirement that the certifying officer obtain cardholder and approving official reconciliation and review documentation within the period permitted by the purchase card contract for dispute and re-credit of disputed bills. Finally, the policy also permits payment of purchase card accounts for items that have been ordered and shipped, but not yet received, subject to verification of receipt within the period permitted by the purchase card contract for dispute and re-credit of disputed bills. (*See* Memorandum of the Under Secretary of Defense, dated March 27, 1997, subject: Purchase Card Reengineering Implementation Memorandum #3: Streamlined Financial Management Procedures.)

In 1999, Congress enacted legislation requiring DoD to promulgate regulations governing the purchase card program that, among other requirements, include safeguards and internal controls to ensure that cardholders and approving officials reconcile the charges appearing on each statement of account with receipts and other supporting documentation, and forward reconciled statements to the designated disbursing office in a timely manner. 10 U.S.C. 2784(b)(2)(A) and (B). Nothing in this statute prohibits payment of the purchase card statement prior to reconciliation. Both the current and proposed DoD policy require cardholder and approving official reconciliation of the purchase card statement of account with receipts and other supporting documentation. Both require the cardholder and approving official to forward the statement after reconciliation to the designated disbursing office, either prior to payment or in time to

protect the government's right to dispute improper charges. Our policy is consistent with the statute. Further, there is nothing in the legislative history that indicates a congressional intent to prohibit payment prior to reconciliation.[1]

The general policy of paying for certain goods and services before receipt of the goods or services, or before audit of the invoice, subject to post-payment verification of receipt and audit within the time period necessary to protect the interests of the United States government, has been approved both by the Office of Management and Budget and Comptroller General. For example, 5 Code of Federal Regulations Part 1315, which replaced OMB Circular A-125, provides that:

> "Sec. 1315.12 Payments to government wide commercial purchase card issuers.
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> Standards for payments to government wide commercial purchase card issuers follow:
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> (a) Payment date. All individual purchase card invoices under $2,500 may be paid at any time, but not later than 30 days after the receipt of a proper invoice. Matching documents is not required before payment. The payment due date for invoices in the amount of $2,500 or more shall be determined in accordance with Sec. 1315.8. I TFM [Vol. I, Treasury Financial Management Manual] 4-4535.10 permits payment of the bill in full prior to verification that goods or services were received.
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> (b) Disputed line items. Disputed line items do not render the entire invoice an improper invoice for compliance with this proposed regulation. Any undisputed items must be paid in accordance with paragraph (a) of this section."

These procedures expressly permit agencies to pay invoices under $2,500 in advance of reconciliation and pay for supplies in advance of verification of receipt and acceptance. In addition, the procedures require that, following payment, agencies ensure that receiving reports and corresponding payments documents are reviewed and reconciled.

The Comptroller General has also authorized fast pay procedures, provided the interests of the government are adequately protected. For example, the Comptroller General held in Matter of Payment for Goods in Advance of Notification of Receipt, B-158487, 60 Comp. Gen. 602, July 17, 1981, that

[1] See the Conference Report for the National Defense Authorization Act for Fiscal Year 2000, H.R. 106-301, August 6, 1999, which says at page 788, "The Senate bill contained a provision (sec. 1009) that ... also requires the Under Secretary of Defense (Comptroller) to prescribe regulations governing the use of credit cards and setting forth controls on the alteration of remittance addresses. ... The House amendment contained no similar provision. ... The House recedes. ... .

> "[T] his Office continues to approve the use of accelerated payments procedures by General Services Administration (GSA) whereby payment is made to vendor based on assurance that goods have been shipped rather than awaiting notification that goods have been received by consignee where it is necessary to take advantage of prompt payment discounts and adequate security has been provided to safeguard the interests of the United States."

Adequate safeguards in this case included the reputable and responsible vendors, coupled with prompt notification of nonreceipt of goods and the ability to seek adjustments later. The Comptroller General also said that while specific internal controls necessary to protect the government's interests vary with the nature of the particular activity involved, agencies using accelerated payment procedures must have adequate internal controls to assure that they get what they pay for. Agencies must have records that permit them to determine that what is paid for is received in proper quantity and condition, and they must match their orders against invoice, and payment and receiving reports in a timely matter, and follow up on discrepancies.

In Matter of GSA's Post-Payment Examination of Utility Invoices by Statistical Sampling, B-227682, 67 Comp. Gen. 194, January 15, 1988, the Comptroller General interposed no objection to a proposal by GSA to combine elements of fast pay procedures, in which utility invoices were paid based on estimates prior to audit, and statistical sampling techniques to examine utility invoices post-payment, subject to certain modifications of GSA's proposed sampling techniques. In that case, the Comptroller General said,

> "Generally, the preaudit of vouchers is required by audit standards set forth in the GAO Policy and Procedures Manual for Guidance of Federal Agencies, title 7, section 20.2 (TS 7-41, January 18, 1985). ... Exceptions to the preaudit requirement are allowed, for example, to permit agencies to take advantage of prompt payment discounts or to effect other economies (including the avoiding of late payment charges or interest under the contract or under laws such as the Prompt Payment Act. ... The common thread supporting these exceptions is that savings to be achieved by procedures which dispense with the preaudit requirement will exceed any losses from overpayments which would have been prevented by the preaudit. Generally, the situations involve a large number of recurring transactions with known reputable vendors. In these situations, post-payment audit of invoices and, when necessary, adjustments of overpayments against future billings, minimize the government's risk of loss."

The practice of paying a purchase card statement of account before receipt of a reconciled statement and detailed supporting documentation is supported by government-wide policy, and not otherwise prohibited by statute. This practice, however, is contingent upon maintaining appropriate internal controls sufficient to ensure that the benefits of the practice outweigh the risk of loss. In this regard, you might consider the high rates at which cardholders and approving officials fail to reconcile their purchase

card statements of account, as documented in recent General Accounting Office audits of Navy, Army and Air Force purchase card programs.

E. Scott Castle
Deputy General Counsel (Fiscal)

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