Case study 1 - Statute of Limitations and Amounts to Repay

> *It is not the denial of relief that makes an accountable officer liable. As noted previously, the basic legal liability of an accountable officer arises automatically by virtue of the loss and is not affected by any lack of fault or negligence on the officer's part. Relief is a separate process and may take lack of fault into consideration to the extent authorized by the governing statute.*
>
> **– Volume 2 Principles of Appropriation Law GAO**

> *Once this 3-year period has expired, no charges may be raised against the account except for losses due to fraud or criminal action on the part of the accountable officer… Thus, an accountable officer can escape liability for an improper expenditure if the government does not raise a charge against the account within the 3-year period.*
>
> **– Volume 2 Principles of Appropriation Law GAO**

Concepts

- Liability attaches automatically
- Most often the liability amount is the result of one improper payment but maybe multiple payments. From an internal control standpoint failure to detect multiple improper payments would likely to be caused by a failure in a control's design rather than a simple mistake which is a failure in its operating effectiveness.
- Statute of Limitations – 3 years
- Legal Analysis
- Liability related to Fraud

Sources: GAO Reports: B-194727, B-247563.4 and Volume 2 Principles of Appropriation Law GAO

Scenario 1

Michelle works at a small government agency of approximately 400 FTEs, she is both the CFO and the agency certifying officer. She joined the agency as a finance and policy analyst 12 years ago. Six years ago she was promoted and gained additional duties as the certifying officer and six months ago became the CFO.

Among other mission focused activities, the agency is authorized to utilize its appropriation as set forth by the Government Employees Incentive Awards Act 5 U.S.C. Sec 4501, which authorizes agencies to make monetary and honorary awards and grants agencies broad discretion to determine when such awards are appropriate. In addition, the act specifically authorizes agencies to “incur necessary expense[s] for the honorary recognition” of employees who meet the statutory criteria. 5 U.S.C. § 4503. In light of this authority, agencies may conduct awards ceremonies and provide “light refreshments” at receptions incident to such ceremonies. 65 Comp. Gen. 738 (1986)

However, as a general rule, agencies may not furnish meals or refreshments to employees within their official duty stations 68 Comp. Gen. 604 (1989).

Recently auditors have been making inquiries regarding the awards ceremonies held by the agency. In particular they are focused on 2 awards ceremonies which were held 4 and 5 years ago where Nigel the agency CIO took 45 members of his department to lunch at a fine dining establishment. The purpose of the outing was to award and recognize his personnel’s key contributions to the development and deployment of an information system five years ago, and the mitigation of the agency’s last IT audit finding four years ago. No other personnel were invited; no mention of their recognition was published and the only reason why Michelle knew about the awards was due to her certifying the payments.

Questions

Based on the information should Michelle have certified those payments 4 and 5 years ago?
(No, they were against the law)

Is Michelle liable for payments made 4 and 5 years ago?
(Answer: Yes, she was liable however the liability was settled as a matter of law)

What is the basis for her account to be settled?
(There was no fraud so as a result the account was settled in 3 years)

What should Michelle do as a CFO to avoid this scenario in the future?
(Discuss this type of awards ceremony with the General Counsel and CIO to determine whether this is a legal proper use of the appropriation and if not, find a solution which is.)

Scenario 2

George is a certifying officer who has not been exercising due diligence over the names on the grants he has been certifying for the past 7 years. George's work ethic is well known and as such his designated payment processor Baldric and his first line reviewer Edmund have a cunning plan to misappropriate hundreds of thousands of dollars by inserting their names into payment vouchers for Urban Mass Transportation Administration grants. To facilitate this deception, the payments required the inclusion of Baldric's name and address in suburban Maryland mixed in with 10 mass transportation agency name and address. During his "review" George failed to notice Baldric's name numerous times.

The fraud was discovered after Edmund having displayed an ostentatious lifestyle fled the country, resulting in Baldric being arrested and numerous assets seized. After recovery procedures including the seizure and sale of assets, resulted in an outstanding amount of $500,000 with as only $500,000 of $1,000,000 was recovered. You may assume that the fraud scheme has been ongoing for the past 5 years with 200,000 misappropriated per year.

Questions

Who is liable for the remainder?
(George)

Why is he liable?
(He did not exercise reasonable due diligence)

What were the internal control failures?
(Collusion between employees and control activity failure due to George's lack of due diligence)

If the fraud had used a false agency name and address such that a reasonable person could not discern the difference between a legitimate mass transit agency and the fake one how would the scenario have been different?
(The certifying officer could have stated that they exercised appropriate due diligence and that they relied in good faith on the system of internal controls)

When does 3 year period start in this case?
(When the fraud was discovered)

Based on the above question, how much is he liable for?
($500,000, no statute of limitations when fraud is involved)

What is the likely response from GAO if he requests relief of liability?
(Denial of relief due to a lack of due diligence)