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B-154996 November 5, 1969

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The Honorable William D. McElory Director, National Science Foundation

Dear Dr. McElory:

This is in reference to a letter dated June 25, 1968, addressed to the General Accounting Office by Dr. Leland J. Haworth, former Director of the National Science Foundation (NSF), relating to the NSF's policy of handling income generated under grant-financed activities, in particular under course content improvement grants.

During our audit work at NSF, we questioned the propriety of crediting certain income, received by grantees and remitted to NSF, to appropriated funds for use in NSF's programs rather than depositing such income as miscellaneous receipts in the U.S. Treasury. We cited a case in which NSF had received from a grantee income of about $463,600 that had been generated under a course content improvement grant and had treated this income as a return of grant funds available for further use.

The Foundation's policy, pertaining to income generated under grant- financed activities, is set forth in Office of the Director Staff Memorandum 61, dated October 22, 1964. This policy permits grantees to retain receipts arising from sales of course content materials produced by such grantees and to use the receipts as a revolving fund to cover the costs of additional printings of materials for sale. It also permits sales proceeds remaining in the revolving fund at the conclusion of the sale of the course content materials to be considered part of the grant and remitted to the Foundation as unused grant funds, except that any profit realized from the sales is to be deposited as miscellaneous receipts in the U.S. Treasury.

The net effect of this policy is that sales proceeds, equivalent to the initial amount of the revolving fund, may be credited to NSF's appropriation and used for regular grant activities.

In the letter to us of June 25, 1968, the view was expressed that the authority to classify certain income as a return of grant funds to be reused for further grant purposes arise from NSF's authorizing legislation which gives NSF a broad mission including the authority to initiate and support programs to strengthen scientific research potential in the sciences, by making contracts or other forms of assistance. In addition, the letter referred to the general authority contained in the National Science Foundation Act of 1950 under which the Foundation has the authority "to do all things necessary to carry out the

provisions of this Act."

The letter stated also that the use of revolving funds by NSF's grantees is based on the Comptroller General's decision in the East-West Center Press case (B-154135, dated August 18, 1964), which permitted the device of a revolving fund to be used in the operation of an activity funded by a Federal grant. The letter further stated further that NSF has permitted its grantees to use funds, on a temporary basis, from their course content improvement grants to establish revolving funds, with the understanding that, as the revolving funds were reconstituted through sales of course materials, the funds would be returned to NSF to be used for normal grant purposes and if not used would be treated the same as all other unused funds that are returned to NSF.

The cited Comptroller General decision stated that there was no legal objection to the operation of a revolving fund by the grantee, since there was no prohibition in the grant agreement against the use of a revolving fund. The decision noted that the Congress had been informed of the plan to use income from the grant-supported operations and that disclosure of receipts would be made to the Congress through annual budget presentations. The decision, however, does not deal with the disposition to be made of the amount initially set aside to establish the revolving fund or with the additional amounts accumulated a the conclusion of the activities conducted through the fund. The decision, therefore, does not fully apply to NSF grants here in question.

With regard to income generated for the use of the United States, the U.S. Code (31 U.S.C. 484), provides that the gross amount of all moneys received from whatever source for the use of the United States muse be deposited into the Treasury without abatement or deduction for salaries, fees, costs, charges, expenses, or claims of any kind. In this connection, a Comptroller General decision (48 Comp. Gen. 211), rendered to the Director, NSF, on October 17, 1968, concerning disposition of insurance compensation received for damages to a Government-owned vessel operated by a contractor stated, in part:

"While the National Science Foundation has been empowered to 'do all things necessary' to carry out the provisions of the National Science Foundation Act of 1950, that authority is qualified by the phrase 'within the limits of available appropriations.' 42 U.S.C. 1870. And in situations in which the appropriations of the National Science foundation may be augmented, or implemented, we find the existence of specific statutory provisions. Thus the National Science Foundation Act grants the Foundation the authority 'to receive and use funds donated by others.' Section 1870(f). See, also, Section 1873(h). And recent appropriations for the Foundation carry the provision: 'That receipts for scientific support services and materials furnished by the National Research Centers may be credited to this appropriation.' Pub. L. 90-121, approved November 3, 1967; 81 Stat. 341, 350.'

As held in the above decision, specific statutory authority is necessary for those situations in which NSF's appropriations may be augmented. In the case of course content improvement grants, we believe that the Foundation, by treating returned income as a return of unused grant funds, is in effect substituting the income for appropriated funds and thereby augmenting its appropriation without specific authority.

Regarding revolving funds, we believe that the initial amount of a revolving fund established from either the principal of a grant or the income generated

under the grant, when returned to NSF at the conclusion of the activities conducted through the revolving fund, is properly for deposit as miscellaneous receipts in consonance with 31 U.S.C. 484, and may not be considered a return of grant funds for further use by NSF.

NSF has reported to the Congress that as of June 30, 1968, revolving funds totaling $1,279,000 had been authorized under 16 course content improvement grants.

We have discussion the treatment of income generated under NSF grants with officials of NSF's Office of the General Counsel. They advised us that NSF has initiated action to discontinue the practice of crediting such income to NSF's appropriation and has under consideration revisions to its policy governing the disposition of income, which are intended to preclude the improper augmentation of appropriated funds. We shall appreciate being advised of the policy revisions.

Copies of this report are being sent to the Director, Bureau of the Budget, and to the Chairman, National Science Board. We are also sending copies to the Chairman of the House Committee on Appropriations and to the Chairmen of the Senate Committee on Appropriations and of its Subcommittee on Independent Offices and Department of Housing and Urban Development.

Sincerely yours,

Lawrence J. Powers Acting Comptroller General Of the United States