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B-207343 August 18, 1982

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The Honorable Cardiss Collins Chairwoman, Subcommittee on Manpower and Housing Committee on Government Operations House of Representatives

Dear Madam Chairwoman:

You have requested our opinion on whether the ACTION agency may legally spend less than the $6 million floor provided for in section 607(a) of Public Law 97-3 for the VISTA program during fiscal year 1982. Your letter, dated April 6, 1982, notes that it is ACTION's position that it must reduce the VISTA floor in order to comply with the requirements of section 142 of Public Law 97-92 that each appropriation account for which provision would be made in the Departments of Labor Health and Human Services, and Education, and Related Agencies Appropriation Act, 1982, be cut by 4 percent, but that no program or project within any given account reduced by more than 6 percent. We disagree with the agency's argument, and conclude that ACTION may not lawfully reduce funding for the VISTA program beneath the $16 million floor.

We received with your letter a copy of a memorandum from the A American Law Division of the Congressional Research Service in which in response to the question of whether or not the provisions of the continuing resolution enacted on December 15, 1981, Public Law 97-92, override contrary provisions contained in the Omibus Budget Reconciliation Act, Public Law 97-35, enacted into law on August 13, 1981, the CRS concluded that there was no irreconcilable conflict between the two statutes. ACTION responded that there was indeed a conflict, and that the statutes could not be reconciled:

"if the VISTA program had been exempted from such reductions * * * it would not have been possible for us to comply with the requirement contained in Section 142(e) of P.L. 97-92 that no project or program be reduced by more than six percent because programs authorized by parts ES and C of title I would have had to absorb a reduction greater than six percent. Since reconciliation is impossible the rule of law is clear the later enactment, P.L. 97-92, is controlling. * * *"

As will be explained more fully below, the flaw in the agency's argument lies in its assumption on that programs authorized by parts B and C of Title I must absorb the full amount of any reduction not taken from VISTA program funding.

As the memorandum by ACTION's General Counsel notes, section 607(a) of the Omnibus Reconciliation Act amended section 501 of the Domestic Volunteer Service Act, 42 U.S.C. Sec. 5081, to read as follows:

"There is authorized to be appropriated to carry out title I of this Act $25,763,000 for fiscal year 1982 and $15,391,000 for fiscal year 1983. Of the amounts appropriated under this section, not less than $16,000,000 shall first be available for carryinq out part A of title I for fiscal year 1982, and not less than $8,000,000 shall first be available for carrying out part A of title I for fiscal year 1983." (Emphasis added.)

Funding for the Domestic Volunteer Service Act for fiscal year 1982 is provided by the continuing resolution enacted on December 15, 1981, Public Law 97-92, as extended by Public Law 97-161 on March 31, 1982. Section 101 of the continuing resolution appropriates the amounts provided in the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act, 1982, (H.R. 4550), as reported to the Senate on November 9, 1981. H.R. 4560 provides one lump-sum or $134,277,000 "[f]or expenses necessary for Action to carry out the provisions of the Domestic Volunteer Service Act of 1973."

In Senate Report No. 97-268, which accompanied H.R. 4560, the Senate Committee on Appropriations recommended that of the S134,277,000 to be appropriated, $16,000,000 should be for the VISTA program (Title I, Part A, of the Domestic Volunteer Service Act), $1,830,000 should be for the service learning program (Title I, Part B), and $1,884,000 should be for citizen participation and volunteer demonstration programs (Title I, Part C). These figures were contained only in the report, however, and did not appear as line items in the bill.

Section 142 of the continuing resolution provided that each appropriation account of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act, 1982, be reduced by 4 percent, but required that no program or project within an account be reduced by more than 6 percent. The ACTION memorandum argues that:

" * * * The total appropriation for all of title I of the Domestic Volunteer Service Act, prior to making the cuts required by P. L. 97-92, was $19.714 million. A four percent cut in this amount requires a reduction of $788,560. If, as the CRS opinion suggests, this sum should be taken first from pert B and part C programs, the resulting reduction in programs and projects authorized by those parts of title I would obviously be far in excess of the six percent reduction which is the maximum authorized by P. L. 97-92, since the total appropriation for these programs was only $2.714 [sic] million. It is therefore impossible to comply with both P. L. 97-35, as interpreted by CRS, and with the plain language of section 142 of P.L. 97-92, which prohibits a reduction in any program or project of more than six percent."

ACTION is incorrect in its assertion that Title I programs must be reduced by $788,560. Section 142(c) states that each appropriation account must be reduced by 4 percent. H.R. 4550, as incorporated into the continuing resolution, did not appropriate monies for Title I programs separately from funds for other programs authorized by the Domestic Volunteer Service Act. Instead, only one lump-sum was appropriated, and thus only one appropriation account was established. Accordingly, reductions of up to 6 percent may be made in programs and projects authorized by Title II or in program support authorized by Title IV in order to offset reductions of less than 4 percent in VISTA funding. In other words, programs authorized by parts B and C of Title I need not by themselves absorb a reduction equivalent to 4 percent of the VISTA program budget.

The Senate version of H.R. 4560, adopted by the continuing resolution

appropriates $134,277,000 for the operation of ACTION's domestic programs. Four percent of $134,277,000 is $5,371,080. Thus, if ACTION can achieve reductions totaling $5,371,080 without reducing the VISTA budget below the $16 million floor or cutting funding for any particular program or project by more than 6 percent, Public Laws 97-35 and 97-92 may be reconciled.

This may be accomplished in several ways. For example, if all portions of the ACTION appropriation other than the $16 million set aside for VISTA were cut by 6 percent, a reduction of $7,096,620 could be achieved. Or, if it were deemed preferable not to reduce program support funds, a reduction of $5,556,840 could still be achieved by reducing the amount; which the Senate committee allocated for each program other than VISTA by 6 percent, while leaving program support intact. It is thus clear that the $16 million floor for VISTA required by Public Law 97-35 and the reductions required by Public Law 97-92 are not inconsistent and the two statutes may be reconciled.

We accordingly conclude that ACTION may not lawfully reduce funding for the VISTA program for fiscal year 1982 below the $16 million floor established by section 607(a) of the Omnibus Budget Reconciliation Act. According to ACTION, this conclusion requires that the reduction of $960,000 that it intended to make in VISTA funding for fiscal year 1982 be absorbed instead by National Older American Volunteer Programs (Title II) or program support (Title IV) funding. The possible consequences of adherence to our decision cannot however, alter our legal conclusion, which is required by the clear wording of the relevant statutes.

Sincerely yours,

Milton J. Socolar for Comptroller General of the United States