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Impoundment of Funds for Discretionary Community Services Activities

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B-207374 July 20, 1982

The Honorable Norman Y. Mineta Chairman, Task Force on Enforcement, Credit and Multiyear Budgeting Committee on the Budget House of Representatives

Dear Mr. Chairman:

This is in response to your letter dated April 30, 1982, in which you asked 'us to determine whether there is an unreported impoundment by the Department of Health and Human Services, Office of Community Services, of funds provided for discretionary community services activities. We found no evidence of an impoundment. A detailed analysis follows.

I.

Under the Community Services Block Grant Act, enacted as Title VI, Subtitle B of the 1981 Omnibus Budget Reconciliation Act, Pub. L. No. 97-35, 95 Stat. 357, 511-519, Congress authorized appropriations for block grants to States for specified community services activities. Section 681 of the Act authorizes the Secretary of Health and Human Services (HHS) to use at his discretion up to 9 percent of the amounts appropriated for community services block grants both for the activities specified in section 681 and for activities authorized under the Community Economic Development Act, enacted as Title VI, Subtitle A, Chapter 8, Subchapter A of the 1981 Omnibus Budget Reconciliation Act, 95 Stat. 357, 489-498. The Secretary is authorized to use the funds directly or through grants, loans, or contracts to States and other eligible organizations.

II.

Because the permanent appropriation bill for fiscal year 1982 has not been enacted, the community services block grant program continues to be funded by continuing resolution. Under the First Continuing Resolution, Public Law 97-51, operative through December 15, 1981, the program's funding level was to be determined with reference to the House version of H.R. 4560, the Labor-HHS appropriation bill. That bill appropriated $362,552,000 and required that $32,630,000 of that amount approximately 9 percent) be used for the Secretary's discretionary activities under section 681 of the Community Services Block Grant Act.

The Third Continuing Resolution, Public Law 97-92, effective December 15, 1981, and later extended through September 30, 1982, provides that funding levels are to be determined according to the appropriation bill's status as of December 15, 1981. Where there are different House and Senate versions of the bill, section

101(a)(3) of the Continuing Resolution provides funding "under the lesser amount or the more restrictive authority."

The Senate version of H.R. 4560, reported to the Senate on November 9, 1981, provides $300 million for community services block grants and does not contain the restrictive language of the House version. Thus, while the Senate version appropriates the lower amount, the House version contains the "more restrictive authority" by virtue of the language requiring that a certain amount be used for discretionary activities.

The legislative history of the Third Continuing Resolution appears to indicate an intention that the restrictive language in the House version be given effect . Both the House report on the Third Continuing Resolution (see H.R. Rep. No. 97-372 at 3), and the statement submitted in the Senate in lieu of a report (see 127 Cong. Rec. S14957 (daily ea., December 10, 1981)), state that the agency is to adhere to the House report on H.R. 4560, which specifies allocation among various discretionary activities of the full 9 percent of the total appropriation. See H.R. Rep. No. 97-251 at 81-82. In addition, although the Senate version provides the lower amount ($300,000,000), the Continuing Resolution itself provides an additional $62,552,000 for community services block grants. Section lOl(a)(3). The additional amount increases the amount in the Senate version to the higher amount provided in the House version ($362,552,000), and allows the agency to give full effect to the allocation specified in the House version.

At the beginning of fiscal year 1982, the agency earmarked an annual amount of only $5 million from the community services block grant appropriation for the discretionary activities described above. (The balance of the appropriation was earmarked. for transition and block grants.) For the first two quarters, half of the annual amount earmarked for discretionary activities ($2.5 million) was allocated.

By the end of March 1982, with half the fiscal year over, only $200,000 of the $2.5 million had been obligated, for a veterans assistance program; the agency had not developed a plan for using the $2.3 million balance. Agency officials told us that they believed there was too much uncertainty regarding the total amount that would be available for discretionary activities for the entire fiscal year to allow prudent planning for 497 using the funds. The uncertainty was said to stem from ongoing discuss tons in the executive branch regarding the amount required to be allocated to discretionary activities under the Continuing Resolutions.

In March 1982, the agency decided to earmark the full percent ($31 million) of the total appropriation for discretionary activities in the last two quarters of fiscal year 1982. /*/ From that amount, agency officials told us that a grant award of $6 million was made in late May for the national youth sports program. In addition, on May 7, 1982, the agency published an announcement in the Federal Register (47 Fed. Reg. 19948) inviting proposals for grants to be made out of the remaining $25 million. The closing date for grant applications was June 21, 1982. Agency officials estimate that awards will be made in August or early September 1982.

III.

Section 1011(1) of the Impoundment Control Act, 31 U.S.C. 1401(1), defines

"deferral of budget authority" to include-

"(A) withholding or delaying the obligation or expenditure of budget authority (whether by establishing reserves or otherwise) provided for projects or activities; or

"(B) any other type of Executive action or inaction which effective precludes the obligation or expenditure- of budget authority * * *."

A delay in obligating funds caused by uncertainty as to a program's final funding level. does not necessarily constitute a deferral within the meaning of the Impoundment Control Act. This position is based on our longstanding view that the reason for a delay in obligating, not the delay alone, is the key to determining if the requirements of the Impoundment Control Act apply. Thus in our view, the Act does not apply to a delay in obligating' funds due to program-related factors that restrain the prudent use of the funds.

More specifically uncertainty as to the amount that ultimately will be available for a particular program may constitute a programmatic basis for a delay in obligating the funds particularly when the uncertainty arises in the context of continuing resolution- funding, where Congress has not yet spoken definitively. For example, in circumstances similar to those in this case, a deferral message may not be required if the record establishes that (1) uncertainty as to the final appropriation level for the program is the primary basis for the withholding, and (2) the adverse effect of the "uncertain funding level on prudent program planning is demonstrated by the agency. However, we emphasize that it is difficult to generalize about what constitutes a programmatic basis for a delay in obligation; each case must be considered on its own facts.

On the present record, it appears that uncertainty as to the amount of appropriations to be used for discretionary activities which caused delay in developing a program plan, was the primary basis for the delay in making the funds available early in the fiscal year. When the First Continuing Resolutlon was enacted, the Senate had not yet acted on the Labor - HHS appropriation hill. The question as to what funding level Congress ultimately would provide continued under the Third Continuing Resolution, which gave rise to the legal issue discussed in par' II. Agency official-. -concluded that the continuing uncertainty hindered development of a discretionary grant plan, and we cannot say that the agency's assessment of the funding situation and its effect on prudent program planning was unreasonable.

Accordingly, the delay in obligating the funds earmarked for discretionary activities in the first half of the fiscal year on the present record appears to reflect reasonable program considerations, and, in cur view, did not constitute e a deferral of budget authority within the meaning or the impoundment Control Act. In addition, in view of the agency's plans for making available the $31 million presently earmarked for discretionary activities, we see no evidence of any current impoundment of those funds..

Sincerely yours,

Milton J. Socolar Acting Comptroller General of the United States

*. The amount allocated for discretionary activities is $31,099,430, which represents 9 percent of the amount available for community services block

grants. Agency officials told us that the amount of budget authority listed on the most recent apportionment form ($347,999,920) represents the base amount provided in the Continuing Resolution ($362,552,000), reduced by 4 percent, as required by section 142(a) of the Continuing Resolution ($348,049,920), reduced by $50,000, representing the office of Community Services' share of the across-the-board reduction for salaries and expenses under section 122 of the Continuing Resolution. The 9 percent figure ($31,099,430) is based on that total amount ($347,999,920), further reduced by $2.5 million reprogrammed,, with Congressional approval, from block grants to salaries and expenses ($345,499,920).

Full Report

Full Report

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