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DIGEST: FUNDS APPORTIONED TO STATES IN ACCORDANCE WITH SECTION 304 OF THE PUBLIC WORKS AND ECONOMIC DEVELOPMENT ACT OF 1965, AS AMENDED, AND RECOVERED DUE TO COST UNDERRUNS MAY BE REOBLIGATED BY THE STATES FOR PURPOSES WITHIN THE SCOPE OF THE AUTHORIZING STATUTE. ONCE APPORTIONED TO THE STATES, SECTION 304 FUNDS TAKE ON THE CHARACTERISTICS OF NO-YEAR MONEY AND REMAIN AVAILABLE UNTIL EXPENDED.

ECONOMIC DEVELOPMENT ADMINISTRATION - AVAILABILITY FOR REOBLIGATION OF FUNDS UNDER SECTION 304 OF THE PUBLIC WORKS AND ECONOMIC DEVELOPMENT ACT OF 1965:

THE GENERAL COUNSEL OF THE UNITED STATES DEPARTMENT OF COMMERCE HAS REQUESTED OUR OPINION ON WHETHER FUNDS ALLOCATED TO STATES BY THE ECONOMIC DEVELOPMENT ADMINISTRATION (ADMINISTRATION) UNDER SECTION 304 OF THE PUBLIC WORKS AND ECONOMIC DEVELOPMENT ACT OF 1965, AS AMENDED (PUBLIC WORKS ACT), 42 U.S.C. SEC. 3153 (1976 AND SUPP. IV 1980), ARE AVAILABLE FOR REOBLIGATION. THESE FUNDS WERE PREVIOUSLY OBLIGATED BY THE STATES FOR SPECIFIC PROJECTS BUT WERE NOT EXPENDED DUE TO COST UNDERRUNS. VARIOUS STATES HAVE QUESTIONED THE ADMINISTRATION ON WHETHER THE AMOUNTS RECOVERED FROM COST UNDERRUNS MAY BE USED TO FUND ADDITIONAL SECTION 304 PROJECTS. WE CONCLUDE THAT THE FUNDS, ONCE APPORTIONED TO THE STATES BY THE ADMINISTRATION, TAKE ON THE CHARACTERISTICS OF NO-YEAR FUNDS AND REMAIN AVAILABLE FOR REOBLIGATION.

SECTION 304 AUTHORIZES THE SECRETARY OF COMMERCE, AND BY DELEGATION OF AUTHORITY THE ADMINISTRATION, TO MAKE MONEY AVAILABLE TO THE STATES TO FUND OR SUPPLEMENT CERTAIN ADMINISTRATION PROJECTS AUTHORIZED BY THE ACT. 42 U.S.C. SEC. 3153(A). THESE FUNDS MUST BE MATCHED BY A 25 PERCENT STATE CONTRIBUTION AND THE STATE PROJECTS MUST BE CERTIFIED BY THE ADMINISTRATION AS MEETING ALL THE ACT'S CRITERIA. 42 U.S.C. SEC. 3153(B).

PRIOR TO FISCAL YEAR 1982, SECTION 304 PROJECTS WERE FUNDED FROM THE ADMINISTRATION'S ANNUAL APPROPRIATION ACCORDING TO A FORMULA PRESCRIBED BY SECTION 304(A). FN1 42 U.S.C. SEC. 3153(A). ONCE APPORTIONED, THESE FUNDS WERE THEN AVAILABLE TO THE STATES UNDER SECTION 304(B) WHICH PROVIDES:

"FUNDS APPORTIONED TO A STATE UNDER SUBSECTION (A) OF THIS SECTION SHALL REMAIN AVAILABLE TO SUCH STATE UNDER OBLIGATED OR EXPENDED BY IT." 42 U.S.C. SEC. 3153(B).

IT IS UNCLEAR FROM THE WORDING OF THIS SECTION WHETHER CONGRESS INTENDED THE STATES TO USE THESE FUNDS AS NO-YEAR APPROPRIATIONS OR, AS THE GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE MAINTAINS, ONLY UNTIL THE MONIES WERE OBLIGATED. GENERALLY, GRANT FUNDS ARE AWARDED ON A FISCAL YEAR BASIS. GRANTEES RECEIVING

FISCAL YEAR GRANT AWARDS MUST OBLIGATE THE MONIES DURING THIS TIME FRAME OR LOSE THEIR RIGHTS TO THE FUNDS. FUNDS DEOBLIGATED AFTER THE EXPIRATION OF THE PERIOD OF AVAILABILITY REVERT TO THE TREASURY AND ARE NOT AVAILABLE FOR FURTHER OBLIGATIONS. COMPARE 58 COMP.GEN. 676, 678 (1979) (GRANTS MADE FROM 1 YEAR APPROPRIATIONS MAY NOT BE SIGNIFICANTLY CHANGED AFTER THE EXPIRATION OF THE PERIOD OF AVAILABILITY) WITH 52 COMP.GEN. 179, 183 (1972) (FISCAL YEAR FUNDS DEOBLIGATED AFTER THE EXPIRATION OF THE PERIOD OF AVAILABILITY MUST REVERT TO THE TREASURY).

ACCORDING TO THE GENERAL COUNSEL, COST UNDERRUNS ON NON-SECTION 304 PROJECTS ARE HANDLED UNDER THIS RULE. HOWEVER, SECTION 304 FUNDS DIFFER FROM OTHER GRANT AWARDS. FUNDS FOR SECTION 304 PROJECTS ARE APPORTIONED TO THE STATES IN ACCORDANCE WITH THE FORMULA CONTAINED IN THE STATUTE AND NOT ON APPROVAL OF A STATE GRANT APPLICATION. 42 U.S.C. SEC. 3153(A). THEREFORE, UNLIKE OTHER ADMINISTRATION GRANTS, THE FUNDS ARE NOT DESIGNATED FOR A SPECIFIC PROJECT BUT ARE AVAILABLE IN ACCORDANCE WITH SECTION 304(B). THE QUESTION, THEN, IS WHETHER UNDER SECTION 304(B) THE STATES ARE TO HAVE USE OF THE FUNDS FOR ONLY A SINGLE OBLIGATION, IN WHICH CASE THE EXCESS FUNDS RECEIVED AS COST UNDERRUNS AFTER THE END OF THE FISCAL YEAR WOULD NOT BE AVAILABLE FOR REOBLIGATION, OR AS NO-YEAR FUNDS THAT REMAIN AVAILABLE FOR REOBLIGATION UNTIL THEY ARE ULTIMATELY EXPENDED.

GENERALLY, THE STANDARD LANGUAGE USED TO IDENTIFY NO-YEAR FUNDS IS "TO REMAIN AVAILABLE UNTIL EXPENDED." SEE, E.G., B-200519, NOVEMBER 28, 1980, 40 COMP.GEN. 694, 696 (1961). SECTION 304(B) DOES NOT FOLLOW THIS PATTERN NOR ARE WE AWARE OF ANOTHER STATUTE THAT IS WORDED LIKE SECTION 304(B). FURTHER, THE AVAILABILITY OF DEOBLIGATED FUNDS FOR REOBLIGATION AND EXPENDITURE IS NOT CLEAR FROM THE STATUTE'S WORDING. THEREFORE, WE MUST REVIEW THE LEGISLATIVE HISTORY TO ASCERTAIN CONGRESSIONAL INTENT.

THE SENATE COMMITTEE ON PUBLIC WORKS EXPLAINED THE PROVISION AS MEANING:

"FUNDS ARE TO REMAIN AVAILABLE TO EACH STATE UNTIL EXPENDED."

S.REP. NO. 1055, 93D CONG., 2D SESS. 16 (1974).

IT APPEARS THEN, THAT CONGRESS INTENDED THE FUNDS TO BE USED BY THE STATES AS NO-YEAR APPROPRIATIONS. AS SUCH, THESE FUNDS REMAIN AVAILABLE FOR THEIR ORIGINAL PURPOSE UNTIL EXPENDED.

WE HAVE PREVIOUSLY HELD THAT NO-YEAR MONEYS RECOVERED AS A RESULT OF COST REDUCTIONS AND OTHER ADJUSTMENTS IN OBLIGATIONS, REGARDLESS OF TIME OF RECOVERY, ARE TO BE TREATED AS UNOBLIGATED BALANCES AVAILABLE FOR EXPENDITURE IN THE SAME MANNER AND FOR THE SAME PURPOSES AS THE ORIGINAL APPROPRIATION. B-200519, NOVEMBER 28, 1980, 40 COMP.GEN. 694, 697 (1961). ACCORDINGLY, SINCE SECTION 304 FUNDS ARE TO BE TREATED AS IF THEY WERE NO-YEAR FUNDS, AMOUNTS RECOVERED DUE TO COST UNDERRUNS ON SPECIFIC PROJECTS MAY BE REOBLIGATED BY THE STATES FOR PURPOSE WITHIN THE SCOPE OF SECTION 304.

FN1 THE OMNIBUS BUDGET RECONCILIATION ACT OF 1981 EFFECTIVELY ENDED THE PROGRAM BY DELETING THE AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1982. PUB.L. NO. 97-35, SEC. 1821(A)(5), 96 STAT. 357, 766 (1981).