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B-212876, Sep 21, 1983, Office of General Counsel

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B-212876, SEP 21, 1983, OFFICE OF GENERAL COUNSEL

MARGERY WAXMAN, ESQ. DEPUTY GENERAL COUNSEL DEPARTMENT OF THE TREASURY:

IN YOUR LETTER OF AUGUST 25, 1983, YOU REQUESTED OUR VIEWS REGARDING THE PERIOD OF AVAILABILITY OF THE FUNDS PROVIDED BY THE SECOND CONTINUING RESOLUTION OF FISCAL YEAR 1983, PUB.L. NO. 97-377, 96 STAT. 1830, FOR THE AFRICAN DEVELOPMENT FUND, AN ACCOUNT NORMALLY FUNDED BY THE ANNUAL FOREIGN ASSISTANCE APPROPRIATION ACT. WE CONCLUDE THAT THE FUNDS MADE AVAILABLE FOR THIS PURPOSE ARE TO REMAIN AVAILABLE UNTIL EXPENDED.

FISCAL YEAR 1983 FUNDING FOR ALL APPROPRIATION ACCOUNTS NORMALLY FUNDED UNDER THE ANNUAL FOREIGN ASSISTANCE APPROPRIATION ACT IS CONTAINED IN SECTION 101(B)(1) OF THE SECOND CONTINUING RESOLUTION FOR 1983. THIS SECTION PROVIDES THAT THESE ACCOUNTS ARE TO BE CONTINUED IN FISCAL YEAR 1983 AT THE PREVIOUS YEAR'S RATE EXCEPT FOR THOSE ACCOUNTS FOR WHICH A SPECIFIED FUNDING LEVEL IS PRESCRIBED. THE AFRICAN DEVELOPMENT FUND IS ONE SUCH ACCOUNT FOR WHICH A LEVEL OF FUNDING IS SPECIFIED. THE SECTION APPROPRIATES $50,000,000 FOR THIS PURPOSE. 96 STAT. 1831.

MOREOVER, BESIDES PROVIDING THE LEVEL OF FUNDING FOR THESE APPROPRIATION ACCOUNTS, SECTION 101(B)(1) ALSO SETS FORTH THE MANNER IN WHICH THESE FUNDS ARE TO BE EXPENDED. IN THIS REGARD, THE SECTION PROVIDES THAT ALL APPROPRIATION ACCOUNTS PROVIDED THEREIN ARE TO BE CONTINUED "UNDER THE TERMS AND CONDITIONS" SET FORTH IN THE FOREIGN ASSISTANCE APPROPRIATION ACT OF 1982. ONE SUCH TERM OR CONDITION ENUMERATED IN THE 1982 APPROPRIATION ACT FOR EACH APPROPRIATION ACCOUNT WAS ITS PERIOD OF AVAILABILITY. THUS, IN DETERMINING THE PERIOD OF AVAILABILITY OF THE FUNDS MADE AVAILABLE IN THE CONTINUING RESOLUTION REFERENCE MUST BE MADE TO THE PERIOD OF AVAILABILITY OF THE APPLICABLE 1982 APPROPRIATION. CONGRESS FURTHER CLARIFIED ITS INTENT AS TO THIS RESULT BY EXPRESSLY EXEMPTING ALL PROJECTS AND ACTIVITIES FUNDED UNDER SECTION 101(B)(1) FROM THE OPERATION OF SECTION 102, WHICH PRESCRIBES THE PERIOD OF AVAILABILITY FOR ALL THOSE FUNDS MADE AVAILABLE BY THE RESOLUTION FOR WHICH ANOTHER PERIOD OF AVAILABILITY IS NOT EXPRESSLY PROVIDED.

THE FOREIGN ASSISTANCE ACT OF 1982 APPROPRIATED $58,333,333 FOR THE AFRICAN DEVELOPMENT FUND, "TO REMAIN AVAILABLE UNTIL EXPENDED." THEREFORE, THE FUNDS PROVIDED BY THE SECOND CONTINUING RESOLUTION OF 1983 FOR THE AFRICAN DEVELOPMENT FUND ARE TO REMAIN AVAILABLE UNTIL EXPENDED.

WE NOTE THAT IN TWO PREVIOUS DECISIONS, 60 COMP.GEN. 263 (1981) AND B-189966, SEPTEMBER 10, 1980, WE CONSTRUED THAT TERM "UNDER THE AUTHORITY AND CONDITIONS PROVIDED IN APPLICABLE APPROPRIATION ACTS" AS NOT APPLYING TO THE PERIOD OF

AVAILABILITY OF FUNDS. THESE TWO DECISIONS CONCERNED PROGRAMS AND ACTIVITIES THAT WERE FUNDED UNDER SECTION 101(A)(4) OF A CONTINUING RESOLUTION. SECTION 101(A)(4) CONTAINS TWO SEPARATE CLAUSES DICTATING THE MANNER IN WHICH THE FUNDS IT APPROPRIATES ARE TO BE EXPENDED. WE CONSTRUED THE FIRST CLAUSE, WHICH PROVIDES THAT "THE PERTINENT PROJECT OR ACTIVITY SHALL BE CONTINUED UNDER THE APPROPRIATION, FUND OR AUTHORITY GRANTED BY THE ONE HOUSE," AS APPLYING TO THE AMOUNT AND PERIOD OF AVAILABILITY OF THE APPROPRIATION. WE THEN CONSTRUED THE SECOND CLAUSE OF SECTION 101(A)(4), QUOTED ABOVE, AS ONLY APPLYING TO PROVISIONS DICTATING THE PURPOSES FOR WHICH APPROPRIATIONS ARE MADE AVAILABLE.

THE INSTANT SITUATION, HOWEVER, IS DISTINGUISHABLE FROM THESE TWO PRIOR DECISIONS. SECTION 101(B)(1) DIFFERS FROM SECTION 101(A)(4) IN THAT IT ONLY CONTAINS ONE CLAUSE DICTATING THE MANNER IN WHICH THE FUNDS IT APPROPRIATES ARE TO BE EXPENDED. THIS ONE CLAUSE ("UNDER THE TERMS AND CONDITIONS *** PROVIDED FOR IN THE FOREIGN ASSISTANCE APPROPRIATIONS ACT") THUS, MUST BE CONSTRUED AS APPLYING TO ALL PROVISIONS, INCLUDING PROVISIONS PROVIDING FOR THE PERIOD OF AVAILABILITY OF FUNDS, WHICH DICTATE THE MANNER IN WHICH FUNDS ARE TO BE EXPENDED.