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Decision by ACTION to deny grantee continued assistance under the VISTA Program was within the authority of the Director of VISTA and is not one that can be questioned by this office.

The Honorable Dale E. Kildee House of Representatives

Dear Mr. Kildee:

This responds to a joint request dated July 24, 1987, from you and the Honorable Howard Wolpe for an advisory opinion regarding the propriety of a decision by ACTION to deny continued assistance under the Volunteers in Service to America (VISTA) Program to the Michigan Network of Runaway and Youth Services (Network). We conclude that the decision was within the authority of the Director of VISTA and is not one that can be questioned by this office.

In light of the short time frame of this request we solicited only informal comments from ACTION officials and we have incorporated those comments into this opinion.

BACKGROUND

The statutory mandate of the VISTA program, as authorized by the Domestic Volunteer Service Act of 1973 (Act), is to eliminate and alleviate poverty and poverty-related problems in the United States. ACTION is the federal agency responsible for carrying out this legislative mandate and does so by assigning volunteers and providing funds to sponsoring organizations to work on VISTA projects. The projects are defined by the sponsoring organization in its application for funding. Network is a statewide association of 27 private, non-profit programs offering assistance for runaway and homeless children and has been a VISTA sponsoring organization for the past 5 years. In a June 23, 1986, letter from ACTION, which granted project refunding for a fifth consecutive year to Network, the Director of VISTA indicated that this final year of funding was granted to provide Network with adequate time for the development of local community resources in preparation for the orderly phaseout of volunteers. The letter indicated that the final year notification did not preclude the sponsor from submitting an application for refunding for the next year.

Network did submit an application for a sixth year of assistance and it was approved by State and Regional ACTION Directors. However, in a letter from the Director of VISTA dated June 12, 1987, Network was notified that in accordance

with the final year notice dated June 23, 1986, ACTION had made the tentative decision to deny Network's application for renewal. The reasons provided for the decision were:

"that the project has been in existence for five (5) years and should have made significant progress toward institutionalization into the local community and that a significant number of the measurable objectives of the project have been achieved, In an effort to obtain the most effective, efficient use of resources allocated to the VISTA program, it is my opinion that these funds should be used to develop new projects in the community."

The letter also extended the current project's expiration date from June 30, 1987, to October 28, 1987, to allow the VISTA volunteers to complete a full year of service. The letter further informed Network of the organization's right to show cause why renewal of assistance should not be denied by ACTION.

On July 1, 1987, the ACTION Regional Director conducted the " show cause" meeting requested by Network. After the Director of VISTA received the Regional Director's report on the meeting, the ACTION General Counsel was requested to review the Network refunding denial to determine whether it was in violation of any ACTION statute, regulation or guideline. After the General Counsel approved the tentative decision on July 17, 1987, the refunding denial was made final by the Director of VISTA.

DISCUSSION

The approval process to be followed by existing VISTA sponsors seeking project continuation for a fourth year or longer is described in Part III B2 of VISTA Guidelines, 50 Fed. Reg. 30982, July 31, 1985. The guidelines require that project applications be submitted to the ACTION State Office prior to the beginning of the proposed project period.

After review by the State Director and then the Regional Director, the project package, including recommendations, is transmitted to the Director of VISTA for the final decision on the project application. If the project is disapproved, the sponsoring organization is to be notified that ACTION intends-to deny the application for renewal and is to be given reasons for the tentative decision. The sponsor must also be given an opportunity to show cause why the application should not be denied in accordance with the denial of refunding procedures contained in section 412 of the Act, 42 U.S.C. 5025, and 45 C.F.R. Part 1206, Subpart B.

When a meeting is requested and held under the VISTA Guidelines, the ACTION official conducting the meeting sends any information supplied by the sponsor together with a report on the meeting and the Regional Director's recommendation to the Director of VISTA for a final decision on the-renewal application.

We have reviewed the procedural aspects of this refunding decision and have found that Network was afforded notice and the opportunity for a "show cause" meeting in accordance with the regulations discussed above. As a result we find nothing improper about the procedures followed in making this refunding decision.

The record indicates that the denial of the current Network application for renewal was a policy judgment made by the Director of VISTA under ACTION

regulations. This decision took into consideration the amount of ACTION resources available for this and similar applications from other potential VISTA sponsors. Congress has indicated that final ACTION refunding decisions, such as this, once procedural safeguards are followed, are to remain with ACTION. See Domestic volunteer Service Act Amendments of 1984, Pub. L. No. 98-288, 98 Stat. 189 (1984), Conference Report, H.R. No. 679, 98th Cong., 2d Sess. 25 (1984).

We have consistently declined to question funding decisions in discretionary federal assistance programs where the assistance award is the appropriate funding tool and there is no conflict of interest. See, e.g., Innocent, Inc., B-208065, September 13, 1983, 83-2 CPD 317. Accordingly, we conclude that the decision in this case was within the authority of the Director of VISTA and is not one that can be questioned by this office.

We hope the foregoing is of assistance to you.

Sincerely yours,

Milton J. Socolar Comptroller General of the United States