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Department of Health and Human Services - Public Health Service Gift Acceptance Statute as Authority for Application for Grant Funds

Number: B-255474

Date: 1995-04-03

Matter of: Department of Health and Human Services - Public Health Service Gift Acceptance Statute as Authority for Application for Grant Funds File: B-255474 Date: April 3, 1995

Because the National Institutes of Health, pursuant to 42 U.S.C. Sec. 300aaa(a), may accept grants as conditional gifts, it may use its appropriated funds to cover any cost incurred in applying for such grants.

DECISION

The Department of Health and Human Services (HHS) has requested our opinion on whether, pursuant to the Public Health Service's (PHS) gift acceptance statute, 42 U.S.C. Sec. 300aaa(a), the National Institutes of Health (NIH), a component of PHS, may use its appropriated funds to apply for grants from non-government sources. The grant funds would be used to support scientific research in furtherance of NIH's mission. For reasons set forth below, we conclude that NIH may use its appropriations to cover costs incurred in applying for grants.

HHS's request raises, in effect, two questions: (1) would NIH's acceptance of grant funds constitute an improper augmentation of its appropriations? and (2) if NIH may accept grant funds, may it use its appropriated funds to apply for grants?

As a general rule, an agency may not augment its appropriations from outside sources without specific statutory authority. 36 Comp.Gen. 268, 269 (1956). The PHS gift acceptance statute cited by HHS provides NIH the specific authority to supplement, or "augment", its appropriations with gifts. 42 U.S.C. Sec. 300aaa(a). The PHS gift acceptance statute reads, in part, as follows:

"The Secretary of Health and Human Services is authorized to accept on behalf of the United States gifts made unconditionally by will or otherwise for the benefit of the Service or for the carrying out of any of its functions. Conditional gifts may be so accepted if recommended by the Surgeon General, and the principal of and income from any such conditional gift shall be held, invested, reinvested, and used in accordance with its conditions, but no gift shall be accepted which is conditioned upon any expenditure not to be met therefrom or from the income thereof unless such expenditure has been approved by an Act of Congress."

Consequently, NIH may accept grant funds only if a grant constitutes a gift under the PHS gift acceptance statute. Although we have viewed grants in other contexts as sharing certain aspects of contractual undertakings, see, e.g., 42

Comp.Gen. 289 (1962), for purposes of the PHS statute, we think that grants will typically qualify as conditional gifts. In ordinary usage, "grant" means "a gift, usually for a particular purpose." Webster's New International Dictionary 989 (3d ed. 1966). See also Black's Law Dictionary 699 (6th ed. 1990) ("to bestow or confer . . . a gift"). So long as the requirements the statute imposes on the acceptance of conditional gifts are otherwise met, and so long as the grant funds are used in furtherance of NIH's mission, we have no objection to NIH's acceptance of grants.

NIH appropriations may be used to apply for grants to further NIH's mission. Grants are often awarded competitively, with the grantor requiring potential grantees to apply for and justify their grant requests. If the Surgeon General determines that particular grants will facilitate the accomplishment of NIH's mission, NIH may consider the costs incurred in the preparation of the grant application a necessary expense of NIH's appropriations. See 6 Comp.Gen. 619, 621 (1927).