Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Department of Labor—Cap on Administrative Expenses Under Job Training Partnership Act

File: B-260990

Date: June 13, 1996

DIGEST

Under the Job Training Partnership Act (JTPA or Act), Public Law 97-300, October 13, 1982, the Department of Labor (DOL) obligates training funds and allots those funds to states and territories. Section 161(b)(1) of JTPA makes such funds available for expenditure by "service delivery areas" (SDA) for 3 program years. Section 108 of JTPA requires charging of grant funds "for any program year" to appropriate cost categories. DOL regulations implement these statutes by providing that states and SDAs "shall have the 3-year period of fund availability to comply with the cost limitations in section 108 of the Act." 20 C.F.R. § 627.445(c)(2) (1995). The effect of this regulation is to permit funds set aside for administration, from any program year allocation, to be used for any administrative cost during the 3-year life of an appropriation, provided the percentage limitation ultimately is satisfied. This regulation is consistent with the Act.

DECISION

This is in response to a request from the Inspector General of the Department of Labor (DOL) for a decision relating to the DOL's interpretation of a statute which limits state and local program administrative costs to not more than 20 percent of the funds provided in a single appropriation act to the local programs under the Job Training Partnership Act (JTPA or Act). DOL interprets this provision as requiring only that the local program administrators not spend more than 20 percent of the total funds on administrative costs over the 3-year period of availability of the funds. The Inspector General interprets the statute as imposing a 20 percent administrative cost limitation on funds expended in each of the 3 years that funds remain available to the local program. For the reasons that follow, we believe that the DOL's interpretation is reasonable.

Background

The Job Training Partnership Act, Public Law 97-300, October 13, 1982, 96 Stat. 1324, as amended, provides job training and employment skills to economically

disadvantaged individuals. Although the Department of Labor has overall responsibility for implementation of the Act, provision of services under the Act is highly decentralized, with most participants receiving job training services through programs administered by the 56 states and territories and over 600 local programs called service delivery areas (SDA). The Inspector General's request for a decision specifically concerns Title II-A of the Act, which authorizes adult and youth programs, although, as he points out, the same legal principles would apply to other JTPA grant programs with similar statutory authority.

Under the mechanism established by the Act, the Department of Labor obligates Title II-A funds and allots those funds to states and territories, in accordance with a fixed formula. JTPA § 201; 29 U.S.C. § 1601. DOL allots funds on a July 1 through June 30 "program year" basis, consistent with section 161(a) of the Act, which provides that funds "shall be available for obligation only on the basis of a program year" and that the program year "shall begin on July 1 in the fiscal year for which the appropriation is made." JTPA § 161(a); 29 U.S.C. § 1571(a). See also 20 C.F.R. § 627.405.

The governor of the state or territory then allocates Title II-A funds to SDAs within the state or territory. JTPA § 202; 29 U.S.C. § 1602. See 20 C.F.R. Part 628, Subpart C (1995). Under section 164 of the Act, each state or territory is required to establish "such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursal of, and accounting for, federal funds paid to the recipient under titles II and III" of the Act. Section 165 of the Act requires SDAs to keep records that are sufficient to permit the preparation of reports required by the Act "and to permit the tracing of funds to a level of expenditure adequate to insure that the funds have not been spent unlawfully." JTPA § 165(a)(1); 29 U.S.C. § 1575(a)(1). SDAs also are required to submit quarterly financial reports that "include information identifying all program costs by cost category in accordance with generally accepted accounting principles and by year of the appropriation." JTPA § 165(f)(1); 29 U.S.C. § 1575(f)(1). See 20 C.F.R. § 627.445 (1995).

Expenditure of funds by SDAs is governed chiefly by two statutes. The first is section 161(b)(1) of JTPA, which provides that funds obligated under the Act "for any program year may be expended by each recipient during that program year and the two succeeding program years . . . ." JTPA § 161(b)(1); 29 U.S.C. § 1571(b)(1). This provision makes funds provided under the Act, including Title II-A funds, available for expenditure by SDAs for 3 program years. As a consequence, as the Inspector General points out, "a JTPA grant recipient or subrecipient may have funds available from three different appropriations at any point in time."

The second is section 108, which requires charging of grant funds to appropriate cost categories. JTPA § 108; 29 U.S.C. § 1518. Sections 108(b)(4) and (6) provide:

"(4) Of the funds allocated to a service delivery area for any program year under parts A or C of title II—

> "(A) not more than 20 percent shall be expended for the costs of administration; and
>
> "(B) not less than 50 percent shall be expended for direct training services.

* * *

"(6) For purposes of paragraph (4), the term allocated means allocated for a program year, as adjusted for reallocations and reallotments under section 109 and for transfers of funds under sections 206, 256, 266."

JTPA § 108(b)(4), (6); 29 U.S.C. § 1518(b)(4), (6). (The specific sections of the Act referred to in section (b)(6) relate to adjustments made by DOL or the governors, not to funds carried over under the 3-year availability of funds authorized by paragraph 161(b)(1).)

According to the submission of the Inspector General, as costs are incurred by SDAs, each cost category is charged for its share of costs. Although SDAs are likely to have most of a current program year's allocation expended at the end of the first program year, any unexpended balances are carried forward into the second year and costs continue to be charged to each category, usually on a first-in, first-out (FIFO) basis.

General Question

The general question submitted by the Inspector General is "how to reconcile the 3-year spending period authorized under Section 161(b) with the 20 percent administrative cost limitation found in Section 108(b)." The Inspector General poses the following illustrative scenario:

> "Using the FIFOing by cost category process described above, at some point (usually early in the second year) the year 1 funds in the account budgeted for administration could be exhausted, while unexpended year 1 funds may remain in the other two budget accounts. The question is whether year 2 funds budgeted for administration can be used to cover the costs of administering activities/projects for which the non-administrative costs are continuing to be charged to the other year 1 budget accounts (direct training services and training-related and supportive services)."

DOL Regulations

DOL regulations implementing the JTPA address this issue by explicitly providing that states and SDAs "shall have the 3-year period of fund availability to comply with the cost limitations in section 108 of the Act." 20 C.F.R. § 627.445(c)(2) (1995). The effect of this regulation is to permit funds set aside for administration from any program year allocation to be used for any administrative cost during the 3-year life of an appropriation, provided the percentage limitation ultimately is satisfied. In the scenario posed by the Inspector General above, for example, year 2 funds budgeted for administration could be used to support activities and projects the program cost of which is funded with year 1 funds, as long as overall no more than 20 percent of year 2 funds are applied to administrative costs.

The Inspector General has provided us with a memorandum by the Associate Solicitor, Division of Employment and Training Legal Services, that takes the following position:

> "In sum, we have identified two legally acceptable approaches to carrying over JTPA funds within the three-year life of a JTPA appropriation. We believe the better interpretation of the statute allows unspent program money from a previous year to be supported by administrative money funded by the subsequent year's appropriations as long as the expenditures benefit the same cost objective or program. On the other hand, although the statute does not require a result which provides that only unspent administrative money carried over from a previous year can be used to administer program money carried over from that year, such a result, although programmatically restrictive, would not result in a violation of the Act." [Footnote omitted.]

The Inspector General essentially has asked whether DOL's interpretation of JTPA, as reflected in the Associate Solicitor's memorandum and in paragraph 627.445(c)(2), is consistent with law. We conclude that it is. We start with the principle that interpretation of a statute, by regulation or otherwise, by the agency Congress has charged with the responsibility for administering it, is entitled to considerable weight. Chevron, U.S., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984); 48 Comp. Gen. 5 (1968). Our role in this case, accordingly, is limited to determining whether DOL's interpretation of the statute is reasonable; it does not extend to determining whether DOL has adopted the best possible policy in implementing the statute. Chevron, 467 U.S. at 842, 843. As set forth below, we conclude that DOL's interpretation of the interrelationship between section 161 and section 108 of the JTPA is reasonable and that DOL's implementation of those sections at 20 C.F.R. § 627.445(c)(2) is consistent with JTPA.

Statutory Analysis

A relatively straightforward statutory analysis of the text of the key statutes supports DOL's interpretation. Paragraph 108(b)(4), which establishes the cost category allocations, refers to funds "allocated" to a service delivery area "for any program year." It does not refer to funds "expended," and does not refer to funds "in any program year." Although the term "program year" is not defined in JTPA, the language of paragraph 108(b)(4) is consistent with the language of paragraph 161(b)(1), which provides that funds "for any program year" shall be available for expenditure for 3 years. Furthermore, there is nothing in the text of either statute that requires that the cost percentages set forth in section 108 be satisfied in each of those 3 years.

Legislative History

The legislative history supports this interpretation. Public Law 102-367, Sept. 7, 1992, amended section 108 to refer to "funds allocated to a service delivery area for any program year" that are "expended for administration." Prior to the 1992 amendment, section 108 provided, "Not more than 15 percent of the funds available to a service delivery area for any fiscal year for programs under part A of Title II of this Act may be expended for the cost of administration." 29 U.S.C.A. § 1518(a) (1985) (emphasis added). One purpose of the 1992 amendments was to clarify how the cost limitation was to be applied. The House report explained the change as follows:

> "The Committee bill applies cost limitations to funds 'allocated for any program year' rather than to 'available' funds under current Title II law, or 'expended' funds under current Title III law. This change is intended to clarify that the limit applies to funds allocated for a program year and continues to apply to the same year's allocated funds over the subsequent two years during which those funds are authorized to be expended.
>
> "Some confusion has arisen over the term 'available funds' under Title II as to whether the limitations apply to new funds, consisting of carry-in funds plus the new program year's allocations, available for each year. This is not the Committee's intent, and the new legislative language, complemented by the recordkeeping provision added in section 165 requiring that records be maintained showing program costs in appropriate categories by year of appropriation, should clarify this requirement."

H.R. Rep. No. 240, 102d Cong., 2d Sess. 72 (1991) (emphasis added).

This passage evidences Congress' intent that the cost category allocation requirements be satisfied over the 3-year life of an appropriation. This is even more clearly reflected in the JTPA conference report. The conference report explained further:

> "The Conferees adopt the House Bill provision in recognition of the planning difficulties substate grantees have had under current law. . . . [S]ubstate grantees will be required to comply with the cost category limits on a program year basis. Thus, the appropriate period of compliance with the cost category limits for a particular program year will be the period for which funds allocated for such program year are available.
>
> "The Conferees amend the House Bill to make clear that for purposes of this section, the term 'allocated' is intended to refer to the final allocation a substate grantee receives for a given program year, adjusted upwards or downwards as appropriate following any reallocation to or from such substate grantee for that program year."

H.R. Rep. No. 811, 102 Cong., 2d Sess. 130-31 (1992) (emphasis added).

Accordingly, we believe that the legislative history of the 1992 amendments to section 108 supports the view that the cost allocation requirements of that section are intended to apply over the full 3 years of fund availability. This is consistent with DOL's implementation of section 108 at 20 C.F.R. § 627.445(c)(2).

This interpretation is supported by other changes to JTPA by the 1992 amendments. Public Law 102-367 also amended section 165 of the JTPA, 29 U.S.C. § 1575, concerning reports, recordkeeping, and investigations. Subsection 165(f) requires that reports by substate grantees and service delivery areas "include information identifying all program costs by cost category in accordance with generally accepted accounting principles and by year of the appropriation." This serves as a further indication that Congress intended that the cost category percentage requirements of section 108 apply over the full 3-year period of availability of Title II-A funds.

Accordingly, we conclude that DOL's interpretation of the JTPA as implemented at 20 C.F.R. § 627.445(c)(2) is consistent with the Act. We recognize that this result would permit the use of administration funds provided in one year's appropriation to be used to support program funds provided in another year's appropriation, as illustrated by several hypothetical questions presented by the Inspector General. We do not find that inconsistent with the statutory scheme, especially in view of the fact that, according to the Inspector General, most of the funds are expended at the local program level in the first program year.

Potential Abuses in Implementation

The Inspector General suggests the possibility that implementation of section 108 in a way that permits SDAs to exceed the category percentage limitations in any given year of availability might be objectionable, since it is inconsistent with the "matching principle," i.e., the principle that the administrative costs of a project or activity should be matched with the nonadministrative costs. This could result in cost reports that "understate (or overstate) the 'true' administrative costs associated with program activities funded under the same year's appropriation," "result in inconsistent treatment of costs as well as costs being shifted to a subsequent appropriation/grant in violation of the JTPA cost principles," or mask "the true costs of administration" and defeat "the congressional intent and purpose of the cost limitations."

We note that the possible abuses suggested by the Inspector General do not go to the legality of implementation of section 108 by DOL, but rather to the accounting and auditing difficulties that such implementation might create. Although these concerns may prove to be well-founded, they do not require a finding that DOL's implementation of the Act is illegal.

Nonetheless, as noted by the Associate Solicitor, although DOL's implementation of sections 161 and 108 of the JTPA at 20 C.F.R. § 627.445(c)(2) is consistent with the JTPA, it is not required by the JTPA. DOL could require that the percentage limitations of section 108 be applied in each of the 3 years of fund availability under section 161, based on its responsibilities under the JTPA to ensure proper fiscal and accounting controls. JTPA § 162; 29 U.S.C. § 1574.

Further, section 165(b)(3)(D) of the JTPA, 29 U.S.C. § 1575(b)(3)(D), provides that nothing in that Act "shall be construed so as to be inconsistent with the Inspector General Act of 1978 or government auditing standards issued by the Comptroller General." Under section 163 of JTPA, DOL is authorized to monitor compliance with the Act and to investigate possible violations. JTPA § 163; 29 U.S.C. § 1573. See generally "Government Auditing Standards," GAO/OCG-94-4, June 1994. The Inspector General has a statutory obligation under section 4 of the Inspector General Act to provide policy direction, to review regulations, and to recommend policies with respect to the promotion of economy and efficiency of DOL programs. 5 U.S.C. App. 3, § 4 (1994).

Accordingly, if the abuses suggested by the Inspector General above in fact occur, then both DOL and the Inspector General can take corrective action within their

respective oversight and audit responsibilities. Further, DOL can take immediate action by reviewing its internal control procedures to ensure that the abuses suggested by the Inspector General do not occur.

/s/Robert P. Murphy
for Comptroller General
of the United States