B-271304

March 19, 1996

DIGESTS

1. Even though the operations of the District of Columbia have been financed by a series of continuing resolutions, the District's quarterly payments to the Police Officers and Fire Fighters Retirement Fund, the Teachers Retirement Fund, and the Judges Retirement Fund were due as required by section 144(b)(2) of the District of Columbia Retirement Reform Act, as amended, D.C. Code Ann. § 1 -724(b)(2) (1981 ed., 1992 replacement volume). The District received the requisite appropriation since the continuing resolutions (1) appropriate the full annual amount for the entire fiscal year regardless of its period of duration, (2) are available to the extent and in the manner which would be provided by the pertinent appropriation act that has yet to be enacted (unless otherwise provided in the continuing resolution, and (3) did not contain any language that relieves the District of its duty to make the contributions.

2. Even though the operations of the District of Columbia have been financed by a series of continuing resolutions, the District is liable to pay one quarter of the amount that the District of Columbia Retirement Board certified as being due by the District to the Police Officers and Fire Fighters Retirement Fund, the Teachers Retirement Fund and the Judges Retirement Fund for fiscal year 1996 under section 142(a)(4)(B) and (c) of the District of Columbia Retirement Reform Act, as amended, D.C. Code § 1-722(a)(4)(B) and (c) (1981 ed., 1992 replacement volume). The continuing resolutions have appropriated funds that are available for such purpose without limitation, and did not alter the amount the District was required to pay quarterly.

GAO

United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-271304

March 19, 1996

Mr. Anthony Williams
Chief Financial Officer
441 4th St., N.W.
Suite 1150
Washington, D.C. 20002

Dear Mr. Williams:

By letter dated February 20, 1996, received in this Office on March 5, 1996, you asked when the District of Columbia's (District) first and second quarter contributions to the Police Officers and Fire Fighters Retirement Fund, the Teachers Retirement Fund, and the Judges Retirement Fund (Retirement Funds) administered by the District of Columbia Retirement Board are due and the amount of such contributions. Your inquiry has been prompted by the fact that Congress has not yet enacted the District's fiscal year 1996 regular appropriations act, and instead has financed District activities through a series of continuing resolutions. As discussed below, the first quarter payment was due no later than October 31, 1995 and the second quarter payment was due no later than January 1, 1996. The amount of the contribution that is due for each quarter is one quarter of the amount that the Board certified for inclusion in the fiscal year 1996 budget request.

Section 142(c) of the D.C. Retirement Reform Act, as amended,[1] provides that the Mayor and Council are to include in each annual budget submitted to Congress for appropriation not less than the full amount certified by the Board as being due from the District for each retirement fund. Section 144(b)(2) of the Retirement Reform Act, as amended,[2] provides that amounts appropriated as a District of Columbia payment to each retirement fund are to be deposited in the appropriate Retirement

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[1]Pub. L. No. 96-122, 93 Stat. 866 (1979) (D.C. Code Ann. § 1-722 (c) (1981 ed. 1992 replacement volume)).

[2]D.C. Code Ann. § 1-724(b)(2).

Fund in equal quarterly installments. Section 144(b)(2) further provides that the District shall make the first payment not more than (1) 30 days after amounts are appropriated or (2) 30 days after the beginning of the fiscal year for which amounts are appropriated, whichever is later. The District shall make subsequent installments on the first day of each succeeding quarter of the fiscal year. If the District is late in paying an installment, the Board is to charge the District daily interest, at a rate consonant with the Board's fiduciary duty.

The resolving clause of each of the continuing resolutions appropriating funds to the District makes it clear that they have appropriated funds to the District for fiscal year 1996.[3] The temporary nature of the continuing resolution serves to limit the time period during which District officials may incur obligations against the appropriation. Provisions in each continuing resolution also affect the total amount that is available to the District to obligate for fiscal year 1996. Nevertheless, a continuing resolution appropriates the full annual amount regardless of its period of duration. See B-152554, Nov. 4, 1974. Standard continuing resolution language makes it clear that the appropriations are available to the extent and in the manner which would be provided by the pertinent appropriations act that has yet to be enacted (unless otherwise provided in the continuing resolution).[4] Nothing in the continuing resolutions expressly relieves the District of the duty to make the contribution to the retirement funds required by section 144(b)(2) of the Retirement Reform Act.

The fiscal year runs from October 1 to September 30.[5] Thus, the quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. Since Pub. L. No. 104-31 made appropriations to the District for fiscal year 1996 on September 30, 1995, the District was required by D.C. Code Ann. § 1-724(b)(2) to make the first quarterly payment to the Board not later than 30 days after the beginning of fiscal year 1996 or October 31. The second quarter's payment was due January 1, 1996.

As noted earlier, the District must include in its budget submission the amount the Board certifies as the annual amount owed by the District. Once an appropriation is made, the District makes payments based on that amount unless the appropriation act or some other law changes the amount of the District's obligation. The District does not normally receive a line item appropriation for its contribution

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[3]Pub. L. No. 104-31, 109 Stat. 278 (Sept. 30, 1995); Pub. L. No. 104-54, 109 Stat. 540 (Nov. 19, 1995); Pub. L. No. 104-56, 109 Stat. 548 (Nov. 20, 1995); and Pub. L. No. 104-92, 110 Stat. 16 (Jan. 6, 1996).

[4]Pub. L. No. 104-31, § 103, 109 Stat. 279 (Sept. 30, 1995); Pub. L. No. 104-54, § 103, 109 Stat. 542 (Nov. 19, 1995); Pub. L. No. 104-56, § 103, 109 Stat. 550 (Nov. 20, 1995); Pub. L. No. 104-92, § 402, 110 Stat. 22, (Jan. 6, 1996).

[5]D.C. Code Ann. § 47-101 (1981 ed., 1990 replacement volume) and 31 U.S.C. § 1102 (1994).

to each retirement fund.[6] Instead, Congress includes the District's contribution in lump-sum amounts annually appropriated to the District. To the extent funds are otherwise appropriated to the District and available for such purposes, they are available to pay the total amount certified as the amount the District owed to each fund under section 122(a)(4)(B) and (c) of the Retirement Reform Act. Nothing in the continuing resolutions expressly altered the District's obligation to make contributions as set forth in the Retirement Reform Act. Thus, the District's liability to contribute the certified amount to the retirement funds is not affected by the fact that a particular continuing resolution appropriates amounts different from those requested by the District for fiscal year 1996 or is available for obligation only for part of the fiscal year.

Sincerely yours,

Robert P. Murphy
General Counsel

[6]In contrast, District appropriation acts typically contain a line item for the federal contribution to each of the retirement funds.