Comptroller General
of the United States

Washington, D.C. 20548

B-271607

June 3, 1996

The Honorable Thad Cochran
United States Senate

Dear Senator Cochran:

In your letter of March 19, 1996, you asked that we provide our opinion about statutory language that is involved in a dispute between the Institute for Technology Development (ITD) in the State of Mississippi and the Economic Development Administration (EDA) Department of Commerce. Specifically you asked whether the language "to remain available until expended," as used in an appropriation to EDA for the purpose of making a grant to ITD, means expended by EDA or expended by ITD.

Based on discussions both with a member of your staff and with the Chief Counsel of the EDA, we learned that EDA grants to ITD have spawned a number of disputes that have resulted in protracted litigation. Recently, in Institute for Technology Development v. Brown, 63 F.3d 445 (5th Cir. 1995), the Fifth Circuit Court of Appeals overturned a district court decision upholding EDA's position that the grantee, ITD, could not substitute depreciation expenses it had incurred, but not initially claimed, for other disallowed costs. We have been informally advised by EDA that the specific question you asked is not directly involved in the ongoing litigation.

The Second Supplemental Appropriations Act, 1984, Pub. L. No. 98-369, 98 Stat. 1369 (1984), provides:

"Economic Development Administration
Economic Development Assistance Programs"

"For an additional amount for 'Economic development assistance programs', $26,000,000, to remain available until expended, pursuant to 42 U.S.C. 3151(f) of which $7,000,000 is for a grant to the Institute for Technology Development in the State of Mississippi . . . ."

98 Stat. at 1372 (emphasis added). This language constitutes an appropriation to EDA for the economic development assistance program, including the making of a grant to ITD. EDA is to make the grant under 42 U.S.C. § 3151(f), which authorizes grants for demonstration projects designed to foster regional productivity and growth and to prevent outmigration.

When the Congress expressly provides that an appropriation "shall remain available until expended," it constitutes a no-year appropriation and all statutory limits on when the funds may be obligated and expended are removed. 43 Comp. Gen. 657, 661 (1964); 40 Comp. Gen. 694, 696 (1961). With one exception discussed below, these no-year funds remain available indefinitely until they are fully expended.

The period of availability of appropriated funds is the period of time in which the administering agency may obligate the funds. It is not a limitation on the time in which a grantee may use the funds once it has received them. Thus, the no-year language in the appropriations act—"available until expended"—means available until obligated and expended by the granting agency, in this case by EDA.

Only the account closing statute, 31 U.S.C. § 1555, affects the perpetual availability of no-year funds. The purpose of this provision is to close no-year appropriations that are no longer active. See 39 Comp. Gen. 244, 245 (1959). Until 1990 this statute provided that the unobligated balance of a no-year appropriation should be withdrawn and "returned" to the Treasury either (1) when the head of the administering agency decided that the purposes of the appropriation had already been fulfilled, or (2) when no disbursement was made from the appropriation for two consecutive fiscal years. On November 5, 1990, the provision was amended to provide that a no-year appropriation account should be closed, and any remaining balance canceled, when both (1) the head of the agency (or the President) determines that the purposes of the appropriation have been carried out, and (2) no disbursement has been made for two consecutive fiscal years.

We trust that this adequately responds to your request. Should you have any questions, please contact Gary Kepplinger (512-5644) or Bertram Berlin (512-8255) in my Office of General Counsel.

Sincerely yours,

/s/James F. Hinchman
for Comptroller General
of the United States

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DIGEST

An appropriation to the Economic Development Administration (EDA), for the purpose of making a grant to the Institute for Technology Development, that is "to remain available until expended", remains available for obligation until obligated and expended by the EDA. The period of availability of appropriated funds is the period of time in which the administering agency has to obligate the funds.