DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-183819

DATE: JUN 26 1975

MATTER OF: Availability of Funds Transferred to Secretary of Commerce For Purposes of Trade Act of 1974 to Administer Loans and Guarantees Made Under Predecessor Statute

DIGEST: Where unexpended balance of funds appropriated for purposes of a former adjustment assistance program is transferred to the Secretary of Commerce to be used for a replacement program of adjustment assistance, while legislative authority to continue to administer the former program is preserved, the funds remain available for care and preservation of collateral and for honoring guarantees made under the former program.

This decision is in response to a request by the General Counsel of the Department of Commerce. The question posed is as follows:

> "Whether unexpended balances of funds appropriated under the Trade Expansion Act, which are transferred to the Secretary of Commerce under § 256(c) of the Trade Act to carry out his functions under Chapter 3 thereof ('Adjustment Assistance for Firms'), may be used for the care and preservation of collateral securing direct loans or guaranteed loans and/or to honor guarantees made or authorizied under the Trade Expansion Act."

Under title III of the Trade Expansion Act of 1962, approved October 11, 1962, Pub. L. No. 87-794, 19 U.S.C. §§ 1901-1920 (1970), the Secretary of Commerce was authorized to provide adjustment assistance, including financial assistance, to firms in a domestic industry which has been or may be seriously injured by competition with imports as a result in major part of concessions granted under trade agreements. 19 U.S.C. § 1901. According to the General Counsel, approximately 15 loans and 3 guarantees of loans were made or authorized under the 1962 Act. Where the loans or guarantees are secured by collateral, the Department may have to incur expenses for "care and preservation," i.e., for the purpose of protecting the collateral or the Government's lien, such as purchase of prior liens, insurance costs, custodial care, and appraisals. Also, expenditures may be necessary to honor guarantees made under the 1962 Act.

The Trade Act of 1974, approved January 3, 1975, Pub. L. No. 93-618, 88 Stat. 1978, repealed most of the adjustment assistance provisions

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of the 1962 Act (section 602(e), Pub. L. No. 93-618, 88 Stat. 2072), and substituted new adjustment assistance provisions. Title II, ch. 3, Pub. L. No. 93-618, §§ 251 et seq. The 1974 Act provides that:

> "The unexpended balances of the appropriations authorized by section 312(d) of the Trade Expansion Act of 1962 are transferred to the Secretary to carry out his functions under this chapter [dealing with adjustment assistance for firms]." Section 256(c), Pub. L. No. 93-618, 88 Stat. 2033.

No specific savings clause or winding-down authority is provided in the 1974 Act with respect to the continued administration of outstanding loans or guarantees under the 1962 Act. Thus, the question arises, since unexpended balances of appropriations under the 1962 Act have been transferred to the Secretary for carrying out his functions under the 1974 Act, whether these same funds remain available for care and preservation expenses related to loans and guarantees made under the 1962 Act, and for honoring guarantees.

We note that various provisions of the 1962 Act have not been repealed, including: section 316 (19 U.S.C. § 1916), providing authority for the Secretary to require security for loans or guarantees and, in effect, to care for and preserve such security; section 318 (19 U.S.C. § 1918), imposing recordkeeping and other requirements on recipients of adjustment assistance; and section 320 (19 U.S.C. § 1920), allowing the Secretary to sue and be sued in connection with adjustment assistance. Congress has thus preserved the legislative authority for servicing adjustment assistance loans and guarantees under the 1962 Act, while repealing the authority for new commitments thereunder.

Section 256(c), transferring the appropriations balances, was added to H.R. 10710, 93d Congress, the bill which became the 1974 Act, by the Senate Committee on Finance. The Committee report does not discuss the addition of section 256(c). S. Rep. No. 93-1298, 147-148 (1974).

In view of the wording of section 256(c), the funds transferred thereby cannot be used for expenses related to loans and guarantees under the 1962 Act, notwithstanding that they were originally appropriated for that purpose, unless those expenses can be considered to be related to functions of the Secretary under title II, chapter 3, of the 1974 Act. The General Counsel of the Department, in a memorandum submitted with his request, takes the view that they are so related.

He relies in part on the inclusion, in title II, chapter 3, of the 1974 Act, of section 263(c), 88 Stat. 2034, 2035, which provides that:

> "Any certification of eligibility of a firm under section 302(c) of the Trade Expansion Act of 1962 made before the effective date of this chapter shall be treated as a certification of eligibility made under section 251 of this Act on the date of enactment of this Act; except that any firm whose adjustment proposal was certified under section 311 of the Trade Expansion Act of 1962 before the effective date of this chapter may receive adjustment assistance at the level set forth in such certified proposal."

The memorandum states in this respect that:

> "It is clear that the Secretary has the continuing authority and responsibility to administer the loans and guarantees made or authorized under the TEA [Trade Expansion Act of 1962]. The relevant provisions of the TEA were not repealed. Furthermore, by virtue of § 263(c), Congress sought to provide a bridge for those cases which were under consideration at the time that the TA [Trade Act of 1974] became effective. Specifically, in § 263(c) Congress authorized the Secretary to provide funds to firms at the level authorized when their adjustment proposals were approved under the TEA. Therefore, based on the foregoing, it is evident that Congress recognized that loans and guarantees made or authorized under the TEA would require continuing attention and left that responsibility with the Secretary.
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> "A narrow interpretation of § 256(c) would define the Secretary's 'functions under this chapter' to be limited to the rendering of new adjustment assistance under the TA and the maintenance thereof. Such an interpretation would preclude the use of the remaining funds for the maintenance of the existing loan and guarantee portfolio.
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> "It is our view that a narrow interpretation of § 256(c) would not carry out the intent of Congress. Congress could not have intended that the recovery on the existing TEA loans and guarantees, and the security therefor, be diminished or jeopardized by denying the use of funds originally appropriated for that purpose.

> "The fact that the relevant TEA provisions were not repealed, can be considered to be in the nature of a savings clause. The absence of an explicit savings clause can easily be explained by the rush in which the TA was enacted. * * *.
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> "With respect to the use of the transferred funds to honor guarantees authorized under the TEA, § 263(c) of the TA specifically authorizes the Secretary to provide adjustment assistance to firms at the level originally authorized under the TEA. Guarantees constitute contingent liabilities and payment is deferred until demand is made on those guarantees by the lending institution. The level originally authorized under a guarantee is the amount of contingent liability assumed by the government. Even though reserves are established for the purpose of paying guarantees, there appears to be no prohibition against payment of the full liability from the transferred funds, to the extent the reserves established for such purpose are not adequate to meet the liabilities. Any other interpretation would suggest the need for setting contingency reserves at 100 per cent of the outstanding guarantees, a practice which we believe is not required and which the Congress could view as fiscally irresponsible."

The result, were we to hold that the transferred funds are not available for the purposes in question, could be that the United States would be deprived of the value of collateral because it could not expend funds for the purpose of preserving it, and also that commitments to provide adjustment assistance to firms, in the form of guarantees, could not be honored. We would be reluctant to rule in a manner which would cause such severe consequences without some indication that the Congress was aware that, by transferring the unexpended balance for adjustment assistance under the 1962 Act, it would in effect abrogate existing commitments under prior law. We find no evidence of such awareness. Rather, to the extent that the legislative history of the 1974 Act offers any indication of congressional intent with respect to the existing program, it tends to suggest that Congress did not intend to curtail the continued administration of the existing adjustment assistance program. The Senate Finance Committee report on H.R. 10710, 93d Congress, which became the Trade Reform Act of 1974, states in this respect that:

> "The Committee firmly believes that the Federal Government bears a special responsibility to workers and firms

> adversely affected by increased imports * * *. Accordingly, the Committee's bill reaffirms the role of firm adjustment assistance and adopts the basic provisions of the House bill which were directed at improving both the substance and procedure of the present program." S. Rep. No. 93-1298, 143 (1974).

Moreover, as noted above, the Congress expressly preserved, in enacting the 1974 Act, those sections of the 1962 Act which give the Secretary authority to service existing loans. See also section 263(c) of the 1974 Act, supra, intended as a transitional provision for applications for assistance under the 1962 Act which were under consideration at the effective date of the new adjustment assistance provisions. H.Rep. No. 93-571, 63-4 (1973). It would be anomalous to conclude, in effect, that assistance could be provided, under the 1974 Act, for firms certified as eligible under the 1962 Act procedures, by virtue of section 263(c), but that nevertheless guarantees made to applicants previously certified as eligible under the 1962 Act could not be honored.

In somewhat analogous circumstances, we have held that an appropriation "for expenses necessary to carry out the purposes of the National Science Foundation Act of 1950 as amended" could be used for preliminary expenses of a new program not within the 1950 Act but which the National Science Foundation (NSF) was charged with administering and for which no other funds were then available. 46 Comp. Gen. 604 (1967). We said therein that the new duties imposed upon the Foundation "* * * bear a relationship to the purposes for which appropriations have been provided sufficient to justify the use of [NSF] appropriations for expenditures related to * * *" the new duties. Id. at 606. Similarly, in this instance, the duties imposed upon the Secretary with respect to the continued administration of adjustment assistance under the 1962 Act bear a relationship to the purposes of chapter 3 of title II of the 1974 Act, the new adjustment assistance provision, sufficient to justify the use of the transferred balance of appropriations in order to care for and preserve collateral and honor guarantees with respect to commitments made under the 1962 Act.

Accordingly, the question presented is answered in the affirmative.

R.F.KELLER
Deputy Comptroller General
of the United States