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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20540

FILE: W-171019

DATE: DEC 14 1976

MATTER OF: **Setoff Against Block Grant Funds**

- DIGEST:
1. Law Enforcement Assistance Administration cannot use setoff against current "block grant" payments to States under Omnibus Crime Control and Safe Streets Act as means of recovering amounts due Federal Government from State's misuse of prior year block grants. Setoff against grant amounts provided in advance of performance would divert grant funds from their intended purpose, since grant funds would be used to discharge debt to the United States at the expense of the current year's program.
  2. Authority granted Law Enforcement Assistance Administration under section 509 of Omnibus Crime Control and Safe Streets Act to withhold further grant payments in case of grantee's failure to comply with applicable requirements until there is no longer such failure, is not equivalent to setoff since funds withheld are not applied to cancellation of debt. Also, grant payments can no longer be withheld under section 509 once grantee comes into compliance with applicable requirements, even though grantee is still indebted to Federal Government for past misuse of grant funds.

The General Counsel and Assistant Administrator of the Law Enforcement Assistance Administration (LEAA) requested our opinion as to whether LEAA may make setoff, against appropriated funds statutorily required to be distributed to the States, to settle a past claim of LEAA.

The funds to be used for setoff are those appropriated for "block grants" to the States under title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. §§ 3701 et seq. (Supp. V, 1975), as further amended by the act approved

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October 15, 1976, Pub. L. No. 94-503. The LEAA Assistant Administrator describes the block grant program as follows:

"\* \* \* 85 percent of LEAA funds shall be allocated among the States in the form of 'block' grants according to their respective population if the States meet certain legal requirements (Sec. 306(a)(1)).

"The grants are called 'block' grants because the grant funds are required by the Act to be allocated in lump sums among the States, according to a formula based on population, for distribution and expenditure by the States and cities themselves.. (Sec. 306(a) and Sec. 203(b)(3)). LEAA also makes 'discretionary' action grants which may be distributed at LEAA's discretion to States or directly to units of local government [or nonprofit organizations] for categorical purposes.

"Block planning grants are utilized by the States to establish and maintain State Planning Agencies (SPA). The SPA is created or designated by the Chief Executive of the State and is subject to his jurisdiction [Sec. 203(a)(1)]. Each State planning agency determines needs and priorities for the improvement of law enforcement throughout the entire State. The SPA then defines, develops and correlates programs to improve and strengthen law enforcement for its State and all the units of local government within the State. All of this material and information is incorporated into a comprehensive Statewide plan for the improvement of law enforcement throughout the State which is annually submitted to LEAA for review and approval. (Sec. 203(b)(1) and [Sec. 302(a)]).

"When a State's plan has been reviewed and approved, the State is eligible to receive its allocated block action grant for that fiscal year. It should be noted that LEAA is required by statute to make block action grants if the SPA has an approved comprehensive plan

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\*Pub. L. No. 94-503, 90 Stat. 2407, enacted after the Assistant Administrator's submission to us, made several changes in the provisions which he describes. However, the basic nature of the block grant program remains the same for purposes relevant here.

which conforms with the purposes and requirements of the Safe Streets Act (Sec. 303(a)) and with rules, regulations and procedures established by LEAA consistent with the Safe Streets Act (Sec. 301). Under the block grant program the States order their own priorities through the comprehensive plan and LEAA cannot dictate to State and local governments how to run their criminal justice systems, so long as the plan is consistent with the Act. LEAA does not approve or disapprove specific projects in the comprehensive plan unless they are inconsistent with the provisions of the Safe Streets Act."

The legal issue presented is whether LEAA may set off against the States' entitlements out of fiscal year 1976 or 1977 Safe Streets Act appropriations to cover LEAA claims against the States which arose out of the misuse of fiscal years 1971, 1972, and 1973 funds, or misused funds from any previous years.

With respect to setoff, it has long been recognized that the Federal Government has the right "which belongs to every creditor to apply the unappropriated money of his debtor, in his hands, in the extinguishment of the debts due him." See, e.g., B-184300, July 28, 1976, 55 Comp. Gen. \_\_\_\_; B-154113, June 24, 1964; B-143373, May 7, 1962, and cases cited. This right of setoff does not depend on specific statutory authorization, and it extends generally to Federal agencies. Thus the Federal Claims Collection Standards issued jointly by our Office and the Attorney General provide in part:

"Collections by offset will be undertaken administratively on claims which are liquidated or certain in amount in every instance in which this is feasible. \* \* \* Appropriate use should be made of the cooperative efforts of other agencies in effecting collections by offset, including utilization of the Army Holdup List, and all agencies are enjoined to cooperate in this endeavor." 4 C.F.R. § 102.3 (1976).

However, by administrative policy, this Office has limited the availability of grant funds as a source for setoff where setoff would have the effect of defeating or interfering with the purposes of the grant. See B-186166, August 26, 1976; B-184300, *supra*. In addition, as the Assistant Administrator points out, paragraph 6 of Attachment J to Federal Management Circular No. 74-7 (1974) (formerly OMB Circular No. 102) also reflects this principle as follows:

"Unless otherwise required by law, grantor agencies shall not withhold payments for proper charges made by State and local governments at any time during the grant period unless (a) a grantee has failed to comply with the program objectives, grant award conditions, or Federal reporting requirements, or (b) the grantee is indebted to the United States and collection of the indebtedness will not impair accomplishment of the objectives of any grant program sponsored by the United States. Under such conditions, the grantor may, upon reasonable notice, inform the grantee that payments will not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal government is liquidated."  
(Emphasis supplied.)

Applying these principles to the instant matter, the 85 percent block grant amounts proposed for use in setoff here may be described as entitlements to the States in the sense that LEAA must make the specified allocations of grant funds to States which have approved plans. However, each State's entitlement becomes absolute only to the extent that it agrees to use the grant funds in accordance with the State plan, and other requirements, and actually does so. Conversely, the level of grant performance by a State is, of course, limited to the amounts made available to it by LEAA, i.e., the State can only apply such grant amounts as are allocated to it.

Viewed from this perspective, we conclude that setoff against block grant amounts prior to the time that performance has taken place would divert grant funds from their intended purpose. In such circumstances, the State would simply forego grant projects to the extent of the amounts denied it by setoff. Thus the amounts set off would cancel the State's indebtedness to the Federal Government resulting from its misuse of prior year grant funds, without financial loss to the State and at the expense of the current year's grant program.

We note that section 509 of the Omnibus Crime Control and Safe Streets Act, as amended, 42 U.S.C. § 3757 (Supp. V, 1975), and further amended by Pub. L. No. 94-503, supra, § 122, 90 Stat. 2418, provides:

"Except as provided in section 518(c), whenever the [Law Enforcement Assistance] Administration, after

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notice to an applicant or grantee under this title and opportunity for a hearing on the record in accordance with section 554 of title 5, United States Code, finds that, with respect to any payments made or to be made under this title, there is a substantial failure to comply with--

(a) the provisions of this title;

(b) regulations promulgated by the Administration under this title; or

(c) a plan or application submitted in accordance with the provisions of this title;

the Administration shall notify such applicant or grantee that further payments shall not be made (or in its discretion that further payments shall not be made for activities in which there is such failure), until there is no longer such failure.<sup>102</sup>

Clearly the withholding authority of section 509 may be invoked as to current or future block grant allocations where claims against a State for past misuse of grant funds relate to a substantial failure to comply with title I of the Act, the LEAA regulations, or the State plan or application, which has not been corrected. See discussion infra. However, this withholding authority is not equivalent to set-off since it does not permit diversion of amounts withheld to satisfaction of a claim. Rather, it appears that, under section 306(b) of the Act, 42 U.S.C. § 3736(b)(Supp. V, 1975), withheld amounts would be reallocated to other States in accordance with the block grant formula.

Moreover, we construe section 509 as a remedial provision designed to assure, prospectively, that failures are corrected and that grant funds will be used in compliance with applicable requirements. We do not view section 509 per se as a device to assist in the collection of claims resulting from past misuses of grant funds. Thus, where a State has corrected the substantial compliance failure, if any, which

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\*Section 518(c) of the Act, as amended by Pub. L. No. 94-503, § 112(b), 90 Stat. 2418, set forth separate procedures for the suspension of funds in the case of discrimination on the ground of race, color, religion, national origin, or sex.

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caused a misuse of prior year grant funds, the existence of an outstanding claim against the State for the misused funds would not, as such, justify the withholding of further payments under section 309.

Paul G. Dembling

For

Comptroller General  
of the United States