Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Interest Earned on Unauthorized Loans of Federal Grant Funds

File: B-246502

Date: May 11, 1992

DIGEST

Interest earned by grantees on unauthorized loans of grant funds belongs to the United States and must be deposited in the Treasury as miscellaneous receipts.

DECISION

This responds to a request from the Inspector General of the United States Department of Housing and Urban Development (HUD) concerning the disposition of interest earned on unauthorized loans made by grantees of federal grant funds. The Inspector General identified two cases where recipients of grants under the Community Development Block Grant (CDBG) Entitlement Program obtained grant funds from the United States Treasury and made loans of the funds for purposes that were subsequently determined to be ineligible under the CDBG program. The amount of the principal of these loans will be returned by the grantees, but HUD's Inspector General has asked our advice on the disposition of the interest the grantees earned on these loans. We conclude that interest earned on loans which are deemed ineligible under the federal grant program belongs to the United States and must be deposited in the Treasury as miscellaneous receipts. See 31 U.S.C. § 3302(b).

Created by the Housing and Community Development Act of 1974 (Pub. L. No. 93-383, 88 Stat. 633) and administered by HUD, the CDBG program is a major source of federal financial aid to cities and counties. The broad purpose of the CDBG program is to improve the quality of urban life, particularly for persons of modest financial means, through better housing and expanding economic opportunities. 42 U.S.C. § 5301(c). Cities and counties may use their CDBG funds for a wide variety of authorized purposes, including making loans for certain community projects. See, e.g., 42 U.S.C. §§ 5305(a)(4),(17). See also B-239907, July 10, 1991.

The general rule is that interest earned by a grantee on funds advanced by the United States belongs to the United States rather than to the grantee and must be paid to the

United States,[1] 64 Comp. Gen. 96 (1984); 42 Comp. Gen. 289 (1962); and cases cited therein. The reason for this longstanding rule is that statutes authorizing grant programs contemplate that recipients shall not profit other than in the manner and to the extent provided by law. 69 Comp. Gen. 660 (1990); 62 Comp. Gen. 701, 702 (1983); 1 Comp. Gen. 652 (1922); B-192459, July 1, 1980.[2]

Once grant funds have been applied to authorized grant purposes, however, the income earned on the funds is called "program" or "grant-related" income and, in contrast with income earned on grant advances, may generally be retained by the grantee for grant-related uses. 44 Comp. Gen. 87 (1964); OMB Circular No. A-112, Attachment D. The issue raised here, therefore, concerns the characterization of the interest earned on grant funds after the funds have been purportedly used for grant purposes but whose use is subsequently deemed ineligible, i.e., whether the interest earned on the unauthorized loans of CDBG funds should be treated as income earned on grant advances and belonging to the United States, as contended by HUD's Inspector General, or program income for use by the grantee, as argued by HUD's Office of Community Planning and Development.

Our decisions support the position that any interest earned on grant funds when those funds are not used for authorized grant purposes must be considered interest earned on grant advances, and hence, belongs to the United States. In 64 Comp. Gen. 103 (1984), for example, we concluded that in determining whether to characterize interest as income earned on grant advances or as program income, the pertinent factor is whether the interest was earned before or after the grant funds were applied to authorized grant purposes. 64 Comp. Gen. at 105. In that case, we found that the interest had been earned after the grant funds had been

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[1]In the Intergovernmental Cooperation Act of 1968, 31 U.S.C. § 6503(a), Congress provided one broad exception to this general rule. States and state instrumentalities are allowed to retain the interest earned on grant advances. This exception does not apply to cities and counties who receive grant funds directly from the United States Treasury, as is the case here. 31 U.S.C. §§ 6501(8)-(9). See 59 Comp. Gen. 218 (1980).

[2]As we explained in 42 Comp. Gen. at 293, "only the Congress is legally empowered to give away the property or money of the United States and when it makes grants of funds . . . it has a right to designate the purpose thereof and to surround the grant by such conditions as it chooses to impose."

applied to proper grant purposes and thus did not belong to the United States. We suggested, however, that had the interest been earned prior to application of the funds to proper purposes, it would have to have been paid over to the United States. Id. at 109. See also 62 Comp. Gen. at 703 and B-192459, July 1, 1980, where we held that program income is income derived from the grantee carrying out authorized grant purposes. We conclude that until grant funds are applied to a purpose authorized by the grant, the funds continue to be characterized as an advance of grant funds. To hold otherwise would contradict the rationale behind the general rule that grant funds may not be used for earning income where to do so would be inconsistent with the purposes of the grant. Here, there is no dispute that the interest was in fact earned before the funds were used for an authorized purpose. Consequently, we hold that the interest belongs to the United States.

The Inspector General also asked whether HUD has discretion not to require payment of the interest earned on the improper loans. Our decisions make clear that the authority to require grantees to deposit interest earned on grant advances in the Treasury is not discretionary. 69 Comp. Gen. 660 (1990). Agencies do not have authority to agree to allow grantees to earn and retain interest on grant funds prior to their expenditure for authorized purposes unless such authority is expressly provided by the Congress. 62 Comp. Gen. at 702; B-192459, July 1, 1980. Therefore, we conclude that HUD does not have the discretion to permit grantees to retain interest earned on loans deemed ineligible under the CDBG program. Accordingly, HUD should take appropriate collection action and deposit the interest collected in the Treasury as miscellaneous receipts. See 42 U.S.C. § 5311.

Milton J. Socolar

for Comptroller General
of the United States