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

FILE: B-214937 **DATE:** August 3, 1984

MATTER OF: Department of Labor - Restoration of Withdrawn Joint Training Partnership Act Funds

DIGEST:

The Department of Labor may restore deobligated withdrawn funds as it proposes. The Joint Training Partnership Act, 29 U.S.C. §§ 1501-1781, requires payments to State Governors based on formulae stated within the Act. Entitlements based on such statutory formulae may be considered as obligated under authority of 31 U.S.C. § 1501(a)(5) whether or not formal recordation takes place. 31 U.S.C.§ 1552(a)(2) provides authority for the Government to restore withdrawn funds considered as obligated under section 1501(a)(5).

The Assistant Secretary for Administration and Management, Department of Labor, (DOL), has requested an advisory opinion regarding restoration of funds which were not recorded as obligated and were therefore withdrawn at the end of fiscal year 1983. For the reasons set forth below, we hold the funds may be restored as proposed by the DOL.

The question arises in relation to the Comprehensive Employment and Training Act (CETA), 29 U.S.C. §§ 801-999 (1976) (repealed October 13, 1982) and the Job Training Partnership Act, (JTPA), 29 U.S.C. §§ 1501-1781 (1982). The JTPA was enacted as a replacement for CETA to promote state-administered employment training for youth, unskilled adults, and other disadvantaged individuals.

The various programs authorized under the JTPA each have allotment formulae to determine the amounts of Federal funds each state is entitled to receive. For example, 29 U.S.C. § 1601 provides the formula for distribution of funds under the "Adult and Youth Programs." This section states:

> "(A) 33 1/3 percent shall be allotted on the basis of the relative number of unemployed individuals residing in areas of substantial unemployment in each State as compared to the total number of such unemployed individuals in all such areas of substantial unemployment in all the States;

"(B) 33 1/3 percent shall be allotted on the basis of the relative excess number of unemployed individuals who reside in each State as compared to the total excess number of unemployed individuals in all the States;

"(C) 33 1/3 percent shall be allotted on the basis of the relative number of economically disadvantaged individuals within the State compared to the total number of economically disadvantaged individuals in all States, except that, for the allotment for any State in which there is any service delivery area described in section 1511(a)(4)(A)(iii) of this title, the allotment shall be based on the higher of the number of adults in families with an income below the low-income level in such area or the number of economically disadvantaged individuals in such area."

Similar formulae and designations of absolute amounts payable under other JTPA programs are found in section 1502, 1631, 1651, and 1751 of Title 29. The Act includes the Commonwealth of Puerto Rico within its definition of "State". 29 U.S.C. § 1503.

The funds at issue here were originally obligated under CETA and disbursed to prime sponsors in the Commonwealth of Puerto Rico under the authority of that Act. To accommodate the transition from CETA to JTPA, a portion of CETA funds ($902,193) was voluntarily deobligated and returned to the Department of Labor prior to the end of fiscal year 1983. This voluntary action was based on the Department of Labor's Field Memorandum No. 110-83 which stated:

"1) Purpose. To allow the transfer of Comprehensive Employment and Training Act (CETA) funds to the Job Training Partnership Act (JTPA).

* * * * *

"3) Procedures

a) The Governor will discuss with each prime sponsor the possibility of voluntarily transferring funds from CETA to the JTPA system to assure the continuation of program operations on October 1, 1983.

* * * * *

> h) All deobligated funds will be reobligated back to the state from which they were deobligated by the National Office by no later than September 1, 1983."

Section 1511 of the JTPA requires that the Governor of each state designate "Service Delivery Areas" (SDA's) within his state. The Federal funds are to be granted to the Governor for transmittal to these SDA's where they are further allocated among local programs.

After the funds were voluntarily deobligated, the Governor's designation of SDA's was challenged. The Secretary of Labor administratively determined that the Governor had illegally precluded certain areas within his state from receiving SDA status. Based on this determination, the Secretary suspended further action concerning the deobligated funds, pending the resolution of the dispute. The matter was ultimately litigated in the courts and resolved in favor of the Governor of Puerto Rico. See Romero-Barcello v. Donovan, 722 F.2d 883 (1st Cir. 1983). The court concluded that the Governor's initial designation had been appropriate and consistent with applicable laws.

However, prior to the court's ruling, fiscal year 1983 ended and the deobligated funds were not reobligated. These funds were returned by the Department of Labor to the general fund of the Treasury pursuant to 31 U.S.C. § 1552(a)(2).

The Assistant Secretary of Labor states in his letter to this Office:

> "Had the Governor and the Secretary agreed on the designation of SDAs initially without resort to litigation, the CETA funds voluntarily transferred by the Puerto Rico prime sponsors would have gone to the Governor for distribution to the SDAs, as occurred in other States and Territories."

In summary, it appears that but for the mistaken interpretation of the statute by the Secretary of Labor, the funds would have been obligated prior to the end of fiscal year 1983.

Resolution of the issue presented appears to rest on the answers to the following two questions.

> 1) May funds, payable, under a statutory formula, be properly obligated when the identity of the recipients (Service Delivery Areas, in this case) is the subject of unresolved litigation?

2) If the answer to the above is affirmative, may amounts determined to be due under such formulae be treated as though they were obligated prior to the end of the fiscal year even though no formal recordation occurred?

For the following reasons, each question is answered in the affirmative.

We considered a situation involving the first issue in B-212145, September 27, 1983. There, the Secretary of the Interior was required to make payments to local governments based on a formula contained in the Payment in Lieu of Taxes Act. Litigation arose as to the identity of the eligible localities and the exact amount each was to receive. The Court's ruling required that extensive resurvey and recalculation be done before entitlements for the individual recipients within the state could be determined and this activity was expected to take several months. Since the end of the fiscal year was near, the Secretary asked if he could record as an obligation his estimate of the total amount which would ultimately become payable for each state.

We relied on 31 U.S.C. § 1501(a)(5) which states:

"(a) An amount shall be recorded as an obligation of the United States Government only when supported by documentary evidence of--

* * * * *

"(5) a grant or subsidy payable--

(A) from appropriations made for payment of, or contributions to, amounts required to be paid in specific amounts fixed by law or under formulas prescribed by law."

Based on this provision, we held that the obligation could be recorded on the basis of the entitlement established by the statutory formula for the state in question, notwithstanding the fact that the ultimate payees and exact amounts due to each would be unknown at the time the obligation was made.

Because the situation encountered by the Secretary of the Interior was presented to this Office prior to the end of the fiscal year, we had no reason to consider the issue of whether funds which meet the criteria of section 1501(a)(5) may be treated as obligations even though no formal recordation was made prior to the end of the fiscal year.

In B-164031(3).150, September 5, 1979, we addressed this second issue. There, the Secretary of Health, Education, and Welfare (HEW) (now Health and Human Services) was required to make quarterly grant awards to states that had approved state plans for Medicaid. Funds were obligated at the beginning of each quarter based on the Secretary's estimate of the amount of Federal matching funds the states would probably be entitled to as reimbursement for incurred medical expenses. In fiscal year 1978, the Secretary underestimated the amount of states' entitlements and recorded as an obligation an unusually low figure. The fiscal year ended prior to detection of his error, and the funds not recorded as obligated were withdrawn pursuant to 31 U.S.C. § 1552(a)(2). We were asked to determine whether the difference between the recorded amount and the amount of states' entitlement could be restored to the fiscal year 1978 account.

In that decision, we first determined that the funds due the states were, in fact, obligated by virtue of the statute requiring the Secretary to pay to the states a certain percentage of the total amount the states spent for medical assistance under an approved State Medicaid plan. We held, in essence, that the obligation arose by operation of law and the erroneous estimate recorded by the Secretary did not alter this obligation. We stated:

> "Under [the statute], there is no need for the Secretary to make an estimate in order for the Government to incur an actual obligation, at least to the extent of available appropriations. It is the obligational effect of [the statute] that he is estimating."

Having made this determination, we turned to 31 U.S.C § 701(a)(2) (now § 1552(a)(2)) as authority for the Secretary to restore the withdrawn funds in order to pay the states' entitlements. This section states:

> " * * *When the head of the agency decides that part of a withdrawn unobligated balance is required to pay obligations and make adjustments, that part may be restored to the appropriate account."

We concluded that this statute permits a withdrawn "unobligated" balance to be restored to pay obligations and make adjustments. We recognized that section 1552(a)(2) is intended to allow the Government to adjust its accounts to more accurately reflect what took place during the period an account was available for obligation. Then we held that the problem presented by HEW was the kind of situation covered by the statute.

We think that a similar holding is appropriate in the situation presented by the Secretary of Labor. Our decision is based on the following reasoning.

First, the amounts in question were payable to Puerto Rico based on the statutory formula. These amounts could have been recorded as obligations prior to the end of the fiscal year under the authority of 31 U.S.C. § 1501(a)(5), notwithstanding the fact that the issue of the proper SDAs was unresolved. The funds represent payment for services provided in fiscal year 1983. Therefore the funds in question must be charged to fiscal year 1983.

Second, 31 U.S.C. § 1552(a)(2) is intended to allow the Government to adjust its accounts to reflect more accurately expenses incurred during a given period. By treating the $902,192 as being obligated during fiscal year 1983 (as was the case with deobligated funds received from, and returned to, other jurisdictions), the accounts will reflect more accurately what actually occurred. Accordingly, restoration of the withdrawn funds is authorized based on 31 U.S.C. § 1501(a)(5) and 31 U.S.C. § 1552(a)(2).

for Milton J. Socolar
Comptroller General
of the United States