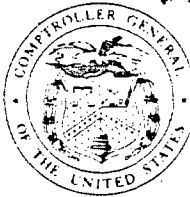


Mr. Seldin

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

FILE: B-192888

DATE: June 26, 1980

MATTER OF: Availability for obligation of funds
apportioned under the Airport and Air-
way Development Act

DIGEST: Obligational authority under the Airport and Air-
way Development Act associated with apportionments
to general aviation and air carrier airports is
carried over for one and two fiscal years re-
spectively under 49 U.S.C. § 1715(a)(5). In
the event the apportionments are not claimed,
the associated obligational authority becomes
discretionary authority. B-192888, August 20,
1979, modified accordingly.

This responds to the Department of Transportation's
(DOT) request for reconsideration of a statement in our
letters of August 20, 1979, B-192888, to the Chairman and
Ranking Minority Member, Senate Budget Committee, Senators
Muskie and Bellmon, ^{protest} concerning the treatment of funds
apportioned under the Airport and Airway Development Act
as amended (AADA) for fiscal year 1979. Specifically,
the General Counsel of DOT asks us to find that the
"statutory obligational authority embodied in the AADA
does carry over concurrently with the carry over of unused
entitlements * * *." We understand DOT's request as
including carryover to fiscal year 1980. Absent addi-
tional legislation, fiscal year 1980 is the final year
for which authorization exists in the AADA.

Title

Based on our reconsideration of the carryover problem,
we now agree that the obligational authority in question
carries over concurrently with the carryover of unused
entitlements. At the same time, we reiterate, and DOT
does not dispute, that the total obligational authority
available for fiscal year 1979 was determined by the
general provisions of the DOT and Related Agencies Appro-
priations Act for that year (Pub. L. No. 95-335, 92
Stat. 435) and the total for fiscal year 1980 is determined
by a similar provision in the 1980 appropriations act
(Pub. L. No. 96-131, 93 Stat. 1036-37). Thus, any carry-
over of obligational authority must be accommodated with-
in the limitations set by those provisions.

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The issue raised by DOT is one of a series of questions with which we have been presented concerning the complexities of the AADA, 49 U.S.C. § 1701 et seq. Initially, the Federal Aviation Administration (FAA) asked us to resolve possible conflicts between several sections of the fiscal year 1979 appropriations act and the formulas for apportionment of airport development grant funds under sections 14 and 15 of the AADA, 49 U.S.C. §§ 1714, 1715, as amended. Our response, Federal Aviation Administration: Application of Statutory Allocation Formulas to 1979 Appropriations for Airport Development Grants (B-192888, November 17, 1978), provoked these comments from Senators Muskie and Bellmon:

"(4) The FAA position [that FAA's obligational authority for fiscal year 1979 included \$54.14 million in new budget authority] ignores the availability of an unobligated balance of contract authority of \$87 million that was carried over into FY 1979 from prior years. This amount is more than sufficient to accommodate a maximum program level consistent with the specified limitation on obligations for FY 1979, without requiring the creation of still further budget (contract) authority. (If the new budget authority in question is in fact created, these unobligated balances will be carried forward again into FY 1980.)

* * * * *

"* * * the appropriations statute provides only a limitation, and * * *, even if a level of program activity \$54 million higher than the \$575 million in permanent budget authority for FY 1979 is appropriate, the additional level of activity should be construed as available from the \$87 million in unobligated balances carried into FY 1979."

In response, we concluded:

'* * * the \$87 million to which you refer is not an 'unobligated balance of contract authority;' it is instead the amount of current year obligational authority potentially needed by FAA to fund accumulated but unclaimed prior year apportionments to airport sponsors."

In reaching this conclusion, we said:

"Thus, while apportionments to sponsors (which are in amounts based on the application of the statutory formulas to the available annual obligational authority), are carried over and accumulated (49 U.S.C. § 1715 (a)(5)), the associated obligational authority is not. Obligational authority for FAA to enter into grant agreements is annual and lapses at the end of each fiscal year. It is this difference in treatment between FAA's obligational authority and the associated apportionments that gives rise to the \$87 million balance."

In large part, this conclusion was based on DOT's own explanatory comments in hearings on its appropriation request:

"The authorizing legislation, the Airport and Airway Development Act of 1970, as amended, allows sponsors of air carrier airports to accumulate, for a period of three years, funds apportioned to them annually. 49 U.S.C. § 1715(a)(5). The annual Appropriations Acts for the Department, on the other hand, include a section that effectively restricts the obligating authority for the year to an amount that is usually equal to a single year's authorization in the Airport Act. Accordingly, although air carrier sponsors carry forward their unused balances from year-to-year, the obligating authority associated with these balances expires at a fiscal year end. Over the last several years, this has resulted in a carryover sponsor entitlement amount that we protected and, depending on sponsor's demands, was funded from obligating authority that would otherwise have been used for

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discretionary funding purposes." (Emphasis added). Hearings on the Department of Transportation and Related Agencies Appropriations for 1980, 96th Cong., 1st Sess. Part 6, 397.

Section 1715(a) of Title 49 of the United States Code provides in part:

"(5) Each amount apportioned to a State under paragraph (1)(A)(i) or (2)(A) or (4)(A) of this subsection shall, during the fiscal year for which it was first authorized to be obligated and the fiscal year immediately following, be available only for approved airport development projects located in that State, or sponsored by that State or some public agency thereof but located in an adjoining State. Each amount apportioned to a sponsor of an airport under paragraph (1)(B) or (3)(A) of this subsection shall, during the fiscal year for which it was first authorized to be obligated and the two fiscal years immediately following, be available only for approved airport development projects located at airports sponsored by it. Any amount apportioned as described in this paragraph which has not been obligated by grant agreement at the expiration of the period of time for which it was so apportioned shall be added to the discretionary fund established by subsection (b) of this section."

In its request for reconsideration, DOT has clarified its position on the carryover. It now states:

"All of the provisions of sections 14 and 15 of the AADA must, of course, be read in conjunction with section 15(a)(5). That section provides that each amount apportioned [to a State] shall be available during the fiscal year in which it was first authorized to be obligated (i.e., the year of apportionment) and

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one fiscal year (in the case of air carrier airports) immediately following the year of apportionment.

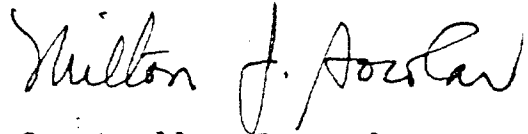
"The provisions that the apportioned funds shall be 'available' for one or two years following the year of apportionment have always been considered by the Federal Aviation Administration (FAA) to mean that the carry over funds are available for obligation. This is supported by the reference in the last sentence of section 15(a)(5), which was written to identify the period for which the funds apportioned in the FY 1976/TQ [Transition Quarter] would remain 'available for obligation.' The same conclusion is dictated by the logical assumption that, if the unused apportionments were to be carried over as entitlements into subsequent fiscal years, then the accompanying obligational authority, arising out of the same apportionment action, should likewise carry over to enable those entitlements to be met, absent other limitations."

We agree that the obligational authority associated with apportionments to general aviation and air carrier airports is carried over for one and two fiscal years, respectively. (In the event the apportionments are not obligated, section 1715(a)(5) provides that that obligational authority is added to the "discretionary fund" established by section 1715(b).) Thus, the obligational authority is not lost. However, as DOT expressly concedes, this modification of our account of the way the statute operates does not affect our basic conclusion in B-192888, August 20, 1979, supra, that the amount by which the obligational authority in the general provisions of the 1979 appropriations act exceeded the obligational authority in the AADA was new budget authority. By the same token, it remains true that for fiscal year 1979,

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"[a]uthority * * * to incur obligations to meet the accumulated apportionments can only be derived from the overall \$629.14 million in fiscal year 1979 obligational authority and must comply with the funding levels established for general aviation airport grants and air carrier airport grants established by sections 302 and 303 of the Appropriation Act and the AADA formulas."

B-192888, August 20, 1979, supra, 7. Similarly, for fiscal 1980, the carryover of apportionments for general aviation and air carrier airports must be accommodated consistently with section 302 of the Department of Transportation and Related Agencies Appropriation Act, 1980, 93 Stat. 1023, 1036-37.



Acting Comptroller General
of the United States