



Comptroller General
of the United States

Washington, D.C. 20546

Decision

Matter of: National Endowment for the Humanities--
Funding of Audit Costs Under Fiscal Year 1990
and Fiscal Year 1991 Grant Agreements With
Nonprofit Institutions

File: B-247950

Date: May 7, 1993

DIGEST

The National Endowment for the Humanities may use unobligated fiscal years 1990 and 1991 appropriations, returned by some grantees as excess to their needs, to cover the cost of audits of other 1990 and 1991 grantees whose grant awards were not sufficient to fund audit costs.

DECISION

The National Endowment for the Humanities (NEH) asks whether it may use the unobligated balances in its fiscal year 1990 and fiscal year 1991 expired accounts to cover the costs of required audits that exceed funds available under certain grant agreements. (The unobligated balances in the two expired accounts are the unexpended balances of grants that NEH subsequently deobligated.) In the circumstances presented here, NEH may use these funds to cover the audit costs.

BACKGROUND

NEH provides monetary grants to individuals and organizations for various humanities projects and programs authorized by the National Foundation on the Arts and Humanities Act of 1965. 20 U.S.C. § 956 et seq. NEH states that many of its grantees are institutions of higher education and other nonprofit institutions that are subject to the audit requirement in Office of Management and Budget (OMB) Circular No. A-133 (March 8, 1990). Circular A-133 requires nonprofit institutions that receive at least \$25,000, but less than \$100,000, annually in federal grants to have an audit made in accordance with A-133 or other federal laws and regulations governing the program in which they participate. The purpose of the audit is to determine whether the nonprofit institution has an internal control structure that provides reasonable assurance that the institution is managing federal awards in compliance with applicable laws, regulations and grant terms, and that federal funds are safeguarded.

NEH states that 822 grants were awarded to nonprofit institutions in fiscal year 1990 and 801 grants were awarded in fiscal year 1991. According to NEH, the grant agreements specifically stated that the "grant is subject to the audit requirements of OMB Circular A-133" and the grantees were also notified, in writing, at the grant approval stage that grant expenditures were subject to A-133.

NEH states, however, that the budgets of approved grant applications from nonprofit institutions for these fiscal years did not provide for audit costs because OMB Circular A-133 was issued on March 8, 1990, after NEH had completed its budgeting for those years.² Consequently, some grantees, who were awarded grants in fiscal years 1990 and 1991, do not have sufficient grant funds available to cover A-133 audit costs.

NEH explains that, as a matter of policy, it funds audit costs and it assists nonprofit grant applicants with budgeting for those costs. NEH states that the policy is necessitated by the fact that nonprofit institutions have difficulty generating private funds to pay for the audits, and that budgeting for these costs is also difficult because the costs cannot be determined with certainty until the audit is undertaken after project completion. NEH estimates that approximately \$296,485 in fiscal year 1990 funds and \$299,477 in fiscal year 1991 funds may have to be provided to cover audit costs. NEH proposes to use unexpended and deobligated excess grant funds carried in the two fiscal years' expired accounts as unobligated funds for the purpose

¹Although the grant agreements specifically provide that that the grants are subject to the requirements of OMB Circular A-133, NEH apparently never intended that the grantees would be encumbered with these costs.

²We should note that the audit was not a new requirement. Circular A-133 continued and elaborated on an audit requirement that was included in OMB Circular A-110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations," which was published in the Federal Register on July 30, 1976. 41 Fed. Reg. 32018. NEH informally advised that since, in its view, A-110 did not clearly require an audit for nonprofit institutions, NEH grant agreements prior to fiscal year 1990 did not require an audit and, thus, NEH never budgeted for audit costs. It was not able to provide adequate grant funds for audits in fiscal years 1990 and 1991 since it learned of the mandatory audit requirement in A-133 only after completion of its budgeting for those two fiscal years.

of funding the audit costs of those grantees with insufficient funds.

DISCUSSION

The NEH proposal raises two issues: (1) may NEH increase the amounts awarded grantees in order to cover audit costs that were not funded by the original awards? and, (2) if so, may NEH use expired appropriations for that purpose? We answer both questions in the affirmative.

NEH has the authority to provide grant funds to nonprofit institutions to cover allowable costs under grants. The cost of a grant audit is an allowable cost under OMB Circular A-133, as well as Circular A-122, "Cost Principles for Nonprofit Organizations" (May 27, 1987). Where a grantor agency determines that costs incurred by the grantee in excess of the amount awarded under the grant constitute a reasonable cost element of the grant project, the grantor agency may make additional funds available to the grantee to cover the excess costs. 47 Comp. Gen. 756 (1968). Since NEH would have provided funds to the underfunded grantees had it earlier realized that the audit requirement was mandatory, we see no reason why NEH cannot now increase the size of its award to grantees who may require additional moneys to cover their audit costs.

We conclude, also, that expired fiscal years 1990 and 1991 funds may be used for this purpose. The availability of these funds depends on whether their application is for a purpose within the original scope of the grant agreement. A federal grant which is made in one fiscal year based upon specific objectives and estimates of project costs gives rise to a definite and maximum obligation of the government, and the enlargement of the grant beyond its original scope creates an additional obligation that must be regarded as a new grant. 39 Comp. Gen. 296 (1959). The new obligation is chargeable to the appropriation available at the time the new obligation is created. Id. Where, as here, a grant amendment does not enlarge the grant's scope but rather is necessary to carry out an original purpose of the grant, a new grant is not created by the amendment. 58 Comp. Gen. 676, 681 (1979). In that situation, prior year funds originally obligated for the grant may be used to fund the amendment. Id.; see also 55 Comp. Gen. 768, 773 (1976) (liabilities and expenditures attributable to a contract made within the period of availability of a fixed period appropriation³ remain chargeable to that appropriation).

³NEH's fiscal years 1990 and 1991 appropriations were available for only one fiscal year.

Since the amendment of the grant agreements at issue here to provide additional funds to cover audits would not expand the scope of the original grant agreements, the expired appropriations which were originally obligated for the grants are available to fund the amendments.

In the future, in order to assure the availability of adequate funds to cover A-133 audit costs, NEH proposes to allow grant applicants, who cannot estimate their audit costs with any reasonable degree of certainty, to budget a "provisional cost rate" subject to upward or downward adjustment.⁴ OMB Circular A-122 provides for "provisional rates" which are temporary indirect cost rates. If NEH determines that its grantees meet the requirements of A-122, provisional indirect cost rates may be used in their grant agreements.



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⁴NEH states that its proposed approach is in accord with our decision in 48 Comp. Gen. 186 (1968). That decision is not relevant here. A provisional cost rate was at issue in 48 Comp. Gen. 186 because the Department of Health, Education and Welfare, which wanted to include a provisional cost rate in its grants, was prohibited by law from making funds available to a project after the conclusion of the project period specified in the grant. Id. at 187.