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

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B-163922.53

April 30, 1979

The Honorable Ray Marshall  
The Secretary of Labor 9

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Dear Mr. Secretary:

This is in response to a letter from Alfred Zuck, Assistant Secretary for Administration and Management, Department of Labor, requesting advice and assistance as to the mechanics of inter-agency offset and information as to specific programs or appropriations available for offset of a claim against the State of Rhode Island. The claim in question arose from disallowed grant costs in a grant to the State under the Emergency Employment Act of 1971 and was the subject of our decision, B-163922, February 10, 1978.

In the course of preparing this response, we asked the Secretary of Transportation for his views concerning the availability of various highway funds for offset. We are enclosing a copy of his letter in response, identifying the Highway Beautification Program, 23 U.S.C. § 131 (1976), and the Safer Off-system Roads Program, 23 U.S.C. § 219 (1976), as examples of programs from which offset may be available. We recommend that you contact the Department of Transportation concerning offset from these programs of the amounts due from the State of Rhode Island.

You will note that the Secretary's letter says that the Highway Trust Fund is not available for offset because of the limitation on expenditures from that fund set forth in 23 U.S.C. § 101(d) (1976). We disagree with the Secretary's conclusion on the unavailability of Highway Trust Funds for offset based on 23 U.S.C. § 101(d) since offset is not an expenditure within the terms of that subsection. Offset simply uses an obligation of the Government to a creditor to satisfy a claim owed to the Government by the creditor. Accordingly, trust funds offset from amounts due the State would, when taken, be treated as if paid to the State in satisfaction of FHWA obligations; i.e., offset would satisfy the claim of the State for reimbursement. Further, we are unable to distinguish, in this context, the limitation in 23 U.S.C. § 101(d) from the more general prohibition against spending appropriated funds for other than the purposes for which they were appropriated (31 U.S.C. § 628 (1976)). The Secretary's argument would have the effect, if logically extended, of ending the Government's long recognized right of offset.

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Letter

