

Comptroller General  
of the United States

Washington, D.C. 20548

B-249087

June 25, 1992

The Honorable Jamie L. Whitten  
Chairman, Committee on Appropriations  
House of Representatives

Dear Mr. Chairman:

This responds to your request for our opinion concerning the period of availability of an appropriation provided to the National Commission on Acquired Immune Deficiency Syndrome (Commission). You asked whether appropriated funds provided to the Commission in the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1991, Pub. L. No. 101-517, 104 Stat. 2190~~1~~ are available for obligation until expended or whether they expired at the end of the fiscal year. As the following discussion shows, the funds were only available for obligation until the end of fiscal year 1991.

In the fiscal year 1991 Labor/HHS Appropriations Act, Congress provided \$3,000,000 to the Commission for ". . . expenses necessary for the National Commission on Acquired Immune Deficiency Syndrome as authorized by subtitle D of title II of Public Law 100-607 . . . ." (Emphasis added.) 104 Stat. 2190, 2217. Subtitle D of title II of Public Law 100-607 is the Commission's authorizing statute, the National Commission on Acquired Immune Deficiency Syndrome Act. Section 248 of that Act provides:

"There is authorized to be appropriated for fiscal year 1989 \$2,000,000 and such sums as may be necessary in any subsequent fiscal year, to carry out the purposes of this Act. Amounts appropriated pursuant to such authorization shall remain available until expended." (Emphasis added.)

102 Stat. 3108 (codified at 42 U.S.C. § 300cc note~~1~~). We understand that the Office of Management and Budget, the Department of Treasury, and the General Services Administration have taken the position that the Commission's appropriation is available until expended since the appropriation language refers to the Commission's authorizing statute that includes the no-year language.

We disagree. There is a general presumption that every appropriation in an annual appropriation act is available for only 1 fiscal year. This presumption derives from the enacting clause contained in regular appropriation acts. Here, the fiscal year 1991 Labor Appropriation Act's enacting clause provides that "sums are appropriated . . . for the fiscal year ending September 30, 1991." 104 Stat. 2190. This presumption is also reflected in 31 U.S.C. § 1301(c)(2) which provides that "[a]n appropriation in a regular, annual appropriation law may be construed to be permanent or available continuously only if the appropriation . . . expressly provides that it is available after the fiscal year covered by the law in which it appears."

Historically, we held that funds were available on a no-year basis when an appropriation expressly provided that funds were no-year funds or referred to authorizing legislation that contained no-year language. See 50 Comp. Gen. 857, 859 (1971) and cases cited therein. We reasoned that a reference to authorizing legislation containing no-year language overcame the general presumption of 1-year availability and met the requirements of 31 U.S.C. § 1301(c)(2). Id.

In response to our decisions, Congress began routinely to include provisions like section 508 of the fiscal year 1991 Labor\HHS Appropriations Act in every appropriation act. See 50 Comp. Gen. 859-60. Section 508 provides that "[n]o part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein." (Emphasis added.) As we stated in 50 Comp. Gen. 857, 859-60:

" . . . the effect of such language is to require the act making the appropriation to expressly provide (rather than by incorporation by reference) for availability longer than 1 year if the enacting clause is to be overcome as to any specific appropriation contained therein. Otherwise the use of such language in an appropriation act would appear to serve little if any purpose."

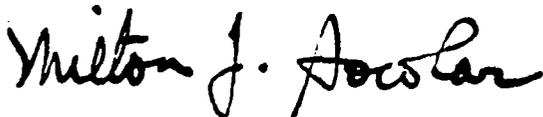
Thus, if an appropriation act includes a provision like section 508, it is not sufficient for the appropriation act to merely incorporate by reference an authorizing statute that includes no-year language. The act must either

expressly use no-year language,<sup>1</sup> or, alternatively, use language that clearly manifests Congress's intent to make the funds available for more than one year (e.g., "to remain available as provided in section 248 of Subtitle D of title II of Public Law 100-607").

Here, the Congress neither specifically used no-year language nor referred specifically to the period of availability language in section 248 of the Commission's authorizing statute. As a result, the requirement of section 508 that the appropriation act itself make clear that Congress intended to provide no-year funds was not met. Accordingly, the funds provided to the Commission expired at the end of fiscal year 1991 and were not available for obligation thereafter.

Consequently, the Commission should adjust its accounts to reflect the expiration of the fiscal year 1991 appropriations as of the close of fiscal year 1991. The Commission should also take steps to ensure that it does not incur obligations in excess of its available appropriations. To the extent it has<sup>✓</sup> it violated the Antideficiency Act, 31 U.S.C. § 1341(a)<sup>✓</sup> and should report accordingly.

Sincerely yours,



Acting Comptroller General  
of the United States

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<sup>1</sup>For example, in the fiscal year 1991 Labor/HHS Appropriations Act, Congress provided no-year money to Gallaudet University for an endowment program by expressly stating that the funds were "available until expended," even though the program's authorizing statute, the Education of the Deaf Act of 1986, contained identical no-year language. Pub. L. No. 99-371, § 407, 100 Stat. 781,<sup>✓</sup>792.