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

B-214172 July 10, 1984

The Honorable Parren J. Mitchell
Chairman, Committee on Small Business
House of Representatives

Dear Mr. Chairman:

This is in response to your request for an opinion from our Office as to the legal program levels in fiscal year 1984 for three loan programs administered by the Small Business Administration (SBA). The question arises in light of what SBA claims is a conflict between the spending levels established for these programs in SBA's authorizing legislation and the levels provided for the same programs in SBA's appropriation for the 1984 fiscal year, as explained by the report of the conference committee on the 1984 appropriation act. From informal discussion with staff of the Office of Management and Budget (OMB), we understand that OMB approved SBA's request to apportion these funds based on the amounts contained in the lump-sum appropriation. It appears that SBA has been making obligations and expenditures at a rate based on the higher levels indicated in the conference report. For the reasons set forth hereafter, it is our view that the spending levels set forth in the authorizing legislation for these programs have not been amended or repealed by the 1984 SBA appropriation or by its legislative history and are still in effect.

As amended by section 1905 of the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 357, 775, August 13, 1981, section 20(q) of the Small Business Act (SB Act), 15 U.S.C. § 631 (note) established specific spending levels or ceilings for SBA's various direct and guaranteed loan programs for the 1984 fiscal year as follows:

> "(q) The following program levels are authorized for fiscal year 1984.
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> "(1) For the programs authorized by section 7(a) of this Act, the Administration is authorized to make $195,000,000 in direct and immediate participation loans; and of such sum, the Administration is authorized to make $15,000,000 in loans as provided in paragraph (10), $45,000,000 in loans as provided in paragraph (11), and $10,000,000 in loans as provided in paragraph (12).

> "(2) For the programs authorized by 7(a) of this Act and section 503 of the Small Business Investment Act of 1958, the Administration is authorized to make $3,140,000,000 in deferred participation loans and guarantees of debentures; and of such sum, the Administration is authorized to make $5,000,000 in loans as provided in paragraph (10), $60,000,000 in loans as provided in paragraph (11), $17,000,000 in loans as provided in paragraph (12), and $350,000,000 in loans as provided in paragraph (13) and guarantees of debentures as provided in section 503.
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> "(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make $35,000,000 in direct purchases of debentures and preferred securities and to make $160,000,000 in guarantees of debentures.

With the exception of three loan categories, the amounts stated in the appropriation act conference report do not exceed the levels provided for in the authorization act. The three loan programs involved are the following:

1. Direct and immediate participation loans to the handicapped, as authorized by section 7 (a)(10) of the SB Act, 15 U.S.C. § 636(a)(10), with a spending level under section 20(q)(1) of the SB Act of $15 million;

2. Direct purchases of debentures and preferred securities issued by Minority Enterprise Small Business Investment Companies (MESBICs), as authorized by section 303(c) of the Small Business Investment Act, 15 U.S.C. § 683(c), with a spending level under section 20(q)(3) of the SB Act of $35 million;

3. Guarantees of debentures issued by Small Business Investment Companies (SBICs), as authorized by section 303(a) of the Small Business Investment Act, 15 U.S.C. § 683(a), with a spending level under section 20(q)(3) of the SB Act of $160 million.

All three of these programs are funded out of the "business loan and investment fund"--a revolving fund established pursuant to section 4(c) of the SB Act, 15 U.S.C. § 633(c)(1)(B), to fund these and other SBA loan programs.

SBA maintains that the authorized spending levels for these programs, as set forth in section 20(q) of the SB Act, have been superseded by the higher levels provided for these

programs in the more recently enacted SBA appropriation for the 1984 fiscal year as explained by its legislative history. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1984, Pub. L. No. 98-166, 97 Stat. 1071, 1080, November 28, 1983.

The applicable provision in the 1984 SBA appropriation is as follows:

> "For additional capital for the "Business loan and investment fund", authorized by the Small Business Act, as amended, $230,000,000, to remain available without fiscal year limitation; and for additional capital for new direct loan obligations to be incurred by the "Business loan and investment fund", authorized by the Small Business Act, as amended, $133,400,000, to remain available without fiscal year limitation." (Emphasis added.)

The conference report on the appropriation act contains a table which breaks down the amounts appropriated for SBA's business loan and investment fund in the 1984 fiscal year on a program-by-program basis. H.R. (Conference) Rep. No. 478, 98th Cong., 1st Sess. 19 (1983). The table lists the amounts provided for handicapped direct loans, MESBIC debentures and securities, and SBIC guaranteed loans at $20 million, $41 million, and $250 million, respectively. As mentioned before, these appear to be the only categories for which the amounts listed in the conference report exceed the amounts set forth in the authorizing legislation for these same programs. The authorized limits are $15 million, $35 million, and $160 million, respectively.

We note that legislation that would expressly increase the authorized spending levels of these and other SBA programs in the 1984 fiscal year has been passed in different forms by both the House and Senate. See S.1323, 98th Cong. 1st Sess. However, your office has advised us that due to the Administration's threat to veto the legislation, the conferees on the bill have decided to take no further action on the legislation. Thus, it appears that "legislation will not be enacted to increase the authorization levels." Accordingly, that legislation has no bearing on the question we are considering here.

Apparently, it is SBA's position, as set forth in a memorandum dated June 13, 1984, from SBA's Associate General

Counsel to its Comptroller[1]/ that the appropriation act provision, which appropriated two separate amounts for SBA's business loan and investment revolving fund, as explained by the table in the conference report, necessarily conflicts with the program levels established in the authorizing legislation for the three programs at issue. Therefore, according to SBA's Associate General Counsel, since "it is well established that Congress may, in a subsequent appropriations act, appropriate more or less than the amount(s) contained in an authorization act", and "since the appropriations act was later passed piece of legislation, we [SBA] conclude[s] the Congress must have upon consideration of the former act intended to alter the previously established spending levels for all of the direct and guaranteed programs in which the levels differ as between the two pieces of legislation when it passed what became Pub. L. No. 98-166."

We cannot agree with SBA's conclusion. In order for the so-called "later-in-time" rule to apply, it must be demonstrated that the two legislative enactments in question necessarily conflict with one another. Once such a conflict in two statutes has been shown to exist, the assumption can be made that Congress intended the later statute to supersede, amend, or repeal (as the case may be) the prior one. However, in the present case, we do not believe that there is any conflict between the authorizing legislation, which established a maximum level of expenditures for each program in 1984, from the business loan and investment revolving fund, and the 1984 appropriation act which appropriated funds into the revolving fund in lump-sum fashion for relatively broad programmatic purposes.

The two specific lump-sum appropriations for these programs, as specified in the 1984 appropriation act are well within the total authorized spending levels established by section 20(q) of the SB Act. For example, while the appropriation act appropriates $133,400,000 in a lump-sum for new direct loans to be incurred by the business loan and investment fund,

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[1]/ Ordinarily, we would have given SBA and OMB the opportunity to provide us with their formal comments concerning the issues you raise. However, in light of the obvious urgency of this matter and your request for an expeditious response we were unable to do so in this case. We have been able to obtain the informal views and comments of OMB's representatives in this matter.

subsection 20(q)(1) of the SB Act authorizes SBA to provide $195,000,000 in direct (and immediate participation) loans, of which amount $15,000,000 should be in the form of loans for the handicapped under 15 U.S.C. § 636(a)(10). Similarly, the $230,000,000 lump-sum appropriation, presumably intended to be available for other loan functions funded out of the business loan and investment revolving fund, is much less than the authorized spending level for SBA's various non-direct loan programs funded out of the revolving fund. In fact, where loan guarantees are involved, there is little if any relationship between the amount of moneys required, through appropriations or otherwise, to liquidate loans that have gone into default and the amount of guaranteed loans an agency is authorized to make. See 60 Comp. Gen. 700, 703 (1981).

Consideration of subsection 20(r) of the SB Act, 10 U.S.C. § 631 (note), lends further support to our conclusion. That section authorizes a total appropriation to SBA in the 1984 fiscal year of $804,000,000 of which "$531,000,000 shall be available for the purpose of carrying out the programs referred to in subsection (q), paragraphs (1) through (3) * * *." Yet, the total amount appropriated for these programs in Pub. L. No. 98-166 is only $363.4 million ($230 million plus $133.4 million). Had the lump-sum appropriations been higher than the total authorized levels for subsection (q) programs, there might be good reason to consult the conference report and other legislative history materials for an explanation. As it is, the two laws complement each other and are plain on their faces.

Of even greater significance is the fact that the appropriation act incorporates by reference the amounts for programs funded by the business loan and investment fund "authorized by the Small Business Act, as amended." As mention earlier, the last amendment to the SB Act which dealt with authorized program levels for FY 84 was contained in Pub. L. No. 97-35 (1981).2/ This reference provides mandatory directives to the agency as to the maximum amounts available for each specified program for the 1984 fiscal year.

2/ It may be that the conferees assumed, at the time they reported out the FY 84 appropriation bill, that the new authorization levels contained in S.1323, discussed before, would be the applicable SB Act amendment, since the bill had already passed both Houses. However, the actual reference in the appropriation act which binds us is to an enacted law and not to an unsigned bill.

We understand that in the past, when no authorizing legislation specifying program levels had been enacted, the Appropriations Committee used the device of a table in the conference report to provide guidance to SBA on how to allocate its lump-sum appropriations between programs. In this instance, however, the Appropriations Act incorporated by reference not its conference report but enacted authorizing legislation. An existing statutory limitation or restriction cannot be superseded or repealed by statements, explanations, recommendations, or tables contained only in committee reports or in other legislative history. The Supreme Court considered a similar argument in Tennessee Valley Authority (TVA) v. Hill, 437 U.S. 153 (1978). That case involved a situation in which Congress had made a lump-sum appropriation to TVA. The report of the appropriation committee indicated that included within the lump-sum appropriation was an amount for a particular project, which was otherwise prohibited by a substantive statutory provision. In rejecting the Government's contention favoring a "repeal by implication" of the substantive provision, the Supreme Court said that '[e]xpressions of committees dealing with requests for appropriations cannot be equivalent with statutes enacted by Congress * * *.'"

In accordance with the foregoing, it is our view that the spending levels established in section 20(q) of the SB Act for the three loan programs involved here in the 1984 fiscal year have not been superseded or repealed and remain in effect. SBA should promptly take whatever steps are necessary to avoid overobligating or overexpending the amounts legally available for each program, including restricting or suspending further loan activity in these three loan programs for the balance of the 1984 fiscal year. In the event that SBA has already exceeded the authorized obligation or spending level for any of these programs, it should make the reports and take the actions required under the Antideficiency Act, 31 U.S.C. § 1341.

Sincerely yours,

Milton J. Socolar

Acting Comptroller General
of the United States