



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

*So sign*  
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B-204905

November 2, 1981

The Honorable Walter E. Fauntroy  
House of Representatives

Dear Mr. Fauntroy:

This responds to your letter of September 15, 1981, concerning a Department of Education (Education) grant to PUSH for Excellence, Inc. (PUSH). You asked whether Education's failure to award the grant to PUSH beginning in March 1981 constituted an impoundment of funds.

The issue of whether the grant funds are being impounded became moot on September 30, 1981, when Education awarded a grant in the amount of \$825,000. Under the award, PUSH may recover grant program expenses it incurred from March 1981 through the date of award. The effect of the award thus appears to be the same as if the award had been made in March 1981. Nevertheless, we have reviewed this matter from an impoundment viewpoint. We conclude that an impoundment did not exist.

We discussed the grant with officials from Education who told us that grants have been made to PUSH since 1979, with the grant funding year running from March 1 through February 28. PUSH's grant for fiscal year 1980 was funded from March 1, 1980, through February 28, 1981. Accordingly, Education's failure to fund the PUSH program beginning on March 1, 1981, reflected the agency's decision not to renew the grant for another year, rather than cancellation of an ongoing grant.

Education officials also told us that the grant to PUSH is made under sections 301-303 of the Education Amendments of 1978, Pub. L. No. 95-561, 92 Stat. 2143, 2210-2211, 20 U.S.C. §§2941-2943 (Supp. III 1979), which authorize discretionary grants for special education-related projects. In its budget request for fiscal year 1981, Education requested a total of \$210.5 million for the School Improvement appropriation, of which \$1 million was earmarked for a grant to PUSH. The House Appropriations Committee approved Education's request for the \$1 million grant to PUSH, although the total amount appropriated for school improvement was reduced to \$166.9 million. See Pub. L. No. 96-536, 94 Stat. 3165, 3166 (December 16, 1980); H.R. Rep. No. 96-1244, 105-108 (1980).

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In his seventh special message for fiscal year 1981, dated March 17, 1981, the President proposed a rescission of \$36.6 million of the total amount appropriated for school improvement (R81-63). Of that amount, \$250,000 of the \$1 million earmarked for PUSH was proposed for rescission. See S. Rep. No. 97-67, 289 (1981).

The funds proposed for rescission were withheld from obligation for 45 days of continuous congressional session pending consideration of the rescission proposal, as authorized by section 1012 of the Impoundment Control Act, 31 U.S.C. §1402. The 45-day withholding period expired on May 17, 1981, and the funds were made available on May 18, 1981. Congress subsequently rescinded \$175,000 of the total \$1 million earmarked for PUSH, in the Supplemental Appropriations and Rescission Act of 1981, Pub. L. No. 97-12, 94 Stat. 14, 58 (June 5, 1981), leaving a balance of \$825,000.

The grant award to PUSH for fiscal year 1981 was not made until September 30, 1981. Education's decision not to award the grant earlier was based primarily on factors relating to the efficient operation of the grant program. First, the Education officials in charge of the grant award to PUSH told us that in early 1981 they became aware of an audit of PUSH done by the Department of Commerce. The audit report concluded that PUSH's accounting system and internal controls were not adequate to safeguard assets and accurately report grant costs, and that none of the expenditures reported by PUSH as being applicable to its grant from the Commerce Department was adequately supported by PUSH's records.

Because of the Commerce audit findings, the Education officials believed that an award to PUSH could not be made until an audit was conducted by Education as well. Apparently problems arose in arranging acceptable dates for the Education audit, but Education auditors ultimately began their work at PUSH on September 17, 1981. (We were told that their preliminary findings are favorable, and supported making the grant award on September 30, 1981.)

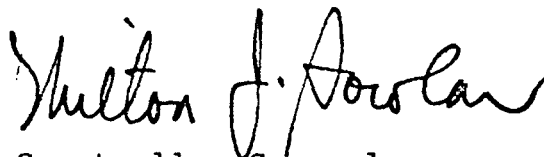
Second, there was a disagreement between PUSH and Education as to how the grant funds should be distributed. PUSH proposed that the funds be awarded directly to the local school districts, while Education declined to reprogram the funds to individual school districts without continuing involvement by PUSH. (The grant on September 30, 1981, awarded some of the funds directly to the Denver and Chattanooga public schools and the major portion to PUSH.)

Finally, the Education officials believed that, because proposals to rescind funds earmarked for the PUSH grant were pending, it would have been inappropriate to make an award until it was clear how much money would remain for the grant to PUSH. However, the officials also told us that, even if none of the funds had been proposed for rescission, they would not have awarded the grant until Education conducted an audit showing that the problems noted in the Commerce Department audit had been corrected.

Although the question is now moot, we do not believe that the funds for the PUSH grant were impounded before award was made on September 30, 1981, except for the \$250,000 that was withheld pending consideration of the rescission proposal (as discussed previously). The applicability of the Impoundment Control Act to the failure of the executive branch to obligate budget authority depends not only on the existence of unobligated budget authority, but also on the reason why the failure to obligate occurred. The fact that funds go unobligated does not, by itself, constitute an impoundment. The agency's primary reason for not awarding the grant in this case was concern about potential problems with PUSH's accounting system, as noted in the Commerce Department audit. Since the agency's decision not to obligate funds was based on factors reasonably related to the proper operation of the grant program, we believe that Education's postponement of the obligation was not an action within the ambit of the proscriptions dictated by the Impoundment Control Act.

For the reasons discussed, we conclude that Education's failure to award the grant to PUSH until September 30, 1981, did not constitute an impoundment of funds.

Sincerely yours,

A handwritten signature in cursive script that reads "Milton J. Rowland".

Acting Comptroller General  
of the United States