
Memorandum

DATE: November 9, 1989

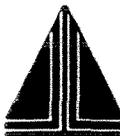
TO: Sub-Project Manager, AFMD/FA - Marcia B. Buchanan

THRU: Assistant General Counsel, OGC/AFMD -
Jeffrey A. Jacobson

FROM: Attorney-Advisor, OGC/AFMD - Douglas H. Hilton

SUBJECT: Financial Statement Audit: Use of Collections by
the Food and Nutrition Service (B-235577.2; Job
Code 917108)

This responds to your August 15, 1989 request for our opinion on whether the Food and Nutrition Service (FNS) may retain collections of its accounts receivable and use those collections to finance current FNS operations. For the reasons stated below, we conclude that FNS may retain and use some, but not all, of the amounts it collects each year. Specifically, FNS may retain any amounts collected from state agencies or households under the authority of the Food Stamp Act, and credit such amounts to the appropriation for the fiscal year in which the collection occurred. However, FNS must deposit into the Treasury any civil penalties collected from retail and wholesale food distributors under the authority of the act. In addition, FNS may credit reimbursements it receives from grantees (generally involving improper payments made from grant funds) to the appropriation which originally funded the grant, but these amounts are not available for new obligations unless the appropriation involved is also available for new obligations.



BACKGROUND

FNS is an agency within the U.S. Department of Agriculture which administers eight food assistance programs.^{1/} The vast majority of FNS's outlays for these eight programs consist of payments for redeemed food stamps and grants. In fiscal year 1988, FNS paid about \$13.1 billion to Federal Reserve Banks to pay for food stamps that had been issued by state agencies to eligible households, used to purchase allowable foods, and then redeemed by the food vendors through the banking system. In the same year FNS had about \$6.4 billion in grant outlays. The financial statements of FNS for fiscal year 1988 also reflect that FNS collected about \$30 million in debts during fiscal year 1988. You asked for our opinion on whether, and under what conditions, the FNS could retain the funds collected and use them for further food stamp redemption payments or grant payments.

LEGAL ANALYSIS

As a general rule,

"[a]n official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim."

31 U.S.C. § 3302 (1982). There are two general types of collections which are exempt from the requirement to deposit all collections to the general fund of the Treasury. The first type consists of collections made under statutes which specifically allow agencies to retain their collections. The only such statute applicable to FNS is section 18(e) of the Food Stamp Act, 7 U.S.C. § 2027(e) (Supp. V 1987), which provides that

"[f]unds collected from claims against households or state agencies . . . shall be credited to the food stamp program appropriation account for the fiscal year in which the collection occurs."

^{1/} The Food Stamp Program; Child Nutrition Programs; the Special Milk Program; the Special Supplemental Food Program for Women, Infants, and Children; the Commodity Supplemental Food Program; Cash and Commodities for Selected Groups; Nutrition Assistance for Puerto Rico; and the Temporary Emergency Food Assistance Program.

You advised us that the vast majority of the collections by FNS are related to the food stamp program. The Food Stamp Act gives the Secretary of Agriculture several authorities to collect claims from state agencies which administer food stamp programs. E.g., 7 U.S.C. § 2016(f) (state liability for losses in the acceptance, storage and issuance of coupons) and 7 U.S.C. § 2020(b) (state liability for negligently issued coupons). The act also authorizes the Secretary to collect claims from households which received overissuances of food stamps. 7 U.S.C. § 2022(a). Finally, the act authorizes the Secretary of Agriculture to assess civil penalties against retail and wholesale food concerns who accept food stamps in violation of the act or FNS regulations. 7 U.S.C. § 2021.

The authority provided by 7 U.S.C. § 2027(e) allows FNS to retain the collections made from state agencies and households, and credit the funds collected to the food stamp program appropriation account for the year in which the collection occurred. Since the fiscal year 1988 appropriation for the food stamp program was available only for the fiscal year,^{2/} collections from state agencies and households were available to FNS in fiscal year 1988 but not thereafter. However, the civil penalties collected under 7 U.S.C. § 2021 are not covered by 7 U.S.C. § 2027(e), and must therefore be deposited in the Treasury under 31 U.S.C. § 3302. You have advised us that FNS has not separated these collections out from the collections retained by FNS. By failing to deposit these collections with the Treasury, FNS has violated the requirement of 31 U.S.C. § 3302.

The second type of exception from the requirement to deposit receipts in the Treasury consist of collections which fall under the definition of "refunds" in GAO, Policy and Procedures Manual for Guidance of Federal Agencies, tit. 7, § 12.1:

"Refunds are returns of advances, collections for overpayments made, adjustments for previous amounts disbursed, or recovery of erroneous disbursements from appropriations or fund accounts that are directly related to, and reductions of, previously recorded payments from the accounts."

This exception is based upon holdings in our decisions. We have long held that the requirement to deposit all receipts

^{2/} Joint Resolution making further continuing appropriations for fiscal year 1988, Pub. L. No. 100-202, 101 Stat. 1329, 1329-349 (Dec. 22, 1987).

into the Treasury is "general in nature and should receive a reasonable construction with respect to any particular form of income or receipt." 39 Comp. Gen. 647, 649 (1960). In 39 Comp. Gen. 647, we considered whether refunds paid to the Department of Agriculture by producers under contracts authorized by the Great Plains Conservation Program, 16 U.S.C. § 590p (1982), could be credited to the appropriation which originally funded the contracts.^{3/} The refunds involved "unearned payments," i.e., payments for contractor practices which constituted a failure to perform under the contract and therefore did not benefit the program.^{4/} 39 Comp. Gen. at 649. We stated that:

"Presumably, the Congress intended that the total amount appropriated for the Great Plains Conservation Program be used for that purpose. Unless the unearned amounts refunded by the producers are credited to the appropriation against which the payments were charged, the results sought to be accomplished by the act involved here may be defeated to that extent, since the amount of the payments required to be refunded by the Secretary for violation of contracts would indicate a failure on the part of the producers to carry out fully the conservation measures and practices agreed to under the contracts. In light of the foregoing, and considering in particular the purpose of [16 U.S.C. § 590p], it is our view that any unearned amounts refunded to the United States because of violations of the Great Plains Conservation Program contracts may be credited to the appropriation from which such amounts originally were paid, and

^{3/} Our decision notes that the conservation contracts between producers and the United States did not create the usual contractual relationship between the United States and a contractor who furnishes supplies or services for a profit. Thus, the payments made under the conservation contracts were actually "more in the nature of grants-in-aid" 39 Comp. Gen. at 649.

^{4/} We contrasted these payments with "earned payments" for practices benefitting the program in which case refunds would be "more in the nature of civil penalties and properly for deposit into the Treasury as miscellaneous receipts." 39 Comp. Gen. at 649.

thus be available for use in furthering [the] program."

39 Comp. Gen. at 649-650.

You have advised us that the vast majority of FNS's collections which are not related to the food stamp program are collections involving improper expenditures made by FNS grantees.^{5/} These collections are analogous to the refunds to we discussed in 39 Comp. Gen. 647 and therefore should be credited to the appropriation which originally paid the grant and used in accordance with that appropriation's availability.

cc: Mr. Hinchman, OGC
Mr. Kepplinger, OGC/AFMD
Mr. Chapin, AFMD
Mr. Crowley, AFMD
Mr. Duquette, AFMD/FA
Ms. Summersett, AFMD/FA

^{5/} Collections do not result simply from FNS's determination of an improper expenditure by a grantee. The regulations governing USDA grants provide that the maximum amount that grantees are entitled to receive may not exceed the allowable costs incurred by the grantee. 7 C.F.R. § 3015.190(a) (1989). If at the end of the grant period, the grantees allowable costs are less than the amount of grant funds received, the balance must be returned to USDA. 7 C.F.R. § 3015.121 (1989). Thus, the amount a grantee must return to USDA will be based on the relationship of total allowable costs and grant funds received, and not simply the amount of any grantee costs FNS determines to be unallowable.

DIGESTS

November 9, 1989

1. The U.S. Department of Agriculture Food and Nutrition Service (FNS) must deposit into the general fund of the Treasury as required by 31 U.S.C. § 3302 (Supp. V 1987), any civil penalties it receives from food retail and wholesale concerns under section 12 of the Food Stamp Act, 7 U.S.C. § 2021 (Supp. V 1987). The authority in section 18(e) of the act, 7 U.S.C. § 2027(e), for FNS to retain and use collections from state agencies which administer the food stamp program, and households which are overissued food stamps, does not apply to civil penalties collected from retailers and wholesalers. FNS violated 31 U.S.C. § 3302 when it failed to deposit its collections from retailers and wholesalers into the Treasury.

2. The U.S. Department of Agriculture Food and Nutrition Service (FNS) distributes grant funds to grantees as part of its program operations. FNS may credit collections (generally involving improper payments of grant funds) from grantees, other than grantees under food stamp program grants, to the appropriation which originally funded the grant. These collections fall under the definition of "refunds" in GAO's Policy and Procedures Manual for Guidance of Federal Agencies, title 7, § 12.2, and are exempt from the requirement to be deposited into the Treasury as "miscellaneous receipts" under 31 U.S.C. § 3302 (1982).