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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

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8-121836

APR 22 1955

APR 22

Dear Mr. Secretary:

Enclosed for your information is a copy of our letter of today to the Director, Foreign Operations Administration, concerning the disposition of certain funds recovered from the Government of Austria because of the improper diversion of commodities furnished to that country.

Sincerely yours,

JOSEPH CAMPBELL
Comptroller General
of the United States

The Honorable
The Secretary of the Treasury

Enclosure

GENERAL ACCOUNTING OFFICE

WASHINGTON 25

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B-121836-070. Apr. 22, 1955
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The Acting Comptroller General

In the fiscal year 1954, Foreign Operations Administration received a refund of \$2.9 million from the Government of Austria because of the illegal diversion of commodities shipped to Austria and paid by the United States in fiscal year 1953, pursuant to the Mutual Security Act of 1951, as amended. FOA had no program of aid to Austria in fiscal year 1954 and none was proposed in fiscal year 1955. The refund was reprogrammed by FOA to other programs in the European area.

Since this refund represented the return of funds expended from an appropriation of a prior year, we questioned the propriety of the agency in applying this refund to program requirements of the fiscal year 1954. The receipt of this refund was not contemplated at the time that the budget request for fiscal year 1954 was considered by the Bureau of the Budget and the congressional appropriations committees and therefore was not a factor in the determination of the funds appropriated for the fiscal year 1954.

The agency defended its action principally on two grounds: (1) that the Mutual Security Appropriation Act of 1954 specifically provided that fiscal year 1953 obligations deobligated thereafter for any reason became available for reobligation during the fiscal year 1954, and (2) that the funds were urgently required to carry out approved programs in other areas. The agency's reference to the authority contained in the Mutual Security Appropriation Act of 1954 is apparently predicated on the argument that the refund upon receipt constituted a deobligation and thus was available for reobligation.

The shipments which were the subjects of subsequent refund were paid in fiscal year 1953 against the 1953 appropriation for Economic and Technical Assistance, Title I, which included funds authorized to be carried over from previous appropriations and consolidated into a single account. The refund upon receipt was credited to the 1954 appropriation for Mutual Defense Financing, Defense Support, Economic and Technical Assistance, Europe. This latter appropriation was the successor appropriation title in fiscal year 1954 to the 1953 appropriation for Economic and Technical Assistance, Title I, and also contained 1953 funds which had been authorized to be carried over to 1954 and consolidated into a single appropriation account.

The Mutual Security Appropriation Act of 1953, in addition to providing new funds for Economic and Technical Assistance, Title I, for fiscal year 1953, authorized the carryover of all unexpended balances previously appropriated. The appropriations act for fiscal year 1954 also provided new funds for this activity under the new title designated above, and further authorized the carryover of not to exceed \$115,706,906 of unobligated balances of appropriations previously made.

It will be noted that the authorized carryovers in the above years in neither case make reference to the handling of refunds. Furthermore, it may be contended that the reference to unexpended balances and unobligated balances in the 1953 and 1954 appropriations acts was intended to apply to the balances at the close of the fiscal years 1952 and 1953, respectively, and were not contemplated to include amounts which might subsequently be classified by the agency as unexpended or unobligated by virtue of refunds received in the succeeding fiscal years. On the same premise the provision of the appropriations act of 1954 authorizing the reobligation of 1953 obligations subsequently deobligated, to which the agency pointed to justify the reprogramming of the refund, may be reasoned as having been intended to apply only to the deobligation of funds that were obligated but not expended at June 30, 1953. The items on which the subject refund was received had been obligated and expended prior to June 30, 1953, and at the close of that year were not outstanding balances in any form.

A further point for consideration is that the Revised Statutes relative to refunds stipulate that certain types of refunds must be deposited in Miscellaneous Receipts of the Treasury, while others may be credited to the appropriations from which the original disbursements were made. If the subject refund falls into the latter category and is thereby considered as unobligated funds upon receipt, there still appears to be a question of its availability for obligation by reason of the limitation in the appropriations act of 1954 on the amount of 1953 funds which may be carried over for obligation in fiscal year 1954.

It may also be of significance that a refund of \$1.15 million received in fiscal year 1953 from the Government of Austria under similar circumstances was returned to the Treasury. This disposition appears to have been based on a statement by the Director of Foreign Operations Administration to the Senate Appropriations Committee in executive session that this refund should be returned to the Treasury rather than reprogrammed.

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In the light of the aforesaid considerations and any other factors that may be pertinent, advice is requested as to whether the agency's application of the refund of \$2.9 million to other program purposes is contrary to applicable statutes.

(Signed) Robert L. Long

Robert L. Long
Director of Audits

Enclosures:

cc of ltr to Controller, FOA, 8/3/54
reply from FOA, 9/9/54
memo from audit supervisor, 10/5/54
copy of excerpts from hearing transcript, 6/17/53

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B-121836-O.M.

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Director of Audits

Returned, inviting attention to the attached copy of letter of today to the Director, Foreign Operations Administration.

JOSEPH CAMPBELL

Comptroller General
of the United States

Attachments