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OFFICE OF GENERAL COUNSEL

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B-189443

The Honorable A. Vernon Weaver, Jr.
Administrator, Small Business Administration

Dear Mr. Weaver:

Some time ago the Department of Justice asked us to certify the compromise settlements and judgments for payment in three SBA suits suits to which the Small Business Administration (SBA) was party. The case of Joan M. Brown v. SBA involved a compromise settlement under the Federal Tort Claims Act, 28 U.S.C. § 2677, and Rosemary E. Twiggs v. SBA involved judgment for costs in an action under Title VII of the Civil Rights Act of 1964, as amended. In the third case—Mucavil, Inc. v. Jerry Derby—SBA had been joined as a third party defendant under a "deferred participation" agreement with a bank, in a suit against the bank for the wrongful sale of loan collateral. Upon our informal inquiry, SBA officials advised us that SBA's practice has been to pay judgments and settlements arising from SBA's activities from SBA funds on the theory that such payments were necessary program expenditures. It is unclear why Justice departed from the past practice and sent these cases to us for payment. However, at Justice's urging in the Mucavil case, in order to avoid jeopardizing the compromise agreement because of delay, we certified that settlement and the other two for payment from the permanent indefinite appropriation for judgments provided for in 31 U.S.C. § 724a (1976).

The statutory provisions governing SBA do not expressly provide for the payment of judgments or compromise settlements. However, SBA receives two distinct kinds of appropriations. One appropriation is for "Salaries and Expenses" and is generally used to fund the cost of administering SBA's various programs. The other appropriation authorizes SBA to make expenditures from various revolving funds under its jurisdiction. These expenditures are made within the limits of the funds and borrowing authority available to them, with those amounts often being adjusted in the annual appropriation acts. Those revolving funds include the "Disaster Loan Fund", the "Business Loan and Investment Fund", the "Lease Guarantees Revolving Fund", the "Pollution Control Equipment Contract Guarantees Revolving Fund", and the "Surety Bond Guarantees Revolving Fund".

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SBA's "Salaries and Expenses" appropriation is, just like the "Salaries and Expenses" appropriations of other Government agencies, not available to pay judgments since there is no provision therefor as required by 31 U.S.C. § 724a. Court judgments or compromise settlements involving tort claims or Federal employee grievances or similar matters against at least those Federal agencies which do not operate out of revolving funds are paid out of the permanent indefinite appropriation established by 31 U.S.C. § 724a. While final judgments, awards and compromise settlements are payable from the permanent indefinite appropriation only if such payments are not otherwise provided for, SBA revolving funds appear to be available to pay losses and expenses which arise from SBA's loan or insurance programs.

The practice of charging judgments against SBA funds when they arise from SBA loan or insurance programs is, we understand, long-standing. We are unaware of any compelling reason to modify the existing practice, so long as judgments and compromises resulting from SBA's administrative practices (tort claims, EEO cases and the like) are paid from the judgment fund. Our Payment Branch therefore, will routinely forward any requests for certification of SBA loan or insurance judgments to you for payment from SBA funds. Because of the nature of the Mucavil case and our lack of specific information concerning it, we cannot determine the category in which it falls and will not seek reimbursement of the judgment fund for that compromise settlement. The Brown and Twiggs cases, however, are clearly of the type which we said are payable from the permanent indefinite appropriation. Should you have any questions, you may call Mr. Lynn Caylor of my staff on (202) 275-5544.

Sincerely yours,



Milton J. Socolar
General Counsel