

Memorandum

7/14/81

115798
TO : Georgi Lira, General Electric

FROM : Sharon Damon, OISS, GAO

SUBJECT: Request to derestrict and make available a GAO document

We have been informed this date by Ms. Margaret Taylor of the GAO Office of General Counsel that the following GAO document has been derestricted:

B-198103 of July 29, 1980
Accession No. 511531
"OMB Certification of Apportionment of
Funded Personnel Ceilings and Funds
to the VA"



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

Mr. Edmondson
GGM
14466

B-198103

July 29, 1980

The Honorable Alan Cranston
Chairman, Committee on Veterans'
Affairs
United States Senate

Do not make available to public reading

Dear Mr. Chairman:

As required by section 301 of Public Law 96-151, we reviewed the Office of Management and Budget's (OMB) certification of the apportionment of funded personnel ceilings and funds to the ~~Veterans' Administration's (VA)~~ Medical Care, Medical and Prosthetic Research, and Medical Administration and Miscellaneous Operating Expenses appropriations for fiscal year 1980. On March 17, 1980, we certified that the Director, OMB, had complied with the section 301 requirements and had provided VA the funded personnel ceilings and funds made available in the fiscal year 1980 HUD-Independent Agencies Appropriations Act (Public Law 96-103).

This was the first time that we had to interpret OMB's responsibility under section 301 to "provide" to the VA the funded personnel ceiling specified in the legislative history of the appropriation. The Committee staff has expressed concern over our initial interpretation of the statute.

In the instant case, our review showed that OMB was willing to apportion to the VA all full time equivalent employees (FTEEs) specified in the legislative history of the appropriation. The VA, however, chose to delay implementation of the Pilot Preventative Health Care Program authorized by Public Law 96-22, and on July 13, 1979, it notified OMB that it was decreasing its request for authorized personnel by 104 FTEEs. Accordingly, OMB's personnel authorization for Public Law 96-22 programs was 104 FTEEs less than that provided for by the appropriation. 1/

1/ OMB's personnel authorization for another VA account, Medical Administration and Miscellaneous Operating Expenses (MAMOE), was also less than that specified in the appropriation. Two FTEEs were removed from that account through a VA reprogramming request. After the request was denied by the OMB, the VA failed to request that the two FTEEs be restored to the MAMOE account. OMB has expressed its readiness to restore the FTEEs upon proper application by the VA.

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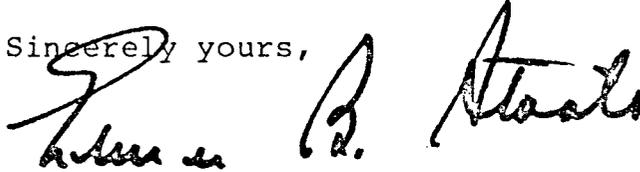
We initially interpreted the responsibility assigned to the OMB by section 301 of Public Law 96-151 with a view toward the statutory purpose of preventing OMB interference in VA's staffing needs. Our certification was based on the fact that by making available to the VA as much of the appropriated staff as the VA wished to apply for, the OMB was not interfering in the VA staffing process, and was therefore "providing" to the VA the funded personnel ceiling as appropriated by Congress.

Because the Comptroller General's certification responsibilities under section 301 of Public Law 96-151 are of a continuing nature, and in light of subsequent discussions with the Committee staff, we have given serious reconsideration to our initial interpretation of this section. We continue to question whether, in the instant case, the purposes of Public Law 96-151 would have been furthered by requiring OMB to apportion to the VA 104 FTEE positions which the VA had already informed OMB it had no intention of filling. Our reexamination of section 301 and its legislative history has, however, led us to the conclusion that were the term "provide" to be interpreted in the manner suggested by the Committee staff, it would minimize any possibility of OMB interference in the VA's staffing needs, in keeping with the statutory purpose of section 301. This interpretation recognizes that section 301 of Public Law 96-151 requires OMB to authorize the personnel ceilings identified in the legislative history of the appropriation regardless of whether the VA chooses to formally apply to OMB for such positions, so long as funds sufficient to pay for the positions are appropriated. In the future, therefore, our review of OMB compliance with section 301 will examine whether OMB actually authorizes the funded personnel ceilings appropriated by Congress, as opposed to whether OMB makes such positions available to the VA for release upon request.

The Committee staff also requested our opinion as to the effect of section 301 of Public Law 96-151 on any future hiring freeze imposed by the executive branch. It is clear to us that the statute would prevail over any non-statutory OMB-imposed limitation on hiring which would have the effect of decreasing employment authorizations for the three VA accounts specified in the statute below the personnel levels specified by Congress. Of course, we would have to review the specifics of any future OMB limitation in order to assess its impact in terms of section 301.

We hope that this letter clarifies any misunderstanding which may have arisen concerning our initial certification of OMB's compliance with section 301 and our understanding of congressional intent in this matter.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Thomas A. Starks". The signature is written in black ink and is positioned to the right of the typed name.

Comptroller General
of the United States