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DECISION



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

FILE: B-204270

DATE: October 13, 1981

MATTER OF: Federal Bureau of Investigation's Standard
Level User Charge Payments, FY 1981.

DIGEST: 1. Provision in 1981 supplemental appropriation for salaries and expenses to the Federal Bureau of Investigation (FBI) which states that: "* * * no part of any appropriation contained in this Act [Pub. L. No. 97-12] nor any part of the appropriation contained in Public Law 96-536 for the Federal Bureau of Investigation, 'Salaries and Expenses' in excess of \$35,218,000 shall be available for paying to the Administrator of the General Services Administration [GSA] the standard level user charge [SLUC] established pursuant to section 210(j) of the Federal Property and Administrative Services Act of 1949, as amended, for space and services," constitutes a limitation on the amount the FBI may reimburse to GSA for SLUC since no other funds are available to the FBI for payment of SLUC for 1981 other than those provided by the "salaries and expenses" appropriation under Pub. L. Nos. 97-12 and 96-536. B-186818, September 22, 1976 and B-177610, September 3, 1976.

2. Action by the Congress in imposing ceiling on SLUC reimbursements by FBI late in the 1981 fiscal year will be construed, in the absence of anything in the language of the limitation or its legislative history to the contrary, to be merely a limitation on the amount paid into the Federal Buildings Fund for the same level of SLUC operations and not an effort to force the FBI to cut back its requirements since with only one quarter of fiscal year remaining it would be difficult to effect economies without serious disruption of agency operations. Furthermore, if the Congress intended to reduce the over-all level of operations of the FBI, more direct means could have been employed.

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3. GSA billed (using the Simplified Intergovernmental Billing and Collection (SIBAC) procedures) SLUC assessments in the amount of \$342,783, in excess of the amount the Congress authorized for payment of SLUC for fiscal year 1981. Thus, issuance of SIBAC Adjustment Voucher for Charge-Backs is appropriate and GSA should adjust its charges to the FBI for SLUC. Payment in excess of appropriation limitation would violate the Antideficiency Act, 31 U.S.C. § 665. See B-201260, May 6, 1981, 60 Comp. Gen. ____.

This decision is in response to an inquiry from L. Clyde Groover, Jr., Certifying Officer, Federal Bureau of Investigation (FBI), Department of Justice, asking whether the Congress limited to \$35,218,000, the amount the FBI is authorized to pay to the General Services Administration (GSA) for Standard Level User Charges (SLUC) levied for fiscal year 1981, and if so, whether amounts paid GSA in excess of this amount may be recovered. For the reasons given below, we answer both of these questions in the affirmative.

BACKGROUND

Section 210(j) of the Federal Property and Administrative Services Act of 1949 (1949 Act), as amended, 40 U.S.C. § 490(j), authorizes the Administrator of General Services to charge anyone furnished services, space, quarters, maintenance, repair, or other facilities at rates established by the Administrator which approximate commercial charges for comparable space and services. The proceeds from these charges (commonly known as SLUC) are paid into the Federal Buildings Fund created by section 210(f) of the 1949 Act, as amended, 40 U.S.C. § 490(f), to finance real property management and related GSA activities.

The regulations implementing section 210(j) are set forth in 41 C.F.R. §§ 101-21.000 et seq. They provide for establishment by GSA and approval by OMB of SLUCs, 41 C.F.R. § 101-21.201, and for annual review and revision of SLUCs previously established and approved, 41 C.F.R. § 101-21.206. GSA also provides estimates of SLUCs to be assessed against agencies for space rental, based on estimates of space to be used at approved rates in order for the agency to budget for such payments in its appropriation requests. See 41 C.F.R §§ 101-21.207 and 101-21.601.

Using the Simplified Intergovernmental Billing and Collection (SIBAC) procedures ^{1/}, GSA billed and the FBI paid SLUC assessments for fiscal year 1981 in the following amounts:

^{1/}See 1 Treasury Fiscal Requirements Manual (TFRM) 6-5000 and FPMR Part 101-2 (41 C.F.R. Part 101-2).

1st quarter	-	\$8,777,107
2nd quarter	-	9,022,817
3rd quarter	-	8,592,760
4th quarter	-	9,168,099
<u>total</u>	-	<u>\$35,560,783</u>

However, prior to the start of the fourth quarter, Congress enacted the Supplemental Appropriations and Rescission Act, 1981, Pub. L. No. 97-12, approved June 5, 1981, 95 Stat. 14, 20-21, which provides as follows:

"FEDERAL BUREAU OF INVESTIGATION

"SALARIES AND EXPENSES

"(INCLUDING TRANSFER OF FUNDS)

"For an additional amount for 'Salaries and expenses', \$12,203,000, * * * Provided, That no part of any appropriation contained in this Act nor any part of the appropriation contained in Public Law 96-536 for the Federal Bureau of Investigation, 'Salaries and expenses' in excess of \$35,218,000 shall be available for paying to the Administrator of the General Services Administration the standard level user charge established pursuant to section 210(j) of the Federal Property and Administrative Services Act of 1949, as amended, for space and services."

The FBI interprets this language as imposing a ceiling on the amount it is authorized to reimburse GSA for SLUC for fiscal year 1981 and has informed GSA of this. ^{2/} Additionally, the FBI has issued to GSA a SIBAC Adjustment Voucher for Charge-Backs in the amount of \$342,783, representing the amount GSA has billed the FBI for SLUC in excess of the amount specified in Pub. L. No. 97-12. However, rather than making the adjustment, GSA informed the FBI that:

"As you know, GSA is directed to charge agencies furnished with space and services at rates which approximate commercial comparable charges pursuant to 40 U.S.C.A. 490(j). The Comptroller General in decision File Number B-186818 and decision File

^{2/} Letter dated June 12, 1981, from Oliver B. Revell, Assistant Director, Administrative Services Division, FBI, Department of Justice to Wolfgang J. Zoellner, Assistant Commissioner, Office of Program Support, GSA.

Number B-177610 has determined that GSA is obliged to charge SLUC to agencies furnished space and conversely, the agencies are obliged to pay the SLUC. Therefore, we must continue to bill for space and services provided to the FBI."^{3/}

As a result of this rejection, the FBI sought our opinion on this matter.

ANALYSIS

We disagree with GSA's reliance in this circumstance on two of our decisions to support its refusal to adjust SLUC assessments. These decisions ^{4/} do state that subdivisions of lump-sum appropriations which are reflected only in the agency's budget request or in appropriation committee reports accompanying the agency's appropriation bill are not legally binding on the agency. However, they also stand for the proposition that if these subdivisions are carried forward into the appropriation act itself, then they would be binding on the agency.

Thus we held that where the Agriculture and Related Agencies Appropriation Act, 1976, Pub. L. No. 94-122, October 21, 1975, 89 Stat. 662, specified that:

"No part of any appropriation contained in this Act shall be available for paying to the Administrator of the General Services Administration in excess of 90 percent of the standard level user charge established pursuant to section 210(j) of the Federal Property and Administrative Services Act of 1949, as amended, for space and services,"

this language imposed a legally binding limitation on the amount the agencies in question (Food and Drug Administration and Soil Conservation Service (FDA and SCS)) could reimburse GSA for SLUC during fiscal year 1976.

^{3/} Letter dated July 8, 1981, from Wolfgang J. Zoellner, Assistant Commissioner, Office of Program Support, GSA, to Oliver B. Revell, Assistant Director, Administrative Services Division, FBI, Department of Justice.

^{4/} In the matter of the Food and Drug Administration's Standard Level User Charge Payments, B-186818, September 22, 1976 and in the matter of the Soil Conservation Service's Standard Level User Charge Payments, B-177610, September 3, 1976.

Thus FDA and SCS were restricted to paying 90 percent of the SLUC established by GSA under the 1949 Act and its implementing regulations.

Generally, the FBI receives its "Salaries and expenses" appropriation as part of the annual Departments of State, Justice, and Commerce, the Judiciary and Related Agencies Appropriation Act. This appropriation is used by the FBI to finance its SLUC payments. However, controversy over various provisions in the 1981 appropriation act (H.R. 7584) caused delay in its passage by the Congress and its subsequent veto by the President on December 13, 1980. During this period, the FBI operated under budget authority provided by continuing resolution, Pub. L. No. 96-369, sec. 101(a)(1), October 1, 1981, 94 Stat. 1251, which expired on December 15, 1981. Faced with the expiration of Pub. L. No. 96-369, Congress adopted a further continuing resolution making appropriations for fiscal year 1981 and which, in connection with the vetoed Departments of State, Justice, and Commerce, the Judiciary and Related Agencies Appropriation Act for 1981 provided:

"Notwithstanding section 102(c) of this joint resolution, such amounts as may be necessary for programs, projects, and activities provided for in the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1981 (H.R. 7584), to the extent and in the manner provided for in such Act as enacted by the Congress, except section 606 of such Act." Pub. L. No. 96-536, approved December 16, 1980, §101(o), 94 Stat. 3166, 3169.

The effect of section 101(o) was to enact H.R. 7584 as passed by the Congress (with the exception of section 606) as the appropriation act for the remainder of fiscal year 1981 for the agencies, including the FBI, covered by its provisions. Furthermore, by virtue of section 105 of Pub. L. No. 96-369, October 1, 1980, 94 Stat. 1355, all expenditures made pursuant to the joint resolution which expired on December 15, 1980, were charged against the subsequent appropriation provided by section 101(o) of Pub. L. No. 96-536. Congress later enacted Pub. L. No. 97-12 which provided supplemental appropriations to the FBI and which placed the limitation on the amount of the FBI's appropriations which would be available to pay SLUC charges.

Based largely on the rationale of B-186818 and B-177610, discussed briefly above, we believe that the language appearing in the proviso to the FBI's supplemental "Salaries and expenses" appropriation for fiscal year 1981 constitutes a legally binding limitation on the

amount available to the FBI for SLUC payments under Pub. L. Nos. 97-12 and 96-536. Congress has expressed this unambiguously in both the language of the statute and the legislative history. See the Conference Committee Report, H.R. Rep. No. 97-124, 97th Cong., 1st Sess. 25 (1981). This specific limitation on FBI expenditures takes precedence over the more general provision authorizing GSA to charge and collect SLUC payments.

While it is clear that the Congress intended to limit the amount available to the FBI for reimbursement of SLUC for fiscal year 1981, it is unclear whether the Congress intended to force the FBI to cut back its SLUC requirements or merely to limit the amount paid into the Federal Buildings Fund for the same level of SLUC operations. In previous years, SLUC restrictions were couched in language which limited the percentage of SLUC charges that an agency could reimburse to the GSA. Our FDA and SCS decisions reflected that type of provision. The present legislation imposes a dollar limit on the amount the FBI can spend for SLUC services.

Nothing in the language of the proviso or its legislative history clarifies this matter. However, the fact that the limitation was imposed by a supplemental appropriation passed late in the fiscal year suggests, in the absence of anything to the contrary, that Congress did not intend a reduction in the FBI's use of space and SLUC services for fiscal year 1981, but merely a reduction in the amount the FBI was to reimburse the Federal Buildings Fund for SLUC. With only one quarter left in the fiscal year, it would be extremely difficult to effect the necessary economies without a serious disruption of agency operations.

Furthermore, if the Congress intended to reduce the over-all level of operations of the FBI, more direct means could have been employed. For example, it could have imposed a five percent (or some other figure) reduction in total obligations and expenditures for the remainder of the fiscal year, rather than imposing a ceiling on SLUC reimbursements alone. Imposing a ceiling on SLUC reimbursements alone does not prevent the use of funds in a lump-sum appropriation which otherwise would have been obligated for SLUC to be used for other purposes. We think that the Congressional target was the Federal Buildings Fund rather than the FBI level of expenditures in this instance.

Consequently, in the absence of a clearer expression of legislative intent on this matter, we will not interpret this limitation as requiring a reduction in the FBI's level of operation for the last quarter. We therefore hold that SLUC reimbursements to GSA may be made only up to the ceiling amount imposed by the proviso.

Therefore, since there are no other funds available against which to charge the FBI's SLUC payments for fiscal year 1981, the FBI is correct in its construction of the proviso set forth in its supplemental

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"Salaries and expenses" appropriation (Pub. L. No. 97-12), and may not reimburse GSA any amount in excess of \$35,218,000, for SLUC attributable to fiscal year 1981. Consequently, issuance of the SIBAC Adjustment Voucher for Charge-Backs under these circumstances was appropriate and GSA should adjust its charges to the FBI for SLUC for fiscal year 1981. In fact, a payment by the FBI in excess of \$35,218,000 would violate the Antideficiency Act, 31 U.S.C. § 665. See B-201260, May 6, 1981, 60 Comp. Gen. ____.

Henry R. Van Cleave

For the Comptroller General
of the United States