



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Transfer of Urban Mass Transportation Administration
Unobligated Balances

File: B-213345

Date: September 26, 1986

DIGEST

Sums apportioned under section 5(a) of the Urban Mass Transportation Act of 1964, 49 U.S.C. § 1604(o), before October 1, 1982 that were available for expenditure in any urbanized area and were unobligated on October 1, 1985, may be transferred to amounts available for apportionment under section 9 of the Urban Mass Transportation Act, 49 U.S.C. § 1607a, for the fiscal year ending September 30, 1986. Subsection 5(o) was a conforming provision intended to preserve availability of the described unobligated apportionments for the new section 9 program.

DECISION

BACKGROUND

The Urban Mass Transportation Administration (UMTA) asks whether subsection 5(o) of the Urban Mass Transportation Act of 1964 (Act), as amended, 49 U.S.C. § 1604(o), authorizes UMTA to transfer certain unobligated balances of section 5 funds to the section 9 appropriation. For the reasons given below, we find that these balances can be so transferred.

Section 5 of the Act, Pub. L. No. 88-365, 78 Stat. 302, 304, as amended, codified at 49 U.S.C. § 1604, authorized an urban mass transit grant program for construction and operating assistance. Subsection 5(o), 49 U.S.C. § 1604(o), which was added by the Surface Transportation Assistance Act of 1982, Pub. L. No. 97-424, 96 Stat. 2097, 2151, provides that any sums apportioned under section 5 before October 1, 1982 that were available for expenditure in any urbanized area and were unobligated on October 1, 1985, are to be added to amounts available for apportionment under section 9 of the Act, 49 U.S.C. § 1607a, for the fiscal year ending September 30, 1986. Section 9, which also was added by the Surface Transportation Assistance Act, Pub. L. No. 97-424, 96 Stat. at 2141, authorizes block grants for construction and operating expenses for mass transit projects.

036897

UMTA informs us of a conflict between it and the Treasury Department's Finance and Funding Branch about the purpose of subsection 5(o). UMTA asserts that the subsection allows a transfer of the described unobligated balances of section 5 funds to section 9 appropriations. UMTA states its position is supported by principles of Federal appropriations laws and the intention of the Surface Transportation Assistance Act to replace the section 5 formula grants program with the section 9 block grants program. UMTA also maintains that a serious accounting problem would occur if a transfer were not permitted.

To the contrary, Treasury's Finance and Funding Branch maintains that subsection 5(o) only gives UMTA authority to use the described unobligated balances of section 5 funds for section 9 purposes, but does not allow a transfer of these balances to the section 9 appropriation.^{1/}

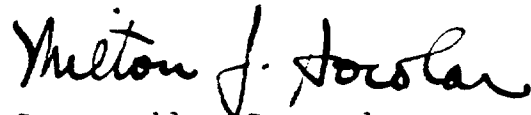
DISCUSSION

A transfer from one appropriation to another is prohibited absent statutory authority permitting it. 31 U.S.C. § 1532; 33 Comp. Gen. 216, 217 (1953). Although use of the word "transfer" in a statute, rather than some less explicit term, in all likelihood, would be dispositive about whether a transfer is intended, its absence does not necessarily mean that a transfer is not authorized; one must still refer to the statutory language and any clarifying legislative history to make a determination. See 60 Comp. Gen. 686, 687 (1981).

Subsection 5(o) does not specifically use the word "transfer." Nevertheless, it does state that certain unobligated section 5 sums should be added to amounts available for apportionment under section 9 for the fiscal year ending September 30, 1986. Although we have not found any clarifying legislative history for subsection 5(o), it is clear that section 9 of the Act was intended to replace the formula

^{1/} Although the Treasury Department's Finance and Funding Branch concluded that a transfer was improper, the Department's legal counsel to the Financial Management Service, in his memorandum of January 31, 1986, suggested support for both positions.

grants program previously authorized by section 5.2/ H.R. Rep. No. 987, 97th Cong., 2d Sess. 154 (1982); 128 Cong. Rec. S14633, 14645 (Dec. 14, 1982) (Explanation of Senate amendment). Subsection 5(o) and section 9 both were added by the Surface Transportation Assistance Act of 1982, supra. It is evident that subsection 5(o) was a conforming provision intended to preserve availability of the described unobligated apportionments for use under the new program. It is more reasonable to assume that a transfer was intended than to assume that the Congress intended to direct retention of the old section 5 funds in a separate account, dedicated for section 9 purposes, but requiring separate bookkeeping and expenditure records. Moreover, such a conclusion would be inconsistent with the plain meaning of the directive in subsection 5(o) that the unobligated section 5 balances be "added to" amounts available for apportionment under section 9 for fiscal year 1986. Accordingly, we conclude that the described unobligated section 5 apportionments may be transferred to the section 9 appropriation account.

for 
Comptroller General
of the United States

^{2/} Section 317 of the general provisions governing the 1986 appropriations to UMTA, Pub. L. No. 99-190, 99 Stat. 1185, 1286, extended a small part of the section 5 program to October 1, 1986.