

Memorandum

January 31, 1986

TO : Director, AFMD - Frederick D. Wolf

FROM : Associate General Counsel, OGC - Rollee H. Efros

SUBJECT: Review of Food and Nutrition Service Child
Nutrition Programs Accounting Procedures -
B-221204-O.M.

This is in response to inquiries by members of your staff regarding the propriety of accounting procedures used by the Food and Nutrition Service (FNS) of the Department of Agriculture in the operation of child nutrition programs. Under procedures now followed by FNS, claims by states for meals provided pursuant to federal child nutrition programs in September of each fiscal year are paid with funds available for the subsequent fiscal year. As set forth below, we conclude that, since the expiration at the end of fiscal year 1982 of specific legislative authority for this procedure, FNS has been acting improperly.

Background

The Agriculture, Rural Development and Related Agencies Appropriation Act, 1980, Pub. L. No. 96-108, 93 Stat. 821, 837 (1979) appropriated funds for child nutrition programs administered by FNS. The Act further provided, "That only claims for reimbursement for meals served during fiscal year 1980 submitted to State agencies prior to January 1, 1981 shall be eligible for reimbursement." *Id.* In other words, claims for reimbursement could be honored only if filed within 3 months after the end of the fiscal year.

During fiscal year 1980, Congress enacted a supplemental appropriation for child nutrition programs of \$312,400,000, of which \$243,000,000 was to be transferred to the Food Stamp program appropriation. Pub. L. No. 96-304, 94 Stat. 857, 859 (1980). The legislative history of the 1980 Supplemental indicates that the Appropriations Committees thought that the transfer of funds to the Food Stamp program from the child nutrition programs would have no effect on the child nutrition programs because the deficit could be made up by a change in accounting procedures. The report of the Senate Appropriations Committee concluded:

"The Committee has concurred in House language which provides that up to \$243,000,000 of [the child nutrition] appropriation may be transferred to the food stamp program. This one time savings can be achieved by converting the child nutrition account from an accrual to a cash basis, and will have no adverse effects on the number of meals served to children or other program operations."

S. Rep. No. 829, 96th Cong., 2d Sess. 33 (1980). See also H.R. Rep. No. 1086, 96th Cong., 2d Sess. 20 (1980); H.R. Rep. No. 1149, 96th Cong., 2d Sess. 17 (1980).

The funding for child nutrition programs in fiscal year 1981 was initially provided by a continuing resolution. Pub. L. No. 96-369, 94 Stat. 1351 (1980). The resolution provided, "Funds available under the provisions of this section for child nutrition programs of the Department of Agriculture may be used to pay valid claims submitted in fiscal year 1981 for meals served in September, 1980." 94 Stat. 1354. The Conference Committee report on the continuing resolution explained as follows:

"Amendment No. 21: Modifies language proposed by the Senate which provided that USDA can pay valid claims for reimbursement for meals served in the child nutrition program regardless of the period in which the meals were served.

"The 1980 Supplemental directed USDA to pay claims for meals served during September 1980 out of fiscal year 1981 funds. Under the House-passed resolution, these claims cannot be paid. The Senate amendment intended to make it legal to pay reimbursements for September meals. The conferees agree to a modification of the Senate language to clarify that the object of the amendment is meals served during September 1980, and not any other prior period."

H.R. Rep. No. 1443, 96th Cong., 2d Sess. 11 (1980). See also 126 Cong. Rec. S 13560 (daily ed., September 26, 1980) (unprinted Senate report).

When a fiscal year 1981 Department of Agriculture appropriation act was enacted in December of 1980, it appropriated

funds for child nutrition programs and provided further, "That only claims for reimbursement for meals served after September 1, 1980 submitted to State agencies prior to January, 1982, shall be eligible for reimbursement * * *." Pub. L. No. 96-528, 94 Stat. 3095, 3112, (1980). The legislative history of this proviso indicates that the Congress intended to maintain the eligibility for reimbursement of meals served in September 1980 contained in the continuing resolution. S. Rep. No. 1030, 96th Cong., 2d Sess. 89 (1980). The method used by the Senate Committee to incorporate the eligibility was to amend the 3-month filing deadline already contained in the House-passed bill, rather than adding a new proviso. See id.

In May of 1981, when the Senate was considering supplemental appropriations for FNS programs, the accounting procedures being used by FNS in the administration of the child nutrition programs were brought to the attention of the Senate by Senator Cochran:

"Mr. President, last year the Department initiated a policy by which obligations for the child nutrition programs were delayed and entered only upon the receipt of claims from schools for meals already served. This accounting change meant that the Federal Government was sanctioning the service of meals for which the Government is required to reimburse schools, with no accounting on the books in advance of actual receipt of claims. I believe this is a very questionable procedure, and one which should not be allowed to continue. Unfortunately, it would require an appropriation of \$223 million to correct this problem in addition to the \$110 million needed to address a funding shortfall under the current appropriation for these programs.

"In view of the severe budgetary constraints which have been imposed on the Federal Government, I believe it prudent to defer action of correcting the obligation procedures of the Department, however if neither of these additional items are provided the Department will have no choice but to further extend its use of this accounting change to defer obligations into the next fiscal year. This will not only mean that the fiscal year 1982 appropriation will have to be increased to bear these costs, but it will frustrate the policy that

the Department has been promoting to encourage the States to file their claims promptly, as well as increase the cash-flow problems of States and school districts since Federal funds will not be immediately available to cover reimbursements for meals as they are served."

127 Cong. Rec. S 5456 (daily ed., May 21, 1981).

The fiscal year 1982 Department of Agriculture appropriation act retained the provision permitting FNS to pay claims for reimbursement of meals served in September of the previous fiscal year with the current fiscal year's funds. Pub. L. No. 97-103, 95 Stat. 1467, 1484 (1981). See H.R. Rep. No. 313, 97th Cong., 1st Sess. 19 (1981). However, the Agriculture Appropriation Act for fiscal year 1983 included ~~no~~ such provision. Pub. L. No. 97-370, 96 Stat. 1787, 1805 (1982). Although a "September reimbursement" provision had been included in the House version of the Act, it was deleted by the Conference Committee without explanation. H.R. Rep. No. 957, 97th Cong., 2nd Sess. 19 (1982).

The September reimbursement provision has not been contained in any FNS appropriation act since fiscal year 1982. Nonetheless, FNS has continued to operate the child nutrition meal programs partially on a cash basis, paying claims for meals provided in September of each fiscal year out of funds available for the next fiscal year. For example, FNS readily admits that over \$124 million in fiscal year 1986 appropriated funds have been used to pay fiscal year 1985 claims. The Senate Appropriations Committee report on the fiscal year 1985 Agriculture appropriations bill included the following comment:

"In fiscal year 1980, the Department received permission to shift appropriations from the child nutrition account to pay for a shortfall in the food stamp account. In subsequent appropriation bills, that initial shortfall was never made up, nor was sufficient funding requested to offset this shortfall. Instead, delayed payments have been made by the Department. School districts are paid for meals served in one fiscal year from appropriations provided for the subsequent fiscal year. This so-called shortfall had grown to an estimated \$338,000,000 in fiscal year 1983. The Committee will expect the Department of Agriculture to submit a supplemental request for fiscal year 1985 that will be sufficient to make up this shortfall."

S. Rep. No. 566, 98th Cong., 2d Sess. 103 (1984).

Analysis

The head of each executive agency is required by statute to maintain the accounts of the agency on an "accrual basis." 31 U.S.C. § 3512(d) (1982). See also GAO Policy and Procedures Manual for Guidance of Federal Agencies, tit. 2, Appendix I at 9 (TS No. 2-24, Nov. 14, 1984). The accrual basis of accounting is defined as follows:

"The basis of accounting under which revenues are recorded when earned and expenditures are recorded when goods are received and services performed even though the receipt of the revenue or the payment of the expenditure may take place, in whole or in part, in another accounting period."

GAO, A Glossary of Terms used in the Federal Budget Process at 85, PAD-81-27, March, 1981. The alternative, the cash basis of accounting, is defined as follows:

"The basis of accounting whereby revenues are recorded when received in cash, and expenditures (outlays) are recorded when paid, without regard to the accounting period to which the transactions apply."

Id. at 86. It is clear that since fiscal year 1982, FNS has operated the child nutrition programs, at least in part, on a cash basis. Expenditures for meals in September of each fiscal year are recorded when paid, in the new fiscal year, despite the fact that the meals were provided in the expiring fiscal year. Accordingly, to the extent that FNS did not have specific statutory authority in each fiscal year to operate the child nutrition programs on a cash basis, FNS violated 31 U.S.C. § 3512(d).

Further, in the absence of specific statutory authority, FNS's practice of charging meals served in September to the next fiscal year's appropriation violated the bona fide need rule. The bona fide need rule requires an appropriation to be obligated only to meet a legitimate need arising during the period of availability of the appropriation. 31 U.S.C. § 1502(a) (1982). See, e.g., 61 Comp. Gen. 184, 185-86 (1981); 44 Comp. Gen. 399, 401 (1965). The need for meals served under the child nutrition programs clearly arises when those meals are served. Accordingly, meals served in

September of one fiscal year can be a bona fide need of that fiscal year only, and may not be charged to the subsequent year's appropriation.

Both the "accrual basis" requirement of 31 U.S.C. § 3512(d) and the bona fide need rule can be overcome by specific statutory authority. We conclude that FNS had such specific statutory authority in fiscal years 1981 and 1982. However, the specific "September reimbursement" provisions included in the Agriculture appropriation acts only applied to those fiscal years. They did not constitute permanent authority. It has been our longstanding position that a provision in an appropriation act may not be construed as permanent legislation unless the language or the nature of the provision makes it clear that such was the intent of the Congress. B-214058, February 1, 1984 62 Comp. Gen. 54 56 (1962). From the language of the "September reimbursement" provisions it is clear that the Congress intended them to apply only for the then current fiscal year. The Agriculture appropriation acts for fiscal years 1983, 1984, 1985, and 1986 include no authority for FNS to reimburse for meals served in September of the prior fiscal year.

Accordingly, we conclude that FNS acted improperly in fiscal years 1983 through 1986 in charging meals served under the child nutrition programs in September of the previous fiscal year to appropriations available in the new fiscal year.

January 31, 1986

DIGEST

Food and Nutrition Service (FNS) of the Department of Agriculture acted improperly in fiscal years 1983 through 1986 in charging meals served under child nutrition programs in September of the previous fiscal year to appropriations available in the current fiscal year. FNS operated the child nutrition programs on a "cash basis" of accounting, contrary to 31 U.S.C. § 3512(d) which requires that executive agencies operate on an "accrual basis" of accounting. Further, procedure of FNS violated the bona fide need rule which requires an appropriation to be obligated only to meet a legitimate need arising during the period of availability of the appropriation. Specific statutory authority available to FNS in fiscal years 1981 and 1982 did not constitute permanent authority for the procedure in question.