



Decision

Matter of: Department of Housing and Urban Development—Application of the Antideficiency Act to Agency Implementation of Statutory Deadline on Grant Funds Expenditure

File: B-332428

Date: February 7, 2022

DIGEST

Section 904(c) of the Disaster Relief Appropriations Act, 2013 imposed a 24-month deadline for grantees in the Department of Housing and Urban Development's (HUD) Community Development Block Grant-Disaster Recovery program to expend grant funds. In a prior decision, we concluded that HUD used a cumulative method of calculation that was not sufficient for HUD to ensure that grantees complied with a 24-month deadline similar to the one in section 904(c). HUD initially assessed grantee compliance with section 904(c) using the same cumulative method of calculation. When HUD's Office of Inspector General brought this to HUD's attention, HUD discontinued use of the cumulative method. An agency violates the Antideficiency Act if it obligates or expends funds in excess of or in advance of any appropriation, apportionment, or allotment. Because HUD made no such obligations or expenditures, its use of the cumulative method of calculation did not result in a violation of the Antideficiency Act.

DECISION

On August 11, 2020, the Department of Housing and Urban Development (HUD), Office of Inspector General (OIG) requested a decision on whether HUD violated the Antideficiency Act when it used a cumulative method of calculation to determine grantee compliance with section 904(c) of the Disaster Relief Appropriations Act, 2013.¹ As discussed below, we conclude that HUD's use of the cumulative method of calculation did not result in a violation of the Antideficiency Act.

¹ Letter from Acting Counsel to the Inspector General, HUD, to General Counsel, GAO (Request Letter).

In accordance with our regular practice, we contacted HUD and HUD OIG to seek factual information and their legal views on this matter.² Both HUD and HUD OIG responded with their explanations of the pertinent facts and legal analysis.³

BACKGROUND

Congress passed the Disaster Relief Appropriations Act, 2013 in response to Hurricane Sandy and other disasters.⁴ The Act included a supplemental appropriation for HUD's Community Development Block Grant, Disaster Recovery (CDBG-DR) program to provide grants to state and local governments for disaster recovery-related purposes.⁵

Section 904(c) of the Act required that the grant funds "be expended by the grantees within the 24-month period following the agency's obligation of funds for the grant."⁶ It also required HUD to "include a term in the grant that requires the grantee to return to the agency any funds not expended within the 24-month period."⁷ This requirement is substantially similar to the 24-month recapture requirement we addressed in a prior decision.⁸ See B-322077, July 17, 2013. To track compliance with section 904(c), HUD used the same "cumulative method of calculation" described in detail in that decision.⁹ However, in that decision, we determined that

² GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 5, 2006), *available at* www.gao.gov/products/GAO-06-1064SP; Letter from Assistant General Counsel for Appropriations Law, GAO, to Director, Appropriations Law Staff, HUD (Feb. 9, 2021); Letter from Assistant General Counsel for Appropriations Law, GAO, to Acting Counsel to the Inspector General, HUD (Feb. 9, 2021).

³ Letter from Director, Appropriations Law Staff, HUD, to Assistant General Counsel for Appropriations Law, GAO (Apr. 9, 2021) (HUD Response); Letter from Counsel to the Inspector General, HUD, to Assistant General Counsel for Appropriations Law, GAO (Mar. 24, 2021) (OIG Response).

⁴ Pub. L. No. 113-2, div. A, 127 Stat. at 4 (Jan. 29, 2013).

⁵ *Id.*, 127 Stat. at 36; Request Letter at 1.

⁶ Pub. L. No. 113-2, div. A, § 904(c).

⁷ *Id.*

⁸ *Compare* Pub. L. No. 113-2, div. A, § 904(c), *with* Pub. L. No. 101-625, § 218(g), 104 Stat. 4079, 4110 (Nov. 28, 1990), *codified as amended at* 42 U.S.C. § 12748(g).

⁹ HUD Response at 1; Request Letter at 5. Rather than a single lump sum, HUD provided funds to grant recipients in increments which it referred to as "rounds." This resulted in multiple obligations for the same grantee on different dates. According to HUD, "The cumulative method measured grantee compliance with the 24-month expenditure requirement by total, cumulative expenditures against total

this cumulative method resulted in HUD “failing to recapture and reallocate uncommitted grant funds” after 24 months as required by the statute. B-322077.

According to HUD OIG, HUD began using the cumulative method to track these funds in February 2017. However, “Once [OIG] notified [HUD’s Office of the Chief Financial Officer (OCFO)] of the improper methodology, OCFO required [the program] to discontinue the cumulative method.”¹⁰ OIG also stated that use of the cumulative method had potentially resulted in violations of the Antideficiency Act.¹¹ HUD and its grantees then took a series of corrective actions similar to those outlined in B-322077.¹²

OCFO also completed an investigation into the potential Antideficiency Act violations that OIG referred.¹³ This investigation found no evidence that use of the cumulative method or the steps taken to discontinue its use resulted in any Antideficiency Act violations.¹⁴

DISCUSSION

HUD states that its use of the cumulative method to assess compliance with section 904(c) was “improper.”¹⁵ At issue here is whether use of the cumulative method resulted in a violation of the Antideficiency Act.

The Antideficiency Act prohibits agencies from obligating or expending funds in excess of amounts available under an appropriation, apportionment, or allotment. It also prohibits obligating or expending funds in advance of an appropriation, apportionment, or allotment. 31 U.S.C. §§ 1341(a)(1), 1517(a). In response to OIG’s referral, OCFO conducted an investigation. Following that investigation, OCFO acknowledged that, while use of the cumulative method was inconsistent with our conclusions in B-322077, no Antideficiency Act violation had resulted from use of

cumulative obligations to date, and not by measuring expenditures attributable to specific rounds.” Memorandum from Director, Office of Appropriations Law Staff, HUD, to Chief Financial Officer, HUD (May 29, 2019) (OCFO Memo), at 2-3.

¹⁰ HUD OIG, *Office of Community Planning and Development, Washington, DC, Compliance With the Disaster Relief Appropriations Act, 2013 Grantee Expenditure Requirement*, 2019-FW-0001 (May 17, 2019), at 12.

¹¹ *Id.* at 30.

¹² HUD Response at 2.

¹³ *Id.* at 2.

¹⁴ OCFO Memo at 14.

¹⁵ HUD Response at 1.

the cumulative method or the steps taken to discontinue its use.¹⁶ Specifically, OCFO found no instances in which the agency obligated or expended funds in excess of, or in advance of, any appropriation, apportionment, or allotment.¹⁷ Similarly, OIG identified no such instances.¹⁸

HUD explained that the CDBG-DR grants were obligated at the time HUD awarded a grant to a grantee and that HUD recorded and tracked these obligations in HUD's financial system.¹⁹ Grantees entered data into HUD's separate Disaster Recovery Grants Reporting (DRGR) system to draw funds from their previously awarded grants. HUD stated that the grantees had no access to HUD's financial system. HUD also stated that the DRGR system did not permit any grantee to draw more than the total obligation amount recorded for that grantee or to draw funds in advance of an obligation to it.²⁰ Thus, HUD's funds control system prevented the use of the cumulative method from leading to any violations of the Antideficiency Act.

OIG also asks whether use of the cumulative method of calculation, "in and of itself," might constitute an Antideficiency Act violation that HUD must report.²¹ Use of the cumulative method, on its own, does not violate the Antideficiency Act. HUD's use of the cumulative method to assess compliance with section 904(c) did not obligate or expend government funds.²² The Antideficiency Act contains specific prohibitions. See 31 U.S.C. §§ 1341(a), 1517. It requires agencies to report violations of these specific prohibitions to the President and Congress. *Id.* §§ 1351, 1517(b). The Antideficiency Act does not require agencies to report violations of other laws nor does it require agencies to report improper financial management practices that do not result in violations of the Antideficiency Act.²³

¹⁶ HUD Response at 2; OCFO Memo at 1.

¹⁷ HUD Response at 4.

¹⁸ OIG Response at 6.

¹⁹ HUD Response at 2, 4.

²⁰ *Id.*, at 2-4.

²¹ Request Letter at 1.

²² HUD Response at 2, 4; *see generally* B-322077.

²³ HUD OIG also questions whether the reasoning of B-322077 and another of our prior decisions, B-272191, Nov. 4, 1997, should apply to the appropriations made in the Disaster Relief Appropriations Act, 2013, given that this was a supplemental appropriation and the appropriations addressed in those prior decisions were annual appropriations. Request Letter at 7. We have generally interpreted provisions in supplemental appropriation acts consistently with similar provisions in prior annual appropriation acts. Nothing in either decision suggests that their analysis was in any way dependent on the annual nature of the appropriations at issue in those cases.

CONCLUSION

HUD states that its use of the cumulative method of calculation to assess grantee compliance with section 904(c) was “improper” and has ceased use of the cumulative method for that purpose. However, an agency violates the Antideficiency Act if it obligates or expends funds in excess of or in advance of any appropriation, apportionment, or allotment. HUD OIG did not identify any evidence that use of the cumulative method, or the steps taken to discontinue it, resulted in HUD making any obligations or expenditures that violated the Antideficiency Act. Furthermore HUD, after undertaking an investigation, found no such obligations or expenditures. Accordingly, HUD’s use of the cumulative method did not result in a violation of the Antideficiency Act.



Edda Emmanuelli Perez
General Counsel

See *generally* B-322077; B-272191. Nothing in the Disaster Relief Appropriations Act, 2013 suggests that the supplemental appropriations made therein are not subject to the Antideficiency Act or that section 904(c) should not be interpreted in a manner consistent with similar provisions in prior acts. See *generally* Pub. L. No. 113-2, div. A, 127 Stat. at 4.