



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

B-207373

May 17, 1982

The Honorable Lawton Chiles  
Committee on the Budget  
United States Senate

Dear Senator Chiles:

In your recent letter, you asked for our legal opinion on a development concerning funding for the Cuban/Haitian Entrant Assistance account in the Department of Health and Human Services. Specifically, the Department asked both Appropriations Committees for approval to reprogram \$35 million for "targeted assistance," within the lump sum appropriation for Cuban-Haitian Entrant Assistance. The Chairman of the Subcommittee on Labor, Health and Human Services, and Education Appropriations, House Appropriations Committee, suggested in his response that the Department retain \$15 million of the \$35 million as an emergency reserve.

For the reasons set forth below, we agree with you that committee approval of the reprogramming request is not a legal prerequisite for the Department to carry out its plan for using \$35 million of the lump sum appropriation for targeted assistance, although of course consultation with the cognizant committees on reprogrammings, either on the agency's initiative or at the committees' request, is an accepted and prudent procedure. Further, we agree that if the Department were to set aside the \$15 million as an emergency reserve without even any asserted programmatic justification, that action would constitute a withholding of budget authority required by the Impoundment Control Act to be reported to the Congress. We have found no indication that such an impoundment is taking place.

Background

In fiscal year 1981, separate appropriations were provided for Cuban and Haitian Entrants Reception and Processing 1/ and

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1/ Reception and Processing, authorized by section 501(c) of the Refugee Education and Assistance Act of 1980, Pub. L. No. 96-422, is for processing, care, maintenance, security, transportation, and initial reception and placement of Cuban and Haitian entrants.

Cuban and Haitian Entrants Domestic Assistance. 2/ At the end of fiscal year 1981, \$48 million of no-year funds appropriated for Domestic Assistance was unused and was carried forward for use in fiscal year 1982. As discussed in our letter to you, B-205499, February 22, 1982, these funds were apportioned to the Department on January 7, 1982.

Meanwhile, in the Senate Appropriations Committee action on the 1982 appropriation, the Domestic Assistance account was merged with the Reception and Processing account, and \$114 million was provided for the combined account. Section 123 of the third continuing resolution, Public Law 97-92 (still operative by virtue of the fourth continuing resolution, Public Law 97-161) makes the Senate Committee bill the operative appropriation for fiscal year 1982. The Senate Appropriations Committee proposed that, of the \$114 million, \$94 million be used for domestic assistance and \$20 million for reception and processing. S. Rep. No. 97-268, 105-06 (1981).

The Secretary of Health and Human Services (HHS) then proposed the reprogramming. Under his proposal, the \$48 million of prior year funds which remains available for obligation would be used in this fiscal year for domestic assistance, the purpose for which it was appropriated. This would free up \$48 million of the \$114 million appropriated in this fiscal year for the proposed reprogramming. Out of that \$48 million in fiscal year 1982 funds, HHS proposed that \$35 million would be used for a new program of targeted assistance, to aid areas heavily impacted by resettlement of entrants. These funds would be used to allow States to provide assistance to local communities in meeting the cash and medical needs of entrants. 3/

In responding to the Secretary's request for authority to reprogram, the Chairman of the Subcommittee on Labor, Health and Human Services, and Education Appropriations, House Committee on Appropriations, speaking for the Subcommittee, agreed to the use of \$20 million for targeted assistance but said that that amount would be adequate for the purpose and--

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2/ The Domestic Assistance program is intended to reimburse States for assistance provided for resettlement of certain Cuban and Haitian entrants under sections 501(a) and (b) of the Refugee Education and Assistance Act of 1980.

3/ The other \$13 million, not here at issue, would be used for reception and processing of entrants in Federal custody.

"The Subcommittee believes that the remaining \$15 million of these funds should be retained as an emergency reserve and, if not needed for that purpose, returned to the Treasury."

### Issues

You suggest that the Department has sufficient authority to spend the \$35 million for targeted assistance without a reprogramming. We agree that it does.

Reprogramming refers generally to the use of funds in an appropriation account for a purpose within the general scope of the account, but not specifically contemplated at the time of appropriation. It is often preceded by consultation in some form between the agency and the cognizant congressional committees, in order for the agency to justify its departure from what was originally planned and to enlist congressional support for its new plans. However, with a few exceptions not applicable here, such consultation is not a legal requirement. B-174702, July 24, 1974. This Office has consistently held that funds within a lump sum appropriation are legally available for any purpose for which the lump sum is available, and that agencies are not bound to spend a lump sum in accordance with a breakdown in budget justification documents or with congressional directions not incorporated in the law itself. See, for example, 55 Comp. Gen. 307, 319 (1975); B-202992, May 15, 1981, and cases cited.

In this case, the targeted assistance for which the reprogramming is proposed appears to be a form of domestic assistance within the purpose of the combined assistance program for which the appropriation was made. The Senate Committee report says in this respect that the funds appropriated "should pay for \* \* \* reimbursements to States for cash and medical assistance for entrants \* \* \*." S. Rep. No. 97-268, 106 (1981). Accordingly, the \$35 million is available for targeted assistance without a reprogramming request, although there is of course no reason why the Department should not use the reprogramming request as a vehicle for consultation with the committees. Moreover, if the committees do not approve a proposed reprogramming, or impose conditions on it, the Department is free to honor the committees' wishes, provided that it has legal authority to do so.

You suggest in this connection that for the Department to do as the House Appropriations Subcommittee suggested, that is to plan on spending \$20 million for targeted assistance and to

set aside the other \$15 million as an emergency reserve, would constitute an impoundment of the \$15 million reserve, required by the Impoundment Control Act to be reported to the Congress. We agree that the effect of such action by HHS, at least without even any asserted programmatic basis, would be to create such an impoundment.

We express no opinion on whether that action, if taken by HHS, would constitute a deferral or rescission. We found, as a result of some preliminary inquiries, that HHS has not at this time taken the proposed action. In the absence of an actual case, we believe no useful purpose would be served by speculation on the precise type of impoundment.

Sincerely yours,

*for*   
Comptroller General  
of the United States