



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Availability of Department of Energy Reception and Representation Funds

File: B-274576

Date: January 13, 1997

DIGEST

Congress annually appropriates to the Department of Energy an amount for "Departmental Administration" that remains available until expended. Each year Congress authorizes the Department to use a specified, "not to exceed" portion of its "Departmental Administration" appropriation for official reception and representation (R&R) activities. DOE's authority to use a portion of its "Departmental Administration" appropriation for R&R activities is coextensive with, and inseparable from, the period of availability of the amount annually appropriated for "Departmental Administration". Thus, to the extent the Department does not use all the R&R authority (and all the "Departmental Administrations" appropriation) provided each year, it continues to remain available for obligation in succeeding years.

DECISION

The Inspector General (IG), Department of Energy (DOE) asks whether DOE may use no year "Departmental Administration" appropriations for official reception and representation (R&R) activities only during the first year of their availability or may DOE use unobligated amounts of R&R authority for activities after the end of the fiscal year of the appropriation act appropriating the no year funds. The R&R authority is not time limited to the first year of the "Departmental Administration" appropriation. Accordingly, DOE may use any unused R&R authority in subsequent years to the extent described below.

Background

As a result of an investigation of overseas travel by the Secretary and other DOE officials, the DOE Inspector General's Office (OIG) determined that DOE incurred costs during fiscal years 1993 through 1995 that should have been charged to appropriations available for R&R activities. Annual appropriation acts for DOE have made a portion of the no year "Departmental Administration" appropriation available for R&R activities. However, the IG questions the time period during

which the R&R authority is available for obligation. The IG considers the R&R authority as available only for the first year of each new "Departmental Administration" appropriation. For example, the IG considers the no year funds appropriated by the fiscal year 1997 appropriation act as being available for R&R activities only during fiscal year 1997. The General Counsel considers the R&R authority to continue as long as the amounts appropriated each year for "Departmental Administration" remain available for obligation.¹ To resolve this issue, the IG has asked "whether the Department's Reception and Representation funds are 'no year' funds, available until expended, or whether the annual expenditures are limited by the stated appropriation act amount."

The Energy and Water Development Appropriations Act, 1997, making appropriations for "Departmental Administration", provides as follows:

"For salaries and expenses of the Department of Energy necessary for Departmental Administration and other activities in carrying out the purposes of the Department of Energy Organization Act...including official reception and representation expenses (not to exceed \$35,000), \$215,021,000, to remain available until expended...."²

Similar language appears in past years appropriations acts.³

As noted above, the IG takes the view that the authority to use a portion of the no year amount appropriated each year for "Departmental Administration" for R&R activities ceases to be available for R&R activities after the first fiscal year of the

¹The difference of opinion is set forth in the memorandum dated October 7, 1996, pp. 2-3, transmitting to the Secretary, the report: Inspector General, Department of Energy, Report on Inspection of the Secretary of Energy's Foreign Travel, Rep. No. DOE/IG-0397 (October 7, 1996).

²Pub. L. No. 104-206, Title III, 110 Stat. 2984, 2996 (1996).

³See, e.g., the Energy and Water Development Appropriations Act, 1996, Pub. L. No. 104-46, Title III, 109 Stat. 402, 414 (1995); the Energy and Water Development Appropriations Act, 1995, Pub. L. No. 103-316, Title III, 108 Stat. 1707, 1718 (1994); and, the Energy and Water Development Appropriations Act, 1994 Pub. L. No. 103-126, Title III 107 Stat. 1312, 1329 (1993). In a memorandum to the Acting Chief Financial Officer, DOE dated July 31, 1996, p. 38, the Deputy General Counsel indicates that starting before 1985, Congress has included in the "Departmental Administration" appropriation not to exceed \$35,000 for reception and representation expenses (except in fiscal year 1987 when the amount was 17,500), all of which remains available until expended.

appropriation. The IG bases this view on DOE's past practice. An explanation of DOE's practice appears in the legislative history of the Energy and Water Development Appropriation Act, 1991. During the hearings on DOE's budget request, Chairman Tom Bevill of the Subcommittee on Energy and Water Development of the House Appropriations Committee asked: "Does the Department take the position that unobligated official reception and representation funds carry forward to the following years? If so, please justify."

DOE's Acting Director, Administration and Human Resources Management, submitted the following response for the record:

"The Department has historically taken the position that funds provided for official reception and representation are available for that purpose only during the fiscal year for which appropriated. Funds for official reception and representation are nearly entirely obligated each fiscal year and, consequently, unobligated balances remaining are relatively insignificant. Funds that do remain at the end of the fiscal year are merged with all other generally appropriated funds for Departmental Administration, thus losing identity as to original purpose. At such time as prior year unobligated funds are reapportioned by OMB, any previous reception and representation balances remaining from the fiscal year are included. However, funds carried forward are used to support other Departmental Administration programs, not to supplement official reception and representation funds in the current fiscal year."⁴

The Deputy General Counsel believes that the authority to spend no year amounts appropriated each year for "Departmental Administration" for R&R activities is not limited to the first fiscal year that such amounts are made available for obligation. He bases his opinion on the plain language of the appropriation act. He responds to the IG's reliance on the Department's past practice by arguing that nothing in DOE's past practice is inconsistent with the law or serves to repeal the authority conferred by law. With the limitations discussed below, we agree with the General Counsel.

Discussion

When an appropriation act expressly provides that the amounts appropriated are "to remain available until expended," the amounts constitute no year appropriations that remain available indefinitely until fully obligated and expended. 40 Comp. Gen. 694 (1961) and B-271607, June 3, 1996. Generally, the amounts appropriated each year for "Departmental Administration" remain available for obligation for

⁴Energy and Water Development Appropriations for 1991: Hearing Before a Subcommittee of the Committee on Appropriations, House of Representatives (Part5), 101st Cong., 2d Sess., 1487 (1990).

authorized purposes until fully obligated in accordance with the purposes and limitations attributable to that lump sum appropriation. 40 Comp. Gen. 696-697(1961) .⁵

The 1997 Energy appropriation act authorizes DOE to spend not more than \$35,000 of the \$215 million appropriated for "Departmental Administration" for R&R activities.⁶ Nothing in the language of the 1997 appropriation act serves to place a time limit on DOE's authority to obligate the amount of funds authorized for R&R activities different from the time limit applicable to the total amount appropriated by the 1997 act for "Departmental Administration".⁷ DOE's authority to use up to \$35,000 for R&R activities is coextensive with, and inseparable from, the period of availability for obligating the \$215 million appropriated for "Departmental Administration". The authority conferred by law for obligating "Departmental Administration" funds is the same regardless of whether the purpose is an R&R activity or some other purpose for which the funds are available. The same is true

⁵The IG does not suggest that DOE or the Congress has cancelled the amounts authorized each year for R&R activities. The President or the head of an agency may cancel unobligated balances of no year appropriation accounts in accordance with the statutory procedures for closing appropriations accounts available for indefinite periods. 31 U.S.C. § 1555 (1994). The Appropriations account in this case is the "Departmental Administration" account; the law does not authorize a separate "R&R" appropriation account.) Alternatively Congress may cancel all or part of the unobligated balance of a no year appropriation by enactment or a rescission law. 2 U.S.C. § 683 (1994).

⁶Appropriated funds are generally unavailable for official entertainment activities absent legislative authority. 69 Comp. Gen. 242 (1990). The R&R language appearing in the appropriation provides the specific authority necessary to use government funds for official entertainment and related purposes. 68 Comp. Gen. 226,228 (1989).

⁷We see no basis in the language of the appropriation to server each years grant of authority to use a portion of the "Departmental Administration" appropriation for R&R activities from the total amount appropriated each year for "Departmental Administration" let alone to assign differing periods of availability to the various purposes including R&R activities for which the "Departmental Administration" appropriation is available. To adopt the IG's position would require us to construe the language in the "Departmental Administration" appropriation as if it read: "Provided further, That DOE may obligate and expend not to exceed \$35,000 for official reception and representation activities during the fiscal year ending September 30, 1997, from amounts appropriated under the heading "Departmental Administration by this or any other act."

for the authority to use a portion of the no year funds appropriated to DOE for "Departmental Administration" for R&R activities in past years appropriations acts. Thus, the authority conferred each year to use a specified portion of the "Departmental Administration" appropriation for R&R activities does not expire at the end of the first fiscal year of each annual appropriation act merely because DOE does not obligate the maximum authorized.

Whether there is unused R&R authority available from past years requires the Department to address one additional consideration. As we emphasized above, the appropriation language does not make an amount available only for R&R activities to the exclusion of the other purposes for which the "Departmental Administration" appropriation is available. Conceivably, by the end of a fiscal year, DOE could obligate the entire amount appropriated in a year for "Departmental Administration" as well as amounts carried over from past years without obligating any amounts for R&R activities. In such a situation there would be no unobligated balances available for R&R activities carried over to a subsequent fiscal year. Thus each year's cumulative unobligated balance carried over to the next fiscal year would have to at least equal the cumulative unobligated authority for R&R activities for past fiscal years in order to conclude that R&R authority continues to be available as a result of the carryover. In other words, the amount of unused R&R authority that may be carried over to a subsequent year is the lesser of the unused R&R authority or the unobligated balance of the "Departmental Administration" account⁸

OMB's practice of including in the apportionment for the next fiscal year the total unobligated "Departmental Administration" appropriation balance at the end of each fiscal year does not serve to change the purpose for which the funds are available. The apportionment process does not effect an amendment to the appropriation act as to the purpose for which appropriations are available (including authority to use a portion of such funds for R&R activities) or the time period during which such funds are available. Otherwise OMB could use the apportionment process to impound funds (without complying with the requirements of law)⁹ or, in effect,

⁸The Deputy General Counsel's July 31, 1996, memorandum, pp. 53-54, states that the amount of unused R&R authority from 1985 through 1995 is \$49,007.88. It also concludes that this is more than adequate to cover the roughly \$35,000, in R&R costs identified during the investigation. However, the record before us does not clearly indicate whether the unobligated balances of the "Departmental Administration" appropriations carried forward each year exceeds the cumulative amounts of unused R&R authority that DOE claims is available.

⁹The President may propose a recession pursuant to section 1012 of the Congressional Budget and Impoundment Control Act of 1974, as amended, 2 U.S.C. § 683 (1994) or the Congress exercising its constitution power of the purse may

amend the appropriation act. Here, OMB's apportionment of DOE's "Departmental Administration" appropriation reflects nothing more than the continuing nature of the no year funds annually appropriated to the "Departmental Administration" account. We see no basis to infer an attempt by OMB through the apportionment process to limit the funds available for R&R activities.

Thus, to the extent that the cumulative unobligated balances of past year appropriations for "Departmental Administration" that are carried over each year are equal to or exceed the cumulative unused authority for R&R activities, they are available to obligate and pay costs incurred in connection with R&R activities that occur subsequent to the initial year in which Congress makes such no year authority available.

/s/Robert P. Murphy
for Comptroller General
of the United States

rescind amounts previously provided. In either event, the rescission must be enacted into law.