



United States General Accounting Office
Washington, DC 20548

Office of the General Counsel

B-284566

April 3, 2000

Ms. Anne Wicks
Acting Executive Officer
District of Columbia Courts

Subject: District of Columbia Courts Appropriation Accounting

Dear Ms. Wicks:

By letter dated January 20, 2000, the former Executive Officer, District of Columbia Courts, asked the following questions concerning the proper accounting for certain payments by D.C. Courts for the D.C. Criminal Justice Act (CJA), the Counsel for Child Abuse and Neglect (CCAN), and the Guardianship programs.¹

- (1) Is the appropriation for "Defender Services in the District of Columbia Courts" the "applicable appropriation" to charge prior fiscal year obligations for purposes of section 108 of a joint resolution making continuing appropriations for fiscal year 2000 (continuing resolution)?²
- (2) Are the "Federal Payment to the District of Columbia Courts" and "Defender Service in the District of Columbia Courts" appropriations for fiscal year 2000 available to pay any prior fiscal year(s) CJA, CCAN, and Guardianship program obligations not paid before enactment of the District of Columbia Appropriations Act, 2000³ or not paid out of interest earned on the fiscal year 1999 "Federal Payment to the District of Columbia Courts"?

¹ The former Executive Officer also asked about the applicability of a government-wide rescission to the fiscal year 2000 appropriation for D.C. Courts. We will address this issue in a separate response. Also, for ease of presentation, we will hereafter characterize questions and representations from the former Executive Officer as from D.C. Courts.

² Pub. L. No. 106-62, 113 Stat. 505, 507 September 30, 1999, as amended.

³ Pub. L. No. 106-113, Division A, Title I, 113 Stat. 1501, November 29, 1999.

- (3) Would the D.C. Courts violate the Antideficiency Act by continuing to incur obligations for court-appointed attorneys if fiscal year 2000 appropriations are insufficient to pay all fiscal year 2000 obligations for these programs?

Regarding payments made under the continuing resolution, the “Defender Services in the District of Columbia Courts” appropriation is an “applicable appropriation” to charge these payments although not the only “applicable appropriation.” We also agree that the “Federal Payment to the District of Columbia Courts” and the “Defender Services in the District of Columbia Courts” appropriations are available to cover prior year(s) obligations. Finally, D.C. Courts would not violate the Antideficiency Act if it incurs and charges CJA, CCAN, and Guardianship program obligations against the fiscal year 2000 Defender Services appropriation after it is exhausted. Congress has authorized, but not required, the D.C. Courts to use the Federal Payment fiscal year 2000 appropriation to pay these obligations. As discussed in more detail below, the D.C. Courts should use the financing flexibility Congress has provided to reduce, if not eliminate, the risk that fiscal year 2000 obligations for the CJA, CCAN, and Guardianship programs would not be timely paid.

Background

The District of Columbia Appropriation Act for 1998 authorized \$108 million in the “Federal Payment to the District of Columbia – Criminal Justice System” appropriation to be used to fund D.C. Courts activities, including payments for attorneys appointed to represent indigents under the CJA, CCAN, and the Guardianship program.⁴ D.C. Courts overobligated its 1998 appropriation in violation of the Antideficiency Act and deferred a significant amount of attorney payments until fiscal year 1999.⁵

Congress became aware of the deferred payments and changed the appropriation for D.C. Courts. Instead of including funds for court appointed attorneys in a lump sum appropriation, the District of Columbia Appropriation Act, 1999, specifically provided up to a specific amount for the CJA and CCAN programs as part of the “Federal Payment to the District of Columbia Courts.”⁶

During fiscal year 1999, it became clear that D.C. Courts would not be able to pay all its fiscal year 1999 and prior year obligations for the CJA, CCAN, and Guardianship programs with fiscal year 1999 appropriations. In response, Congress significantly changed the way it appropriated funds for D.C. Courts by establishing two separate

⁴ Pub. L. No. 105-100, 111 Stat. 2160, 2161 (1997).

⁵ D.C. Courts: Planning and Budgeting Difficulties During Fiscal Year 1998 GAO/AIMD/OGC-99-226, September 1999.

⁶ Pub. L. No. 105-277, sec. 101 (c), 112 Stat. 2681, 2681-122, October 21, 1998.

appropriation accounts. The District of Columbia Appropriation Act, 2000, provides a “Federal Payment to the District of Columbia Courts” to fund salaries and expenses of court operations and capital improvements. The Act separately appropriates funds for “Defender Services in the District of Columbia Courts” to fund the CJA, CCAN, and Guardianship programs.

Congress also included two provisos in the Defender Services appropriation to reduce the likelihood that there would be unpaid CJA, CCAN, and Guardianship Program obligations at the end of fiscal year 2000. The first proviso authorizes D.C. Courts to use the “Federal Payment to the District of Columbia Courts” account to make payments for the same purposes that the Defender Services account is available. The second proviso provides that in addition to the Defender Services appropriation, D.C. Courts may use interest earned on the fiscal year 1999 Federal Payment made to the District of Columbia Courts and the fiscal year 2000 “Federal Payment to the District of Columbia Courts” account to pay prior year obligations.⁷ Congress included these provisos because of concern that D.C. Courts had underestimated the amount needed to pay obligations carried over from fiscal year 1999 and to be incurred in fiscal year 2000, and that the planned fiscal year 2000 appropriation for Defender Services would be inadequate to meet these needs.⁸

“Applicable Appropriation” for Purposes of Section 108 of the Continuing Resolution

From October 1 to November 28, 1999, D.C. Courts received funding for fiscal year 2000 through a continuing resolution. During this period, D.C. Courts used authority provided by the continuing resolution to pay some fiscal year 1999 obligations for attorney services provided under the CJA, CCAN, and Guardianship programs. Section 108 of the continuing resolution clearly provides that expenditures made under the continuing resolution should subsequently be charged to the applicable appropriation, fund, or authorization when the fiscal year 2000 appropriation bill is enacted. Accordingly, once the District of Columbia Appropriation Act, 2000, became law on November 29, 1999, D.C. Courts had to determine the applicable appropriation, fund, or authorization for paying the fiscal year 1999 obligations. D.C. Courts has decided to charge the payments for prior year obligations made from October 1 to November 28 against the Defender Services appropriation account.

⁷ The proviso authorizes the use of these funding sources only “if the Comptroller General certifies that the amount of obligations lawfully incurred for such payments during fiscal year 1999 exceeds the obligational authority otherwise available for making such payments.” We made the certification to the Joint Committee on Judicial Administration, D.C. Courts. DC Courts: Review of Fiscal Year 1999 Defender Services Obligations, B-284464, January 27, 2000.

⁸ H.R. Rep. No. 106-299 (1999)(conference report on H.R. 2587); 145 Cong. Rec. H111097 (daily ed. October 28, 1999) (statement of Chairman Istook on H.R. 3064). For reasons not relevant here, the President vetoed H.R. 2587 and H.R. 3064, the first two District of Columbia appropriations bills for fiscal year 2000 passed by Congress.

According to an apportionment schedule dated December 30, 1999, the Office of Management and Budget apportioned \$6 million from the Defender Service account for fiscal year 1999 obligations based on D.C. Courts October 1999 estimates. The District of Columbia Appropriation Act, 2000, as illuminated by its legislative history, supports a conclusion that the Defender Services funds are the primary source of funds for paying CJA, CCAN, and Guardianship Program attorneys. However, the first proviso in the “Federal Payment to the District of Columbia Courts” account also made it available to pay for fiscal year 1999 defender services. Accordingly, the “Federal Payment to the District of Columbia Courts” account also may be considered an applicable appropriation for paying the fiscal year 1999 obligations. Therefore, charging the payments for prior year obligations made from October 1 to November 28 against the Defender Services appropriation account is a reasonable, although not the only, application of the law.

Payments Chargeable to the Two Fiscal Year 2000 Appropriations

After November 28, 1999, D.C. Courts paid some fiscal year 1999 obligations to CJA, CCAN, and Guardianship Program attorneys under authority provided by the District of Columbia Appropriation Act, 2000. D.C. Courts decided to charge these payments against the interest earned on the fiscal year 1999 “Federal Payment to the District of Columbia Courts.” The District of Columbia Appropriation Act, 2000, authorized using the interest, but only to pay fiscal year 1999 obligations.⁹ Thus if it is not used for prior year obligations, it may not be used at all. Accordingly, using all the interest first is not only authorized, but good fiscal management because it reduces the amount of the fiscal year 2000 appropriations for “Defender Services in the District of Columbia Courts” and “Federal Payment to the District of Columbia Courts” that will be needed to pay prior year obligations.

We agree that the District of Columbia Appropriation Act, 2000, makes both the fiscal year 2000 “Defender Services in District of Columbia Courts” and “Federal Payment to the District of Columbia Courts” accounts available for payments of prior year obligations made after November 28. D.C. Courts suggests that after using the interest, it will charge the Defender Services account rather than the Federal Payment account. After we issued the necessary certification, the second proviso

⁹ D.C. Courts discussed the use of interest for fiscal year 1999 obligations only in the context of payments made after November 28, 1999. Payments for fiscal year 1999 obligations made between October 1 and November 28 under the continuing resolution also could have been charged against the interest. After enactment of the District of Columbia Appropriation Act, 2000, and our issuance of the certification provided for by the act, the interest became an applicable appropriation, fund, or authorization for purposes of charging expenditures pursuant to section 108 of the continuing resolution. Whether the interest is used to cover fiscal year 1999 obligations paid between October 1 and November 28 or those paid after November 28 has no practical effect under the circumstances here.

authorizes, but does not require, D.C. Courts to use the Federal Payment account to pay prior year obligations. As with the payments made from October 1 to November 28 discussed above, charging the payments for prior year obligations made after November 28 against the Defender Services appropriation account is a reasonable, although not the only, application of the law.

Antideficiency Act

D.C. Courts suggests that after using the fiscal year 2000 Defender Services appropriation to pay prior year obligations not covered by the interest, the Defender Services appropriation will be inadequate to pay all fiscal year 2000 obligations for the CJA, CCAN, and Guardianship programs. You therefore ask whether D.C. Courts may continue to incur obligations for the CJA, CCAN, and Guardianship programs and would violate the Antideficiency Act if D.C. Courts does not use the Federal Payment account to pay fiscal year 2000 obligations after exhausting the Defender Services appropriation.

We previously agreed with D.C. Courts that obligations for attorneys appointed under the CJA, CCAN, and Guardianship programs are mandatory in nature; and we stated that when a law establishes an appropriation for the sole purpose of paying obligations of a mandatory nature, overobligating the appropriation does not violate the Antideficiency Act. D.C. Courts: Planning and Budgeting Difficulties During Fiscal Year 1998, GAO/AIMD/OGC-99-226, September 1999, p. 12 (citing 65 Comp. Gen. 4 (1985)). Accordingly, the Antideficiency Act does not affect the authority of the D.C. Courts to appoint attorneys under the CJA, CCAN, and Guardianship programs and record the resulting obligations against the fiscal year 2000 appropriation for “Defender Services in District of Columbia Courts.”

We also believe that no violation of the Antideficiency Act would result if D.C. Courts does not use the Federal Payment account to pay obligations for the CJA, CCAN, and Guardianship programs after exhausting the Defender Services appropriation. The fiscal year 2000 appropriation for “Defender Services in District of Columbia Courts” authorizes but does not require D.C. Courts to use the Federal Payment account for attorney payments. Further, the Federal Payment’s primary purpose is to fund D.C. Courts operations and capital improvements. The Antideficiency Act does not require an agency to exercise discretionary authority to use funds in one appropriation in order to pay mandatory obligations properly chargeable against a different appropriation.¹⁰

¹⁰ This is not like the Antideficiency Act issue we addressed in D.C. Courts: Planning and Budgeting Difficulties During Fiscal Year 1998, GAO/AIMD/OGC-99-226, September 1999. Unlike fiscal year 2000, fiscal year 1998 funding for mandatory obligations under the CJA, CCAN, and Guardianship programs was included in a larger, lump sum appropriation for operating D.C. Courts, which was overobligated. We found an Antideficiency Act violation because the overobligations resulted from discretionary spending, not from unexpected mandatory spending. Here, instead of (...continued)

Congress provided D.C. Courts with considerable discretion to reduce, if not eliminate, the risk that fiscal year 2000 obligations for CJA, CCAN, and Guardianship attorneys would not be timely paid. Charging the fiscal year 2000 Defender Services appropriation with all prior year obligations not paid with interest reduces the amount of the Defender Services appropriation available for fiscal year 2000 obligations. D.C. Courts may decide not to use the Federal Payment to pay any prior year obligations for CJA, CCAN, and Guardianship attorneys until the Defender Services appropriation is exhausted. While this is permissible as a matter of law, it delays use of the Federal Payment for CJA, CCAN, and Guardianship attorneys until late in the fiscal year, at which point the amount of the Federal Payment not needed for basic operating needs of the D.C. Courts may be relatively small.

While it may be difficult to accurately quantify the amount necessary to supplement the Defender Services account, D.C. Courts need to anticipate possible exhaustion of the Defender Services account and develop plans to reduce the likelihood that it will be unable to pay some CJA, CCAN, and Guardianship obligations at the end of fiscal year 2000. For example, D.C. Courts could identify low priority fiscal year 2000 spending for general operations that can either be canceled or postponed and reserve the amount to pay CJA, CCAN, and Guardianship obligations before or after the Defender Services account is exhausted. D.C. Courts could manage the amount of budget authority reserved as a contingency in the event needed to make attorney payments and, if not needed, release it to fund postponed spending. We will separately respond to the question on the government-wide rescission in the near future. I trust this otherwise responds to your inquiry.

Sincerely yours,

Robert P. Murphy
General Counsel

(...continued)

one appropriation account available to cover the mandatory and discretionary obligations, we have two separate appropriations, one of which is available for mandatory obligations and against which the overobligation would be charged.