



United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Implementation of the Library of Congress FEDLINK Revolving Fund

File: B-288142

Date: September 6, 2001

DIGEST

The Library of Congress (LOC) has requested an advance decision concerning the Library of Congress Fiscal Operations Improvement Act of 2000, Pub. L. No. 106-481, 114 Stat. 2187 (2000), as it applies to the Federal Library and Information Network (FEDLINK) revolving fund. LOC asks whether Public Law 106-481 authorizes it to retain in the FEDLINK revolving fund, without fiscal year limitation, deobligated, unexpended balances of customer funds advanced to FEDLINK with orders for services, placed prior to or after the effective date of Public Law 106-481, to cover the cost of customer orders in future fiscal years. We conclude that Public Law 106-481 will not permit the Library to retain any deobligated, unexpended fiscal year appropriations advanced by a customer agency that the Library determines, after filling the customer's order and reconciling the customer's account, is not needed for costs the Library incurred in filling the order.

DECISION

The Library of Congress (LOC) has requested an advance decision concerning its proposed implementation of the Library of Congress Fiscal Operations Improvement Act of 2000, Pub. L. No. 106-481, 114 Stat. 2187 (2000), as it applies to the Federal Library and Information Network (FEDLINK) revolving fund. Specifically, LOC asks whether Public Law 106-481 authorizes it to retain in the revolving fund, without fiscal year limitation, deobligated, unexpended balances of customer funds advanced to FEDLINK with orders for services, placed prior to or after the effective date of Public Law 106-481, to cover the cost of customer orders in future fiscal years. For the reasons discussed below, the Act does not provide the Library with the authority to retain deobligated, unexpended balances without fiscal year limitation.

BACKGROUND

The LOC has operated FEDLINK under the authority of the Economy Act, 31 U.S.C. § 1535, for over 25 years. FEDLINK is a cooperative procurement, accounting, and training program designed to provide access to online databases, periodical subscriptions, books and non-print materials and other library and information support services. Under the program, LOC has negotiated contracts with commercial suppliers to take advantage of volume discounts. In addition, FEDLINK provides an accounting of customer agency funds, training in the use of library systems, and management of federal library and information services.

Because FEDLINK customer agencies make payments in advance, the payments are based on estimates rather than actual costs. Frequently, FEDLINK customer agencies transfer payments to the Library greater than the estimated cost to ensure coverage of any cost overruns that might occur. Upon receipt of customer payments, the Library enters into an agreement with vendors, obligating the payments as it receives them. Any amount not obligated for FEDLINK services or contracts before the end of the period of availability of the customer agency funds is returned to the agency as required by section 1535(d).¹ After the Library completes performance of a customer agency's order, often after the end of a fiscal year, it closes the customer agency's account, and reconciles all liabilities associated with the account. At that time, an excess of funds may remain, sometimes, for example, because of over-budgeting by the customer, and the Library deobligates this amount.² Currently, the Library returns these deobligated, unexpended balances to the customer for credit to the proper appropriation account.

Congress enacted Public Law 106-481 to improve the financial management of the Library and to increase savings for the LOC and its FEDLINK customer agencies. 146 Cong. Rec. H10015-02, H10017. Section 103 of Public Law 106-481 established a revolving fund within the LOC for FEDLINK and the Federal Research Program.³ By virtue of section 105, the revolving fund becomes available to the Library at the

¹ Section 1535(d) of title 31, U.S.C., requires an agency to deobligate a fixed-year appropriation at the end of the fiscal year charged to the extent the performing agency has not performed or incurred valid obligations against such budget authority. 39 Comp. Gen. 317 (1959); 34 Comp. Gen. 418 (1955).

² The process of account reconciliation, according to the Library, can take up to 5 years. See 31 U.S.C. § 1552(a).

³ Public Law 106-481 established two other revolving funds, for (1) audio and video duplication services associated with the national audiovisual conservation center, and (2) a gift shop, decimal classification development, and photo duplication services.

beginning of fiscal year 2002, i.e., October 1, 2001. As relevant here, section 103(b) directs LOC to maintain separate accounts within the revolving fund for FEDLINK and the Federal Research program. Section 103(c)(1) authorizes the Librarian to charge a fee for FEDLINK services and deposit such fees into the FEDLINK account. The FEDLINK revolving fund is intended to be self-sufficient and to use deposits to cover the costs of providing FEDLINK products and services.

The question that LOC has asked us to address arises in two contexts—for orders placed after October 1, 2001, and for orders placed before October 1 but not reconciled until after October 1.⁴ Section 103(c)(2) authorizes advance payments for orders placed after October 1:

“Participants in the FEDLINK program and the Federal Research program shall pay for products and services of the program by advance of funds—
(A) if the Librarian determines that amounts in the Revolving Fund are otherwise insufficient to cover the costs of providing such products or services; or
(B) upon agreement between participants and the Librarian.”

Section 103(d)(1)(A) requires the Librarian to deposit advances into the revolving fund.

Section 103(d)(2) addresses the deposit of funds during the transition of the FEDLINK program from an Economy Act activity to a revolving fund activity, and is relevant to disposition of amounts deobligated as a result of reconciling orders placed before October 1:

“Notwithstanding section 1535(d) of title 31, United States Code, the Librarian shall transfer to the appropriate account of the revolving fund under this section the following:
(A) Any obligated, unexpended balances existing as of the date of the transfer which are attributable to the FEDLINK program or the Federal Research program.”

The LOC would like to treat any deobligated, unexpended balances associated with pre- or post-effective date customer orders as remaining available to the Library and its customers without fiscal year limitation, notwithstanding any fiscal year limit otherwise imposed upon the customer’s appropriation from which the funds were advanced. In support of its position, LOC cites section 103(e):

⁴ LOC advises that the issues are the same for FEDLINK and the Federal Research program. For ease of reference, we address only the implementation of the FEDLINK program.

“Amounts in the accounts of the revolving fund under this section shall be available to the Librarian, in amounts specified in appropriations Acts and without fiscal year limitation, to carry out the program covered by each such account.”

The LOC views its interpretation of section 103(e) as “the key to new flexibility and cost savings for FEDLINK customer agencies.” Letter from General Counsel, LOC, at p. 2, dated June 6, 2001. LOC would like to use deobligated, unexpended balances to pay for account deficits or rejected invoices of orders of later fiscal years placed by the customer agency, modifications to current delivery orders to cover known requirements, and new delivery orders for needed services.⁵

ANALYSIS

Technically, fees for services under the FEDLINK program have two components: (1) advances the customer agency provides the Library to cover the customer’s order for goods and services, and (2) reimbursements to the Library for the accounting services and its other administrative costs, both direct and indirect, of operating the program. The Library acknowledges that at the time it receives the advances, or what it refers to as “service dollars,” it does not consider that amount to be “earned.” The Library does consider itself as having earned the reimbursements for accounting services and administrative costs when they are received. This is particularly important to the Library because it factors into its assessment of administrative costs the need to build a reserve over the years to finance future improvements and to replace outdated equipment. The Library may not necessarily spend such amounts in the fiscal year collected, waiting until it has accumulated a sufficient reserve. Such costs are legitimate business costs to the FEDLINK program, and acting today to accumulate a reserve for such purposes is prudent. Because the Library intends for these amounts to reimburse the Library for the administrative costs of running the program rather than as an advance to cover the customer’s order for goods and services, we agree with the Library’s conclusion that it may retain these amounts without fiscal year limitation. Our decision, therefore, focuses on the so-called “service dollars”, or advances, and whether the Library has the authority to retain without fiscal year limitation the deobligated balances of fiscal (or fixed) year funds a customer agency had advanced for one order for use in defraying costs of that customer’s future year orders.

⁵ The LOC also proposes the following new procedures: (1) no longer requiring an annual contract closeout, refund and redeposit of no-year balances for customer agencies funded with no-year appropriations, (2) accepting end-of-year orders from customer agencies and delivering services in the following fiscal year, and (3) using unobligated unexpended balances to pay for account deficits or rejected invoices under other delivery orders of the same fiscal year. These procedures are not at issue.

When, as here, an agency withdraws funds from its appropriation and makes them available for credit to another appropriation, that amount is available for obligation only for the same time period as the appropriation from which the funds were withdrawn:

“An amount available under law may be withdrawn from one appropriation account and credited to another or to a working fund only when authorized by law. Except as specifically provided by law, an amount authorized to be withdrawn and credited is available for the same purpose and subject to the same limitations provided by the law appropriating the amount.” 31 U.S.C. § 1532.

Because they are subject to the same limitations as the appropriation from which they were withdrawn, the withdrawn amounts retain their time character and do not assume the time character of the appropriation to which they are credited. See 31 Comp. Gen. 109, 114-15 (1951); see also OMB Cir. A-34, § 11.2(c) (1995) (“Amounts transferred are available for obligation only for the same period as the original appropriation, unless the language authorizing the transfer provides for a change.”). Consequently, unless otherwise specifically provided by law, amounts withdrawn from a fiscal year appropriation and credited to a no year revolving fund, such as the FEDLINK revolving fund, are available for obligation only during the fiscal year of availability of the appropriation from which the amount was withdrawn. See, e.g., 55 Comp. Gen. 1012 (1976); 23 Comp. Gen. 668 (1944).

We addressed this situation in 1944 with regard to a no year revolving fund called the Navy Procurement Fund. 23 Comp. Gen. 668 (1944). The law establishing the fund authorized the Navy to advance amounts from other Navy appropriations to the revolving fund when placing orders with the revolving fund. The Navy believed that because the revolving fund was not subject to fiscal year limitation, advances made to the fund, whether from annual or no year appropriations, were available until expended. We concluded that “the mere fact that advancements from the various naval appropriations to the Fund are authorized to be made does not operate ipso facto to effect such a result.” Id. at 672. We explained that if that were the case, “the action of the Congress in making annual appropriations for a fiscal year could be nullified completely,” and we stated, “that such a result was contemplated by the Congress cannot seriously be contended.” Id.

Section 1532 is a significant control feature protecting Congress’ constitutional prerogatives of the purse. The Congress imposes accountability on the Executive’s use of federal funds and exercises its oversight through the appropriations process. Appropriations constitute legal authority granted to the Executive by Congress to incur obligations and to make disbursements for the purposes, up to the amount and during the time periods specified by Congress in appropriation acts. Placing time limits on the availability of appropriations is a fundamental means of congressional

control because it permits Congress to periodically review a given agency's programs and activities.

Of course, the Congress, in legislation, can provide for the modification or elimination of previously enacted time limitations, including the conversion of fiscal (or fixed) year funds to no year funds. Indeed, section 1532 recognizes that possibility with the proviso "except as specifically provided by law." Given the significance of time restrictions in preserving congressional power of the purse, we look for clear legislative expressions of congressional intent before we will interpret legislation to override the time limitations that Congress, through the appropriations process, imposes on an agency's use of funds.

The Library argues that the language of section 103(e) overrides any time restrictions imposed on the agency appropriation from which amounts were advanced to the FEDLINK revolving fund. Section 103(c), the Library points out, authorizes the Library to charge fees for FEDLINK services (and permits the Library to require advances), and requires the Library to deposit fees collected into the revolving fund. See also § 103(d)(1)(A). Section 103(e) specifies that amounts in the revolving fund are available to the Librarian "without fiscal year limitation" to carry out the FEDLINK program. The Library asserts that this language of section 103(e) acts to remove any time restrictions on any amounts credited to the revolving fund. We disagree.

In our opinion, section 103(e) does not clearly indicate that Congress intended unobligated balances of agency advances to be available without fiscal year limitation regardless of the time restrictions imposed on the appropriation from which the advances were withdrawn. As noted above, until the amounts are "earned," they are not part of the corpus of the fund that is available to the Librarian "without fiscal year limitation." Accordingly, without more, we are unwilling to read section 103(e) as the Library would have us read it. For example, we contrast the language of section 103(e) with language in 10 U.S.C. § 2865, a statute offering incentives to the Defense Department to encourage energy savings at military installations. Section 2865(b) permits the Secretary of Defense, in certain circumstances, to extend the time period of availability of fiscal year funds:

"Two-thirds of the portion of the funds appropriated to the Department of Defense for a fiscal year that is equal to the amount of energy cost savings realized by the Department . . . shall remain available for obligation . . . through the end of the fiscal year following the fiscal year for which the funds were appropriated, without additional authorization or appropriation."

The language of section 2865(b) clearly evidences congressional permission for an agency to alter a previously enacted time restriction imposed on appropriated funds. We find no comparable expression in section 103(e).

Consequently, we conclude that section 103 will not permit the Library to retain any deobligated, unexpended fiscal (or fixed) year appropriations advanced by a customer agency that the Library determines, after filling the customer's order and reconciling the customer's account, is not needed for costs the Library incurred in filling the order. That the Library would reserve the deobligated amounts to cover future year orders placed by the customer agency which advanced the funds is beside the point. The Library's proposal would violate section 1532 as well as the time constraints legislatively imposed on the appropriation from which the advance was made.

Anthony H. Gamboa
General Counsel