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United States General Accounting Office
Washington, DC 20548

B-290659

September 20, 2002

William H. Taft, IV, Esq.
Legal Adviser
U.S. Department of State

Subject: Transfer of funds originally allocated for the United Nations Population Fund

Dear Mr. Taft:

As you may be aware, in response to a congressional inquiry, we were asked to consider whether the Department of State had impounded, and failed to so report, \$34 million of a fiscal year 2002 lump sum appropriation for "International Organizations and Programs." The State Department was authorized to make up to \$34 million of that lump sum available for the United Nations Population Fund (UNFPA), but only after ensuring that UNFPA practices satisfied a number of statutory conditions. Pub. L. No. 107-115, § 576, 115 Stat. 2168 (January 10, 2002). In a statement issued July 22, 2002, the State Department reported that it had decided not to fund UNFPA for program-related reasons.

After reviewing the State Department information provided to us, as well as discussions with State Department officials, we issued an opinion letter to Senator Barbara Boxer on July 24, 2002 (copy enclosed). We concluded that since the State Department delayed obligating the funds because of uncertainty whether the statutory conditions were met, the delay did not constitute an impoundment. We noted, however, that the State Department must release the funds with sufficient time remaining in the fiscal year to obligate them and stated that we would continue to monitor the use of these funds.

In this regard, we recently learned that the State Department formally notified Congress by letter dated August 28, 2002, that the President intends to transfer \$34 million in Fiscal Year 2002 International Organizations and Programs (IO&P) funds, originally allocated for the United Nations Population Fund, to the Child Survival and Health Programs Fund. After reviewing the letter and attached justification, we have the following questions:

1. The August 28, 2002 letter to the Chairman, Committee on Appropriations, United States Senate, from the Acting Assistant Secretary for Legislative Affairs, Department of State, constituted a notification of the intent to transfer the funds (\$34 million) from the IO&P account to the Child Survival and Health Programs Fund. Has the Department in fact made this transfer?
2. The authority for the transfer cited in the letter is contained in 22 U.S.C. § 2360(a), which provides in pertinent part:

“Whenever the President determines it to be necessary for the purposes of this chapter, *not to exceed 10 per centum of the funds made available for any provision of this chapter* . . . may be transferred to, and consolidated with, the funds made available for any provision of this chapter”
(Emphasis added.)

Since authority for International Organizations and Programs and the Child Survival and Health Programs Fund are both found in the cited chapter, funds from IO&P may be transferred into the Child Survival and Health Programs Fund. However, as the emphasized language requires, the amount transferred from IO&P must not exceed 10% of the total lump sum appropriated for IO&P. The total amount appropriated for IO&P in fiscal year 2002 is \$208,500,000. By our calculations, the amount to be transferred, \$34,000,000, is 16.3% of \$208,500,000. Therefore, the proposed transfer is 6.3% over the transfer amount allowable under 22 U.S.C. § 2360. In this case, up to \$20,850,000 would be allowable for transfer and the additional \$13,150,000 would be an improper transfer. Given this scenario:

- Is there some other transfer authority that would cover the 6.3%?
 - If not, when does the Department plan to move the 6.3% back to the original IO&P appropriation? That amount is legally available to IO&P and can still be obligated before the end of the fiscal year. What are your intentions regarding this money?
 - If the money has already been transferred, has the Department obligated any of the 6.3% while it was in the Child Survival and Health Programs Fund? If yes, when does the Department plan to shift that obligation from the 6.3% money to other funds available within the Child Survival and Health Programs appropriation? If insufficient funds are available in the Child Survival and Health Programs Fund to cover an obligation of the 6.3% IO&P money, the Department would have to report such an obligation as an Antideficiency Act violation (see 31 U.S.C. § 1341) since it would be in excess of available funds in the Child Survival and Health Programs Fund.
3. The 10% of the IO&P account properly transferred to the Child Survival and Health Programs Fund is fiscal year 2002 money. Have you obligated this money and, if not, when will you obligate the transferred 10% IO&P money?

Since it is nearly the end of the 2002 fiscal year, we would appreciate receiving your response to our inquiries by September 25, 2002. If you have any questions, please call Thomas Armstrong or Carlos Diz of my staff at 202-512-5644.

Sincerely yours,

/signed/

Anthony Gamboa
General Counsel

Enclosure