



G A O

Accountability * Integrity * Reliability

United States General Accounting Office
Washington, DC 20548

B-291241

October 8, 2002

The Honorable Herb Kohl
Chairman
The Honorable Thad Cochran
Ranking Minority Member
Subcommittee on Agriculture, Rural
Development, & Related Agencies
Committee on Appropriations
United States Senate

The Honorable Henry Bonilla
Chairman, Subcommittee on Agriculture,
Rural Development, FDA & Related Agencies
Committee on Appropriations
House of Representatives

Subject: Funding for Technical Assistance for Conservation Programs Enumerated in
Section 2701 of the 2002 Farm Bill

This responds to your letters of August 30, 2002 (from Chairman Bonilla) and
September 16, 2002 (from Chairman Kohl and Ranking Minority Member Cochran)
requesting our opinion on several issues relating to funding technical assistance for
the wetlands reserve program (WRP) and the farmland protection program (FPP).
You asked for our views on the following issues:

- (1) Does the annual limit on fund transfers imposed by 15 U.S.C. § 714i (known
as the section 11 cap) apply to Commodity Credit Corporation (CCC) funds
used for technical assistance provided the WRP and FPP as authorized by the
Farm Security and Rural Investment Act of 2002 (2002 Farm Bill)?
- (2) Is the Department of Agriculture's Conservation Operations appropriation
available for technical assistance for the WRP and the FPP? and

(3) Did the Office of Management and Budget's (OMB) July 18, 2002, decision not to apportion funds for technical assistance for the WRP and the FPP violate the Impoundment Control Act.¹

For the reasons given below, we conclude that:

(1) the section 11 cap does not apply to funds for technical assistance provided for the conservation programs enumerated in section 3841, title 16, U.S.C., as amended by section 2701 of the 2002 Farm Bill;

(2) the Conservation Operations appropriation is not an available funding source for the WRP and the FPP operations and associated technical assistance; and

(3) OMB's failure to initially apportion WRP and FPP funds was a programmatic delay and did not constitute an impoundment under the Impoundment Control Act. Further, since OMB has approved recently submitted apportionments for these two programs, and since budget authority for both the WRP and the FPP was made available for obligation, there was no impoundment of funds in fiscal year 2002.

BACKGROUND

Section 2701 of the 2002 Farm Bill, Pub. L. No. 107-171, 116 Stat. 278, 279 (enacted on May 13, 2002) (codified at 16 U.S.C. §§ 3841 and 3842) amended section 1241 of the Food Security Act of 1985, 16 U.S.C. § 3841, to provide that the Secretary of Agriculture (Secretary) shall use the funds of the CCC to carry out seven conservation programs, including the provision of technical assistance to, or on behalf of, producers. The WRP and the FPP are among the conservation programs named in the 2002 Farm Bill that are to be funded with CCC funds.

In its June 19, 2002, apportionment request, the Department of Agriculture (Agriculture) asked OMB to apportion a total of \$587,905,000 in CCC funds to the Natural Resources Conservation Service (NRCS) for both financial and technical assistance related to section 3841 conservation programs. SF 132, Apportionment and Reapportionment Schedule for Farms Security and Rural Investment Programs, Account No. 1221004, July 18, 2002. Of the amount requested, Agriculture designated

¹ In addition to the WRP and the FPP, Chairman Kohl and Senator Cochran asked about the Conservation Reserve Program (CRP) as one of the programs for which OMB had failed to apportion funds. The letter arrived after we had already received a response to a detailed set of inquiries sent to OMB and Agriculture regarding the WRP and the FPP. In the interest of time, we did not send a second letter asking OMB to address the CRP program. However, the CRP is covered by the same general authorities applicable to the WRP and the FPP. The CRP is also a program authorized by the Food Security Act of 1985, as amended. Therefore, to the extent funds were not apportioned for the CRP under the same circumstances as the FPP and the WRP, the same legal principles outlined herein should apply.

\$68.7 million for technical assistance to be provided under the conservation programs. In its July 18, 2002, apportionment, OMB apportioned all of the funds for financial and technical assistance requested for the conservation programs, except \$22.7 million designated for WRP and FPP technical assistance. *Id.* OMB reports that it did not apportion funds for WRP and FPP technical assistance at that time, because OMB believed that the section 11 cap, 15 U.S.C. § 714i, limited the amount of funds that could be transferred from CCC to other government agencies for technical assistance associated with the section 3841 conservation programs, and that CCC funding of WRP and FPP technical assistance would exceed the section 11 cap. Letter from Philip J. Perry, General Counsel, OMB, to Susan A. Poling, Managing Associate General Counsel, GAO, September 16, 2002. In discussions with Agriculture regarding the use of CCC funds in excess of the section 11 cap for section 3841 technical assistance, OMB indicated to Agriculture that either CCC funds subject to the section 11 cap or Agriculture's Conservation Operations appropriation could be used to fund this technical assistance. *Id.*²

OMB reports that Agriculture recently submitted a new apportionment request for \$5.95 million for WRP technical assistance (as well as the Conservation Reserve Program) which OMB approved on September 3, 2002. *Id.* OMB also reports that Agriculture submitted a new apportionment request for an additional \$2 million in FPP financial assistance, which OMB approved on September 11, 2002, bringing the total apportionment for the FPP to the \$50 million authorized by section 3841. *Id.*

DISCUSSION

1. Section 11 Cap

The question whether the section 11 cap (15 U.S.C. § 714i) applies to technical assistance provided through the conservation programs authorized by 16 U.S.C. §§ 3481, 3482, is one of statutory construction. It is a well-established rule of statutory construction that statutes should be construed harmoniously so as to give maximum effect to both whenever possible. B-259975, Sept. 18, 1995, 96-1 CPD ¶ 124; B-258163, Sept. 29, 1994. Based upon the language of the relevant statutes, we can read the statutes in a harmonious manner, and, in doing so, we conclude that the section 11 cap does not apply to technical assistance provided under the section 3841 conservation programs.

The section 11 cap is set forth in 15 U.S.C. § 714i, which states, in pertinent part:

“The Corporation may, with the consent of the agency concerned, accept and utilize, on a compensated or uncompensated basis, the officers, employees, services, facilities, and information of any agency of the Federal

² The Department of Agriculture concurred with OMB's responses to our substantive questions regarding these issues. Letter from Nancy Bryson, General Counsel, Department of Agriculture to Susan A. Poling, Managing Associate General Counsel, GAO, September 16, 2002.

Government, including any bureau, office, administration, or other agency of the Department of Agriculture
The Corporation may allot to any bureau, office, administration, or other agency of the Department of Agriculture or transfer to such other agencies as it may request to assist it in the conduct of its business any of the funds available to it for administrative expenses. . . .
After September 30, 1996, the total amount of all allotments and fund transfers from the Corporation under this section (including allotments and transfers for automated data processing or information resource management activities) for a fiscal year may not exceed the total amount of the allotments and transfers made under this section in fiscal year 1995.”

(Emphasis added.) We note that the section 11 funding limitation applies only to funds transferred by the CCC to other agencies under the authority of section 11.

The 2002 Farm Bill, which amended subsection (a) of section 3841, directs the Secretary to use CCC funds to carry out the WRP and the FPP and five other conservation programs, including the provision of technical assistance as part of these programs. As amended, 16 U.S.C. § 3841 provides, in pertinent part, as follows:

“For each of fiscal years 2002 through 2007, the Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out the following programs under subtitle D (including the provision of technical assistance):

* * *

(2) The wetlands reserve program under subchapter C of chapter 1.

* * *

(4) The farmland protection program under subchapter B of chapter 2, using, to the maximum extent practicable—
(A) \$50,000,000 in fiscal year 2002 * * * ”

16 U.S.C. § 3841(a) (emphasis added). Section 3841 provides independent authority for the provision of technical services to these programs.

The 2002 Farm Bill also added a new subsection (b) to section 3841. It is this provision that has generated the current dilemma: “Nothing in this section affects the limit on expenditures for technical assistance imposed by section 11 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714i).” 16 U.S.C. § 3841(b). When read in the context of section 11, section 3841(b) makes clear that the section 11 cap applies only to funds transferred under section 11. Section 11 specifically imposes the cap on “fund transfers . . . under this section.” Section 11 by its terms

clearly does not apply to amounts transferred under other authority, such as section 3841(a). And we read section 3841(b) to make plain that, while the section 11 cap continues to apply to amounts transferred under section 11, it does not apply to amounts transferred by section 3841(a)

Accordingly, reading the above provisions harmoniously, we conclude that: (1) the section 11 cap by its own terms applies only to CCC funds transferred to other agencies under section 11; (2) 16 U.S.C. § 3841(a) provides independent authority for the Secretary to fund the seven conservation programs named in that section out of CCC funds; and (3) 16 U.S.C. § 3841(b) makes it clear that, while the section 11 cap still applies to funds transferred by the CCC to other government agencies for work performed pursuant to the authority of section 11, the section 11 cap does not apply to the seven conservation programs that are funded with CCC funds under the authority of 16 U.S.C. § 3841(a).

Our conclusion that the section 11 cap does not apply to the seven conservation programs of section 3841(a) is confirmed by a review of the legislative history of the 2002 Farm Bill, which shows that the Congress was attempting to make clear that section 3841 technical assistance was not affected by the section 11 cap. The legislative history to the 2002 Farm Bill unambiguously supports the view that the Congress did not intend the section 11 cap to limit the funding for technical assistance provided under the section 3841 conservation programs. In discussing the cap, the Conference Committee stated: “The Managers understand the critical nature of providing adequate funding for technical assistance. For that reason, technical assistance should come from individual program funds.” H.R.Conf. Rep. No. 107-424 at 497 (May 1, 2002) (emphasis added). In discussing administration and funding of these conservation programs, the Conference Committee further explained that:

“The Managers provide that funds for technical assistance shall come directly from the mandatory money provided for conservation programs under Subtitle D. (Section 2701)

In order to ensure implementation, the Managers believe that technical assistance must be an integral part of all conservation programs authorized for mandatory funding. Accordingly, the Managers have provided for the payment of technical assistance from program accounts. The Managers expect technical assistance for all conservation programs to follow the model currently used for the EQIP whereby the Secretary determines, on an annual basis, the amount of funding for technical assistance. Furthermore, the Managers intend that the funding will cover costs associated with technical assistance, such as administrative and overhead costs.”

H.R. Conf. Rep. No. 107-424 at 498-499 (2002) (Emphasis added).

The “EQIP model” that the conferees referred to was established in the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. No. 104-127, Subtitle E, § 341, 110 Stat. 888, 1007 (1996) (1996 Farm Bill). For fiscal years 1996 through 2002, the Secretary was to use CCC funds to carry out the CRP, WRP and the Environmental Quality Incentives programs (EQIP).³ *Id.* (Former 16 U.S.C. § 3841 (a)). More specifically, the 1996 Farm Bill authorized the Secretary to use CCC funds for technical assistance (as well as cost-share payments, incentive payments, and education) under the EQIP program. 16 U.S.C. § 3841(b). *Id.*⁴ While the 1996 Farm Bill authorized the use of CCC funds to carry out the CRP and WRP programs, it did not specifically authorize the funding of technical assistance out of program funds as it did for EQIP.

Importantly, five days before enactment of the 2002 Farm Bill when the Senate was considering the Conference Report on the Farm Bill, a colloquy among Senators Harkin, Chairman, Senate Agriculture, Nutrition and Forestry Committee, Lugar, its Ranking Republican Member, and Cochran, an Agriculture Committee member,⁵ makes it unmistakably clear that the section 11 cap was not meant to apply to the provision of technical assistance with respect to any of the conservation programs named in 16 U.S.C. § 3841(a):

“Mr. LUGAR. Mr. President, I wish to engage in a colloquy with the distinguished Senators from Iowa and Mississippi. Mr. President, the 1996 farm bill contained a provision which led to serious disruption in the delivery of conservation programs. Specifically, the 1996 act placed a cap on the transfers of Commodity Credit Corporation funds to other government entities. Is the distinguished Senator from Iowa aware of the so called "section 11 cap?"

Mr. HARKIN. I thank the Senator from Indiana for raising this issue, because it is an important one. The Section 11 cap prohibited expenditures by the Commodity Credit Corporation beyond the Fiscal Year 1995 level to

³ EQIP is a voluntary conservation program for farmers and ranchers that promotes agricultural production and environmental quality as compatible national goals. EQIP offers financial and technical help to assist eligible participants install or implement structural and management practices on eligible agricultural land. <http://www.nrcs.usda.gov/programs/eqip>.

⁴ The 1996 Farm Bill required that for fiscal years 1996 through 2002, 50 percent of the funding available for technical assistance, cost-share payments, incentive payments, and education under EQIP be targeted at practices relating to livestock production.

⁵ Chairman Harkin and Senator Cochran were Managers on the part of the Senate for the Conference Committee on the 2002 Farm Bill.

reimburse other government entities for services. Unfortunately, in the 1996 farm bill, many conservation programs were unintentionally caught under the section 11 cap. As a result, during the past 6 years, conservation programs have had serious shortfalls in technical assistance. There was at least one stoppage of work on the Conservation Reserve Program. The Appropriations Committees have had to respond to the problem ad hoc by redirecting resources and providing emergency spending to deal with the problem. This has been a problem not just in my state of Iowa or in your states of Indiana and Mississippi; it has been a nationwide constraint on conservation.

Mr. COCHRAN. I thank the Chairman for the clarification, and I would inquire whether the legislation under consideration here today will fix the problem of the section 11 cap for conservation programs.

Mr. HARKIN. I thank the Senator from Mississippi for his attention to this important issue. Section 2701 [16 U.S.C. § 3841] of the Farm Security and Rural Investment Act of 2002 recognizes that technical assistance is an integral part of each conservation program. Therefore, technical assistance will be funded through the mandatory funding for each program provided by the bill. As a result, for directly funded programs, such as the Conservation Security Program (CSP) and the Environmental Quality Incentives Program (EQIP), funding for technical assistance will come from the borrowing authority of the Commodity Credit Corporation, and will no longer be affected by section 11 of the CCC Charter Act.

For those programs such as the CRP, WRP, and the Grasslands Reserve Program (GRP), which involve enrollment based on acreage, the technical assistance funding will come from the annual program outlays apportioned by OMB-again, from the borrowing authority of the CCC. These programs, too, will no longer be affected by section 11 of the CCC Charter Act. This legislation will provide the level of funding necessary to cover all technical assistance costs, including training; equipment; travel; education, evaluation and assessment, and whatever else is necessary to get the programs implemented.

Mr. LUGAR. I thank the Chairman for that clarification. With the level of new resources and new workload that we are requiring from the Department, and specifically the Natural Resources Conservation Service, I hear concerns back in my state that program delivery should not be disrupted, and the gentleman has reassured me that it will not.”

148 Cong.Rec. S3979, 4020 (daily ed. May 8, 2002) (emphasis added).

In our view, the Congress intended all funding for the seven conservation programs authorized in section 3841 (§ 2701 of the 2002 Farm Bill), including funding for technical assistance, to be mandatory funding drawn from individual program funds, rather than from CCC’s administrative funds that are subject to the section 11 cap. Accordingly, based on the language of 3841, we conclude that the section 11 cap does not apply to funds for technical assistance provided under the conservation programs enumerated in section 3841.

2. Availability of the Conservation Operations Appropriation

The next issue is whether the Department of Agriculture’s Conservation Operations appropriation is available for technical assistance for the WRP and the FPP. As noted above, this issue arose when OMB advised Agriculture that its Conservation Operations appropriation could be used to fund this technical assistance. For the reasons that follow, we conclude that Agriculture may not use its Conservation Operations appropriation to fund the WRP and FPP.

The fiscal year 2002 Appropriation for the Conservation Operations account provides in pertinent part:

NATURAL RESOURCES CONSERVATION SERVICE CONSERVATION OPERATIONS

“For necessary expenses for carrying out the provisions of the Act of April 27, 1935 (16 U.S.C. 590a–f), including preparation of conservation plans and establishment of measures to conserve soil and water (including farm irrigation and land drainage and such special measures for soil and water management as may be necessary to prevent floods and the siltation of reservoirs and to control agricultural related pollutants); operation of conservation plant materials centers; classification and mapping of soil; dissemination of information; acquisition of lands, water, and interests therein for use in the plant materials program by donation, exchange, or purchase”

Pub. L. No. 107-76, 115 Stat. 704 at 717, 718 (2001). In addition to its availability to carry out the provisions of the Act of April 27, 1935 (16 U.S.C. § 590a-f), the fiscal year 2002 Conservation Operations appropriation is also available to carry out a variety of

other specified programs such as those authorized by 7 U.S.C. § 428a, 7 U.S.C. § 2209b, 7 U.S.C. § 2250a, § 202(c) of title II of the Colorado River Basin Salinity Control Act of 1974 (43 U.S.C. § 1592(c)): section 706(a) of the Organic Act of 1944 (7 U.S.C. § 2225), for employment under 5 U.S.C. § 3109 and 16 U.S.C. § 590e-2. OMB asserts that the language of the Conservation Operations appropriation and the Act of April 27, 1935 cited therein are broad enough to encompass the technical assistance that Agriculture will provide under the WRP, the FPP and the other section 3841 conservation programs. Since the technical services provided by Agriculture under the WRP and the FPP (and other section 3841 conservation programs) fall within the general purposes articulated in the fiscal year 2002 Conservation Operations appropriation, OMB considers the Conservation Operations appropriation as an additional available source of funding for technical assistance provided as part of the section 3841 conservation programs. In other words, the Conservation Operations appropriation is available to continue financing for the FPP and the WRP, when, in OMB's view, the section 11 cap limits the availability of CCC funds for those programs. We do not agree.

First, the Conservation Operations appropriation identifies specific programs that it is available to fund, including the authority to carry out the provisions of the Act of April 27, 1935 (16 U.S.C. § 590a-f) cited by OMB above. However, none of the specific statutory programs identified in the Conservation Operations appropriation include the FPP or the WRP found in 16 U.S.C. §§ 3838h- 3838i and 3837-3737f, respectively. The FPP and the WRP were authorized by Title XII of the Food Security Act of 1985, as amended, and the provisions of the Food Security Act of 1985 are not among the statutes listed in the Conservation Operations appropriation as an object of that appropriation. Thus, the Conservation Operations appropriation by its own terms does not finance Agriculture programs and activities under the Food Security Act.⁶⁷

Second, even if the language of the Conservation Operations appropriation could reasonably be read to include the WRP and the FPP, section 3841, as amended by the 2002 Farm Bill, very specifically requires that funding for technical assistance will come from the "funds, facilities, and authorities" of the CCC. Indeed, the statute is unequivocal--the Secretary "shall use the funds" of the CCC to carry out the seven conservation programs, including associated technical assistance. It is well settled that even an expenditure that may be reasonably related to a general appropriation may not be paid out of that appropriation where the expenditure falls specifically within the scope of another appropriation. 63 Comp. Gen. 422, 427-28, 432 (1984);

⁷ For fiscal year 1999, the Natural Resources Conservation Service sought to add language to the Conservation Operations appropriation to provide authority to expand the use of Conservation Operations funds to support the technical assistance activities of other programs administered by NRCS such as EQIP, WRP and CRP. Hearings before the House Committee on Appropriations, Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations for Fiscal Year 1999, 105th Cong., 2nd Sess., Part 3 at 776 (1998). The language was not included in the final version of the Agriculture Appropriations Act for fiscal year 1999.

Third, this view is supported by the Senate colloquy on the 2002 Farm Bill Conference report:

“Mr. COCHRAN. It is then my understanding that, under the provisions of this bill, the technical assistance necessary to implement the conservation programs will not come at the expense of the good work already going on in the countryside in conservation planning, assistance to grazing lands, and other activities supported within the NRCS conservation operations account. And, further, this action will relieve the appropriators of an often reoccurring problem.

Mr. HARKIN. Both gentlemen are correct. The programs directly funded by the CCC-EQIP, FPP, WHIP, and the CSP--as well as the acreage programs--CRP, WRP, and the GRP-- include funding for technical assistance that comes out of the program funds. And this mandatory funding in no way affects the ongoing work of the NRCS Conservation Operations Program.”

148 Cong. Rec. S3979, 4020 (daily ed. May 8, 2002) (emphasis added).

This colloquy underscores the understanding that the 2002 Farm Bill specifically requires that funding for technical assistance will come from the borrowing authority of the CCC and will not interfere with other activities supported by the Conservation Operations appropriation.

Furthermore, before passage of the 1996 Farm Bill, which made a number of conservation programs, including the WRP, mandatory spending programs, the WRP received a separate appropriation for that purpose. In other words, before the 1996 farm bill provided CCC funding to run the program, the WRP was not funded out of the Conservation Operations appropriation. Pub. L. No. 103-330, 108 Stat. 2453 (1994); Pub. L. No. 102-142, 105 Stat. 897 (1991). Moreover, Agriculture has

⁸ OMB cites language in the legislative history of the Fiscal Year 2002 appropriations act that appears to support the use of the Conservation Operations appropriation for conservation technical assistance, and in particular WRP and CRP assistance. Our own review of the legislative history finds language that indicates a congressional intent that technical assistance for the conservation programs in question must be funded from CCC funds. However, in view of the subsequent enactment of the 2002 Farm Bill, which specifically and unequivocally requires that funding for technical assistance for conservation programs named in 16 U.S.C. § 3841 shall come from CCC funds, we do not consider the legislative history controlling.

previously concluded that the Conservation Operations appropriation is not available to fund technical assistance with respect to programs authorized under provisions of the Food Security Act. Their reasoning tracks ours--the provisions of the Food Security Act are not among the statutes cited in the Conservation Operations appropriation. Memorandum from Stuart Shelton, Natural Resources Division to Larry E. Clark, Deputy Chief for Programs, Natural Resources Conservation Service and P. Dwight Holman, Deputy Chief for Management, Natural Resources Conservation Service, October 7, 1998 (Conservation Operations appropriation is not available to fund technical assistance for the Conservation Reserve Program); GAO/RCED-99-247R, Conservation Reserve Program Technical Assistance, at 9 (Aug. 5, 1999).

Thus, the Conservation Operations appropriation is not an available funding source for WRP and FPP operations and associated technical assistance. To the extent that Agriculture might have used the Conservation Operations appropriation for WRP, Agriculture would need to adjust its accounts accordingly, deobligating amounts it had charged to the Conservation Operations appropriation and charging those amounts to the CCC funds. We note that in this event OMB would need to apportion additional amounts from CCC funds to cover such obligations.

3. Impoundment Control Act

The last question is whether OMB's July 18, 2002, decision not to apportion funds for technical assistance for the WRP and the FPP constitutes an impoundment under the Impoundment Control Act of 1974. Based upon the most recent information provided by OMB, to the extent OMB did not initially apportion funds for the FPP or the WRP, the delay was programmatic and did not constitute an impoundment of funds. Also, based on information recently provided by OMB, no impoundment of funds is occurring with respect to the FPP or the WRP.

We generally define an impoundment as any action or inaction by the President, the Director of OMB or any federal agency that delays the obligation or expenditure of budget authority provided in law. Glossary of Terms Used in the Federal Budget Process, Exposure Draft, GAO/AFMD-2.1.1, Page 52 (1993).⁹ However, our decisions distinguish between programmatic withholdings outside the reach of the Impoundment Control Act and withholdings of budget authority that qualify as

⁹ There are two types of impoundment actions--deferrals and rescissions. A deferral is a temporary withholding or delay in obligating or any other type of executive action which effectively precludes the obligation or expenditure of budget authority. Glossary of Terms Used in the Federal Budget Process, Exposure Draft, GAO/AFMD-2.1.1, Page 38 (1993). Deferrals are authorized only to provide for contingencies, to achieve savings made possible by changes in requirements or greater efficiency of operations, or as otherwise specifically provided by law. See 2 U.S.C. § 684. A rescission involves the cancellation of budget authority previously provided by Congress (before that authority would otherwise expire) and can be accomplished only through legislation enacted by Congress that cancels the availability of budgetary resources previously provided by law. See Glossary of Terms Used in the Federal Budget Process, Exposure Draft, GAO/AFMD-2.1.1, Page 70 (1993).

impoundments subject to the Act's requirements. B-290659, July 24, 2002. Sometimes delays are due to legitimate program reasons. Programmatic delays typically occur when an agency is taking necessary steps to implement a program even if funds temporarily go unobligated. Id. Such delays do not constitute impoundments, and do not require the sending of a special message to the House of Representatives and the Senate under 2 U.S.C. § 684(a). Id.

Here, OMB initially did not apportion funds for WRP and FPP technical assistance because it believed the section 11 cap was applicable and would be exceeded. OMB's General Counsel states that OMB reserved apportioning budget authority to discuss its funding concerns with Agriculture. These funding concerns generated a "vigorous and healthy internal legal discussion" between the Department of Agriculture and OMB. Letter from Nancy Bryson, General Counsel, Department of Agriculture to the Honorable Tom Harkin, Chairman, Senate Committee on Agriculture, Nutrition and Forestry, September 24, 2002. Since OMB delayed apportionment of technical assistance funds because of uncertainty concerning the applicability of statutory restrictions and since OMB approved Agriculture's subsequent apportionment requests, we conclude that OMB did not impound funds under the Impoundment Control Act. See B-290659, July 24, 2002 (delay in obligating funds because of uncertainty whether statutory conditions were met did not constitute an impoundment).

As noted above, according to OMB, Agriculture recently submitted revised apportionment requests for technical assistance for both the FPP and the WRP, and OMB has approved the revised apportionments. For the FPP, Agriculture requested an additional apportionment for financial assistance of \$2 million, bringing the total amount available for obligation to \$50 million. Thus, the entire \$50 million in FPP funds authorized by section 3841 have been apportioned. Since OMB advises that it has apportioned the full funding amount and that is available for obligation, these funds were not impounded for the FPP.

As for the WRP funding, as noted above, on June 19, 2002, Agriculture asked OMB to apportion a total of \$20,655,000 for WRP technical assistance. OMB did not apportion this amount. SF 132, Apportionment and Reapportionment Schedule for Farms Security and Rural Investment Programs, Account No. 1221004, July 18, 2002. On August 30, 2002, Agriculture requested an apportionment of WRP (and CRP) technical assistance for totaling \$5,950,000. SF 132, Apportionment and Reapportionment Schedule for Commodity Credit Corporation Reimbursable Agreements and Transfers to State and Federal Agencies, Account No. 12X4336. On September 3, 2002, OMB approved this request and apportioned \$5,950,000. Id. Since OMB apportioned the budget authority for the WRP and it was made available for obligation, there was no impoundment of funds in fiscal year 2002.

While the present record does not establish an impoundment of the fiscal year 2002 funds appropriated for the WRP and the FPP, we will continue to monitor this situation to ensure that any impoundment that might occur in fiscal year 2003 for conservation programs is timely reported.

We hope you find this information useful. If you have any questions, please contact Susan Poling, Managing Associate General Counsel, or Thomas Armstrong, Assistant

General Counsel, at 202-512-5644. We are sending copies of this letter to the Secretary of Agriculture, Director of the Office of Management and Budget, the Chairmen and Ranking Minority Members of the House and Senate Agriculture Committees and other interested Congressional Committees. This letter will also be available on GAO's home page at <http://www.gao.gov>.

Anthony H. Gamboa
General Counsel

B-291241 Digests

1. 15 U.S.C. § 714i authorizes the Commercial Credit Corporation (CCC) to use employees from other agencies, and, subject to a maximum limitation set at the fiscal year 1995 level (the “section 11 cap”), CCC may make transfers from its funds available for administrative purposes to those agencies to reimburse them for their assistance to CCC in the conduct of its business. 16 U.S.C. § 3841 (as amended by section 2701 of the 2002 Farm Bill, enacted May 13, 2002) specifically provides that the Secretary of Agriculture “shall use the funds” of the CCC to carry out seven conservation programs (including the wetlands reserve program and the farm protection program) named therein, including technical assistance. Based upon the language of the statutes, we conclude that the section 11 cap does not apply to technical assistance provided under the section 3841 conservation programs.
2. 16 U.S.C. § 3841 specifically provides that the Secretary of Agriculture “shall use the funds” of the Commercial Credit Corporation (CCC) to carry out seven conservation programs (including the wetlands reserve program and the farm protection program) named therein, including technical assistance. Therefore, the Secretary is required to use CCC funds for the conservation programs named in section 3841, including for technical assistance, rather than funds from the Department of Agriculture’s more general Conservation Operations appropriation.
3. Where the Office of Management and Budget (OMB) initially did not apportion funds for technical assistance for the wetlands reserve program (WRP) and the farm protection program (FPP) because of OMB’s uncertainty concerning applicability of statutory funding restrictions, and where OMB subsequently approved the Department of Agriculture’s revised apportionment requests for the WRP and the FPP, the delay in apportioning funds was programmatic and did not constitute an impoundment of funds.