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

Subject: Use of Conservation Operations Appropriation to Fund Technical Assistance for Conservation Programs Enumerated in Section 2701 of the 2002 Farm Bill

This responds to your letter of October 9, 2002, requesting our legal opinion on issues related to the funding of technical assistance for the conservation programs enumerated in section 2701 of the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill). In B-291241, October 8, 2002, we found that the Department of Agriculture's (Agriculture) conservation operation (CO) appropriation was not available to fund technical assistance for section 2701 conservation programs. You asked us to: (1) ascertain whether Agriculture had used the CO appropriation in the last quarter of fiscal year 2002 for technical assistance for section 2701 programs and, if so, the total amount of CO funds expended for that purpose; and (2) describe the actions that Agriculture must take to ensure proper accountability of Commodity Credit Corporation (CCC) and CO funds.

We found that Agriculture improperly obligated approximately $20.8 million of the CO appropriation to pay for technical assistance for section 2701 conservation programs in the last quarter of fiscal year 2002. Because the CO appropriation was not available for that purpose, Agriculture's obligation of the CO appropriation violated 31 U.S.C. § 1301(a), which prohibits the use of appropriations for purposes other than those for which they were appropriated. To ensure proper accounting of the CO and CCC appropriations, Agriculture must adjust both appropriation accounts, deobligating the $20.8 million improperly charged to the CO appropriation and charging that amount to the CCC account. Agriculture, however, has not requested an apportionment from the Office of Management and Budget (OMB) of CCC funds to cover the $20.8 million of section 2701 technical assistance obligations. Thus, Agriculture has violated the Antideficiency Act, 31 U.S.C. § 1341(a), which

prohibits making or authorizing an expenditure or obligation that exceeds available budget authority.

BACKGROUND

Because your questions arise from many of the same facts that we addressed in our opinion, B-291241, October 8, 2002, we will not repeat them here. In that opinion, we found that Agriculture's CO appropriation was not available to provide technical assistance to section 2701 conservation programs[1] because the CO appropriation, by its own terms, did not finance the section 2701 conservation programs. The appropriation specifically identified a number of programs, but the section 2701 conservation programs were not among them. We pointed out that even if one could reasonably read that appropriation to fund these conservation programs, the Congress, with enactment of section 2701 of the 2002 Farm Bill on May 13, 2002, required that the Secretary of Agriculture "shall use the funds" of the CCC to carry out the seven conservation programs enumerated therein, including the provision of technical assistance. Since section 2701 specifically states that funding for its conservation programs "shall" come from CCC funds, the CO appropriation was not available for that purpose.[2]

In the opinion, we stated that:

> "To the extent that Agriculture might have used the CO appropriation for WRP [Wetlands Reserve Program], Agriculture would need to adjust its accounts accordingly, deobligating amounts it had charged to the CO 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]

[1] The seven conservation programs are: (1) the conservation reserve program (CRP), (2) the wetlands reserve program (WRP), (3) the conservation security program (CSP), (4) the farmland protection program (FPP), (5) the grassland reserve program (GRP), (6) the environmental quality incentives program (EQIP), and (7) the wildlife habitat incentives program (WHIP). According to Agriculture officials, the CSP and GRP have not yet been implemented.

[2] It is well settled, we explained, that even an expenditure that may be reasonably related to a general appropriation (such as the CO appropriation) may not be paid out of that appropriation where the expenditure falls specifically within the scope of another appropriation (such as section 2701). 63 Comp. Gen. 422, 427-28, 432 (1984); B-290005, July 1, 2002.

[3] While this statement was made regarding the WRP, we indicated that the same legal principles would apply to other section 2701 programs.

DISCUSSION

To respond to your request, we contacted Agriculture to determine whether Agriculture had used the CO appropriation in the last quarter of fiscal year 2002 for technical assistance for section 2701 programs and, if so, the total amount of CO funds expended for that purpose. Agriculture officials informed us that Agriculture obligated approximately $20.8 million of the CO appropriation during the last quarter of fiscal year 2002.[4] Notwithstanding our October 8 opinion, Agriculture has taken no action to correct its improper obligation of the CO appropriation.[5] Agriculture has not asked OMB for an apportionment to permit correction of the improper obligation of CO funds.

As we alerted Agriculture in our October 8 opinion, Agriculture's use of CO funds is improper and violates 31 U.S.C. § 1301(a). Section 1301(a) prohibits the use of appropriations for purposes other than those for which they were appropriated. B-290005, July 1, 2002. The CO appropriation is not available to fund the section 2701 conservation programs; Agriculture must use CCC funds for that purpose. B-291241, Oct. 8, 2002.

To ensure proper accounting of the CO and CCC appropriations, Agriculture, as we explained in our October 8 opinion, must adjust both appropriation accounts, deobligating the $20.8 million improperly charged to the CO appropriation and charging that amount to the CCC account. Because Agriculture has not adjusted its accounts, we conclude that Agriculture has violated the Antideficiency Act.

Antideficiency Act

Agriculture, in addition to violating 31 U.S.C. § 1301(a), has violated the Antideficiency Act. The Antideficiency Act prohibits an agency from incurring obligations that exceed the amount of available budget authority. 31 U.S.C. § 1341(a). The $20.8 million in obligations that Agriculture improperly charged to its CO appropriation exceed the amounts of CO appropriation available for this purpose, which is zero. See B-229732, Dec. 22, 1988. The Antideficiency Act requires agencies to report such overobligations to the Congress and the President. 31 U.S.C. § 1351. Given our October 8, 2002, opinion on the unavailability of the CO appropriation for this purpose, and because Agriculture was put on notice of a possible Antideficiency Act violation more than 2 months ago and still has not initiated any corrective action to ensure proper accounting of the CO and CCC appropriations, we will send copies

[4] Agriculture officials told us that Agriculture may, in fact, be obligating the CO appropriation for section 2701 conservation programs during fiscal year 2003.

[5] Consistent with our October 8, 2002 opinion, Agriculture should ascertain whether it obligated additional amounts from the CO appropriation after the 2002 Farm Bill was enacted (May 13, 2002) to pay for any expenditures associated with the section 2701 conservation programs and, if necessary, take action to cure those improper obligations as well.

of this opinion to the Speaker of the House and the President of the Senate to notify both Houses of the Congress of the violation.

CONCLUSION

Agriculture improperly obligated approximately $20.8 million of the CO appropriation to pay for section 2701 technical assistance in the last quarter of fiscal year 2002. As a consequence, Agriculture violated 31 U.S.C. § 1301(a) and the Antideficiency Act, 31 U.S.C. § 1341(a).

We hope you find this information useful. If you have any questions, please contact Susan A. Poling, 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, the Director of OMB, the Chairmen and Ranking Minority Members of the House and Senate Agriculture Committees and the House and Senate Appropriations Committees. This letter will also be available on GAO's home page at http://www.gao.gov.

/signed/

Anthony H. Gamboa
General Counsel

DIGEST

The Department of Agriculture improperly obligated approximately $20.8 million of its conservation operations appropriation in the last quarter of fiscal year 2002 to pay for technical assistance for conservation programs enumerated in section 2701 of the 2002 Farm Bill instead of using Commodity Credit Corporation (CCC) funds as required by section 2701. As a consequence, Agriculture violated 31 U.S.C. § 1301(a) and the Antideficiency Act, 31 U.S.C. § 1341(a)(1).