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United States General Accounting Office
Washington, DC 20548

B-300673

July 3, 2003

Mr. Timothy Blodgett
Acting Counsel, Immediate Office of the
Chief Administrative Officer
U.S. House of Representatives

Subject: Use of the Chief Administrative Officer's salaries and expenses appropriation to pay certain Child Care Center expenses for fiscal year 2003

Dear Mr. Blodgett:

This is in response to your request for our views concerning whether the authority provided in the fiscal year 2003 appropriations act for the Chief Administrative Officer (CAO) to make certain payments involving the House of Representatives Child Care Center from the salaries and expenses appropriations for the Office of the CAO is applicable to payments made during the period from October 1, 2002 to the date of enactment of the 2003 appropriations act. Payments made during that period were made from the Child Care Revolving Fund, and you ask whether that Fund may be reimbursed for those payments under the new authority. For the reasons set forth below, we conclude that the CAO should use funds appropriated for salaries and expenses to reimburse the Child Care Fund for the applicable payments made on or after October 1, 2002.

BACKGROUND

While Congress was considering eleven of the thirteen fiscal year 2003 appropriations bills, it passed a series of continuing resolutions to keep the government functioning.[1] The original continuing resolution, Public Law 107-229, was enacted on September 30, 2002, to provide funds for the continued operation of the relevant departments and agencies under the authority and conditions provided in the

[1] The Department of Defense Appropriations Act for Fiscal Year 2003 (Pub. L. No. 107-248) and the Military Construction Appropriation Act for Fiscal Year 2003 (Pub. L. No. 107-249) were enacted into law on October 23, 2002.

applicable appropriations acts for fiscal year 2002 until enactment of a fiscal year 2003 appropriation act or October 4, 2002, whichever occurred first.[2] Section 108 of Public Law 107-229 provided that expenditures made pursuant to the continuing resolution "shall be charged to the applicable appropriation, fund, or authorization whenever a bill in which such applicable appropriation, fund or authorization is contained is enacted into law." Pub. L. No. 107-229, supra, 116 Stat. at 1467. There were seven more continuing resolutions for fiscal year 2003 providing for the continuation of funding through February 20, 2003.[3] While some of these extensions also contained substantive amendments, none affected section 108 of Public Law 107-229.

In January of 2003, the House and the Senate incorporated the eleven appropriations bills under consideration into a single bill, H.J.Res. 2, the Consolidated Appropriations Resolution for Fiscal Year 2003, and agreed to the conference report (H. Rept. 108-10) on February 13, 2003. H.R. Rep. No. 10, 108th Cong., 1st Sess. (2003). H.J. Res. 2 was signed into law on February 20, 2003, as Public Law 108-7 (117 Stat. 11-554). The Legislative Branch Appropriations Act for Fiscal Year 2003 is found in Division H of Public Law 108-7 (117 Stat. 345-384), section 108 of which provides as follows:

> "Sec. 108. (a) Section 312(d) of the Legislative Branch Appropriations Act, 1992 (2 U.S.C. 2112(d)[4]), is amended-
> (1) in paragraph (1), by striking 'paragraph (2)' and inserting 'paragraphs (2) and (3)'; and
> (2) by adding at the end the following new paragraph:
> '(3) The House of Representatives shall make payments from amounts provided in appropriations acts for salaries and expenses of the Office of the Chief Administrative Officer for the following activities carried out under this section:
> '(A) The payment of the salary of the director of the center.
> '(B) The reimbursement of individuals employed by the center for the cost of training classes and conferences in connection with the provision of child care services, together with the cost of travel

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[2] Joint Resolution Making Continuing Appropriations for the Fiscal Year 2003, Pub. L. No. 107-229, §§ 101 and 107, 116 Stat. 1465–1467 (Sept. 30, 2002).

[3] Pub. L. No. 107-235, 116 Stat. 1482 (Oct. 4, 2002); Pub. L. No. 107-240, 116 Stat. 1492 (Oct. 11, 2002); Pub. L. No. 107-244, 116 Stat. 1503 (Oct. 18, 2002); Pub. L. No. 107-294, 116 Stat. 2062 (Nov. 23, 2002); Pub. L. No. 108-2, 117 Stat. 5 (Jan. 10, 2003); Pub. L. No. 108-4, 117 Stat. 8 (Jan. 31, 2003); Pub. L. No. 108-5, 117 Stat. 9 (Feb. 7, 2003).

[4] This was apparently a typographical error; the correct section is 2 U.S.C. § 2062(d). See notes following 2 U.S.C. § 2062.

(including transportation and subsistence) incurred in connection with such classes and conferences.'
(b) The amendment made by subsection (a) shall apply with respect to fiscal year 2003 and each succeeding fiscal year."[5]

117 Stat. 355 (codified at 2 U.S.C. § 2062(d)(3)). According to your submission, in the period from October 1, 2002, to the date of enactment of Public Law 108-7, February 20, 2003, the Child Care Center's director's salary and any training or conference expenses were paid from the Child Care Center Revolving Fund.[6] Under authority of section 108 of Public Law 108-7, the CAO would like to reimburse the Fund for the payments made during that period.

DISCUSSION

It is a general rule of statutory construction that a statute is effective on and after the date of its enactment and is not to be applied retroactively unless it is clear from its language or by necessary implication that a different effective date was intended. 39 Comp. Gen. 286 (1959); B-237791, Sept. 6, 1991; B-217565, June 27, 1985; 2 Norman J. Singer, Sutherland Statutes and Statutory Construction § 41:4 (6th ed. 2001). As quoted above, section 108(b) of Public Law 108-7 expressly and plainly directs that the authority provided in section 108(a) applies to fiscal year 2003, which began on October 1, 2002, and each subsequent fiscal year. See B-217565, June 27, 1985. There is no basis for otherwise construing the provision as being effective prospectively only from the date of enactment, February 20, 2003.[7] Under the plain meaning of section 108(b) of Public Law 108-7, the salaries and expenses

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[5] The authority provided in new subsection 2062(d)(3) is similar to that provided to the executive agencies in 1992, making agency appropriations available to cover travel, transportation, and subsistence expenses incurred by any federal employee or any person employed to provide child care services to federal employees for training classes, conferences, or other meetings relating to the provision of child care services. 40 U.S.C. § 590(e).

[6] The fiscal year 2002 Legislative Branch Appropriations Act provided authority for the payment of salaries and expenses for the House of Representative's Child Care Center from amounts deposited in the Child Care Revolving Fund set up under the authority in 2 U.S.C. § 2062(d)(1). Pub. L. No. 107-68, 115 Stat. 560, 572 (Nov. 12, 2001).

[7] The legislative history of section 108 of Public Law 108-7, while not necessary for the analysis given the plain wording of subsection (b), does not provide any additional information. The section was not included in the original legislative branch appropriation bill for fiscal year 2003, H.R. 5121, and does not appear until the enrolled version of H.J. Res. 2. The conference report on H.J. Res. 2 does not discuss section 108. H. Rept. 108-10, supra.

appropriation for the Office of the CAO is the proper appropriation to charge for payment of the director's salary and any Child Care Center's employees' training costs for fiscal year 2003, which began on October 1, 2002.

The fact that payments were made during a period covered by a continuing resolution is not significant. The regular appropriation, once enacted, supersedes the continuing resolution and governs the amount and period of availability since continuing resolutions are intended to be temporary "stop-gap" measures. See B-209583, Jan. 18, 1983. Indeed, section 108 of Public Law 107-229, the original continuing resolution, provided that any expenditures made under its authority (as well as the extensions provided by the other seven continuing resolutions) were required to be charged to the "applicable appropriation, fund, or authorization" provided in the enacted permanent appropriation for fiscal year 2003. This standard provision, included in most continuing resolutions, is designed to ensure that to the extent possible, obligations incurred or expenditures made under the continuing resolution are to be charged against the funds provided by the regular appropriation act. 62 Comp. Gen. 9 (1982). In construing this type of provision in the past, we concluded as follows:

> "When an annual appropriation act provides sufficient funding for an appropriation account to cover obligations previously incurred under the authority of a continuing resolution, any unpaid obligations are to be charged to and paid from the applicable account established under the annual appropriation act. Similarly, to the extent the annual act provides sufficient funding, those obligations which were incurred and paid during the period of the continuing resolution must be charged to the account created by the annual appropriation act."

Id. at 11-12. See also B-227658, Aug. 7, 1987.

In this case, Public Law 108-7, the enacted legislative branch appropriations act, provided in section 108 that for fiscal year 2003 and thereafter the Child Care Center's director's salary and employee's training costs should be charged to the salaries and expenses appropriation for the Office of the CAO. Public Law 108-7 also provided that for fiscal year 2003 the Office of the CAO would receive $105,363,000 for salaries and expenses. 117 Stat. 352. Nothing in your submission indicates that this amount would be insufficient to cover the additional Child Care Center expenses for the entire fiscal year. Also, the amount appropriated for fiscal year 2003 is a significant increase over the amount appropriated for the CAO's salaries and expenses for fiscal year 2002, which was $67,495,000. Public Law 107-68, supra, at 115 Stat. 571. This increase may reflect in part the additional amount to be charged to the salaries and expenses account by operation of section 108 of Public Law 108-7. Given the requirement in section 108(a) of Public Law 107-229, the obligations incurred and paid for the applicable Child Care Center expenses during the period from October 1, 2002 to February 20, 2003 should be charged to the CAO's salaries and expenses appropriation for fiscal year 2003.

Accordingly, the CAO should use its fiscal year 2003 salaries and expenses appropriation to credit the Child Care Center Revolving Fund for the expenses described in section 108(a) of Public Law 108-7 and incurred during the period from October 1, 2002 to February 20, 2003.

Sincerely yours,

/signed/

Anthony H. Gamboa
General Counsel

DIGEST

The fiscal year 2003 appropriations act for the legislative branch, enacted on February 20, 2003, authorizes the House of Representative's Chief Administrative Officer (CAO) to use the Office's salaries and expenses appropriation to pay the salary of the House Child Care Center's director as well as certain training and conference expenses incurred by the Center's employees for "fiscal year 2003 and each succeeding fiscal year." The continuing resolutions in effect during the period from October 1, 2002 to February 20, 2003, provided funds for the continuing operation of the government under the authority of the fiscal year 2002 legislative branch appropriations act until the fiscal year 2003 act was passed, at which point any expenditures made under the authority of the continuing resolutions were required to be charged to the "applicable appropriation, fund, or authorization." During that period the relevant Child Care Center's expenses were paid from the Child Care Revolving Fund. Since it is clear from the fiscal year 2003 appropriations act provision that the new authority to use the CAO's salaries and expenses appropriation applies to fiscal year 2003, implying a retroactive effect from the date of enactment to October 1, 2002, the CAO should reimburse the Child Care Revolving Fund for the relevant payments made during the period from October 1, 2002 to February 20, 2003.