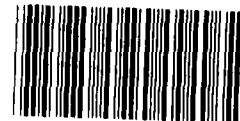


GAO

March 1987

ANTI-DEFICIENCY ACT

Agriculture's Food and Nutrition Service Violates the Anti- Deficiency Act



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**United States
General Accounting Office
Washington, D.C. 20548**

**Accounting and Financial
Management Division**

B-221204

March 17, 1987

The Honorable John C. Stennis
Chairman, Committee on
Appropriations

The Honorable John Glenn
Chairman, Committee on
Governmental Affairs
United States Senate

The Honorable Jamie L. Whitten
Chairman, Committee on
Appropriations

The Honorable Jack Brooks
Chairman, Committee on
Government Operations
House of Representatives

As part of our work to examine the overall effectiveness of agencies' accounting systems in operation, we reviewed the accounting system of the Department of Agriculture's Food and Nutrition Service. During our review, we found that the Service's Child Nutrition Programs violate the Anti-Deficiency Act (31 U.S.C. 1341) and as of September 30, 1985, had a cumulative deficiency of at least \$109.6 million. The Service has indicated that this deficiency could be as much as \$66.6 million more as of the end of fiscal year 1986.

The violation occurred because, since fiscal year 1983, the Service has been paying for meals provided as part of the Child Nutrition Programs in September of each fiscal year with funds from the subsequent year's appropriation without the authority to do so. We conclude that since specific legislative authority for this procedure expired in fiscal year 1982, the Service's actions have violated the Anti-Deficiency Act, which provides that no officer of the government may authorize an expenditure or obligation exceeding an amount available in an appropriation or involve the government in an obligation for the payment of money before an appropriation is made unless authorized by law [31 U.S.C. 1341 (1982)]. The act further provides that, in the event of a violation of the act, the head of the agency concerned shall immediately report to

the President and the Congress all pertinent facts together with a statement of actions taken. Since the Service has not taken appropriate corrective actions nor reported the violation, we are bringing this to your attention.

Objectives, Scope, and Methodology

The objective of our review of the accounting procedures used for the Child Nutrition Programs was to determine if the Service's procedures complied with the requirements of the law. Specifically, we planned to

- document and verify the accuracy of amounts included as funding authority and expenditures for the period fiscal years 1980 to 1985 using the Service's accounting records and
- analyze the funding authority and related obligations based on procedures that should have been used.

We had to modify some of these procedures because we could not verify the dollar amounts obligated prior to fiscal year 1983. We were told by Service officials that the accounting records for those years were lost. We also could not use official accounting records to verify the amount of obligations in each fiscal year since 1983, because, based on our work, we found the accounting records to be unreliable. As a result, we used Child Nutrition grant records to estimate the final expenses for fiscal years 1983, 1984, and 1985. For 1980, 1981, and 1982, we used the Service's budget work sheets to estimate expenses. We then subtracted these estimates from the appropriate funding¹ to determine each fiscal year's balance. Our work was conducted between September 1985 and November 1986, in accordance with generally accepted government auditing standards. In addition to the problems we found with the accounting records, we discovered other problems in the accounting system. We will discuss those problems in our report on the Service's accounting system, which will be issued later.

Background on Current Accounting Procedures

In fiscal years 1980 to 1982, the Service was given specific statutory authority to record obligations for meals served in the previous fiscal year. This exception was made to allow a transfer of funds in fiscal year 1980 from the Child Nutrition Programs to the Food Stamp Program rather than provide a supplemental appropriation at that time for the

¹We used a cash basis of accounting to determine the funding for fiscal years 1980 through 1982. Under the cash basis of accounting, revenues are recorded when received in cash, and expenditures (outlays) are recorded when paid without regard to the accounting period.

Food Stamp Program. This created a shortfall in the Child Nutrition Programs that has never been made up.

Since fiscal year 1983, this statutory authority to account for meals served under the Child Nutrition Programs has not been included in Agriculture's appropriation act. Although the amount has varied each year, much of the original 1980 shortfall created by the transfer still exists because the Department never requested additional funding for the shortfall. Thus, for the period fiscal years 1983 through 1986, the Service should have changed its procedures so that obligations for meals served in September would have been charged to the pertinent appropriation account of the expiring fiscal year.

The Senate Appropriations Committee report on Agriculture's fiscal year 1985 appropriations said that it expected the Department to submit a supplemental funding request that would be sufficient to make up the shortfall created in fiscal year 1980. After we discussed the violation with Agriculture officials, Service officials prepared a request in March 1986 to change the basis of accounting. However, it was not submitted to the Congress. The Service did testify before the House Appropriations Committee in March 1986 that the shortfall in Child Nutrition funding was about \$125 million at the end of fiscal year 1985. Again in June 1986, the Service provided an answer for the record to the Senate Appropriations Committee that the shortfall could be \$66.6 million higher by the end of fiscal year 1986. No solution to the shortfall was discussed.

**Child Nutrition Programs
Are Overobligated by
Millions of Dollars**

Although the Service testified that the cumulative shortfall of the Child Nutrition Programs at the end of fiscal year 1985 was \$125 million, we could only verify a shortfall of \$109.6 million. Using the best available information from their accounting and other records, we compared the Child Nutrition Programs' expenses to available funds for the period fiscal years 1980 through 1985. Table 1 shows the annual and cumulative shortfalls for fiscal years 1983 through 1985. It also indicates that fiscal year 1983 expenses exceeded available funds by \$33 million, without considering the cumulative shortfalls from prior years.

Table 1: Estimate of Child Nutrition Programs' Fiscal Year and Cumulative Shortfall

Dollars in millions			
	1983	1984	1985
Obligational authority	\$3,296.0	\$3,558.8	\$3,804.7
Expenses (grant closeout) ^a	(3,329.0)	(3,508.2)	(3,688.5)
FY—available/(short)	(33.0) ^b	50.6	116.2
Net shortfall—prior FY	(243.2) ^c	(276.3)	(125.7)
Cumulative shortfall— end FY ^d	\$(276.3)	\$(225.7)	\$(109.6)

^aThese expenses include meals served for the Child Nutrition Programs during the appropriate fiscal period October 1 through September 30

^bExpenses exceed available funds in the pertinent appropriation account for fiscal year 1983

^cThis balance of a \$243.2 million shortfall is based on our analysis using budget worksheets and obligational authority for fiscal years 1980 through 1982

^dTotals may not add due to rounding

We did not review the Child Nutrition Programs' obligations in fiscal year 1986. As a result, we do not know the exact amount of the cumulative shortfall as of the end of fiscal year 1986. However, we believe that when the cumulative shortfall from prior periods is combined with the expenses of fiscal year 1986, available funds will not be adequate. In June 1986, Service officials indicated that the shortfall could be \$66.6 million higher by the end of fiscal year 1986. In November 1986, officials indicated that they were using fiscal year 1987 funds to pay for 1986 obligations for meals served in September.

Service Is Aware of Violation

We discussed the Anti-Deficiency Act violation with Department of Agriculture and Food and Nutrition Service officials in February 1986. We also sent a letter of inquiry to the Assistant Secretary for Food and Consumer Services on August 5, 1986, asking Agriculture to inform us within 30 days of any plans to correct this situation. On August 12, 1986, the Assistant Secretary for Food and Consumer Services responded that the Food and Nutrition Service was operating under the belief that its accounting procedures were legal, and that it would review the situation and advise us soon. On November 4, 1986, Food and Nutrition Service officials told us that they did not plan to change their accounting procedures nor report the deficiency.

Conclusions

The Child Nutrition Programs are in violation of the Anti-Deficiency Act because, since fiscal year 1983, they have been paying for meals provided as part of the programs in September of each fiscal year with

funds from the subsequent year's appropriation without the authority to do so. Although we notified the appropriate officials, the Service has not reported the deficiency as required by the Anti-Deficiency Act, nor has it acted to correct the situation. Further, the Service has not determined the exact amount of the cumulative shortfall as of the end of fiscal year 1986 nor requested a supplemental to eliminate the shortfall as expected by the Congress. Therefore, we are bringing this matter to the attention of your committees.

Recommendations

We recommend that the Secretary of Agriculture direct the Food and Nutrition Service to

- report a deficiency violation, as required by the Anti-Deficiency Act, to the Congress and the President;
- determine the amount of the deficiency as of the end of fiscal year 1986 and request, through the Office of Management and Budget (OMB), a supplemental appropriation from the Congress to eliminate it; and
- change its practice of paying for meals provided through the Child Nutrition Programs in September of each fiscal year with funds from the subsequent year's appropriation so that obligations for meals served in September will be charged to the pertinent appropriation account of the expiring fiscal year.

Agency Comments and Our Evaluation

In commenting on a draft of this report, the Department of Agriculture stated that it believes the Service acted with proper authority and in good faith in its practice of paying for meals provided as part of the Child Nutrition Programs in September of each fiscal year since 1983 with funds from the subsequent year's appropriation. Accordingly, Agriculture believes that a violation of the Anti-Deficiency Act did not occur. (Agriculture's comments are included in appendix I.) Agriculture bases its beliefs on the following legislative provision of its appropriations acts for 1983 and subsequent years. The act, Public Law 97-370, states:

"Provided further, that only final reimbursement claims for service of meals, supplements, and milk submitted to State agencies by eligible schools, summer camps, institutions, and service institutions within sixty days following the claiming month shall be eligible for reimbursement from funds under this Act. States may receive program funds appropriated under this Act for meals, supplements, and milk served during any month only if the final program operations report for such month is submitted to the Department within ninety days following that month. Exceptions to

these claims or reports submission requirements may be made at the discretion of the Secretary."

In Agriculture's view, this provision authorizes the use of subsequent year funds to pay current year claims so long as the claims are submitted to state agencies within 60 days and the state agency report is submitted to the Service within 90 days. The Service, therefore, plans to continue its current payment practice to meet unpaid fiscal year 1986 claims.

The statutory language cited by Agriculture does not constitute statutory authority for the Service's practice of paying for meals served in September of each fiscal year with funds available for the next fiscal year. Rather, it requires that states submit claims in a timely manner in order to be paid. It does not make those claims, once submitted, payable out of any appropriation other than the appropriation available in the year in which the meal was served. Unlike the statutory language which was included in Agriculture's appropriations for fiscal years 1981 and 1982, it does not authorize the use of funds from one fiscal year to pay for meals served in the previous fiscal year.

Agriculture also advises that the Congress is well aware of the Service's management of this account, took no action that would discontinue the Service's practices, and did not appropriate additional funds to address this issue for fiscal year 1983 or subsequent years. Neither the Constitution nor the Anti-Deficiency Act is satisfied by merely notifying the Congress of an expenditure. No money may be drawn from the Treasury, "but in consequence of appropriations made by law ..." (U.S. Const. Art. I, sec. 9). Further, the Anti-Deficiency Act (31 U.S.C. 1341) provides that no government officer may obligate or expend funds "exceeding an amount available in an appropriation" for an expenditure or obligation.

Further, Agriculture concludes that it will not submit an Anti-Deficiency Act violation report to the Congress and the President because it does not believe a violation occurred and because it has kept the Congress and OMB informed of the matter. However, when GAO determines that an Anti-Deficiency Act violation has occurred, an agency's responsibility to report the violation to the Congress and the President does not depend on its concurrence in GAO's determination. Office of Management and Budget Circular A-34 provides as follows:

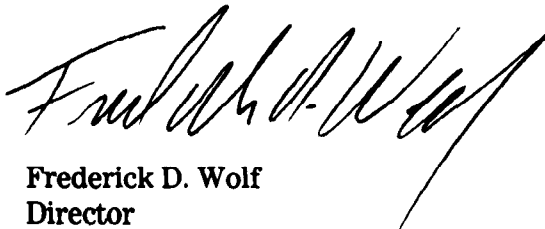
"Reports to the President and the Congress should also be made on violations not previously reported by the agency that are included in findings of the General Accounting Office in connection with audits and investigations.

"In these cases, the report to the President will contain an explanation as to why the violation was not discovered and previously reported by the agency. If the agency does not agree that a violation has occurred, the report to the President and to the Congress will explain the agency's position."

Finally, Agriculture objects to our discussion of problems we encountered with its accounting records because we did not substantiate these problems in this report. Our purpose for including these generalized references is to explain that we could not more precisely determine the amount of the deficiency because we could not rely on the Service's accounting records. For example, pre-fiscal year 1983 accounting records needed to perform this calculation were reported by the Service to have been lost and therefore not available for our scrutiny. We will issue a separate report which more fully discusses the Service's accounting system problems we identified.

In summary, we continue to believe that the Service's practice of paying for meals served in September of each fiscal year with funds from the following year's appropriation has resulted in a violation of the Anti-Deficiency Act. The Department of Agriculture's assertion that language in its appropriations acts authorizes the Service to charge meals served one year to the appropriation for the next year is unfounded. The statutory language merely requires local agencies and states to submit their claims for reimbursement in a timely manner. It does not permit Agriculture to cross fiscal year lines in charging meals to its appropriations. Further, OMB Circular A-34 requires that Agriculture report the violation to the Congress and the President regardless of whether it agrees with our determination.

We are sending copies of this report to the Director of the Office of Management and Budget, the Secretary of Agriculture, and the Administrator of the Food and Nutrition Service. We will give copies of this report to others who request them.



Frederick D. Wolf
Director

Comments From the Department of Agriculture

Note: GAO comments supplementing those in the report text appear at the end of this appendix



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

February 11, 1987

Mr. Charles A. Bowsher
Comptroller General of the United States
General Accounting Office
Washington, D.C. 20548

Dear Mr. Bowsher:

This responds to your draft audit report (B-221204) of January 13, 1987, which alleges a violation of the Anti-Deficiency Act (31 U.S.C. 1341) by the Food and Nutrition Service (FNS) concerning of the Child Nutrition Programs.¹ I have reviewed this matter with the Office of the General Counsel and other U.S. Department of Agriculture (USDA) officials. As a result of this review, I believe that FNS has acted with proper authority and in good faith in this matter. No violation of the Anti-Deficiency Act has occurred.

The draft audit report states that a violation of the Anti-Deficiency Act occurred because "...the Service has been paying for meals provided as part of the Child Nutrition Programs in September of each fiscal year with funds from the subsequent year's appropriation without the authority to do so." The draft audit report bases the conclusion of improper payment on the fact that the Child Nutrition appropriation for fiscal year 1983 and thereafter contains language different from the language authorizing the payment practice for fiscal years 1981 and 1982.

Although the appropriations language at issue was amended for fiscal year 1983, the amended language authorized USDA to use current year funds to pay claims for meals served in the previous year. The appropriations language for fiscal year 1983 ("An Act making appropriations for Agriculture, Rural Development, and Related Agencies programs for the fiscal year ending September 30, 1983, and for other purposes," 96 Stat. 1787, December 18, 1982) states:

"...final reimbursement claims ... submitted to State agencies ... sixty days following the month for which reimbursement is claimed shall be eligible for reimbursement from funds appropriated under this Act."

The language further states:

"States may receive program funds appropriated under this Act ... if the final program operations report for such month is submitted to the Department within ninety days following that month."

¹ The Child Nutrition Programs referred to in the draft report presumably are the National School Lunch, School Breakfast, Summer Food Service and Child Care Food Programs. 42U.S.C. 1751 et seq.

See comment 1

Appendix I
Comments From the Department
of Agriculture

Mr. Bowsher

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See comment 1

This language authorizes the use of funds to pay claims so long as the claims are submitted to state agencies within sixty days and the state agency report is submitted to FNS within 90 days. This same language has been included in each appropriation act for the Child Nutrition Programs since fiscal year 1983. Although a central premise of the draft report is that the statutory authority contained in the fiscal year 1981 and 1982 appropriation act was not continued, the report ignores the existence of the above-cited language, which authorizes the practice.

See comment 2

The conclusion reached by GAO that Congress, beginning with fiscal year 1983, intended to remove the Department's authority to pay claims for meals served in the previous fiscal year from current appropriations is insupportable. Furthermore, Congress took no action that would be consistent with discontinuing the practice. Congress appropriated no additional funds specifically to address the payment issue for fiscal year 1983 or any subsequent year. Congress is well aware of the FNS management of this account. It should be noted that since 1982 Congressional committees have from time to time questioned the Administration on its plans for eliminating the Child Nutrition funding shortfall.² Though several members of Congress expressed displeasure with the payment procedure, none stated that the practice is illegal.

See comment 2

Even as recently as January 13, 1987, FNS reported to Representative Jamie L. Whitten, Representative Virginia Smith, Senator Quentin Burdick, and Senator Thad Cochran on this matter. Though Congress has repeatedly addressed funding of the Child Nutrition Programs with a full knowledge of FNS management of the account, it has never addressed the matter with greater specificity than cited above.

The Department's responses to the specific recommendations in the draft audit report are as follows:

- report a deficiency violation, as required by the Anti-Deficiency Act, to the Congress and the President;

See comment 3

USDA Response: Since FNS has committed no violation of the Anti-Deficiency Act, the Department will not submit an Anti-Deficiency Act violation report to the Congress or the President. In addition to the

² Congressional committees have discussed the payment practice. See S. Rep. No. 566, 98th Cong. 2nd Sess. 103 (1984); "Agriculture, Rural Development and Related Agencies Appropriations for 1985, Hearings Before a Subcommittee of the Committee on Appropriations, U.S. House of Representatives", 98th Cong., 2nd Session, 760 (1984); "Agriculture, Rural Development and Related Agencies Appropriations for 1987, Hearings Before A Subcommittee on the Committee on Appropriations, U.S. House of Representatives", 99th Cong., 2nd Sess. 952, 1007 (1976). These discussions indicate a desire on the part of committee members that USDA submit a supplemental request for funds necessary to eliminate the payment practice. None of these discussions state the practice is illegal. These discussions do conclusively indicate that the appropriation committees are aware of the practice.

Appendix I
Comments From the Department
of Agriculture

Mr. Bowsher

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notice provided to Congress on FNS management of this account, appropriate officials in the Executive Office of the President have been kept fully informed on this matter.

- determine the amount of the deficiency as of the end of fiscal year 1986 and request a supplemental appropriation from the Congress to eliminate it;

See comment 4

USDA Response: Under the provisions of the Budget and Accounting Act of 1921, only the President may submit requests for appropriations. USDA does not intend to violate provisions of the Budget and Accounting Act of 1921 by following the recommendation of GAO.

- change its practice of paying for meals provided through the Child Nutrition Programs in September of each fiscal year with funds from the subsequent year's appropriation so that obligations for meals served in September will be charged to the pertinent appropriation account of the expiring fiscal year;

See comment 5

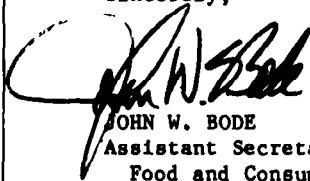
USDA Response: Since USDA has authority for its practice in fiscal year 1987 appropriations language, USDA will continue its current payment practice to meet unpaid fiscal year 1986 claims. Implementation of this GAO recommendation would result in delay of the payment of millions of dollars worth of legitimate reimbursement claims pending Congressional action.

See comment 6.

Finally, the Department strongly objects to the draft audit report's vague allegations of unreliable, unreconciled and unavailable records. Such grave allegations are a matter of great concern to the Department. However, the Department is unable to address this very serious matter since GAO has not substantiated its position. These references should be deleted from this and future GAO reports unless the basis for such characterizations is provided.

In summary, USDA has acted properly to pay the legitimate claims for meals served in schools across the country. The present system for making these payments was begun in 1980 at the authority given by Congress. Each subsequent year, statutory authority for the practice has been provided and no Congressional directive to discontinue the practice has been given. Until there is a change in the law or in the funding situation, USDA intends to continue to reimburse unpaid claims from the following year's appropriations.

Sincerely,



JOHN W. BODE
Assistant Secretary for
Food and Consumer Services

Enclosures

The following are GAO's comments on the Department of Agriculture's letter dated February 11, 1987.

GAO Comments

1. The cited language does not authorize the practice. See agency comments section of report.
2. The fact that the Department notified the Congress of the Service's management of the account does not eliminate an Anti-Deficiency Act violation. See agency comments section of report.
3. Discussed in agency comments section of report.
4. We agree and have therefore changed the wording of our final report to recommend instead that Agriculture follow its normal budget process and request, through OMB, a supplemental.
5. Discussed in agency comments section of report.
6. No change to report needed. See agency comments section of report.

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