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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-204034

August 12, 1981

The Honorable Alan Cranston
United States Senate

Dear Senator Cranston:

This responds to your letter dated July 1, 1981, in which you asked us to address the concerns expressed by Dr. Theodore Jackson, Martin Luther King General Hospital, in his letter to you dated June 26, 1981. Dr. Jackson's concerns arise out of the Department of Health and Human Services' not awarding an emergency medicine training grant to the hospital subsequent to the expiration of the 45-day withholding period authorized for rescissions under the Impoundment Control Act.

EMERGENCY MEDICAL SERVICES TRAINING PROGRAM

The Emergency Medical Services Training Program (EMST) was established by section 3(a) of the Emergency Medical Services Systems Act of 1973, Pub. L. 93-154, which amended title VII of the Public Health Services Act. 42 U.S.C. 295g-9. The Secretary of the Department of Health and Human Services is authorized to make grants to, and enter contracts with, qualified hospitals having training programs which meet requirements established by the Secretary. The grants and contracts assist in meeting the cost of training programs in the techniques and methods of providing emergency medical services, and provide financial assistance to those who plan to work in the practice of emergency medicine. 42 U.S.C. 295g-9(a)(1). The statute gives the Secretary discretion in determining the amount of any grant or contract, 42 U.S.C. 295g-9(c), and in establishing the funding cycle applicable to the submission and review of applications for grants and contracts, 42 U.S.C. 295g-9(f).

The EMST grant to the Hospital initially was awarded in 1977, with up to 5 years of renewal options. Grant periods for 1977 through 1980 were from October 1 through September 30. During the first 3 years, the hospital was awarded a grant during the fourth quarter; in 1980, the grant was awarded at the end of the third quarter.

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IMPOUNDMENT

The EMST is funded out of a lump-sum appropriation to the Department of Health and Human Services, Health Services Administration, for health services. On March 19, 1981, President Reagan proposed a \$56.636 million rescission (R81-134) from these funds.

Under section 1012 of the Impoundment Control Act, 31 U.S.C. 1402, funds were withheld pending Congressional consideration of the rescission proposal. Section 1012 authorizes a withholding period of 45 days of continuous Congressional session. This rescission had been proposed originally by President Carter on January 15, 1981, and was before the Congress for 22 days before it was converted temporarily to a deferral on February 13, 1981. Twenty-three days after the proposed rescission of March 19, the 45-day withholding period was considered to have expired, and on April 28, 1981, OMB made the EMST funds available to HHS. The matter involving the reproposal of several rescissions, including the one pertaining to EMST funds, is discussed in detail in our impoundment report, dated May 14, 1981 (copy enclosed), responding to the President's March 19 impoundment message.

On April 27, 1981, the Director of the Office of Management and Budget (OMB) issued a memorandum to the heads of Executive Departments and Establishments in which agencies were informed of the required release date. The memorandum also stated:

"The release of funds proposed for rescission should not be interpreted as a mandate to spend. In order to help the President in his efforts to avoid unnecessary spending and to carry out the intent of Congress, you should be very prudent in obligating funds that have been proposed for rescission. Funds eventually rescinded by the Congress will need to be derived from the budgetary resources that remain available to the appropriation or fund at the time of the rescission."

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HHS did not proceed to obligate any of the funds for EMST grants. On May 4, 1981, just 7 days after the required date of release, the House Committee on Appropriations issued its report, H.R. Rep. No. 97-29, on the Supplemental Appropriations and Rescission Bill. In its report, the Committee endorsed the policy stated in OMB's April 27 memorandum. The Committee report stated on page 11:

"The 45 day period will have expired on the Presidential proposals before the anticipated enactment date of the accompanying bill. Similar situations have existed in the past. Last year, during the process of Congressional action on the Supplemental Appropriation and Rescission Bill, 1980, the Director of the Office of Management and Budget issued directions to executive departments and agencies to exercise extreme prudence in obligating funds which have been recommended for rescission. Similar instructions have been issued by the present Administration.

"In view of the resolutions reported by the Budget Committees of the House and Senate and in view of the recommendations contained in the accompanying bill, the Committee joins in urging officials of the Executive Branch to exercise caution in regard to action on such funds except where such funds are due and payable under existing law."

Congress responded to the President's impoundment proposal in the Supplemental Appropriations and Rescission Act, 1981, Pub. L. No. 97-12, which became law on June 5, 1981. The Act rescinded \$49.776 million from the health services account.

LEGALITY OF HHS DECISION NOT TO AWARD EMST GRANTS

Section 1012 of the Impoundment Control Act, 31 U.S.C. 1402, requires that if Congress does not pass a rescission bill within the prescribed 45-day period, the funds must be made

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available for obligation. OMB complied with section 1012 when it released the funds to HHS on April 28, 1981.

The agency has a similar obligation under section 1012 to make the funds available for obligation. However, section 1012 contains no requirement that the agency obligate the funds immediately following the expiration of the 45-day withholding period. Section 1012 does not require an agency to obligate the funds in a manner inconsistent with program needs and historical practices. After the expiration of the 45-day period, an agency should be guided by whatever factors would, in the absence of a rescission bill, control the obligation of funds during that period.

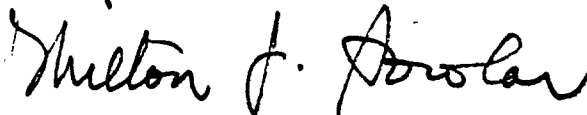
As previously discussed, the Secretary has discretion in determining the amount and the timing of any grant awards. The EMST is not a formula or other type of mandatory grant program. The earliest date on which the Martin Luther King General Hospital was awarded grants during the four previous years was June 26. Awards in the other 3 years were made in August and September. Consequently, HHS's decision not to award a grant to the Hospital during the period between April 28, 1981 (when the funds became available), and June 5, 1981 (when the Supplemental Appropriations and Rescission Act became law), was not inconsistent with its customary practice concerning the timing of its grant awards. The agency's decision also was consistent with the instructions from OMB, which were endorsed by the House Committee on Appropriations. Consequently, we find that the agency did not act improperly by not awarding a grant to the hospital during the period of April 28, 1981, through June 5, 1981.

The funds for the EMST program were part of a lump-sum appropriation, as mentioned earlier. The Supplemental Appropriations and Rescission Act rescinded \$49.776 million from the appropriation, but did not provide which programs would be affected by the rescission. The agency has applied \$3 million of the rescission to the EMST program, which will have the effect of terminating the EMST program for fiscal year 1981. The Hospital is one of 22 potential grantees affected by the rescission. Because the language appropriating and then rescinding funds for health services did not specify the programs involved, the agency has discretion to allocate the remaining funds. Therefore, the agency did not act improperly in applying the remaining funds to

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other programs authorized in the health services account, and in not awarding EMST grants after June 5, 1981.

Sincerely yours,

A handwritten signature in cursive script that reads "Milton J. Fowler".

Acting Comptroller General
of the United States

Enclosure

DIGEST

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1. Section 1012 of Impoundment Control Act, 31 U.S.C. 1402, requires that if Congress does not pass rescission bill within prescribed 45-day withholding period, withheld funds must be made available for obligation.
2. After Office of Management and Budget releases funds to agency, agency has obligation under section 1012 to make funds available for obligation. However, section 1012 contains no requirement that agency obligate funds immediately following expiration of 45-day withholding period. Section 1012 does not require agency to obligate funds in manner inconsistent with program needs and historical practices. After expiration of 45-day period, agency should be guided by whatever factors would, in absence of rescission bill, control obligation of funds during that period.
3. Agency awarded grants in previous years after June 26. Consequently, agency decision not to award grants during period between when funds became available on April 28, 1981, and when fund were rescinded by Congress in Supplemental Appropriations and Rescission Act, 1981, Pub. L. No. 97-12 (June 5, 1981), was not inconsistent with its customary practice concerning timing of grant awards. Agency's decision also was consistent with OMB instructions, which were endorsed by House Committee on Appropriations, H.R. Rep. 97-29 (May 4, 1981). Therefore, agency did not act improperly by not awarding grant during period of April 28, 1981, and June 5, 1981.