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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20543

B-183433

MAR 28 1979

NOT BEING AVAILABLE TO PUBLIC READING ROOM

The Honorable Russell B. Long
Chairman, Committee on Finance
United States Senate

Dear Mr. Chairman:

This decision is in response to the request submitted jointly by you and Senator Magnuson, for an opinion on whether payments to States for amounts expended in implementing that portion of the Child Support Enforcement Program set forth in section 454(6) of the Social Security Act (the Act), 42 U.S.C. § 654(6), can be financed under section 101(a) of Pub. L. No. 95-482, 92 Stat. 1803, October 18, 1978, Continuing Appropriations, Fiscal Year 1979, particularly in view of the provision in section 455(a) of the Act, 42 U.S.C. § 655(a), prohibiting any payments to States under section 454(6) of the Act after September 30, 1978.

For the reasons set forth below, it is our opinion that, absent specific legislation repealing or delaying the effective date of the prohibition clause of section 455(a), no funds are available for expenditure at this time for the implementation of section 454(6) of the Act.

The Child Support Enforcement Program (the Program), Title IV-D of the Act, 42 U.S.C. § 651, et seq., was enacted to assist States in establishing and carrying out programs for locating absent parents, establishing paternity, and obtaining child support owed by absent parents to their children.

An approved State plan for child support must provide, inter alia, that "the child support collection or paternity determination services established under the plan shall be made available to any individual not otherwise eligible for such services (i. e., non-AFDC families) upon application filed by such individual with the State," section 454(6) of the Act, 42 U.S.C. § 654(6). Matching funds are paid by the Federal Government to the States pursuant to section 455(a) of the Act, for activities under approved State plans.

Section 455(a) provides, however, "that no amount shall be paid to any State on account of furnishing child support collection or paternity determination services (other than the parent locator services) to individuals under section 454(6) during any period beginning after September 30, 1978."

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Funding for the Child Support Program as a whole is permanently authorized by section 451 of the Act, 42 U.S.C. § 651, which authorizes the appropriation for each fiscal year of a sum sufficient to carry out the purposes of the Program. Thus, the Title IV-D, non-AFDC program is not an unauthorized program, in contrast to the other programs covered by the Continuing Resolution.

Funds for the Program, including the Title IV-D, non-AFDC program, were included in a fiscal year 1979 lump sum appropriation for "Assistance Payments Programs," by Pub. L. No. 95-480, Title II, 92 Stat. 1571, 1581, October 18, 1978. There was a budget estimate of \$13,000,000 net expenditures for the Program as a whole. S. Rep. No. 95-1119, 95th Cong., 2d Sess. 174.

During debate and in the reports on H. R. No. 12929, the derivative source of the fiscal year 1979 Departments of Labor and Health, Education, and Welfare appropriations act, supra, the spending prohibition clause of section 455(a) of the Act was not discussed. Both Houses of Congress noted that there were a large number of programs which they would not consider for funding because they lacked authorizing legislation (see, e.g., S. Rep. No. 95-1119, supra, at 4-5), but the non-AFDC child support enforcement activities were not included in a list of affected programs.

Although there is authority for the non-AFDC Child Support Program and funds were appropriated which would normally be available to carry it out, the Department of Health, Education, and Welfare (HEW) is prohibited after September 30, 1978, from making any payments to the States from these funds for the purpose of providing matching funds for State costs incurred pursuant to section 454(6) of the Act. That is to say, the explicit language of section 455(a) fixed a date beyond which otherwise available appropriated funds may not be spent for non-AFDC child support efforts; it did not repeal the permanent authorization of appropriations for that activity.

Shortly after the fiscal year 1979 Labor-HEW appropriations act was passed by Congress, a joint resolution was enacted making continuing appropriations for a number of programs of the Departments of Labor and HEW and related agencies, which had been carried on in fiscal year 1978 but for which no appropriations had been made in the regular Labor-HEW appropriation act because their authorizations had expired and had not yet been reenacted. Pub. L. No. 95-482, supra. Under section 101(a) of the Joint Resolution are appropriated "such amounts as may be necessary for continuing the following activities, not otherwise

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provided for, which were operated in fiscal year 1978, but at a rate for operations not in excess of the current rate; * * * activities under the Social Security Act; * * *," (Emphasis added.)

You have suggested that matching funds for the non-AFDC portion of the Program may be made to the States pursuant to this provision of the Joint Resolution as this is an activity "under the Social Security Act." HEW has advised us informally that they have reached the same conclusion. We agree that this is an activity under the Social Security Act, but do not agree that it is an activity which is not "otherwise provided for."

In both reports accompanying H. J. Res. 1139, the derivative source of Pub. L. No. 95-482, it was clearly stated that the Joint Resolution was intended to permit the continuation of programs omitted from the Labor-HEW appropriation act for fiscal year 1979 because necessary authorizing legislation had not been passed. These programs are listed in both reports, and the child support enforcement program is not included. H. R. Rep. No. 95-1599, 95th Cong., 2d Sess. 3-4; S. Rep. No. 95-1317, 95th Cong., 2d Sess. 1-3.

Of more significance, however, is the fact that, as noted above, the entire Title IV-D program is permanently authorized by section 451 of the Act, and thus the Joint Resolution is, by its own terms, inapplicable to the non-AFDC activities at issue. Additionally, funds have been made available in Pub. L. No. 95-480, supra, in the lump sum appropriation which includes Title IV of the Act. As a result, amounts have been "otherwise provided for" the non-AFDC activities, although they cannot be expended by HEW because of the prohibition in section 455(a). To make funds available under the Joint Resolution as proposed would constitute an impermissible augmentation of HEW appropriations, and would still not overcome the expenditure prohibition in section 455(a) of the Social Security Act.

We are aware that a proposal to repeal the prohibition clause of section 455(a) was offered as Title VI of the Senate amendments to H. R. No. 11711, 95th Cong., 2d Sess. (1978), the proposed Trade Adjustments Assistance Amendments, and we understand that it was adopted by the House but not enacted into law. Therefore, the prohibition clause remains in effect at this time.

In conclusion, it is our opinion that in order for HEW to be able to make payments to the States pursuant to sections 454(6) and 455(a)

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of the Act, the Congress must first enact specific legislation which either extends the effective date of the section 455(a) prohibition, or repeals the restriction altogether.

Sincerely yours,

R. F. KELLER

Acting Comptroller General
of the United States

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WASHINGTON, D.C. 20543

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For the reasons set forth below, it is our opinion that, absent specific legislation repealing or delaying the effective date of the prohibition clause of section 455(a), no funds are available for expenditure at this time for the implementation of section 454(6) of the Act.

The Child Support Enforcement Program (the Program), Title IV-D of the Act, 42 U.S.C. § 651, *et seq.*, was enacted to assist States in establishing and carrying out programs for locating absent parents, establishing paternity, and obtaining child support owed by absent parents to their children.

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Although there is authority for the non-AFDC Child Support Program and funds were appropriated which would normally be available to carry it out, the Department of Health, Education, and Welfare (HEW) is prohibited after September 30, 1978, from making any payments to the States from these funds for the purpose of providing matching funds for State costs incurred pursuant to section 454(6) of the Act. That is to say, the explicit language of section 455(a) fixed a date beyond which otherwise available appropriated funds may not be spent for non-AFDC child support efforts; it did not repeal the permanent authorization of appropriations for that activity.

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