GAO

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Office of the General Counsel

B-284566.2

August 9, 2000

Ms. Anne Wicks
Acting Executive Officer
District of Columbia Courts
500 Indiana Avenue
Washington, D.C. 20001

Subject: Rescission of District of Columbia Courts Appropriations

Dear Ms. Wicks:

This completes our response to a January 20, 2000 letter from the former Executive Officer, District of Columbia Courts (D.C. Courts). The former Executive Officer asked a number of questions concerning the proper accounting for certain payments, which we addressed in B-284566, April 3, 2000. The former Executive Officer also asked about the applicability to the D.C. Courts of the .38 percent rescission of discretionary budget authority made by the Consolidated Appropriations Act for Fiscal Year 1999, Pub. L. No. 106-113, Division B § 1005(a)(5), 113 Stat. 1501, 1535 (November 29, 1999).

Specifically, the rescission applies to "discretionary budget authority provided . . . for fiscal year 2000 in this or any other Act for each department, agency, instrumentality, or entity of the Federal Government." The Office of Management and Budget (OMB) applied the rescission to two D.C. Courts appropriation accounts. The former Executive Officer questioned whether the rescission applies to D.C. Courts, stating that the federal government and the District of Columbia are separate legal entities. For the reasons explained below, we conclude that OMB's application of the rescission to the D.C. Courts discretionary accounts is reasonable.

Background

During Congress's consideration of the fiscal year 2000 federal budget, OMB warned that discretionary spending limits might be exceeded and a sequestration of discretionary spending might be required. See OMB Sequestration Update Report to the President and Congress for Fiscal Year 2000, April 25, 1999. Rather than relying on a possible sequestration order, Senator Nickles offered the following amendment

to S. 1650, the Labor, Health and Human Services, Education Appropriations Act for FY 2000:

> "(b) Sense of the Senate—It is the sense of the Senate that Congress should ensure that the fiscal year 2000 appropriations measures do not result in an on-budget deficit (excluding the surpluses generated by Social Security trust funds) by adopting an across-the-board reduction of all discretionary appropriations sufficient to eliminate such deficit if necessary." [1]

Senator Nickles indicated that approximately a 1- percent across-the-board reduction to all discretionary appropriations would eliminate the overage.[2] Unlike a reduction issued under the President's sequestration order, which would only apply to the discretionary spending category causing a breach,[3] the Senator proposed a reduction that would apply to all discretionary appropriations. However, the Senate did not include the proposal in S. 1650.

Thereafter, the Conference Committee Report on H.R. 3064 (the second District of Columbia and Labor, HHS, Education Appropriation Act) included an across-the-board .97 percent rescission of budget authority provided in any discretionary account (or obligation limitation) in any fiscal year 2000 appropriation.[4] However, the President vetoed H.R. 3064 on November 3, 1999. The President's veto message to Congress cited the across-the-board cut as one of the reasons for vetoing the bill. The President objected to the "indiscriminate cuts" to areas such as national defense and security, education, environmental programs and law enforcement.[5] The President's message, however, makes no specific reference to the effect of such cuts on the District's appropriations, but does commend the Congress for providing "essential funding for the District Courts and Corrections" and other federal funds he requested for the District.

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[1] Amendment No. 1889 to Amendment No. 1851. 145 Cong. Rec. S11774-75 (daily ed. October 1, 1999)(italics added).

[2] 145 Cong. Rec. S11775 (daily ed. October 1, 1999).

[3] Congress established the sequestration process in 1985 to enforce compliance with spending targets set to eliminate the budget deficit over a period of time. Pub. L. No. 99-177, title II, 99 Stat. 1037, 1038 (1985). Currently, sequestration is used to enforce statutory limits set for four categories of discretionary spending (discretionary, violent crime reduction, highway, and mass transit). 2 U.S.C. 900(c)(4), 901(c)(4) (Supp. IV 1998).

[4] H.R. Conf. Rep. No., 106-419, 93-94, 254 (1999).

[5] H. Doc. No. 106-154, at 1-6, (1999).

Shortly thereafter, on November 17, 1999, the chairman of the House Appropriations Committee, Mr. Young of Florida, introduced H.R. 3425, a bill making miscellaneous appropriations for fiscal year 1999. Section 301(a) of H. R. 3425 provided for a .38 percent rescission. Section 301(b) precluded the reduction of any program, project or activity by more than 15 percent, specifically included an exemption for military personnel accounts from the .38 percent rescission, and provided that the reduction for Defense and Energy accounts shall be applied proportionately to all defense activities.

In this same time frame, Congress took up H.R. 3194, the House's third version of the District of Columbia appropriation act for fiscal year 2000. In conference, the conferees added four additional regular appropriations acts and a number of other legislative initiatives to H.R. 3194, and retitled it the Consolidated Appropriations Act for fiscal year 2000. On November 18, 1999, the House adopted the conference report on H.R. 3194 and the Senate did the same the next day. On November 29, 1999, President Clinton signed the measure into law. Pub. L. No. 106-113, 113 Stat. 1501-1537 (1999).

Section 1005 (a)(5) of the Consolidated Appropriations Act for fiscal year 2000, Pub. L. No. 106-113, Division B, § 1005(a)(5), 113 Stat. 1501, 1535 (November 29, 1999), incorporated by reference and enacted into law H.R. 3425, as introduced on November 17, 1999. Section 301 (a) of H.R. 3425, as introduced on November 17, 1999, provides that:

> "There is hereby rescinded an amount equal to 0.38 percent of the discretionary budget authority provided (or obligation limit imposed) for fiscal year 2000 in this or any other Act for each department, agency, instrumentality, or entity of the Federal Government." Pub. L. No. 106-113, Appendix E, 113 Stat. 1501A-303.

Subsection 301(c) requires the Director of OMB to include a report specifying the reductions made to each account pursuant to section 301 in the President's fiscal year 2001 budget. The OMB report on the rescissions lists only the "Federal Payment to the District of Columbia Courts" account (349-10-20-1712) among the accounts subjected to the .38 percent reduction.[6] In addition, the OMB apportionment schedule dated December 30, 1999, for "Federal Funds," "Defender Services in the District of Columbia Courts" account (349-10-20-1736), identified amounts rescinded for this account pursuant to Public Law 106-113.

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[6] Analytical Perspectives, Budget of the United States Government, Fiscal Year 2001, "Report on the Government-Wide Rescissions in the Consolidated Appropriations Act, 2000 (P.L. 106-113)," pp. 381, 394.

Discussion

As we read section 301, two conditions must be met for it to apply. First, the funds rescinded must be discretionary budget authority provided for fiscal year 2000. Second, the discretionary budget authority provided must be for a "department, agency, instrumentality, or entity of the Federal Government."

The D.C. Courts do not dispute that they received, and OMB rescinded, discretionary budget authority provided for fiscal year 2000. In its request to us, the D.C. Courts point out that the District of Columbia government has been treated as possessing a separate legal identity from the federal government for certain purposes, citing 60 Comp. Gen. 710 (1981).[7] Accordingly, the question is whether, for purposes of section 301(a), OMB may reasonably consider the D.C. Courts a "department, agency, instrumentality, or entity of the Federal Government."

There are any numbers of examples of where Congress has treated the District government as part of the federal government for some purposes but not for others.[8] Although Congress often explicitly addresses a statute's application to the District, the failure of Congress to do so does not mean that the District is not covered where the statute's language and purpose warrants coverage. Here we think that OMB's application of section 301(a) to the D.C. Court's fiscal year 2000 discretionary budget authority finds support in both the language and purpose of section 301(a).

As noted in the background, Congress adopted the across-the-board cut in response to OMB's warning of a potential breach of the discretionary spending caps. Senator Nickles's proposal was designed to remedy this situation by a reduction applicable to all discretionary spending. Congress' subsequent legislative actions were broadly

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[7] As discussed in 60 Comp. Gen. 710 (1981), Congress established the District of Columbia government as a municipal corporation authorized to exercise limited autonomy over purely local matters. Among its powers is the authority to tax, collect debts, and settle claims. See, e.g., D.C. Code Ann. §§ 1-105, 1-109, 1-201 (1981, 1999 Replacement Vol.). Even though there was no explicit statutory guidance, we determined that the D.C. government had the necessary separate legal existence from the federal government for Government Printing Office to charge interest on overdue District accounts. See also, 65 Comp. Gen. 594 (1986)(administrative procedures to enforce civil rights protections for federal employees found in section 717 of the Civil Rights Act of 1964 do not apply to D.C. Courts).

[8] Congress has expressly included the District of Columbia as an "agency" for purposes of our audit authority, 31 U.S.C. §§ 701(1), 717 (1994). For purposes of chapter 11, title 31, United States Code, relating to the annual budget, the District of Columbia is included within the definition of "agency". 31 U.S.C. 1101(1) (1994). In contrast, Congress has expressly excluded the District of Columbia from the definition of "agency" for purposes of the Administrative Procedures Act, 5 U.S.C. § 551(1)(D).

written to achieve this purpose. Until the incorporation by reference of section 301 of H.R. 3425, the rescission language under consideration by the Congress was intended to reduce across-the-board all discretionary appropriations, which would have included those received by D.C. Courts.

Moreover, a sequester in the general category for discretionary spending would reach federal funds appropriated for the D.C. Courts. Given the legislative purpose behind section 301(a), we see no reason to infer that Congress intended it to apply more narrowly than would a sequester of discretionary spending.[9] We found nothing in the legislative history of section 301(a) suggesting that the phrase "department, agency, instrumentality or entity of the Federal Government" reflects a change from reducing spending from all discretionary appropriations to something less. Further, section 301(b), which imposes express limitations on the rescission (that responded in part to the President's veto message), supports the inference that Congress intended to make the reductions less extensive than had previously been considered only in the areas expressly addressed in section 301(b). If the drafters also intended to exclude the District of Columbia from the proposed rescission, they presumably would have provided equally clear guidance to that effect either in the law or its legislative history.[10]

While the phrase "of the Federal Government" in section 301(a) raises a legitimate issue concerning its application to the D.C. Courts, we think there is a reasonable basis to view the D.C. Courts as either an "instrumentality" or "entity" of the federal government. Arguably, the terms "federal department" and "federal agency" have taken on a settled meaning. In everyday conversation these terms are typically used to describe governmental organizations headed by federal officers, staffed with federal employees, funded with federal dollars, and subject to the panoply of federal laws and regulations governing the day-to-day activities of its departments and agencies. Admittedly, this does not precisely capture the District of Columbia Courts.

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[9] Only appropriations of locally raised funds of the District are exempt from sequester. 2 U.S.C. § 905(g)(1)(A). In addition to the exemption in 2 U.S.C. § 905(g)(1)(A), Congress routinely includes language in the annual District appropriations act specifying that any sequesters shall apply to each account appropriating federal funds for the District rather than the aggregate of the accounts. See, e.g., Pub. L. No. 106-113, Division A, title I, § 123, 113 Stat. 1501, 1515 (1999). Previous sequesters have included the federal payment and other federal funds appropriated to the District of Columbia.

[10] During floor debates on the Conference Report on H.R. 3194, members of the House referred to the cuts as across-the-board. No one stated that the language excluded the District or that it was anyone's understanding that the language excluded the District. See statements of the Honorable David Obey, Majority Leader Richard Armey, Majority Whip Tom Delay, and Speaker Dennis Hastert, 145 Cong. Rec. H12742, H12766, H12767, and H12800, respectively (daily ed. November 18, 1999).

Clearly, however, Congress intended the terms "entity" and "instrumentality" to have a broader reach than the terms "department" or "agency." This is obvious from the way Congress used the terms in the statute. Moreover, viewing the phrase "for each department, agency, instrumentality, or entity of the Federal Government" as a whole, we think Congress used it expansively to capture as much of the federal establishment funded with discretionary appropriations as possible.

If the phrase is so understood, there is a credible basis in law to consider the D.C. Courts a federal "instrumentality" or "entity" for purposes of section 301(a). Even though the District of Columbia Home Rule Act increased local participation in a number of ways, the federal government retains a significant role over the appointment of judges to the local courts and the spending of locally generated revenues. Specifically, the President appoints, with confirmation by the Senate, the judges to the Superior Court of the District of Columbia and the District of Columbia Court of Appeals. D.C. Code Ann. § 11-1501 (1981, 1995 Replacement Volume). Further, no officer or employee of the District government may obligate or spend an amount unless the amount is authorized by enactment of a federal law. D.C. Code Ann. §§ 47-304. 47-313(a) (1981, 1997 Replacement Volume, 2000 Supp.). The federal government authorizes most of the District of Columbia government spending (including D.C. Courts) through the enactment of a regular annual appropriation act considered (along with the 12 other regular annual appropriations acts) as part of the annual federal budget process. Finally, unlike the other branches of the District government, beginning with fiscal year 1998, federal revenues, not District revenues, have funded the D.C. Courts. Thus, when viewed from an appointment, funding, and spending authorization standpoint, there is support for the proposition that the D.C. Courts may be considered a federal instrumentality or entity.

Accordingly, for the reasons discussed above, the decision by OMB, the implementing agency, to apply the rescission provision to the D.C. Courts was a reasonable application of section 301(a).

Sincerely yours,

/s/Robert P. Murphy
General Counsel