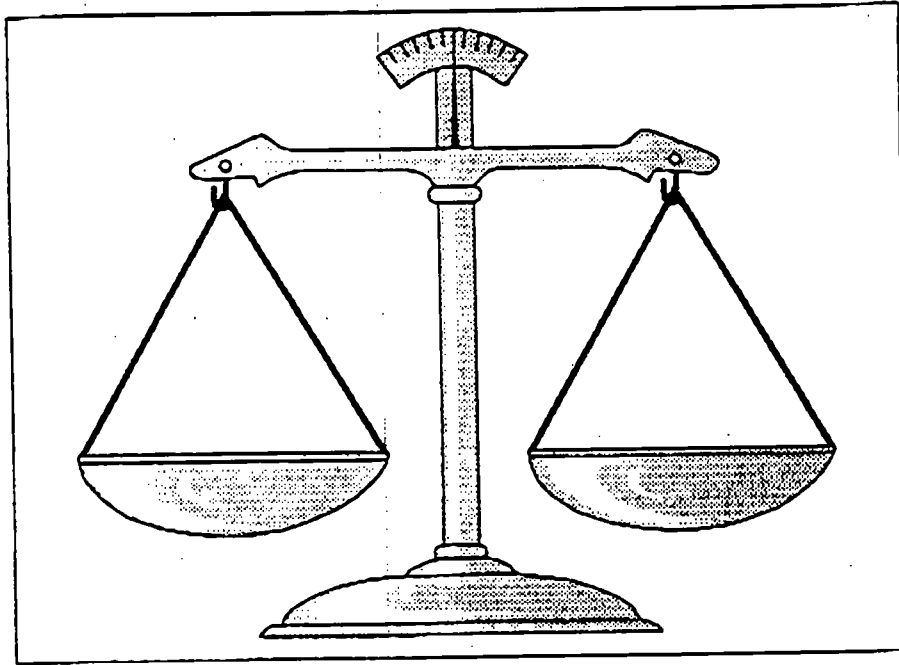


UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE GENERAL COUNSEL
14TH AND INDEPENDENCE AVENUE, S.W.
WASHINGTON, D.C. 20250-1400



A3
OMB

DATE: 9/1/98

TO: Tom Freedman

FROM: Charlie Rawls

FAX #: 202-720-8666

PHONE #: 202-720-3351

PAGES: 4 INCLUDING COVER SHEET

COMMENTS:



United States
Department of
Agriculture

Office of the
General
Counsel

Washington,
D.C.
20250-1400

Mr. Rawls

AUG 06 1998

Robert Damus, Esq.
General Counsel
Office of Management and Budget
252 Old Executive Office Building
Washington, D.C. 20503

Dear Mr. Damus:

As you know, the 1998 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act ("Agriculture Appropriation"), Pub. L. No. 105-86, contains language that authorize the transfer of all obligated and unobligated balances from prior years for a number of Rural Development programs into two separate appropriations: the Rural Community Advancement Program ("RCAP") and the Rural Housing Assistance Grants ("RHAG"). The RCAP language provides:

Provided further, That any obligated and unobligated balances available for prior years for [various Rural Development programs] shall be transferred to and merged with this account.

111 Stat. 2094 and 2095. The RHAG language is substantially the same, 111 Stat. 2096.

The RCAP and RHAG appropriations accounts by their terms are no-year accounts.

I understand that the view of some in the Office of Management and Budget (OMB)¹ regarding the above-quoted language is that the language in RCAP and RHAG does not extend no-year availability to funds provided for programs that were previously funded on a fiscal year basis because in order for the period of availability to be changed, explicit language, such as, "shall be merged with and subject to the same terms and conditions and period of availability as the appropriation to which transferred" must be included in the appropriation language.

The purpose of this letter is to set forth the position of the Department with respect to the language.

¹Staff of the Agriculture Branch have noted that the budget schedules reflect an estimated carryover of \$7 million into the RCAP account in FY 1998, rather than the total of over \$150 million which would be available based on the inclusion of prior year unobligated balances. While we regret that the budget schedules do not reflect the total amount of the carryover, we do not believe that this omission should prevent the use of those funds which is clearly provided under the terms of the language.

At the time the Agriculture Appropriation was enacted on November 18, 1997, all prior-year (fiscal year 1997 and earlier year) monies for the other identified accounts had lapsed. Therefore, Congress must have intended to convert the balances available in those accounts to no-year funds; otherwise, the language "shall be transferred to and merged with this account" would be surplusage and thus a nullity. In interpreting statutes, the courts try to avoid any reading which would render any part of a statute superfluous. State of N.Y. v. Shore Realty Corp., 759 F.2d 1032, 1044 (2d Cir. 1985); National Insulation Transportation Committee v. I.C.C., 683 F.2d 533, 537 (D.C. Cir. 1982).

If Congress had intended the Department simply to transfer and consolidate the balances of the various accounts into the appropriations concerned without changing the terms, conditions, and period of availability, it could have done so by stating "that any obligated and unobligated balances available for prior years for the [various accounts] shall be transferred to this account." In this case, however, Congress used the words "transferred to and merged with this account." Another canon of statutory construction, of course, is that unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning. Perrin v. United States, 444 U.S. 37, 42 (1979). Webster's Ninth New Collegiate Dictionary, 743 (1985) defines "merge" as "to cause to combine, unite, or coalesce." Because Congress used the phrase "and merged with this account," in addition to providing the authority to transfer the funds, it is clear that Congress intended that the prior fiscal year funds of the various accounts be mixed with the no-year funds in the RCAP and RHAG accounts so that the aggregate amount of old and new funds was made subject to the terms and conditions and period of availability in the RCAP and RHAG accounts.

In 31 Comp. Gen. 275 (1952), the Comptroller General held that a personal service limitation in a 1952 Department of Commerce appropriation was applicable to funds transferred from the 1951 appropriation (the 1951 appropriation did not contain that limitation) and merged with funds made available by the 1952 act. The 1952 appropriation stated in part:

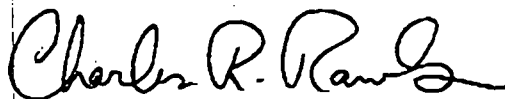
\$2,700,000 shall be available as one fund for necessary planning . . . and not to exceed \$1,937,447 shall be available for personal services: Provided, That the appropriation under this head for the next preceding fiscal year is hereby merged with this appropriation and the contract authorization heretofore granted for the foregoing purposes may hereafter be accounted for under this head.

The language in that appropriation did not contain the language that OMB states is necessary to change the terms, conditions, and period of availability of the transferred and merged funds, yet the Comptroller General found that the conditions of the appropriation to which the earlier funds were transferred applied.

Accordingly, it is our position that the views articulated by some in OMB are not in accord with Congressional intent. While the language used is less than perfect, we believe the better view is that funds made available in prior years for the identified rural development accounts should be available, without fiscal year limitation, for the RCAP and RHAG accounts.

I would very much appreciate your consideration of this analysis. If I can be of further assistance, please contact me at 720-3351.

Sincerely,

A handwritten signature in cursive script, reading "Charles R. Rawls". The signature is fluid and written in dark ink.

Charles R. Rawls
General Counsel