USDA funds

Charles R. Rawls
General Counsel
US Department of Agriculture
Washington, DC 20250-1400

Dear Mr. Rawls,

This is in response to your letter, dated August 6, 1998, concerning provisions enacted in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998, concerning consolidation of account balances under the headings, "Rural Community Advancement Program" ("RCAP") and "Rural Housing Assistance Grants" ("RHAG").

In your letter, you state that some in this agency assert that the provisions in question do "not extend no-year availability to funds provided for programs that were previously funded on a fiscal year basis...". This is not the case. Rather we agree with you that all amounts transferred to RCAP and RHAG become no-year funds by virtue of the provision you have cited.

However, the issue is not that which you articulated. It is, rather, what funds are available to be transferred to the new account headings in the first place, pursuant to this statutory authority. It is on the point that I believe our views differ.

The RCAP provision states:

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

111 Stat. 2094 and 2095.

In applying this provision, we need to identify which types of funds would be subject to this transfer. The authority applies only to "obligated or unobligated balances." These terms are well-recognized and are defined in both GAO and OMB materials. For example, GAO defines "unobligated balances" as follows: "The portion of obligational authority that has not yet been obligated. Unobligated balances whose period of availability has expired are not available for new obligation and may only be used for recording, adjusting, and liquidating obligations properly chargeable to the fiscal year account." See GAO, "A Glossary of Terms Used in the Federal Budget Process," (Exposure Draft, 1993, p. 62). Similarly, OMB's Circular A-11 defines "unobligated balances" as "balances of budgetary resources that remain available for obligation...". See Circular A-11, section 14.2(a) at p. 39. GAO defines "obligated balances" as "The amount of obligations already incurred for which payment has not yet been made" (GAO Glossary at p. 61); A-11 defines the term in similar fashion (see A-11 at 39). These definitions are consistent with the statutory definitions used in Subchapter IV of Title 31, United States Code, dealing with the closing of accounts. The definitions in 31 U.S.C. 1551(a) provide: "An obligated balance of an appropriation account as of the end of a fiscal year is the amount of unliquidated obligations applicable to the appropriation less amounts collectible as repayments to the appropriation"; and "An unobligated balance is the difference between the obligated balance and the total unexpended balance."

There is a third category of funds: lapsed amounts. Expired amounts are those which were not obligated during their period of availability. Such amounts cease to be budget authority. Their usefulness is limited to adjustments pursuant to 31 U.S.C. 1551 et seq. If Congress enacts legislation to "revive" such lapsed funds, that action is an appropriation, which is scored as new budget authority.

What is clear from the available definitions is that neither obligated nor unobligated balances includes expired funds.

The fiscal year 1998 proviso, therefore, would apply to obligated and unobligated balances of no-year funds, and to those pre-fiscal year 1998 fiscal year funds which had been obligated during their period of availability. However, those amounts of pre-1998 fiscal year funds that were not obligated prior to the end of the period of their availability would not transfer.

We believe that it is incorrect to assert, as your letter does, that at the time this appropriations act was enacted, "all prior-year (fiscal year 1997 and earlier year) monies for the other identified accounts had lapsed" and that to avoid a nullity, the proviso is to be read to apply to such lapsed amounts. **However, there is no "nullity" problem under the interpretation we adopt. In fiscal year 1998, there were $5 million in unobligated balances that were transferred to the the new RCAP account, and $2 million transferred to the RHAG account. In addition, the fiscal year 1998 Budget showed $1 million in unobligated balances coming into the RHAG account.**

This proviso was proposed in the President's fiscal year 1998 Budget. At that time, the Budget, as well as USDA's supporting materials (see Budget Explanatory Notes for Committee on Appropriations, Volume 2), under RCAP and RHAG indicate that, if enacted, this proviso would be applied to unobligated balances remaining at the end of fiscal year 1996 from fiscal year 1995 and prior year Water and Wastewater Grants, Rural Housing Repair Grants, Farm Labot Housing Grants, Compensation for Construction Defects, Supervisory and Technical Assistance Grants, and the 1996 Rural Utilities Assistance Programs. Further, unobligated balances for Compensation for Construction Defects and for Supervisory and Technical Assistance Grants were displayed in the fiscal year 1998 column of the fiscal year 1998 Budget as available. **The unobligated amounts totalled $1 million. This was the amount transferred when the provision was enacted. This is what we advised Congress would happen if they enacted the language we suggested. Neither OMB nor Agriculture advised Congress that lapsed funds totalling $154 million would transfer as well.**

Thus, we conclude that in enacting the language of the fiscal year 1998 appropriation, Congress intended to transfer to the new RCAP and RHAG the balances of obligated and unobligated budget authority identified in the President's fiscal year 1998 Budget. There was no intention to appropriate expired amounts which had ceased to be available. As the amounts that your agency seeks to bring under this authority are neither obligated balances nor unobligated balances of budget authority, they are not subject to the transfer authorized by the fiscal year 1998 appropriation act.

I hope this explanation clarifies the legal opinion of this agency and corrects any misinformation which may have been communicated.

Sincerely,

Robert G. Damus