



It's The Law

Office of the Assistant General Counsel for Finance and Litigation

Federal Assistance Law Division

Vol 5

August 31, 1995

The Eligibility of Federal Agencies To Receive Federal Assistance Funds From Other Agencies

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One of the most frequently asked questions from program offices is whether Federal agencies or institutions may receive Federal assistance funds from other Federal agencies. According to the *Principles of Federal Appropriations Law, 2nd Ed., Vol.II*, (See the Red Book, page 6-155), the General Accounting Office (GAO) states:

“A federal institution is normally not eligible to receive grant funds from another federal institution. It is not necessary for the grant statute to expressly exclude federal institutions as eligible grantees; the rule will apply based on the augmentation theory unless the grant statute expressly includes federal institutions.” 23 Comp. Gen. 694 (1944); 57 Comp. Gen. 662, 664 (1978).

The above-mentioned cases provide a glimpse into the reasoning behind GAO's handling of this issue. Further exploration of these cited cases reveal the following examples:

- (1) St. Elizabeths Hospital, a Federal institution, was not allotted

Federal grant funds for nurse training programs because the hospital was receiving appropriations to maintain and operate its nursing school. Although Federal institutions were not specifically excluded from the statute, the case held: “The program, the provisions of the statute, and the prescribed manner of its operation are inconsistent with the idea of participation by Federal institutions which maintain nursing schools, or train nurses, with funds appropriated for that purpose... Obviously, there would be no reason, need or sound basis for paying a Federal hospital, operated with appropriated moneys, “tuition and fees” for training student nurses. In practical effect, an allotment of funds under the act here involved to St. Elizabeths hospital would simply amount to an augmentation of the appropriation made for maintaining and operating the

nursing school therein.” 23
Comp. Gen. 694 (1944).

- (2) The National Commission on Library Information Science was denied a transfer of funds (support grant) from the Office of Education. The case found the Commissioner of Education had no authority to make an exception from the statutory regulation (45 C.F.R. 100.1) which defines “public agency” as excluding Federal agencies for purposes of grant awards or contracts under section 223 of the Higher Education Act of 1965. For the Commission to receive funds from another agency to carry out functions for which it receives appropriations would be an improper augmentation of its appropriations. 57
Comp. Gen. 662 (1978).

Basically, the augmentation rule which is derived from several enactments rather than a specific statute provides that a Federal agency may not supplement its appropriations from outside sources without specific statutory authority. The Red Book notes, “the objective of the rule against augmentation of appropriations is to prevent a government agency from undercutting the congressional power of the purse by circuitously exceeding the amount Congress has appropriated for that activity.” (See page 6-103). In addition, 31 U.S.C. 1301(a) states appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.

The augmentation theory may also arise when Federal assistance funds are used by a grantee to pay the expenses of Federal employees. For instance, financial assistance funds awarded by the National Oceanic and Atmospheric Administration (NOAA) under the Saltonstall-Kennedy Act (15 U.S.C. 713 c-3) can not be used to pay the foreign travel expenses of NOAA’s National Marine Fisheries Service (NMFS) inspectors who are participating in the grant recipients’ programs. Department Administrative Order (DAO) 203-26 states that “[r]ecipients of federal financial assistance shall be prohibited from expending federal or non-federal grant funds... for purposes of providing transportation or other travel expenses for an employee of the awarding organization unit.” (DAO 203-26 6.10d.11).

In addition, these travel expenses were incurred while performing activities outside the inspectors’ regularly conducted inspection services and were not considered “fees and charges” payable by the recipient. This type of payment by Saltonstall-Kennedy (S-K) financial assistance recipients to Federal employees would amount to an unauthorized expenditure or augmentation of federal funds. There is no provision in the S-K Act which authorizes financial assistance for federal use. Consequently, the financial assistance recipient is prohibited from paying for travel expenses of the awarding organization’s employees. (DAO 203.26, 6.10d.11).

DAO 203.26, 6.10d.11 is supported by a NOAA Administrative Special Award Condition which provides the following restriction: “The recipient is prohibited

from expending Federal on non-Federal grant funds, or in-kind goods or services for purposes of providing transportation, travel and any other expenses for any Federal employee.”

Moreover, the augmentation theory receives further substantiation from the premise that Federal funds. (See GAO Red Book, page 10-45). The augmentation rule may still apply because the government retains a property interest in grant funds until they are actually spent by the grantee for authorized purposes. The interest may be an equitable lien pertaining to the government’s right to ensure that the funds are used for authorized purposes, or a reversionary interest since funds that can be longer be used for grant purposes may revert back to the government.

Henry v. First National Bank of Clarksdale, 595 F.2d 291 308-09 (5th Cir. 1979), *cert. denied*, 444 U.S. 1074.

The Department of Commerce has also addressed the issue of providing Federal funds through a subaward and/or contract to a Federal agency. The Department’s Financial Assistance Standard Terms and Conditions, J.05, provides the following guidance: “The Recipient, subrecipient, contractor, and/or subcontractor shall not sub-grant or sub-contract any part of the approved project to any agency of the DOC and/or other Federal department, agency or instrumentality, without the prior written approval of the Grants Officer.”

Requests for approval of such action must be submitted to the Federal Program Officer who shall review and make a recommendation to the Grants Officer. The Grants Officer shall make the final determination with the

concurrence of legal counsel of the DOC agency making the award, and legal counsel of the other Federal department, agency or instrumentality receiving the subaward and/or contract. The Grants Officer will notify that Recipient in writing of the final determination. This condition provides a checkpoint to ensure that Federal funds are not augmented when distributed through a subaward and/or contract to another Federal agency.

Reimbursable transactions between Federal agencies may also trigger the augmentation theory. For instance, the Comptroller General held that the Merit Systems Protection Board may not accept reimbursement from other Federal agencies for travel expenses of hearing officers to hearing sites away from the Board’s regular field offices. The case turned on the fact that the Board’s function is to hold hearings. Therefore, the Board receives appropriations for that function. 59 Comp. Gen. 515 (1980), *affirmed upon reconsideration*, 61 Comp. Gen. 419 (1982).

Similarly, the Comptroller General has decided other cases which involved Federal agencies violating the augmentation theory through reimbursement transactions. The Patent Office is required by law to furnish services performed in administering the patent and trademark laws and receives appropriations for them. Therefore, Federal agencies may not reimburse the Patent Office for services performed in connection to these duties. 33 Comp. Gen. 27 (1953). In addition, the General Services Administration may not seek reimbursement for the costs of storing records for which it receives

appropriations. B-211953, December 7, 1984. These cases reveal the augmentation rule applies when a Federal agency attempts to transact for a service which is within the normal scope of the agency's mission and for which it receives appropriations.

In conclusion, a Federal agency is normally not eligible to receive grant funds from another Federal agency unless specifically provided by statute. The reader must be aware of statutory requirements and departmental policies which must be met in order to properly transfer funds between Federal agencies.

Moreover, the reader should note from the research provided that some reimbursable transactions between Federal agencies may also trigger the augmentation theory. We recommend that you consult OGC on transactions which may be subject to the augmentation theory.