

Subject Cont

B-164031(1) .128

October 4, 1977

The Honorable Ike Andrews, Chairman
 Subcommittee on Economic Opportunity
 Committee on Education and Labor
 House of Representatives

Dear Mr. Chairman:

Your letter of September 28, 1977, asked for our opinion as to whether the allocation of funds by the Department of Health, Education, and Welfare (HEW) for Project Headstart for fiscal years 1976 and 1977, and HEW's proposed allocation for fiscal year 1978, have been and are consistent with the statutory distribution formula. You enclosed a recent report by the Congressional Research Service (CRS), Library of Congress, which concludes that the HEW allocations violated the statutory formula.

In view of the urgency indicated in your request, we were not able to formally solicit agency comments, nor have we attempted to independently verify any of the computations or other factual data contained in the CRS report. Our review is thus essentially limited to the pertinent statutory provision and the CRS report. Based on this limited review, we concur generally with the CRS conclusion as to how the formula should be applied.

The statutory distribution formula is found in section 513(a) of the Community Services Act of 1974, 42 U.S.C. § 2928b (Supp. V, 1975), added by Pub. L. No. 93-644 (January 4, 1975), § 8(a), 88 Stat. 2291, 2301. Section 513(a) provides as follows:

"Of the sums appropriated pursuant to section 512 for any fiscal year beginning after June 30, 1975, the Secretary shall allot not more than 2 per centum among Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands, according to their respective needs. In addition, the Secretary shall reserve not more than 20 per centum of the sums so appropriated for use in accordance with such criteria and procedures as he may prescribe. The remainder shall be allotted among the States, in accordance with the latest satisfactory available data, so that equal proportions are distributed on the basis of (1) the relative number of public assistance recipients in each State as compared to all States, and (2) the relative number of related children living with families with incomes below the poverty line in each

State as compared to all States: but there shall be made available, for use by Headstart programs within each State, no less funds for any fiscal year than were obligated for use by Headstart programs within such State with respect to fiscal year 1975. Allocation of such increases within each State shall, to the extent feasible, be made in such manner as to reflect the proportionate increases in program costs incurred by grantees, in accordance with regulations which the Secretary shall prescribe for this purpose. For the purpose of this subsection, the Secretary shall utilize the criteria of poverty used by the Bureau of the Census in compiling the 1970 decennial census."

It seems clear from the plain terms of the above provision that the proper method of allocating funds under section 513(a) would be as follows:

(1) Determine the amount to be allotted to the specified territories, not to exceed 2 percent of the amount appropriated for the fiscal year.

(2) Determine the amount to be reserved for use in accordance with criteria prescribed by the Secretary of HEW, not to exceed 20 percent of the amount appropriated.

(3) The remainder, which will be not less than 78 percent of the amount appropriated (100 percent less a maximum of 22 percent for steps (1) and (2)), is to be tentatively allotted to the States, one half based on the relative number of public assistance recipients in each State as compared to all States, and the other half based on the relative number of related children living with families with incomes below the poverty line in each State as compared to all States.

(4) If the amount tentatively allotted to any State under step (3) is less than the amount obligated for use by Headstart programs within that State in fiscal year 1975 (the "hold harmless" amount), the allocation for that State is to be increased to the FY 1975 level.

We are aware of nothing in the legislative history of Pub. L. No. 93-644^{42 USC 2701 mt} to contradict this interpretation. Our analysis of the proper steps to be taken, as set forth above, agrees with that of CRS with one minor exception. CRS indicates that States receiving tentative allotments in excess of their 1975 amounts would be proportionately reduced to provide the amounts needed to make the adjustments required under step (4). As we read the statute, such reductions, while permissible,

would not be the only means of satisfying the "hold harmless" requirements. The Secretary would seem to have the discretion to either proportionately reduce the tentative allotments for States receiving in excess of their 1975 amounts or to utilize the funds reserved under step (2), so long as no State received less than its 1975 amount. In any event, the thrust of the two analyses is the same: the "hold harmless" adjustments are to be made after the formula is applied.

According to the CRS report, the method used by HEW in FY 1977, and apparently in FY 1976 as well, did not involve application of the statutory formula. After deducting the territorial allotment and the discretionary reserve, HEW then gave each State the amount it obligated in 1975, and distributed the remainder to provide each State with a cost-of-living increase over its previous year's level of obligations. The proposed procedure for FY 1978 would recognize the formula, but only to a very limited extent. As summarized by CRS, HEW plans to set aside the territorial allotment and the discretionary reserve, then give each State the amount it obligated in 1975, and distribute the remaining funds in accordance with the formula. Under the HEW procedures, the formula is applied, if at all, only after the "hold harmless" amounts are allotted.

Based on our review of section 513(a) and its legislative history, we are not aware of any basis to justify the procedure proposed by HEW for use in 1978. Section 513(a) clearly requires that at least 78 percent of the Headstart appropriations for a given fiscal year be allotted among the States based on two criteria: the relative number of public assistance recipients in each State as compared to all States, and the relative number of related children living with families with incomes below the poverty line in each State as compared to all States. The only variation from this would be in the case of adjustments made necessary by the "hold harmless" provision. If the "hold harmless" amounts--which were not necessarily based on the above criteria--are deducted first, the formula would then apply to a relatively small part of the appropriation, and the statutory purpose may be largely defeated.

Section 513(a) was designed to provide for the allocation of Headstart funds in accordance with the two cited criteria. Under the HEW method, as noted by CRS, States whose 1975 amounts were significantly higher than they would have been under the section 513 formula would be benefitted, at the expense of States whose 1975 amounts more closely approximated what they would have been under the formula. Thus, any imbalance that may have existed in 1975 in terms of the section 513 criteria would be perpetuated rather than corrected. Accordingly, we agree with CRS that the HEW method is not consistent with the requirements of section 513(a).

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As noted at the outset, we have not been able to formally solicit HEW's comments. We have, however, discussed the matter informally with HEW officials. According to these officials, the amount of the Headstart appropriation for each of the fiscal years 1976 and 1977, after setting aside the authorized reserves was not larger than the total "hold harmless" base for all States. Compliance with the "hold harmless" requirement for 1976 and 1977 would have rendered futile application of the two formula criteria.

HEW concedes that the situation for FY 1978 is different, and that the allotments to the States will differ depending upon whether the formula is applied before or after the "hold harmless" provision. Nevertheless, HEW apparently takes the position that its proposed allocation method is consistent with expressions in committee reports to its appropriations legislation, and that in any event section 513 does not mandate the sequence of steps in determining the allotments. As to the first point, there is some indication that the Appropriations Committees anticipated increases in the 1978 allocations for all States. Thus the Senate Appropriations Committee report on the 1978 appropriation bill observed in this regard:

"The Committee feels strongly that this entire increase should be allocated among all the States in a fair and equitable manner. On top of their existing base, all grantees should receive a proportional cost-of-living increase. In addition, the resources for program expansion should be distributed to all States in accordance with the formula in the authorizing legislation so that all States will receive an equitable increase for program expansion above their existing base." S. Rep. No. 95-283, 124 (1977).

However, such expressions cannot, independent of additional statutory language, overcome the effect of the existing statutory allocation formula.

As to the second point, we think the sequence of steps in the allocation process is clear from the language of section 513(a) as well as its legislative history. Thus, in the debate on the conference report to Pub. L. No. 93-644 on the Senate floor, Senator Nelson explained the formula as follows:

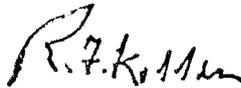
"The formula in the conference agreement for distribution of Head Start funds is as follows: 50 percent of the funds will be allocated to States based on the number of public assistance recipients and 50 percent to States based on the number of children in families with incomes below the poverty line.

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However, all Head Start programs would be held [harmless] at the fiscal year 1975 funding level." 120 Cong. Rec. 41117 (1974).

Again, it seems clear to us that the "hold harmless" provision is an adjustment to be made after tentative application of the formula and we see no basis for reversing the sequence of these steps.

Sincerely yours,



Deputy Comptroller General
of the United States

HEALTH, EDUCATION AND WELFARE DEPARTMENT

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