United States General Accounting Office

GAO

Briefing Report to the Honorable
Andy Ireland, House of Representatives

May 1992

FOREIGN ASSISTANCE

AID's Implementation of Expired Appropriation Account Legislation

146640

GAO/NSIAD-92-189BR

GAO

United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-248164.2

May 20, 1992

The Honorable Andy Ireland
House of Representatives

Dear Mr. Ireland:

This report responds to your October 24, 1991, request that we review issues related to the Agency for International Development's (AID) implementation of sections 1405 and 1406 of Public Law 101-510—the National Defense Authorization Act for Fiscal Year 1991. This legislation, enacted November 5, 1990, revised the rules governing federal agencies' management of fixed-year appropriations whose period of availability for obligation had ended, otherwise known as "expired appropriations." Our objectives were to report on (1) how AID has responded to the requirements of sections 1405 and 1406, including actions it has taken to preserve funds that would have been otherwise canceled pursuant to these sections and (2) issues related to the obligation and expenditure of "no-year if obligated"[1] funds provided to AID in its annual appropriation acts since fiscal year 1987 and the extent to which the no-year if obligated provision in AID's appropriation has enabled AID to more effectively manage its operations.

We briefed your staff on the preliminary results of our review on March 10, 1992. This briefing report formalizes the information provided at that briefing.

Results in Brief

AID sought and was granted a presidential waiver extending to September 30, 1992, the March 6 and September 30, 1991, deadlines for closing its "M" accounts[2] for fiscal year 1984 and before. Before the waiver was granted, AID developed a contingency plan to shield the funds in its fiscal year 1983 and prior M accounts from Public Law 101-510 by

[1]Beginning with fiscal year 1987, the annual appropriation act for AID has contained a provision found at section 517 specifying that certain funds appropriated as fixed-year funds "shall remain available until expended if such funds are initially obligated before the expiration of their respective periods of availability...." Such funds are designated in this report as no-year if obligated funds.

[2]"M" accounts are successor accounts into which obligated balances under an appropriation were transferred at the end of the second full fiscal year following expiration and were merged with obligated balances from prior appropriations for the same purposes. The balance in the M account remains available for the payment of obligations and liabilities charged or chargeable to the expired appropriations from which the M account was derived. Under Public Law 101-510, section 1405, no new M accounts will be established, and all existing M accounts will be phased out.

exercising authority contained in section 515 of its annual appropriations legislation to deobligate these funds and reobligate them as current-year funds. The waiver was granted before it was necessary for AID to implement its plan.

AID sought a legislative waiver extending the deadline for closing portions of its M accounts for fiscal years 1985 and 1986. However, the waiver has not been granted, and AID plans to close its accounts for fiscal years 1985 to 1988 in accordance with the statutory requirements. AID officials stated that, when closing these accounts, they intend to exercise the section 515 authority to deobligate any funds that cannot be disbursed by the deadlines and reobligate them as current-year funds.

Since fiscal year 1987, about 85 percent of AID's appropriations have been in the form of no-year if obligated funds, which if obligated, are not subject to the restrictions imposed by Public Law 101-510. AID obligated virtually all of these funds during the initial period of availability. Thus, AID's pipeline of obligated-but-unspent no-year if obligated funds grew from $2.6 billion as of September 30, 1987, to $7.8 billion as of September 30, 1991. This, however, did not increase AID's total pipeline of obligated-but-unspent funds, which decreased during this period from about $9.4 billion to about $9.2 billion, as obligations of funds appropriated before fiscal year 1987 were spent or canceled. AID has made little use of its ability to deobligate and reobligate its no-year if obligated funds. As of September 30, 1991, AID had deobligated only about 1.3 percent of its no-year if obligated funds for fiscal years 1987 to 1990.

Background

Public Law 101-510 restricts the availability of funds from fixed-year appropriations, which are available for obligation for only a specified period of time. Once this period ends, the appropriation expires, and the agency places the remaining funds in expired appropriation accounts, where they can no longer be used for new obligations. The statute seeks to improve agency management of these expired funds, reduce the amounts in expired appropriation accounts, and strengthen congressional control over spending. Public Law 101-510 does not significantly restrict the availability of funds from no-year appropriations, including no-year if obligated funds once they have been obligated, which are available until expended and do not expire.

Prior to the enactment of Public Law 101-510, agencies placed unobligated funds from expired fixed-year appropriations in surplus accounts, where the funds maintained their fiscal year identity for 2 years, after which they were combined with such funds from other years in "merged surplus accounts." Funds in merged surplus accounts were available indefinitely to pay legitimate upward adjustments of prior-year contracts. Obligated-but-unspent funds from expired fixed-year appropriations were placed in expired appropriation accounts, where the funds maintained their fiscal year identity for 2 years, after which they were placed in merged M accounts containing obligated balances from prior appropriations for the same general purposes. Funds in M accounts also lost their fiscal year identity and were available indefinitely for payment of previously recorded obligations until they were disbursed or the obligation was canceled. Pubic Law 101-510 and Office and Management and Budget (OMB) implementing regulations[3] required agencies to close their merged surplus accounts by December 5, 1990, and their M accounts in accordance with the schedule shown in table 1.

Table 1: Schedule for Closing M Accounts

Fiscal year	Deadline for closing M accounts
1983 and before	March 6, 1991
1984	September 30, 1991
1985	September 30, 1992
1986/87/88	September 30, 1993

The legislation and OMB guidance require that beginning with appropriations that expired at the end of fiscal year 1989, agencies are to maintain separate "expired accounts" for each fixed-year expired appropriation reflecting unobligated and obligated-but-unspent balances. The funds in these accounts can be used for the same purposes for which funds in the merged surplus and M accounts were used. However, unlike funds in these former accounts, funds in expired accounts retain their fiscal year identity and can be spent only for obligations incurred during that fiscal year or legitimate upward adjustments to those obligations.

[3]On January 17, 1991, OMB issued Bulletin 91-07, amending Circular A-34, to provide agencies guidance on implementing Public Law 101-510. Under Public Law 101-510 and A-34, as amended, an agency is not required to close fiscal year 1983 and prior M accounts when it has documentary evidence that a payment from the account will be required by May 5, 1991, or when the obligation supports severance pay for foreign national employees.

Agencies then have 5 years to spend funds in these expired accounts, after which time the accounts are to be closed and all balances, both obligated and unobligated, canceled. Agencies can obtain relief from the requirements of Public Law 101-510 upon the enactment of statutory language in their annual appropriation acts or in separate legislation extending the availability of funds in expired accounts. In addition, the President has authority under 22 U.S.C. 2393 to exempt AID from statutory provisions governing the expenditure of funds, such as Public Law 101-510.

The provisions of Public Law 101-510 requiring that all obligated balances of fixed-year funds in M accounts be canceled on or before September 30, 1993, applies to AID appropriations for fiscal years prior to fiscal year 1987. Beginning with fiscal year 1987, Congress provided most of AID's appropriations in the form of no-year if obligated funds in an effort to expand the agency's ability to deobligate and reobligate funds and, thus, better manage its financial resources. Once obligated, these funds become "no-year" funds and are not restricted by Public Law 101-510. Prior to 1983, AID, like most other agencies, could reobligate funds only during their period of availability, but in 1983, Congress granted AID the authority, set forth in section 515 of its annual appropriation act, to deobligate and reobligate funds after the period of availability had expired. However, Congress placed limitations on AID's use of this authority, including the requirement that AID reobligate the funds in the same fiscal year in which they were deobligated and that the agency inform Congress of each deobligation and reobligation. In addition, such reobligations were annually "scored" by OMB, and, hence, counted against AID's current budget. The appropriation of no-year if obligated funds allowed AID to reobligate deobligated funds without further fiscal year restrictions and without scoring. Also, Congress did not impose any of the other restrictions on AID's section 517 authority that apply to its section 515 authority and required the agency to inform Congress only of reobligations.

AID Acts to Limit Impact of Legislation on Funds for Fiscal Year 1986 and Before

In response to the enactment of Public Law 101-510, AID sought and obtained a presidential waiver extending the deadlines for closing out its M accounts for fiscal year 1984 and before. AID was concerned that Public Law 101-510 did not give it sufficient time to disburse the $420 million in its M accounts for these years. It believed that canceling these funds could create serious foreign policy consequences for the United States, especially in Egypt, which at the time was deploying troops for Operation Desert

Storm. On February 27, 1991, the President issued Presidential Determination 91-21, extending until September 30, 1992, the March 6 and September 30, 1991, deadlines for AID to close its M accounts for fiscal year 1984 and before.

While it waited for the waiver, AID set in motion a contingency plan to shield from the legislation its M account funds for fiscal year 1983 and before. The agency planned to use its section 515 authority to deobligate funds in these accounts and reobligate them as current-year funds. AID would then have an additional 5 years to spend these funds. To ensure a continuity of effort, AID planned to deobligate and reobligate funds for the same projects. AID officials informed us that before proceeding with these transactions, they had received approval from the staff of the House and Senate Committees on Appropriations and from an OMB official who had given them one-time authority to deobligate and reobligate funds for the same projects.

Once the waiver had been granted, AID halted implementation of its contingency plan. At that point, the agency had reobligated only small amounts of its M account funds for fiscal year 1983 and before, which had been made available from completed projects. The agency had not deobligated and reobligated funds for the same project. AID managers had anticipated that the agency would experience difficulty concluding the myriad of administrative steps needed to deobligate these funds and then reobligate them before the end of the fiscal year, as required by section 515. These steps included obtaining the approval of affected beneficiary governments before proceeding with the deobligations, which can be time-consuming and difficult to obtain.

AID Sought a Waiver for M Account Funds for Fiscal Years 1985 and 1986

AID's budget request for fiscal year 1992 sought the inclusion of a statutory waiver in its fiscal year 1992 appropriations bill that would extend until September 30, 1994, the deadlines imposed by Public Law 101-510 for closing AID's M accounts for fiscal years 1985 and 1986. However, AID's fiscal year 1992 appropriation bill has not been enacted, and the continuing resolution (P.L. 102-145, as amended by P.L. 102-266) under which AID has been operating and that is effective through the end of fiscal year 1992 does not contain the extension language. According to AID officials, the agency has proceeded on the basis that it would not receive the waiver, and AID plans to close its M accounts for fiscal year 1985 and before by September 30, 1992, in accordance with Public Law 101-510 and the presidential waiver it obtained in February 1991. Accordingly, AID has instructed its bureaus and missions to close out their obligations for fiscal year 1985 and before.

The agency also plans to cancel its M accounts for fiscal years 1986 to 1988 by September 30, 1993, as required by Public Law 101-510.[4] AID has instructed its bureaus and missions to begin planning for closing its accounts for fiscal years 1986 to 1988. AID officials stated that the agency does not plan to deobligate and reobligate fiscal year 1988 and prior funds for the same project. However, it plans to exercise its section 515 authority to deobligate any of these funds that it cannot disburse before the deadlines and reobligate them as current-year funds. In this way, when the agency closes its M accounts, it will not lose any funding authority.

AID's Obligation and Expenditure of Its No-Year if Obligated Funds for Fiscal Years 1987 to 1991

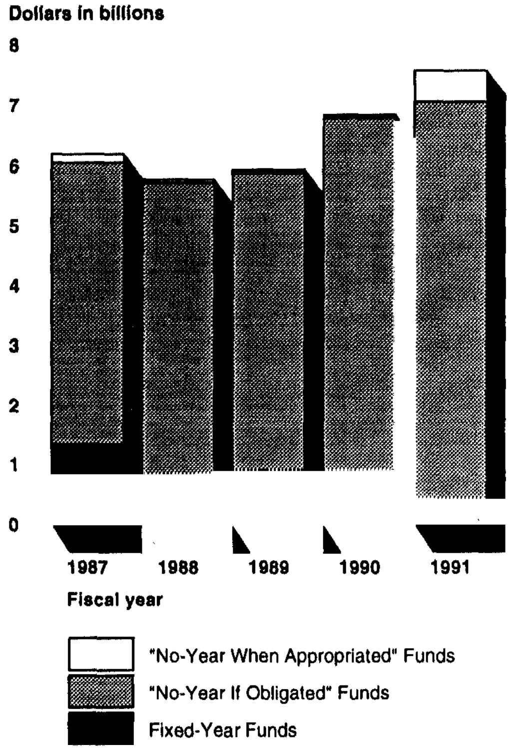
Beginning with fiscal year 1987, AID's annual appropriation acts have contained a provision found at section 517 specifying that certain funds appropriated as fixed-year funds would be available until expended if such funds were obligated during the period of their initial availability. Such funds are referred to in this report as no-year if obligated funds. Unlike funds appropriated for AID prior to fiscal year 1987, these no-year if obligated funds, once obligated, are not subject to the restrictions imposed by Public Law 101-510. Accordingly, while enactment of Public Law 101-510 has caused AID to take various steps with respect to pre-1987 fiscal year funds to minimize the potential loss of funding authority, the statute will not require AID to take any similar actions regarding no-year if obligated funds appropriated in fiscal year 1987 and thereafter.

During fiscal years 1987 to 1991, about 85 percent of AID's appropriations[5] were in the form of no-year if obligated funds. As shown in figure 1, AID's no-year if obligated funds grew from about 76 percent of AID's total fiscal year 1987 appropriation of about $6.1 billion to about 88 percent of AID's total fiscal year 1991 appropriation of $7.5 billion. All no-year funds—including both no-year if obligated and "no-year when appropriated" funds—represented about 95 percent of AID's total appropriations in fiscal year 1991. Conversely, fixed-year funds decreased from 21 percent of AID's appropriation in fiscal year 1987 to 5 percent in fiscal year 1991.

[4] AID's plans to cancel its M accounts for fiscal years 1986 to 1988 do not apply to those funds appropriated in fiscal year 1987 and thereafter on a no-year if obligated basis.

[5] Including transfers and sequesters.

Figure 1: AID's Appropriations for Fiscal Years 1987 to 1991

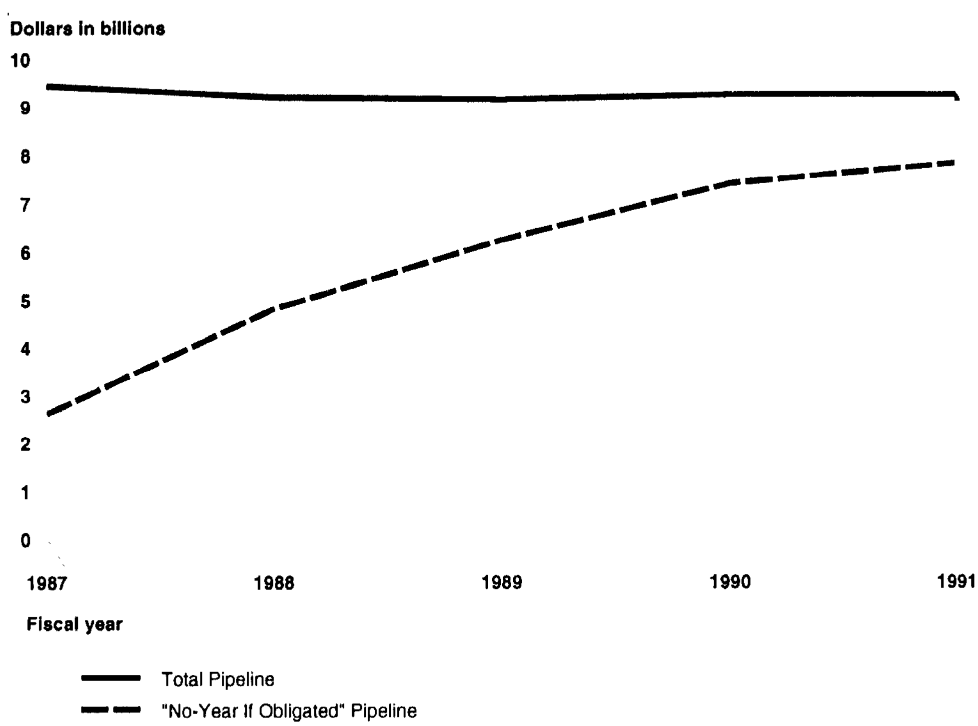


An increasing number of AID programs are being supported with no-year if obligated appropriations. Since fiscal year 1987, AID has received these funds for its two primary development programs—the Development Assistance program and the Economic Support Fund. Later, AID began receiving no-year if obligated funds for two additional development programs—the Sub-Saharan Africa Development Assistance program in fiscal year 1988 and the Special Assistance Initiatives program for the Philippines in fiscal year 1990. In fiscal year 1991, AID also began receiving these funds for nondevelopmental activities—Operating Expenses and Operating Expenses of the Inspector General—both of which had previously been funded with fixed-year appropriations.

Appropriation of No-Year if Obligated Funds Has Had Little Effect on AID's Pipeline

During fiscal years 1987 to 1991, AID obligated virtually all of its no-year if obligated appropriations during their initial period of availability. As shown in figure 2, AID's pipeline of no-year if obligated funds grew from about $2.6 billion at the end of fiscal year 1987 to $7.8 billion at the end of fiscal year 1991. The new obligations of no-year if obligated funds, however, did not increase AID's total pipeline of obligated-but-unspent funds. The agency's total pipeline, which also includes fixed-year and no-year when appropriated funds, decreased during this period from about $9.4 billion to about $9.2 billion, as obligations of funds appropriated before fiscal year 1987 were spent or canceled.

Figure 2: AID's Pipeline of Funds



AID Has Made Little Use of No-Year if Obligated Funding to Improve Management

We found that AID has made little use of its ability to deobligate and reobligate its no-year if obligated funds to deobligate funds from troubled projects and reobligate the funds for higher priority programs or projects.

As of September 30, 1991, AID had deobligated only about 1.3 percent of its no-year if obligated funds for fiscal years 1987 to 1990. These deobligations do not necessarily reflect agency decisions to move funds from troubled projects to higher priority projects elsewhere. Missions often deobligate unspent funds that remain after the conclusion of projects, sometimes as part of periodic reviews of unspent funds.

The amount of deobligations is small at least partially because of AID's practice of requiring project officers seeking to deobligate funds to first reach agreement with the beneficiary government that the funds are no longer needed. AID commonly obligates funds by entering into project or program agreements with foreign governments. AID officials believe that they cannot unilaterally deobligate funds obligated through a bilateral project or program. Our April 9, 1990, report recommended that the Administrator of AID require that future project and program agreements contain a standard provision stating the conditions under which AID could unilaterally deobligate certain assistance funds.[6] AID officials said that the agency plans to include such a clause in future agreements with recipient governments.

Scope and Methodology

We conducted our review in Washington, D.C. We reviewed AID Office of the Inspector General reports and our reports on AID financial management and the history of Public Law 101-510. We also reviewed other documents pertaining to AID's implementation of this legislation. We interviewed officials from AID's Office of Finance and Administration and Office of General Counsel concerning AID's implementation of Public Law 101-510, the agency's obligation and expenditure of its no-year if obligated funds, and deobligation and reobligation of these funds. We interviewed officials of several AID bureaus, particularly the Latin American and Caribbean Bureau and the Research and Development Bureau, about the agency's policies and practices concerning the deobligation and reobligation of funds. We obtained and analyzed AID statistics regarding the size and composition of the agency's no-year funding and the exercise of its ability to deobligate and reobligate these funds.

We performed our review from December 1991 to March 1992 in accordance with generally accepted government auditing standards. We did not obtain written comments on this report; however, AID officials provided oral comments that have been included where appropriate.

[6] Foreign Assistance: Funds Obligated Remain Unspent for Years (GAO/NSIAD 91-123, Apr. 9, 1991).

We are sending copies of this report to the Administrator of AID and appropriate congressional committees. We will also make copies available to others upon request.

Please call me on (202) 275-5790 if you or your staff have any questions concerning this report. Major contributors to this report were Donald L. Patton, Assistant Director; Joseph J. Natalicchio, Evaluator-in-Charge; and Alan N. Belkin, Senior Attorney.

Sincerely yours,

Harold J. Johnson
Director, Foreign Economic
Assistance Issues

Ordering Information

The first copy of each GAO report is free. Additional copies are $2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

U.S. General Accounting Office
P.O. Box 6015
Gaithersburg, MD 20877

Orders may also be placed by calling (202) 275-6241.

United States
General Accounting Office
Washington, D.C. 20548

Official Business
Penalty for Private Use $300

First-Class Mail
Postage & Fees Paid
GAO
Permit No. G100