

Hartford Susan L

From: Hartford Susan L
Sent: Monday, December 04, 2006 5:09 PM
To: Olson Nina E; Swartz William R
Cc: Wall Judith M
Subject: obligating funds by September 30th - final advice

Attachments: LITC-FY06-fnds.pdf

Attached is the advice rendered by General Legal Services (GLS), indicating the obligation of the \$47,500 for FY06 was appropriate.

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Please let me know if you have any questions. Thanks again for your patience while we sorted this one out.

Susan L. Hartford

Office of Chief Counsel

Technical Advisor to the Special Counsel, NTA

CC:NTA

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LITC-FY06-fnds.pdf
(211 KB)

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:GLS:EGG:Pembroke
GLS-148226-06

DEC 1 2006

to: SUSAN L. HARTFORD
TECHNICAL ADVISOR TO THE SPECIAL COUNSEL, NTA

from: 
Mark S. Kaizen
Associate Chief Counsel, GLS

subject: **Use of Fiscal Year 2006 Funds For Additional Grant Payments**

This is in response to your request for advice as to whether the Low Income Taxpayer Clinic (LITC) Program took sufficient actions in fiscal year 2006 (FY '06) to obligate \$47,500 in FY '06 grant funds that remained unexpended at the end of that fiscal year. As explained below, we believe that the determination in FY '06 to award the remaining grant funds was sufficient to create an obligation in that fiscal year.

Discretionary payments obligate the agency at the time of the appropriate administrative determination to make the payment. 64 Comp. Gen. 114, 115 n. 2 (1984) (when discretionary Rank Award determination was made in FY 1982 but the check for the award amount was not delivered to the recipient until FY 1983, the agency should charge the 1982 appropriation); B-137762.32 (July 11, 1972) (IRS has no recordable obligation to make informant award until an appropriate IRS official determines that a reward should be paid). Before the agency can record the obligation, however, there must, pursuant to 31 U.S.C. § 1501(a), be sufficient documentary evidence to support it.¹ In the case of a discretionary award of a grant, the documentary evidence consists of an agreement accepted by the grantee. GAO, *Principles of Federal Appropriations Law (Principles)*, Vol. II, p. 7-40 (February 2006) (citing section 1501(a)(5)). Once the grant agreement/documentary evidence exists, the agency may obligate funds to make supplement payments based on the initial grant agreement as long as the payments are within the scope of the initial obligation. 72 Comp. Gen. 175 (1993) (where the agency's intent is that a grantee's activities would be funded by the agency and the activities fall within the scope of the grant arrangement, the agency may make a supplemental award out of unexpended funds from the fiscal year of the grant arrangement). By contrast, simply reserving or earmarking amounts in the agency's accounting records is not enough to support a grant obligation. *Champaign County,*

¹ Federal fiscal law also provides that funds made available for a definite period can be used only for expenses properly incurred during that period and that those funds are not available for expenditure for a period beyond that period. 31 U.S.C. § 1502.

Illinois v. United States Law Enforcement Assistance Administration, 611 F.2d 1200 (7th Cir. 1979) (where agency discussed a potential grant and offered the initial grant, but the grantee did not effectuate acceptance within the time allowed by the offer such that no agreement ever existed).

LITC grants are authorized by I.R.C. § 7526(a) which provides that the Secretary "may" make grants. The statutory provision gives the Secretary broad discretion in awarding such grants to qualifying clinics. The Secretary's authority has been delegated down to National Taxpayer Advocate Office. See IRM 1.1.8.1.

On April 14, 2006, the LITC Program announced its FY '06 grant awards. On or about that time, the agency and the grantees executed a form grant agreement (form 12183). The form agreement gave the agency the discretion to give the grantees additional amounts.

On September 28, 2006, the LITC Program Office notified via e-mail the National Taxpayer Advocate (NTA) that the Program Office had \$47,500 in surplus FY '06 grant funds which it recommended be awarded to 12 existing grantees. Specifically, the Office recommended that six clinics, which the Office had initially intended to award \$100,000 but which had ultimately received only \$97,250, be awarded an additional \$2,750. The Office also recommended that another six clinics that were performing well be awarded amounts ranging from \$2,500 to \$7,250. That same day, the NTA e-mailed back her approval of the additional awards. The Program Office also on September 28 identified a 13th clinic for an award. The Deputy NTA approved in writing that award on September 28. The LITC Program Office then directed that the additional amounts be posted to the accounts of the grantees and, with one exception, the amounts were in fact posted on Friday, September 29, 2006. While the grant funds were awarded in FY '06, the grantees were not orally notified of the awards until the following fiscal year.

As indicated above, the Program Office had at the time of the initial awards determined that all of the clinics at issue met the statutory qualifications for low income taxpayer clinics. Accordingly, the agency had broad discretion to issue grant funds to those entities. Further, appropriate officials within the Taxpayer Advocate Office rendered in FY '06 written determinations that those clinics be awarded the funds. Thus, the September 28, 2006, determinations of the National Taxpayer Advocate and the Deputy National Taxpayer Advocate obligated the agency, on September 28, 2006, to pay \$47,500 in supplemental awards. Further, such obligations were sufficiently supported by the written determinations and the form 12183 grant agreements to support their recordation.²

² While one clinic's award was not posted until FY '07, this apparent administrative error does not change when the determination to award the grant was made and therefore that award should be charged to FY '06. See 64 Comp. Gen. 114, *supra*. (where Rank Award had to be charged to the year in which it was made, not the year in which it was paid). Further, because annual appropriations remain available for an additional 5 fiscal years beyond expiration to make payments to liquidate liabilities arising from obligations

If you have any questions about this opinion or if we can be of further assistance, please contact Christine Pembroke of this office at (202) 283-7935.

made within the fiscal year for which the funds were appropriated (31 U.S.C. § 1552(a), 1553(a)), the FY '06 account remains available for that charge.