



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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November 14, 1972

Dear Mr. Van Dyke:

Reference is made to your letter of August 21, 1972, asking, in effect, whether Public Law 92-334 (Continuing Resolution) approved July 1, 1972, as amended, permits the Secretary of Health, Education, and Welfare to provide funds to the National Advisory Council on Extension and Continuing Education (Council) to carry out its functions under section 103 of the Education Amendments of 1972, Public Law 92-318, approved June 23, 1972, 86 Stat. 237.

The Council was established by section 109 of the Higher Education Act of 1965, Public Law 89-239, approved November 8, 1965, 79 Stat. 1223, as amended, 20 U.S.C. 1009. The duties of the Council are set out in sections 109(b) as being to advise the Commissioner of Education in the preparation of general regulations and with respect to policy matters arising in the administration of title I of the act, including policies and procedures governing the approval of State plans, and policies to eliminate duplication and to effectuate the coordination of programs offering extension or continuing education activities and services. Section 109(c) provides that the Council shall review the administration and effectiveness of all federally supported extension and continuing education programs and make annual reports concerning its activities together with its recommendations and furnish such reports to the Secretary, HEW, and to the President.

The Council receives no direct appropriations to carry out its functions but the Secretary, HEW, is directed by 20 U.S.C. 1233d to provide to the Council such personnel and technical assistance as the Council may require to carry out its functions. It is understood that funds provided for the Council under the above authority in prior years have been approximately \$100,000 annually.

Title IV of the Elementary and Secondary Education Amendments of 1967, Public Law 90-247, approved January 2, 1968, as amended by title IV of Public Law 91-230, approved January 2, 1968, 20 U.S.C. 1221, et seq., authorized the appropriation of funds to be used by the Secretary, HEW, for, among other purposes, the planning and evaluation of all educational programs for which the Commissioner of Education is responsible. Under the provisions of 20 U.S.C. 1224 the Secretary, HEW, is required, no later than January 31 of each year, to transmit to the appropriate committees of the Congress a report evaluating the results and effectiveness of programs and projects receiving assistance during the preceding fiscal year.

Section 103 of Public Law 92-318, however, provides that--

"SEC. 103. (a) During the period beginning with the date of enactment of this Act and ending July 1, 1974, the National Advisory Council on Extension and Continuing Education, hereafter in this section referred to as the National Advisory Council, shall conduct a review of the programs and projects carried out with assistance under title I of the Higher Education Act of 1965 prior to July 1, 1973. Such review shall include an evaluation of specific programs and projects with a view toward ascertaining which of them show, or have shown, (1) the greatest promise in achieving the purposes of such title, and (2) the greatest return for the resources devoted to them. Such review shall be carried out by direct evaluations by the National Advisory Council, by the use of other agencies, institutions, and groups, and by the use of independent appraisal units.

"(b) Not later than March 31, 1973, and March 31, 1975, the National Advisory Council shall submit to the Committee on Labor and Public Welfare of the Senate and the Committee on Education and Labor of the House of Representatives a report on the review conducted pursuant to subsection (a). Such report shall include (1) an evaluation of the program authorized by title I of the Higher Education Act of 1965 and of specific programs and projects assisted through payments under such title, (2) a description and an analysis of programs and projects which are determined to be most successful, and (3) recommendations with respect to the means by which the most successful programs and projects can be expanded and replicated.

"(c) Sums appropriated pursuant to section 401(c) of the General Education Provisions Act for the purposes of section 402 of such Act shall be available to carry out the purposes of this section."

Inasmuch as the annual appropriation bill providing funds to HEW for the current fiscal year has not been enacted into law, the Department is fiscally operating under the Continuing Resolution. Question regarding the availability of funds provided therein to carry out the functions of the Council under section 103, quoted above, arises by reason of section 106 of the Continuing Resolution which provides that--

"No appropriation or fund made available or authority granted pursuant to this joint resolution shall be used to initiate or resume any project or activity which was not being conducted during the fiscal year 1972."

We have been informed by a representative of HEW that they consider the functions prescribed in section 103 to constitute a new activity of the Council because such section provides for the evaluation of specific programs and projects; it requires the issuance of reports to certain committees of the Congress; and the activity is a "one shot" project that will terminate upon the issuance of the two reports required by section 103(b). Furthermore, it is reported that estimates regarding annual costs of the Council in carrying out its functions under section 103 are approximately \$223,000 as compared to about \$100,000 annually in previous years.

On the other hand, it is your view that since for the last seven years the Council has had responsibility for evaluating programs under title I of the Higher Education Act of 1965, the language of section 103 of Public Law 92-318 does not provide for a new Council program or activity.

In this connection you state that--

"Funds made available to the Secretary of Health, Education and Welfare under Section 402(a) of the General Education Provisions Act are discretionary funds. These funds can be used to evaluate any existing educational program, including programs authorized under Title I of the Higher Education Act of 1965. Therefore, even without the enactment of the Education Amendments Act of 1972, we believe the Secretary of Health, Education and Welfare is legally able to make available these discretionary monies for an evaluation of Title I (HEA) programs. To hold that because the Education Amendments Act of 1972 now specifically requires the Secretary to do exactly that, it consequently makes him unable to do so because it constitutes a 'new activity', strikes us as logically unsound and clearly unintended by the Congress * * *."

It seems to us that since the Council had authority and responsibility to evaluate title I programs independently of section 103 of Public Law 92-318, the primary effect of such section, insofar as the question here under consideration is concerned, is to require the Council to evaluate certain

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programs and projects which theretofore were more or less discretionary with the Council.

Accordingly, while the application of section 106 of the Continuing Resolution in the instant situation is not entirely free from question, we agree with your view that the functions prescribed in section 103 of Public Law 92-318 do not constitute a new "project or activity" within the meaning of section 106 of the Continuing Resolution. Consequently, it is our view that such section does not preclude the provision of funds to the Council to carry out its functions under section 103.

A copy of this decision is being sent to the Secretary of Health, Education, and Welfare.

Sincerely yours,

RF. KELLER

Comptroller General
Deputy of the United States

The Honorable Frank J. Van Dyke, Chairman
National Advisory Council on Extension and
Continuing Education