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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: United States Information Agency--Debt Conversion Activities

File: B-237858

Date: April 15, 1991

DIGEST

1. Unless otherwise authorized, the United States Information Agency (USIA) may not use appropriated funds to engage in "debt for equity" swaps to fund educational and cultural exchange activities. The authority contained in the Mutual Educational and Cultural Exchange Act, 22 U.S.C. § 2451, to finance educational and cultural exchange activities by "grant, contract, or otherwise" does not include the authority to purchase discounted foreign debt from commercial lenders.

2. USIA may accept donations of foreign debt for the purpose of funding international educational and cultural activities. Under 22 U.S.C. § 2697, USIA may accept conditional gifts. Congress specifically provided that USIA may hold, invest, reinvest, and use the principal and income from any such conditional gift in accordance with the conditions of the gift to carry out authorized functions.

DECISION

This responds to a request from the General Counsel, United States Information Agency (USIA), regarding the agency's authority to engage in transactions, commonly referred to as "debt for equity swaps," that are part of a foreign country's program to reduce the amount of its outstanding U.S. dollar denominated debt. The General Counsel asks whether the agency may engage in such transactions to fund educational and cultural exchange programs. For the following reasons, we conclude that USIA may not use appropriated funds to purchase foreign debt and convert it to foreign currency or foreign currency denominated bonds. However, under its statutory authority to accept and invest gifts in accordance with their conditions, USIA may accept donations of foreign debt and use such donations to engage in the proposed activities.

BACKGROUND

In 1987, the Internal Revenue Service (IRS) set forth the federal income tax consequences for various transactions that are part of a foreign country's program to reduce the amount of its outstanding U.S. dollar denominated debt, Rev. Rul. 87-124, 1987-47 C.B. 205. The IRS ruling makes it financially beneficial, under certain circumstances, for a commercial lender holding U.S. dollar denominated debt of a foreign country to donate or sell the debt at a substantial discount. For the lender to obtain the financial benefits, the principal and income on the debt must be used for charitable purposes in the debtor nation. USIA officials hope to take advantage of this tax incentive to commercial lenders to help fund educational and cultural exchange programs.

We understand USIA's proposal is as follows. USIA would accept a donation of, or purchase at a substantial discount, a portion of a foreign country's outstanding debt from a commercial lender. USIA would then grant the note representing the foreign country's outstanding debt to a United States nonprofit organization located in the foreign country. The nonprofit organization would then take the note to the foreign country's monetary authority and exchange it, at face value, for local currency or local currency denominated bonds.^{1/} The nonprofit organization would then use the local currency or the income from the bonds to carry out educational and cultural exchange programs. By engaging in the transaction, the commercial lender can improve its loan portfolio and may also be able to receive both a charitable contribution deduction and a loss deduction. The foreign country involved reduces the amount of its outstanding U.S. dollar denominated debt and frees its U.S. dollar reserves for other purposes.

DISCUSSION

Congress enacted the Mutual Educational and Cultural Exchange Act to (1) increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchange, (2) to strengthen the ties between nations, and (3) to promote international cooperation for educational and cultural advancement. 22 U.S.C. § 2451 (1988). To that end, USIA is authorized to finance international educational and cultural exchanges and

^{1/} For purposes of this discussion, we assume that the official exchange rate is equal to the market rate and that there is no risk of default by the debtor country. We also assume that USIA and the monetary authority fixed the rate of exchange before USIA obtained the debt.

United States participation in international fairs by "grant, contract, or otherwise," 22 U.S.C. § 2452(a). USIA is also authorized to provide for a wide variety of other activities including establishing and operating schools abroad, and promoting and supporting medical, scientific, cultural, and educational research and development. 22 U.S.C. § 2452(b).

Our Office has previously held that the authority to provide financial assistance under the Mutual Educational and Cultural Exchange Act by "grant, contract, or otherwise" does not include the authority to make unrestricted or unconditioned gifts or grants or to establish permanent endowment funds to finance program activities. 42 Comp. Gen. 289 (1962). There, we found nothing in the Act or its legislative history to indicate that Congress intended for the Department of State (USIA did not yet exist) to use appropriated funds for such purposes. Therefore, we recommended that the Department obtain specific statutory authority before engaging in the proposed funding activities. Id.

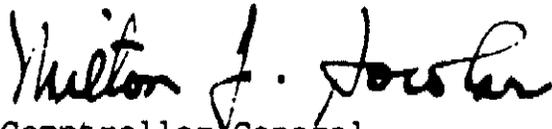
Here, USIA proposes to use program funds to purchase certain notes and transfer those notes to grantees who would then swap the notes for foreign currency denominated bonds and use the income to carry out program activities. However, as USIA officials readily concede in their submission, the agency has "no specific statutory authority clearly authorizing or appropriating monies to be spent for debt purchase, either directly or indirectly . . ." We agree and have found nothing to indicate that Congress has provided, under the Mutual Educational and Cultural Exchange Act, 22 U.S.C. § 2451, as amended, any new authority for USIA that would permit it to use program funds to purchase discounted foreign debt for the benefit of grantees or to provide unrestricted grants to grantees to invest rather than apply to programmatic efforts. See B-149441, Feb. 17, 1987.

Moreover, the proposed transaction has important policy implications unrelated to USIA's mission. USIA would be using appropriated funds to participate in the burgeoning third-world debt trading market. By doing so, USIA would in effect be using appropriated funds to provide debt relief to certain countries while enabling U.S. banks to improve their loan portfolios and to take advantage of tax benefits. We do not think that Congress intended for USIA to use funds provided to finance international, educational, and cultural activities by "grant, contract, or otherwise" for such purposes. Thus, we remain of the view expressed in 42 Comp. Gen. 289, at 295, that in light of the fact that this proposal, like the one under consideration there, "constitutes an innovation in the methods generally authorized by the Congress with respect to the financial transactions of the United States," specific

legislative authority should be obtained from Congress before entering into such transactions.

The General Counsel, USIA, also asks whether USIA may use donations to carry out the proposed transaction. Under 22 U.S.C. § 2697, USIA may accept conditional gifts and hold, invest, reinvest and use the principal and income from any such gift in accordance with its conditions to carry out authorized functions. Therefore, USIA may accept a donation of foreign debt to carry out the proposed debt conversion activities if the principal and income is ultimately used for authorized activities.

We also would not object if USIA, under its broad congressional mandate, were to match commercial lenders willing to donate or sell foreign debt, with the appropriate nonprofit organizations responsible for carrying out educational and cultural exchange activities.

for 
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