

December 19, 2001

Council of the District of Columbia

PUBLIC OVERSIGHT HEARING ON THE DISTRICT OF COLUMBIA'S USE OF SECTION 157
FEDERAL FUNDS FOR ITS FISCAL YEAR 2000 WORKFORCE REDUCTION INITIATIVE

Testimony of Gordon McDonald, Associate Deputy CFO, Office of Budget and Planning, before the Committee on Government Operations

Good morning, Chairman Orange and members of the Committee on Government Operations. I am Gordon McDonald, Associate Deputy CFO for the Office of Budget and Planning, in the Office of the Chief Financial Officer (OCFO). With me today is Marvin Morris, Special Counsel, also in the OCFO.

I am pleased to appear before you today to testify on the District's use of the \$18 million severance fund provided under Section 157 of the DC Appropriations Act for FY 2000 (Public Law 106-113), enacted Nov. 29, 1999. Specifically, my testimony will address issues raised in the Nov. 5, 2001 General Accounting Office (GAO) Report on "District of Columbia Issues: DC Workforce Reductions and Related Funding Issues." The GAO reviewed the District's actions in FY 2000 to determine whether the conditions under Section 157 were satisfied in order to use the funding provided. These funds were included in the FY 2000 appropriation to pay for severance costs associated with certain workforce and savings initiatives. My testimony will summarize the actions taken by the District to satisfy the conditions under Section 157. I will also explain why no Anti-Deficiency Act violations would have resulted if the Section 157 funding had not been used for the retirement incentive payments.

Section 157 Funding

The \$18 million in funding provided in the FY 2000 Appropriations Act was made available from the District's interest earnings held by the DC Financial Responsibility and Management Assistance Authority (Authority) on behalf of the District during the control period. Using this interest income as a source, the Congress enacted Section 157 of the DC Appropriations Act for FY 2000 to provide funds to the District for severance payments, to expand contracting authority of the Mayor, and to implement a system of managed competition. Pursuant to this section, severance costs associated with FY 2000 retirements and reductions-in-force (RIFs) could be charged to this appropriation, provided that the District satisfy the following key conditions stated in Section 157:

1. That such funds are used in accordance with a plan agreed to by the Council and the Mayor;
2. The plan is approved by the Committees on Appropriations of the House of Representatives and the Senate; and
3. The expenses charged to this fund reduce reoccurring future costs at an annual ratio of at least 2-to-1 relative to the funds provided.

The District satisfied these conditions when it used \$14.3 million of the \$18 million in FY 2000 for severance costs. I will now explain how each of these conditions was satisfied.

Joint Mayor and Council Plan

During FY 2000, the Mayor and Council agreed that, in order to develop a more realistic budget, the FY 2001 budget submission to Congress would not include offsetting budget savings that were not allocated to a specific program, as had been done in prior years. This decision meant that Management Reform Savings of \$37 million and Operational Improvement Savings of \$10 million for FY 2001 needed to be allocated to specific programs. Consistent with this agreement, the Mayor proposed such a plan. This plan included a retirement incentive program and RIFs to be executed in FY 2000. The Mayor and Council agreed to use the Section 157 funding to pay for the retirement incentives and RIFs. These actions satisfied the first condition that the Mayor and Council agree to use the Section 157 funds in accordance with a plan.

Approval by the House and Senate of the Plan

The second condition was that the plan be approved by the Committees on Appropriations of the House and Senate. The District submitted the plan to the House of Representatives, by letter dated March 30, 2000, and a copy of the plan was subsequently sent to the Senate, by letter dated Jan. 30, 2001. The delayed submission of the plan to the Senate was an administrative oversight. Through frequent discussions, the District received verbal confirmation that the use of the funds for a retirement incentive program and RIFs was consistent with the conditions under Section 157. Neither the House nor the Senate followed up their verbal approval with a written response.

2-to-1 Savings

The third requirement was that the District reduce reoccurring future costs at an annual ratio of at least 2-to-1 relative to the funds provided. Two-to-one savings require that for every dollar expended, the District had to show a savings in future costs of two dollars. The District's use of the funds for personal services savings did result in the reduction of future costs at an annual ratio of 2-to-1. Specifically, the District used \$12.4 million for payments to retirees under the retirement incentive program. This meant that to satisfy the 2-to-1 savings requirement, the District had to show savings in future reoccurring costs of at least \$24.8 million. In accordance with this condition and the broader savings initiative, the CFO certified \$26.3 million in personal services savings. This certification satisfied the third condition for use of the funds.

The GAO Report

The GAO report asserts that the District failed to satisfy the conditions set in Section 157 because the Authority did not certify that the 2-to-1 savings requirement had been satisfied. We disagree with this assertion for two reasons. First, a legal opinion prepared by the Authority on Dec. 2, 1999 stated that the 2-to-1 savings requirement under Section 157 did not apply to the severance costs included in the retirement incentive program. The opinion reasoned that the conditions under Section 157 did not apply equally to the different programs that could be funded by it. This interpretation by the Authority suggests that the Authority never intended to certify the 2-to-1 savings requirement for severance costs.

Second, the District received verbal approval from the Authority to use the Section 157 funding, after the District had disclosed additional evidence that all conditions had been met. The GAO report restates the Authority's reasons for denying on Oct. 20, 2000 the District's original request for \$12.4 million. However, what the report does not state is that actions were taken by the District after Oct. 20, 2000 to address all of the Authority's concerns. Through subsequent discussions and submissions of required information requested by the Authority, the District satisfied the issues raised in the Oct. 20 letter.

The Anti-Deficiency Act

The GAO report recommended to the Mayor that the District determine whether any "operating deficits resulting from reversing [the District's] inappropriate use of the Section 157 authority would result in, or contribute to, any potential Anti-Deficiency Act violations and report, as necessary, to disclose any such violations." An Anti-Deficiency Act violation occurs when an appropriation title, such as Governmental Direction and Support or Public Safety and Justice, ends a fiscal year with spending in excess of the appropriated amount. An Anti-Deficiency Act violation does not occur when an agency within an appropriation title ends the fiscal year with an operating deficit that does not "result in or contribute to" a deficit in the appropriation title.

The District conducted this analysis, as recommended by GAO, and concluded that the reversal of Section 157 funding, even if it were appropriate, would not "result in or contribute to" an Anti-Deficiency Act violation. Indeed, the only appropriation title that ended FY 2000 with spending in excess of the appropriated amount was Public Safety and Justice, at \$27.4 million. This \$27.4 million deficit was due entirely to the Settlements and Judgements Fund expenditures of \$41.3 million, over its original budget request of \$26.9 million. However, the Settlements and Judgements Fund was authorized by the Congress, under Section 106 of the FY 2000 Appropriations Act, to pay the total \$68.2 million in settlements and judgements for FY 2000. Therefore, the only operating deficit at the appropriation title level in FY 2000 was authorized by the Congress under Section 106.

Conclusion

In closing, it is the position of the OCFO that the District met the conditions of Section 157 in order to use the funds for severance payments in FY 2000. The District has acted on the GAO's recommendation and found that no Anti-Deficiency Act violation would have resulted if the District had made severance payments in the absence of Section 157 funding. Moreover, no agency operating deficit would have "contributed to" an Anti-Deficiency Act violation. We have so advised the GAO in the District's Nov. 30, 2001 response to their report.

The Office of the Chief Financial Officer will continue to work closely with the Mayor and Council to ensure that reporting requirements under the annual appropriations and other laws are satisfied and documented in the appropriate manner.

This concludes my testimony. I would be happy to answer any questions you may have.