IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SOCIETY OF GENERAL INTERNAL MEDICINE & NORTH AMERICAN PRIMARY CARE RESEARCH GROUP, *Plaintiffs*, v. ROBERT F. KENNEDY, JR., *et al.*, *Defendants*.	Case No. 8:25-cv-2751-BAH

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO VACATE OR, IN THE ALTERNATIVE, TO AMEND ORDER

Plaintiffs in this case allege that Defendants unlawfully halted research grantmaking and, as a result, improperly impounded funds at the Agency for Healthcare Research and Quality (AHRQ). On September 19, 2025, this Court granted Plaintiffs' unopposed motion to extend the deadline for AHRQ to obligate funds appropriated to it in the Full-Year Continuing Appropriations Act, Pub. L. No. 119-4, to December 31, 2025. *See* Order, ECF 21. Defendants now move to vacate or, in the alternative, to amend that order. *See* Defs. Mot. to Vacate, ECF 23.

Plaintiffs oppose Defendants' motion insofar as it seeks vacatur of the Court's order extending the deadline to obligate funds. As Plaintiffs have explained, such an order is within the Court's equitable authority as a means of preserving the status quo of the dispute pending any ruling on the merits. *See* Pls. Mot. to Extend at 3–4, ECF 20; Pls. Mot. for a Prelim. Inj. at 30, ECF 4-1. Nonetheless, Defendants question whether the order is "legally effective as written," including because it does not prevent the funds at issue from reverting to Treasury at the end of the fiscal year. Defs. Mot. 2. To avoid any uncertainty, Plaintiffs respectfully request that the Court amend the order to ensure that the status quo is, indeed, preserved through the end of this litigation.

As an alternative to vacatur, Defendants propose an order preserving a sum certain until the conclusion of the litigation. Plaintiffs agree that, if the Court determines that the order should not be continued in its current form with the above amendment, an order preserving a sum certain out of AHRQ appropriations until the conclusion of the litigation would be appropriate. *See* Defs. Proposed Order, ECF 23-1. Plaintiffs additionally request that the Court, in doing so, include a provision making clear that such funds are available for the grantmaking activities at issue in this case during the pendency of the litigation.

ARGUMENT

I. The Court should ensure that the extension order effectively preserves the status of the disputed appropriations.

A. This Court has the equitable power "to order that funds be held available beyond their statutory lapse date if equity so requires." *State of Conn. v. Schweiker*, 684 F.2d 979, 997 (D.C. Cir. 1982). As courts have recognized, this authority "does not conflict with Congress' exclusive power to appropriate funds," *id.*, but instead "give[s] effect to congressional intent by" preserving a court's ability to provide meaningful relief with respect to disputed funds, *Rochester Pure Waters Dist. v. EPA*, 960 F.2d 180, 184 (D.C. Cir. 1992). *See also Nat'l Ass'n of Neighborhood Health Centers v. Mathews*, 551 F.2d 321, 339 (D.C. Cir. 1976) (recognizing that extension of obligation date may be needed to ensure that relief can be afforded and remanding to district court to determine appropriate length of extension). Accordingly, this Court had (and has) the power to order that the AHRQ appropriations continue to be available after September 30.

Although they do not oppose the relief that the Court entered, Defendants now contend that the order is "not legally effective" and should be vacated. *See* Defs. Mot. 2. To support this contention, Defendants argue that the Court's equitable power does not extend to preserving a lump-sum appropriation and that the order amounts to an unlawful amendment of the fiscal year 2025 appropriations statute. Defendants, however, offer no citations to support those arguments, and Plaintiffs have not found any, either. Rather, existing case law on the extent of the Court's equitable power supports the previously entered order. For one thing, *all* orders extending the time period of an appropriation operate by "suspend[ing] the operation of" a statutory lapse provision and "extend[ing] the term of already existing budget authority." *Nat'l Ass'n of Reg'l Councils v. Costle*, 564 F.2d 583, 588 (D.C. Cir. 1977)). Courts have nevertheless found doing such orders to be within their equitable powers to preserve a dispute.

Further, the lump-sum nature of the appropriation does not transform that proper exercise of authority into an improper one. Under the "complete relief" principle—which has "deep roots in equity"—courts "generally may administer complete relief between the parties," even if doing so creates inadvertent practical effects on others not before the court. *Trump v. CASA, Inc.*, 606 U.S. 831, 851–52 (2025). Here, given the lump-sum nature of the appropriation, the order may extend the deadline for obligation of funds that ultimately end up not in dispute. That result is reasonable in light of the nature of the appropriation and the objective of ensuring the preservation of funds that *are* in dispute because Defendants unreasonably delayed awarding them.

B. Defendants have conveyed to Plaintiffs their view that the order is inadequate to achieve the objective of preserving the expiring funds because the order does not direct Defendants to take steps to prevent those funds from reverting to Treasury on October 1. *See also* Defs. Mot. 2 (stating that the Court has the power to order the preserve funds, "to prevent their expiration," during pendency of litigation). Plaintiffs take no position on whether it is correct, as a matter of law, that such an order to hold funds is necessary to avoid reversion to Treasury or otherwise ensure that the funds remain available, notwithstanding the Court's extension of the expiration date. But to ensure that the order extending the appropriations deadline has the practical effect intended, Plaintiffs respectfully request that the Court amend its original order, as reflected in the attached proposed order, to direct Defendants to hold the funds from the fiscal year 2025 appropriation and prevent their reversion to Treasury during the pendency of the litigation. Such an order would allow, but not require, Defendants to obligate the funds, while the litigation continues. And it would implement Congress's general direction that "[a] provision of law requiring that the balance of an appropriation or fund be returned to the general fund of the Treasury at the end of a definite period does not affect the status of lawsuits or rights of action involving the right to an amount payable from the balance." 31 U.S.C. § 1502(b).

II. In the alternative, the Court should order that Defendants hold a sum certain, which will be available for use on grantmaking during the pendency of the litigation.

Although Defendants question whether the Court may order them to hold the entire amount of unobligated funds, they agree that the Court may "direct an agency to preserve a sum certain amount of appropriated funds" to "prevent their expiration" before the end of the case. Defs. Mot. 2. Accordingly, if the Court is not inclined to continue the order extending to the entire fiscal year 2025 appropriation, Plaintiffs request that the Court enter the alternative relief outlined in Defendants' proposed order, with one key adjustment described below.

A. To begin, the Court should not be swayed by Defendants' suggestion that an order to set aside a set amount of funds is appropriate only when Plaintiffs "seek money damages or allege that they are entitled to money from the government." Defs. Mot. 3. As Defendants recognize, Plaintiffs could not ask for such money damages in an APA suit and instead would need to bring a claim under the Tucker Act in the Court of Federal Claims. *Id.* Notwithstanding those limitations, it is well established that district courts *do* have the equitable power to order an agency to hold funds available beyond an appropriation deadline, where the obligation of such funds is necessary to effectuate complete relief. *Cf. Defy Ventures, Inc. v. U.S. Small Bus. Admin.*, 469 F. Supp. 3d 459, 479 (D. Md. 2020) (recognizing that court had power to extend statutory deadline with respect to appropriation where plaintiffs were "at risk of losing a benefit for which they are eligible because of arbitrary and capricious agency action"); *Multnomah Cnty. v. Azar*, 340 F. Supp. 3d 1046, 1055 (D. Or. 2018) (recognizing power to extend agency's deadline to obligate funds via grantmaking, in case challenging eligibility criteria for grant awards). Moreover, courts have recognized that they may order a portion of an appropriation be held available where that sum is needed to allow plaintiffs to obtain relief. *See, e.g.*, *Wilson v. Watt*, 703 F.2d 395, 403 (9th Cir. 1983) (instructing district courts to order portion of appropriation remain available "as is necessary to implement" an order reinstating an assistance program); *Nat'l Ass'n of Neighborhood Health Centers*, 551 F.2d at 338–39 (instructing district court to direct agency to recover illegally transferred funds and extend appropriation deadline for any recovered funds to allow reallocation).

Contrary to Defendants' suggestion, *see* Defs. Mot. 3, the relief contemplated in Defendants' proposed order would not infringe on AHRQ's discretion to allocate its fiscal year 2025 funds to grant programs. The order would only *preserve* the agency's ability to lawfully exercise that discretion throughout the pendency of this case.

2. Should the Court choose to enter Defendants' proposed order in support of its alternative request for amendment, Plaintiffs separately request that the Court include a provision making clear that any funds held by AHRQ during the pendency of this litigation are available for the grantmaking functions at issue in this case. Courts entering orders to extend appropriations deadlines have regularly recognized that, depending on the circumstances of the case, it can be appropriate to allow the agency to make funds available for use in the interim. *See, e.g.*, *Nat'l*

Ass'n of Neighborhood Health Centers, 551 F.2d at 339 (ordering that "the funds involved in this case continue to be made available" during remand to district court to determine period of extension). For example, in *National Family Planning & Reproductive Health Ass'n v. Kennedy*, the court recently entered an order—while motions for summary judgment were pending—requiring the agency to "maintain" disputed funds related to the delayed award of grant funds. *See* No. 25-cv-1265-ACR (D.D.C. Sept. 12, 2025), ECF 38. That order made clear that *"[w]hile this litigation is pending*, Defendants may continue to issue Notices of Awards and provide grants from the funds at issue to Plaintiff's Affected Members that currently have their grants withheld." *Id.* (emphasis added). Such a provision is particularly appropriate in this case, as Plaintiffs have alleged that Defendants have unreasonably delayed processing of their members' grant applications. *See* Compl. ¶¶ 58–61, ECF 1. A provision allowing AHRQ to continue to use funds for the programs at issue in this case would prevent any additional delay in those grant applications and best preserve the status quo.

CONCLUSION

For the foregoing reasons, the Court should deny Defendants' motion to vacate and amend the order extending the deadline for AHRQ to obligate funds to ensure that the funds remain available for obligation during the pendency of this litigation.[1]

[1] While Defendants suggest that the Court must enter an amended order by 11:59 p.m. on September 30 "[t]o ensure its effectiveness," Defs. Mot. 4, the Court's authority is not extinguished at that point. A court has authority to order the holding of funds even after their expiration date, so long as the suit was initiated and request for injunctive relief was made before the funds lapsed. *See Schweiker*, 684 F.2d at 996–99. That remedy is part and parcel of the court's authority "to fashion a … remedy in the interest of justice," and avoids the "highly unjust result" of leaving plaintiffs without "meaningful relief" because of the timing of the agency's actions. *Id.* at 999.

Dated: September 29, 2025

Respectfully submitted,

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[PROPOSED] ORDER

Upon consideration of Defendants' motion to vacate or, in the alternative, amend order, and the record in this case, it is hereby

ORDERED the Order (ECF 21) extending the deadline for the Agency for Healthcare Research and Quality to obligate funds provided in the Full-Year Continuing Appropriations Act, Pub. L. No. 119-4, *id.* § 1106, is hereby amended, as follows:

It is hereby

ORDERED that the deadline for AHRQ to obligate funds provided in the Full-Year Continuing Appropriations Act, Pub. L. No. 119-4, *id.* § 1106, shall be extended during the pendency of this litigation; it is further

ORDERED that Defendants shall hold the funds appropriated to AHRQ in the Full-Year Continuing Appropriations Act, Pub. L. No. 119-4, during the pendency of the litigation, such that those funds do not revert to the Treasury; and it is further

ORDERED that while this litigation is pending, Defendants may continue to obligate the funds at issue through the award of grants under the grantmaking program at issue in this case.

SO ORDERED.

Date: September __, 2025

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U.S. District Judge