

DECISION

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

FILE: B-200923

DATE: October 19, 1982

MATTER OF: Treasury Withdrawal of Appropriation Warrants
for Programs Operating Under Continuing Resolution

DIGEST:

Funds appropriated for appropriation accounts of the Departments of Agriculture and Transportation by fiscal year 1982 continuing resolutions, and properly obligated during the period the resolutions were in effect, remain available to liquidate the obligations incurred even though later regular appropriation acts provided no funding at all for these programs. Treasury is required to restore the applicable accounts established pursuant to the continuing resolutions at amounts sufficient to cover the unliquidated obligations.

In January of this year, we were informally advised that the Department of the Treasury had withdrawn undisbursed balances, including sums previously obligated, from appropriation accounts established under authority of the fiscal year 1982 continuing resolutions for the Department of Agriculture and the Department of Transportation, National Highway Traffic Safety Administration. In taking this action, Treasury indicated it was required to do so by language in a 1972 GAO letter applicable when an annual appropriation act does not provide sufficient funds to cover obligations incurred under a continuing resolution. As a result of the withdrawal, both agencies were unable to pay the obligations they had previously incurred under authority of the resolutions.

Since Treasury relied on a GAO opinion to justify its action, we decided to reexamine our 1972 ruling. In doing so, we solicited the views of Agriculture and Transportation, as well as the Department of the Treasury and the Office of Management and Budget. All four agencies concluded that the obligated (but not yet paid) balances remaining in the accounts at the time the agencies' annual appropriation acts were enacted should not have been withdrawn. After considering all relevant arguments, we now conclude that to the extent an annual appropriation act does not provide sufficient funding for an appropriation account to cover obligations validly incurred under the terms of a continuing resolution, the funds made available by the resolution remain available to pay these obligations.

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Prior to December 23, 1981, when the regular appropriation acts for the Department of Agriculture and the Department of Transportation were enacted, programs of the Department of Agriculture and the Department of Transportation's National Highway Traffic Safety Administration (NHTSA) were funded under the several continuing resolutions for fiscal year 1982. Under the terms of these continuing resolutions, Agriculture was provided funding for the appropriation account, Scientific Activities Overseas (Special Foreign Currency Program), at an annual level of \$5,000,000 and NHTSA was provided funding for the appropriation account, Territorial Highway Safety Program, at an annual level of \$975,308. Of these total sums, the Office of Management and Budget apportioned and thereby made available for obligation for the period covered by the resolutions \$450,000 for Scientific Overseas Activities of Agriculture and \$136,540 for the Territorial Highway Safety Program of NHTSA. Thereupon, the Department of Treasury issued and this Office countersigned appropriation warrants in these amounts for the two accounts. As of December 23, 1981, Agriculture had obligated \$434,016 of its available funds. Of these obligations, \$196,016 had not yet been paid. NHTSA had obligated the entire amount of its available funds, but had not yet paid any of these obligations.

On December 23, 1981, the regular annual appropriation acts for both Agriculture and NHTSA were enacted. The Agriculture appropriation act made no provision for Scientific Overseas Activities and the Transportation appropriation act made no provision for NHTSA's Territorial Highway Safety Program. Accordingly, relying on language in a 1972 GAO letter to Senator William Proxmire, B-152554, February 17, 1972, Treasury withdrew the undisbursed balances in the appropriation accounts established for the two programs under the continuing resolutions.

The 1972 letter relied on by Treasury responded to a question raised by Senator Proxmire concerning the effect of an annual appropriation act that provided funds for a particular appropriation account (previously funded by continuing resolution) at an amount lower than the amount of obligations already incurred under the resolution. While we recognized that the obligations incurred under the authority of the continuing resolution remained valid, we concluded that "any appropriations warranted under the continuing resolution in excess of the final appropriations and not disbursed would be rescinded." In our letter we assumed that the agency confronted with this situation would be able "to negotiate downward the amount of such obligations so as to come within such sums as may be finally approved by the Congress." We did not mention that if the agency could not reduce its obligations the result of our decision would be that the obligations could not be liquidated without a supplemental appropriation.

In reaching our conclusion in 1972, we relied on a provision in the resolution that expenditures under its authority should be charged to the applicable appropriation account when a regular appropriation act was enacted. We concluded that when the annual appropriation act appropriated less funds than the amount of obligations already incurred, no expenditures in excess of this appropriation amount could be charged against the applicable account. Thus, any undisbursed funds in the account in excess of the amount of the regular appropriation would have to be withdrawn. The obligations previously incurred under the authority of the continuing resolution remained valid but there were insufficient funds available in the applicable account to liquidate them.

The provision we relied on in our 1972 letter is routinely included in most continuing resolutions. In the most recent fiscal year 1982 resolution it appeared as section 104, in the following language:

"Expenditures made pursuant to this joint resolution shall be charged to the applicable appropriation, fund, or authorization whenever a bill in which such applicable appropriation fund, or authorization is contained is enacted into law." Pub. L. No. 97-92, § 104, 95 Stat. 1193 (1981).

Upon reconsideration, we are convinced that our 1972 application of this provision was wrong. The provision's history indicates that its purpose is to make it clear that the amounts appropriated by the continuing resolution are not in addition to the funds later appropriated by the regular appropriation acts. See, e.g., H.R. Rep. No. 91-234, 91st Cong., 1st Sess. 2 (1969). Thus, to the extent possible, obligations incurred or expenditures made under the continuing resolution are to be charged against the funds provided by the regular appropriation act.

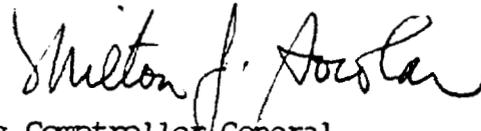
However, this does not mean that if the regular appropriation act provides insufficient funding to cover obligations made under the resolution that these obligations cannot be liquidated. Another provision generally contained in continuing resolutions covers this situation. In the most recent resolution, this provision is found in section 103. It provides as follows:

"Appropriations made and authority granted pursuant to this joint resolution shall cover all obligations or expenditures incurred for any project or activity during the period for which funds or authority for such project or activity are available under this joint resolution." Pub. L. No. 97-92, § 103, 95 Stat. 1193 (1981).

This section provides that funds appropriated by the continuing resolution are to remain available to liquidate obligations incurred within the availability period of the continuing resolution.

Reading these two provisions together, we reach the following results: When an annual appropriation act provides sufficient funding for an appropriation account to cover obligations previously incurred under the authority of a continuing resolution, any unpaid obligations are to be charged to and paid from the applicable account established under the annual appropriation act. Similarly, to the extent the annual act provides sufficient funding, those obligations which were incurred and paid during the period of the continuing resolution must be charged to the account created by the annual appropriation act. On the other hand, to the extent the annual appropriation act does not provide sufficient funding for the appropriation account to cover obligations validly incurred under a continuing resolution, the obligations in excess of the amount provided by the annual act should be charged to and paid from the appropriation account established under authority of the continuing resolution. 1/ Thus the funds made available by the resolution must remain available to pay these obligations.

Accordingly, Treasury should restore the applicable accounts established under authority of the continuing resolution to a level sufficient to liquidate the unliquidated obligations validly incurred by Agriculture and NHTSA.



Acting Comptroller General
of the United States

1/ That the Congress intended this result is confirmed by committee statements with respect to the Youth Conservation Corps, another program which was funded by the fiscal year 1982 continuing resolution but not by the regular annual appropriation act. In response to an agency proposal that obligations incurred under the resolution be charged to other accounts under the regular appropriation act, the House Appropriations Committee stated:

"* * * The Committee does not approve of that procedure. The Department is expected to charge the obligations to the proper account under authority provided in the continuing resolution." H.R. Rep. No. 97-673, 97th Cong., 2d Sess. 108.

The Senate Appropriations Committee agreed. See S. Rep. No. 97-516, 97th Cong., 2d Sess. 114 (1982).