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DECISION



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

FILE: B-206571

DATE: June 15, 1982

MATTER OF: National Commission for Student Financial
Assistance—Fiscal Year 1982 Funding Level

DIGEST: Funding level for the National Commission for Student Financial Assistance, under the continuing resolution for fiscal year 1982, is \$960,000. In fiscal year 1981 funds for the Commission were first appropriated in supplemental appropriation act enacted June 5, 1981, and were apportioned for use only in the fourth quarter of the fiscal year. Therefore, to determine the current rate of operations for the Commission it is necessary to annualize the partial-year amount over the full fiscal year. Annualizing the \$250,000 appropriation over the full year results in a figure of \$1 million. Reducing this amount by the 4 percent reduction required by the continuing resolution gives a funding level of \$960,000.

The Chairman of the Senate Labor-HEHS-Education Appropriations Subcommittee of the Committee on Appropriations requested a decision concerning the fiscal year 1982 funding level for the National Commission on Student Financial Assistance. The Chairman's submission suggests that the Commission's funding level for fiscal year 1982, as provided for in the continuing resolution, Pub. L. No. 97-92, 95 Stat. 1183 (1981), as extended by Pub. L. No. 97-161, 96 Stat. 22 (1982), should be \$240,000, an amount which equals the fiscal year 1981 funding level for the Commission less the 4 percent reduction required by section 142(a) of the continuing resolution. The submission indicates, however, that the Commission takes the position that its appropriation for fiscal year 1982 is \$960,000.

We requested the views of both the Commission and the Office of Management and Budget (OMB) about the Commission's 1982 funding level. Both agencies indicated that the "current rate" of operations of the Commission in 1982 should be \$250,000 per quarter, or \$1,000,000 for the entire fiscal year, less 4 percent. Their conclusion was based on the fact that the Commission was only provided for in the Supplemental Appropriations and Recission Act, 1981, which they assert was enacted for the last quarter of fiscal year 1981 and therefore reflected only a partial year's appropriation. Additionally, OMB asserts that the effect of funding the Commission at only \$240,000 in fiscal year 1982 would be to force the Commission out of existence; a result which OMB contends is not in accord with congressional intent.

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For the reasons indicated below, we conclude that the funding level for the Commission for fiscal year 1982 is \$960,000.

The fiscal year 1982 continuing resolution provides that where, as in this case, an item is included in only one version of an appropriation act as passed by both Houses of the Congress as of December 15, 1981, then the item is to be continued at a "rate for operations of the current rate or the rate permitted by the action of the one House, whichever is lower * * *."

Determining the rate provided by the one House is not difficult. The House of Representatives' version of the Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act, 1982, H.R. 4560, provides the amount of \$1,000,000 for the Commission. The dispute in this case centers around the "current rate."

This Office has generally interpreted the term "current rate," as used in continuing resolutions as referring to a sum of money rather than a program level. See, e.g., 58 Comp. Gen. 530 (1979); B-194063, May 4, 1979. (We have made an exception only when there was an overwhelming congressional intent to maintain a prescribed program level. See B-197636, February 25, 1980.) Thus we have held that the term "current rate" is equivalent to the "total appropriation or the total funds which were available for obligation for a program during the previous fiscal year." E.g. B-194632, May 1, 1979.

Because the Commission's \$250,000 appropriation for fiscal year 1981 was contained in the Supplemental Appropriations and Recission Act, 1981, Pub. L. No. 97-12, 95 Stat. 60, which was not enacted until June 5, 1981, it is uncertain whether this \$250,000 represents the total available funds or whether this figure should be "annualized" to determine the current rate.

Neither OMB nor the Commission argue that we should look to the program level at which the Commission was operating in September 1981 in determining the fiscal year 1982 appropriation for the Commission. Apparently, they agree that the term, "current rate", refers to a sum of money. Nevertheless, both OMB and the Commission argue that our general definition of "current rate" should not be applied to the fiscal year 1982 funding level for the Commission. It is their position that since the fiscal year 1981 appropriation was intended to cover only one-fourth of the year, it is necessary to multiply the appropriation by four to get the annual amount or current rate. To justify its assertion that the fiscal year 1981 appropriation was intended to cover only one quarter of the year, OMB specifically refers to language in the Senate report accompanying the supplemental appropriation act of 1981, which states that the supplemental appropriation was "for

the balance of the fiscal year." S. Rep. No. 97-67, 97th Cong., 1st Sess. 298 (1981). OMB construes this language as meaning that the appropriation represented only a "part-year, start-up amount."

We agree with OMB and the Commission that our general definition of the term "current rate" should not be applied in this case. As our precedents in this area illustrate, this general definition has only been used in situations where in the previous fiscal year an agency was funded for the entire year. Where, as here, an agency's initial funding was only intended for part of a year, applying the general definition would require the agency to drastically reduce its rates of spending during the period of the continuing resolution, a result we believe to be contrary to the intent of the Congress.

The Congress made clear its intent concerning the meaning of "current rate" during its consideration of a fiscal year 1981 continuing resolution, Pub. L. No. 96-369, 94 Stat. 1351 (1980). For the House, this intent was contained in the Appropriations Committee report accompanying the continuing resolution. The committee stated:

"Various sections of the continuing resolution refer to a 'rate for operations not in excess of the current rate.' * * * In most cases, the total appropriation for the current year should serve as the upper limit in determining the current rate for operations. Nevertheless, the 'current rate' should not be interpreted as requiring cutbacks in ongoing program levels which Congress has approved.

"The Committee notes that where programs were authorized to expand during the current year, it is likely that the cost of operating the program for a full year at the rate achieved at the end of the current year would exceed the total cost for the program in the current year. The current rate for operations should be construed to maintain individual program and activity levels except where Congress has expressed a contrary intent with respect to specific programs." H. Rept. 96-1327, 96th Cong., 2d Sess. 3 (1980).

In the Senate a similar statement was included in an informal report by the Appropriations Committee. See 126 Cong. Rec. S 13559 (1980). Moreover, the Senate amended the resolution to define the term, "current rate". Although this amendment was dropped by the Conference Committee, it does indicate the intent of the Senate with respect to current rate. The amendment reads as follows:

"For the purpose of this joint resolution, the term 'current rate' shall mean the total appropriation available for a project or activity during FY 1980, except that the appropriation level shall be increased or decreased by the amounts that are necessary to respond to any expansion or contraction of a particular program in FY 1980 as directed by Congress."

126 Cong. Rec. S 13564 (1980). 1/

This legislative history demonstrates that the Congress intends our general definition of current rate—the total funds available in the previous fiscal year—to apply in the normal situation. On the other hand, it is equally clear that when the Congress provides additional funding during the previous fiscal year to expand or start up a program, the Congress does not intend "current rate" to be interpreted so as to force a reduction of that increased funding under the continuing resolution. Rather, the Congress intends that the program continue to operate with the same funding that was available towards the end of the previous fiscal year.

In the present instance, the Congress increased the funding for the Commission from zero to \$250,000 on June 5, 1981, after two-thirds of fiscal year 1981 had already passed. These funds were apportioned by OMB for use in the fourth quarter of the fiscal year. Were we to apply our normal definition of "current rate" and conclude that the Commission's full annual amount under the continuing resolution is \$250,000, it is obvious that the Commission would be faced with drastically reduced funding under the resolution. As we have indicated, this is not what the Congress intended. To carry out the true intent of the Congress—that the Commission continue to operate under the resolution at the same rate at which it operated near the end of fiscal year 1981—we must annualize the \$250,000 figure.

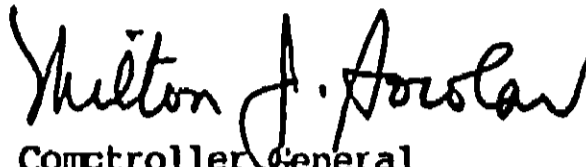
The appropriation for the Commission was apportioned by OMB for use in the fourth quarter of the fiscal year. Therefore, the \$250,000 appropriated for the Commission was available for obligation from July 1, 1981, through September 30, 1981, or one quarter

1/ This amendment was not viewed as a change to existing law but only as a clarification of what was always intended by the use of the term "current rate" in all previous continuing resolutions. Additionally, the sponsor of this amendment also recognized that it was totally consistent with the House's interpretation of this term, as expressed in House reports. 126 Cong. Rec. S 13564 (1980).

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of the fiscal year. Annualizing this amount over the full fiscal year results in a figure of \$1 million. We conclude that this amount is the current rate.

Since the current rate is the same as the "one-House" rate of \$1 million, this is the rate for operations of the Commission. Applying the 4 percent reduction required by section 142(a) of the continuing resolution, we conclude that the funding level for the Commission for fiscal year 1982 is \$960,000.

for 
Comptroller General
of the United States