DECISION

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

Joseph
119580

FILE: B-205836 DATE: September 28, 1982

MATTER OF: Losses on exchange of foreign currency for accommodation purposes--use of pegged rate

DIGEST: 1. Losses incurred from time to time throughout year by Accounting and Finance Officer, Department of the Army, while making accommodations exchanges and exchange transactions pursuant to 31 U.S.C. § 492a, are accepted part of handling these transactions. As an accountable officer, the Finance Officer is not liable for losses in foreign currency dealings which occur because Army Regulations call for him to use an estimated, rather than the actual, exchange rate. Under 31 U.S.C. § 492b an agency is authorized to place itself in a deficiency situation and not be in violation of the Antideficiency Act.

2. Treasury Department calls for agencies making accommodations exchanges and exchange transactions to use an estimated, rather than the actual, foreign exchange rate. Army Regulations call for the use of an "average rate formula." The Army has decided to test the "pegged rate formula" in Europe as, in effect, a deviation from the average rate formula. The Treasury Department, which under the statute has overall responsibility for these transactions, has no objection to this method. We also have no legal objection to this method of estimating the exchange rate. In our view, an Accounting and Finance Officer in Europe may use this method, as long as it is properly authorized by the Army, without concern about being held liable for losses resulting from foreign currency exchanges. However, the Army should take action to rectify certain areas of concern, such as the potential for abuse by individual officers who may be permitted to vary the pegged rate to lessen their gains and losses.

Lieutenant Colonel H.D. Flynn, Finance and Accounting Officer, U.S. Army in Europe, requests an advance decision as to the proper method of effecting official and accommodation exchanges of foreign currency.

Specifically, he asks whether the use of the "pegged rate" system of accounting is authorized, or whether in fact it may violate the Antideficiency Act, 31 U.S.C. § 665 or the provisions of 31 U.S.C. § 628. He also asks whether he is liable for losses incurred in exchanges. For the reasons discussed below, we find that the use of the pegged rate in foreign exchanges is not in this situation a violation of any statutory or regulatory provision and the Finance and Accounting Officer is not personally liable under the various accountable officer statutes for losses on exchanges.

Disbursing officers of the United States, such as LTC Flynn, are authorized by 31 U.S.C. §§ 492a to 492c (1976) to conduct foreign exchange transactions for "official purposes, or for the accommodation of members of the Armed Forces and civilian personnel of the United States Government," as well as other classes of individuals mentioned in section 492a and implementing regulations.

As the General Counsel of the Treasury has advised us, it believes that sound cash management requires that some exchange rate other than the actual exchange rate be used. The "average rate formula," described in AR 37-103, sec. 12-52b, was formerly used in Europe and is generally used by the Army in other areas. Since March 1980, the Army, pursuant to an unsigned letter of instruction, has been using the "pegged rate method" in Europe on a trial basis.

The pegged rate is generally set once a month, but if the actual exchange rate substantially fluctuates within a month, it may be adjusted more often. When the rate is adjusted, the Finance Officer calculates, for the time the old rate was in effect, the actual dollar cost of currency purchased during that period and an accounting adjustment is made for the difference between the dollar amount debited to the various accounts based on the pegged rate and the actual cost of the currency. For example, the voucher LTC Flynn submitted to us in the amount of $347,990.94 covers a loss adjustment for a 2-week period in May 1981, and which, in turn, was caused by his decision to raise exchange rates to offset previous gains which it appears he had been instructed to do.

Army Finance Officers throughout the world record their adjustments throughout the fiscal year to an account entitled "Gains and Deficiencies in Exchange Transactions, Army." At fiscal year's end, all these gains and losses are offset against each other. If the overall balance is positive, the overall gain is deposited from the account to the Treasury as miscellaneous receipts. If there is a loss in this account, 31 U.S.C. § 492b provides that, in effect, the Army may obtain an overall deficiency appropriation to make up any losses.1/ In other words, the statute contemplates that losses could exceed gains, leading to a deficit situation in which an agency does not have appropriations sufficient in the fiscal year to eradicate the overall loss. It thereby carves out an exception to the Antideficiency Act and certainly is not a violation of it or 31 U.S.C. § 628.

Obviously, if there were to be no gains and losses, i.e., if foreign currency were bought and sold at the same rate, there would be no need for sections 492a to 492c. Accordingly, it is clear that the Congress expected that accounting for foreign currency would result in gains and losses throughout the year. See, for example, H.R. Rep. No. 511, 83rd Cong., 1st Sess. 2 (1953) and S. Rep. No. 210, 83rd Cong., 1st Sess., 1953 U.S. Code Cong. and Admin. News 1685. The losses incurred periodically throughout the year in making accommodation exchanges and exchange transactions are an expected result of doing business this way. Provided the Finance Officer is neither negligent nor guilty of fraud, he will not be held liable as an accountable officer for these losses. Relief under the applicable accountable officer relief statutes need not be requested on account of these losses.

Finally, we come to LTC Flynn's question concerning the use of the pegged rate. Treasury's General Counsel states that his Department "has not formally exercised its authority to concur in either the Army regulations governing exchange transactions, (AR) 37-103, or the directive setting forth the pegged rate exception to those regulations."

1/ In the fiscal year 1979 Defense Appropriations Act, (Pub. L. No. 95-457 (1978)), a Foreign Currency Fund was created, the purpose of which was to permit Defense managers in the field to execute approved programs without their being subject to uncertainties caused by day-to-day fluctuations in foreign currency exchange rates. It was established as an indefinite no-year appropriation and was intended to eliminate the need for the agency to request supplemental appropriations to complete approved programs. See S. Rep. No. 96-393, 96th Cong., 1st Sess. 117, 118 (1979). See also 58 Comp. Gen. 46 (1978). There is no indication that the Foreign Currency Fund applies to accommodation and exchange transactions authorized by 31 U.S.C. § 492a-c. Therefore, unless Congress makes an appropriation similar to the Fund available for transactions authorized by § 492a-c, the Army is required to request a supplemental appropriation for any yearly loss on exchange transactions incurred due to the foreign currency exchange rate.

In the past few years the various agencies involved in these types of transactions have developed and implemented a number of other formulas for setting an estimated exchange rate. Treasury's major concern is that "* * * foreign currency purchased to cover foreign currency disbursements be held for the shortest time possible prior to disbursement." The pegged rate was apparently adopted in response to this concern. Even though Treasury has not "formally" concurred in Army's exchange rate regulations, we understand that it has advised the Army that so long as the pegged rate does not vary from the prevailing rate by more than 5 percent on any given day, that method does not seem objectionable. We also have no legal basis to object to use of the pegged rate. However, both Treasury and this Office have some practical reservations, discussed further below, about this system if the Army should decide to implement it.

LTC Flynn further points out that the pegged rate method is not authorized by AR 37-103 which provides for the use of the average rate and makes no mention of the pegged rate. He notes that paragraph 1-2a(5) of that regulation provides:

> "(5) The provisions are mandatory except where deviations are specifically authorized by Headquarters, Department of the Army. Requests for deviation will be forwarded through command channels to Commander, USAFAC, ATTN: FINCY, Indianapolis, IN 46249."

As part of a plan designed to reduce the size of local depository accounts, the Army Finance and Accounting Center, Europe, agreed to test the pegged rate system based on a draft letter of Instruction from Headquarters, USAREUR. The Office of the Assistant Comptroller of the Army (Finance and Accounting), Indianapolis, concurred in this test in January 1980. However, it appears, according to LTC Flynn, that no formal deviation from Army Regulations has been issued by the Army, and LTC Flynn is not satisfied that he is properly authorized, to use the pegged rate. This is an internal departmental matter which we cannot resolve for him, however.

While we have no legal objections to the use of the pegged rate by LTC Flynn, we feel that the Army, should it finally adopt this system, should tighten administrative controls. We are concerned that use of the pegged rate system permits potential abuse by allowing individual officers to adjust the rate to achieve, in effect, whatever gain or loss is desired.

The Treasury Department has also recognized that a potential for abuse exists whenever an individual disbursing official has discretion for setting an estimated rate of exchange without guidelines for automatic adjustments to reflect current currency market rates. As the pegged rate contains no automatic adjustment, disbursing officers may set artificially high or low rates, thereby inflating the appropriation account to which the payment is charged at the expense of the Gains and Deficiencies Account. Treasury has stated that it has no objection to use of an estimated rate formula such as the pegged rate so long as the rate does not vary on any given day more than 5 percentage points from the prevailing rate at which the Finance Officer could purchase the currency. This standard would also appear to satisfy our objections. The Army has, Treasury advised us, agreed to this modification. To prevent problems we feel that the Army should adopt a method of verification to assure that a proper rate—one within 5 percent variation—is used by its Finance Officers.

Comptroller General
of the United States