



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-225980

February 29, 1988

The Honorable Terrence M. Scanlon
Chairman, Consumer Product
Safety Commission

Dear Mr. Scanlon:

This letter is in response to your request for our opinion concerning the effect of a \$250,000 limitation in the 1987 fiscal year appropriation for the Consumer Product Safety Commission (Commission), Pub. L. No. 99-591, 101g, 100 Stat. 3341, 3341-242 (1986), on the total amount of salaries and benefits payable during the 1987 fiscal year to you, as Chairman, and the two other Commissioners serving on the Commission.^{1/}

The legislative history of this provision reveals that Congress adopted the \$250,000 limitation in order to limit to three the number of Commissioners serving on the Commission. See S. Rep. No. 487, 99th Cong., 2d Sess. 30 (1986); and H.R. Rep. No. 731, 99th Cong., 2d Sess. 21 (1986). However, as a result of the scheduled 3 percent federal pay raise, which became effective on January 1, 1987, and the subsequent increase in executive level salaries, both of which went into effect after the appropriation limitation was enacted, you advised us that the salaries and benefits estimated to be payable to the three Commissioners during the 1987 fiscal year would exceed \$250,000. Accordingly, you asked us to determine whether or not the Commissioners were prohibited in these circumstances from receiving these pay increases if, as a result of such increases, their total salaries and benefits would exceed \$250,000.

After we received your request, we informally advised officials in your budget office that while our decision was pending, we thought the three Commissioners should continue to be paid at the "old" rate in order to avoid the possibility that the Commission would exceed the \$250,000 limitation and thereby violate the Antideficiency Act in the

^{1/} In the remainder of this letter the Chairman and two other Commissioners will all be referred to as "Commissioners."

event that we determined that the limitation was not superseded or modified by the Commissioners' subsequent pay increases. However, while we were considering this question, the Supplemental Appropriations Act, 1987, Pub. L. No. 100-71, was enacted on July 11, 1987, making an additional \$20,000 of the Commission's salaries and expenses appropriation available to pay personnel compensation and benefits to the Commissioners during the 1987 fiscal year. The legislative history of this provision demonstrates that it was adopted by Congress in order to ensure that the three Commissioners would receive the full amount of salaries and benefits to which they were entitled, including the executive level pay raise that went into effect during the 1987 fiscal year. See S. Rep. No. 48, 100th Cong., 1st Sess. 52 (1987); and H.R. Rep. No. 28, 100th Cong., 1st Sess. 44 (1987). Thus, since the additional \$20,000 this provision made available to pay the salaries and benefits of the Commissioners was more than adequate to cover all salary increases that went into effect during the 1987 fiscal year, the possibility that the limitation might be exceeded was alleviated and the Commissioners were paid the full amount of salaries and benefits to which they were otherwise entitled during the 1987 fiscal year, including whatever retroactive adjustments were required.

While the enactment of Pub. L. No. 100-71 resolved this issue for fiscal year 1987, officials at the Commission advised us initially that our answer to this question would still be helpful because the problem was likely to recur in the 1988 fiscal year (and possibly thereafter), if the Congress continued to set an annual limitation on salaries and benefits for the Commissioners that was too low to accommodate any pay increases that might go into effect later in the fiscal year. However, the recently enacted continuing resolution containing the Commission's appropriation for the 1988 fiscal year, Pub. L. No. 100-202, sets a limit on personnel compensation and benefits for the Commissioners at \$300,000, which would have been sufficient to accommodate the federal pay raise that went into effect on January 1, 1988.^{2/} See H.R. Conf. Rep. 498, 100th Cong., 1st Sess. 845 (1987).

^{2/} The Commissioners, together with other senior employees and officers of the executive, judicial, and legislative branches of government whose salaries are at the executive level V rate or higher did not receive the cost-of-living pay raise that other federal employees received on January 1, 1988. See H.R. Conf. Rep. 498, 100th Cong., 1st Sess. 1182 (1987).

Thus, it is our view that this issue is now a purely hypothetical one that the Commission will not have to face this year and which it may never again have to address. Generally, our Office is reluctant to consider such hypothetical questions, especially where, as here, the issues are complex and the answer is not readily apparent. Recently, officials at the Commission have informed us that they no longer think this problem is likely to arise in this fiscal year and that, therefore, there is no current need for us to resolve the question. Accordingly, with the concurrence of Commission staff, we have decided that it is neither necessary nor advisable for our Office to make a substantive determination regarding this matter at the present time. However, in the event that this issue does arise again at any time in the future, we would welcome your request for our legal opinion on the matter and would endeavor to respond to any such request on an expedited basis. In this connection, we will preserve all of the relevant information we now have regarding this matter.

Sincerely yours,



(Mrs.) Rollee H. Efros
Associate General Counsel