

DECISION



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

FILE: B-114833

DATE: NOV 12 1974

MATTER OF: Rate of expenditure for Rural Environmental Assistance Program under Pub. L. No. 93-324

DIGEST: Provision of § 101(a)(4) of continuing resolution for fiscal year 1975, Pub. L. No. 93-324, which makes funds available for expenditure, in certain circumstances, at "current rate of operations" should be interpreted with respect to Rural Environmental Assistance Program (REAP) to allow expenditures sufficient to liquidate obligations already incurred under program pursuant to congressionally approved contract authority levels, since purpose of provision is to retain maximum flexibility for Congress in enacting agency's annual appropriation act for fiscal year and Congress has already set such rate for REAP in establishing contract authority levels in prior years' appropriation acts.

In a letter dated October 9, 1974, the Secretary of Agriculture requested our opinion as to the amount of funds available for expenditure for the Rural Environmental Assistance Program, Department of Agriculture, pursuant to appropriations made for such purpose in the Joint Resolution making continuing appropriations for the fiscal year 1975 (1975 Continuing Resolution), Pub. L. No. 93-324, June 30, 1974, 88 Stat. 281.

The Rural Environmental Assistance Program (REAP), established by the Soil Conservation and Domestic Allotment Act, as amended, February 29, 1936, 16 U.S.C. § 590g, is designed to encourage conservation by sharing with farmers, ranchers, and woodland owners, the cost of carrying out approved soil and water conserving practices. Contracts are entered into for such cost-sharing on the basis of advance obligation authority contained in annual appropriation acts. Each appropriation act also appropriates the funds necessary to liquidate the obligations incurred on the basis of the advance contract authorizations contained in previous appropriation acts.

The provisions of the Act of August 22, 1972, appropriating funds for Agriculture-Environmental and Consumer Protection programs for fiscal year 1973 (1973 Appropriation Act), Pub. L. No. 92-399, 86 Stat. 591, appropriated \$195.5 million to carry out the program

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B-114833

and gave advance obligational authority in the amount of \$225.5 million. (Title III--Environmental Programs, Department of Agriculture, Agricultural Stabilization and Conservation Service, Rural Environmental Assistance Program, 86 Stat. 607, 608.)

The Administration, however, impounded all but \$15 million of the obligational authority provided in the 1973 Appropriation Act. Consequently, the provisions of the Act of October 24, 1973, appropriating funds for Agriculture-Environmental and Consumer Protection programs for fiscal year 1974 (1974 Appropriation Act), Pub. L. No. 93-135, 87 Stat. 468, appropriated only \$15 million--the full amount necessary to liquidate the obligations incurred under the unimpounded contract authority--and provided \$160 million in advance obligational authority (under the same heading as in 1973 Appropriation Act, at 87 Stat. 486).

In its 1973 decision in v. , 368 F. Supp. 1233, the United States District Court for the District of Columbia held that the impoundment action was unlawful. Pursuant to that decision and section 501 of the Supplemental Appropriation Act, 1974, Pub. L. No. 93-245, January 3, 1974, 87 Stat. 1071, 1077, the Fiscal Service of the Treasury Department advised the Department of Agriculture that the amount of the impoundment, \$210.5 million, was available for obligation until December 28, 1974.

H.R. 15472, 93d Cong., 2d Sess., making appropriations for Agriculture-Environmental and Consumer Protection programs for fiscal year 1975, was considered and passed on June 21, 1974, and July 22, 1974, respectively, by the House of Representatives and the Senate. It provided appropriations of \$285.5 million to liquidate obligations authorized in the 1973 and 1974 Appropriations Acts. (See pages 45 and 46 of the bill.) However, on August 8, 1974, former President Nixon vetoed the measure. (H. Doc. No. 93-331, 93d Cong., 2d Sess.)

The 1975 Continuing Resolution (Pub. L. 93-324, supra.) was enacted after H.R. 15472 had been passed by the House but before it was passed by the Senate. Section 101(a)(4) of the 1975 Continuing Resolution provides, in pertinent part, that--

"Whenever an Act * * * has been passed by only one House as of July 1, 1974; * * * the pertinent project or activity shall be continued under the appropriation, fund, or authority granted by the one House, but at a rate for operations not exceeding the current rate or the rate permitted by the action of the one House, whichever is lower * * *."

Identical language used in the Senate and House Reports commenting on this provision states that the Federal agencies, during the period covered by the Continuing Resolution, should "take only the limited action necessary for orderly continuation of projects and activities, preserving to the maximum extent possible the flexibility of Congress in arriving at final decisions in the regular annual bills" and that these agency decisions should not "unduly impinge upon discretionary decisions otherwise available to the Congress." (Emphasis supplied.) S. Rep. No. 93-951, 93d Cong., 2d Sess. 4 (1974), and H. Rep. No. 93-1119, 93d Cong., 2d Sess. 2 (1974).

On August 30, 1974, the Department of the Treasury issued an appropriation warrant, with an effective date of July 1, 1974, for REAP in the amount of \$120 million; the warrant was signed and countersigned respectively by duly authorized representatives of the Secretary of the Treasury and the Comptroller General of the United States. On September 25, 1974, an adjustment warrant, signed and countersigned by the same officials, was issued by the Treasury Department in the negative amount of \$105 million effective July 1, 1974.

The Secretary of Agriculture states in his letter that he understands that the adjustment warrant resulted from an interpretation of the provisions of the 1975 Continuing Resolution to the effect that only \$15 million was available for expenditure based on the amount appropriated for REAP in the 1974 Appropriation Act. He contends that this interpretation is incorrect and further states:

"It appears clear that it is not the intent of the Congress to restrict the payment of obligations entered into with its specific authorization, and backed by the full faith and credit of the United States. While an appropriation is needed in order to honor the obligations, there is, in truth, no "discretion" on the part of the Congress. The Congress exercised its discretion previously in determining the amounts available for obligation; the remaining function is essentially ministerial in nature.

"We believe it necessary in construing the Continuing Resolution to consider the nature of the particular activity involved. Clearly, section 101(a)(4) applies to most of the activities of the Department since they are conducted on the basis of appropriations in advance of obligations, and in the absence of such a provision Congress might lose its ability to determine the level

of obligations. Here, however, we are dealing only with the liquidation of prior obligations specifically approved by the Congress. There is no 'rate for operations' in connection with the liquidation of due debts based on valid executed contracts entered into under the authority of the Congress.

"The Continuing Resolution, Public Law 93-324, appropriates to the Department of Agriculture such amounts as may be necessary for continuing projects and activities which were conducted in the fiscal year 1974 and for which appropriations would be available in its appropriation Act for the Fiscal Year 1975. As above indicated, it is our opinion that the 'rate for operations' restrictions on the use of moneys appropriated are not applicable in the matter under discussion. * * *"
(Emphasis in original.)

He further states that if the "rate for operations" restrictions are considered applicable with respect to this matter, the phrase "current rate" used in the 1975 Continuing Resolution can logically refer in this case only to the amount of advance authorization, \$285.5 million, contained in the 1973 and 1974 Appropriation Acts which had been obligated and not merely to the \$15 million provided in the 1974 Appropriation Act for liquidation of obligations earlier incurred.

We agree with the Secretary's position to the effect that there is no "rate for operations" in connection with the liquidation of due debts based on validly executed contracts entered into under the authority of the Congress. The "rate for operations" within the context of REAP can logically only apply to the establishment of new contract authorization levels.

There being no applicable rate for operations, the relevant provision (i.e., section 101(a)(4)) of the 1975 Continuing Resolution provides funds for the continuation of REAP in the amount provided by "the action of the one House" (here, the House of Representatives) which had taken action on the appropriation bill as of July 1, 1974. As indicated by the Secretary, the Continuing Resolution appropriates to the Department of Agriculture such amounts as may be necessary for continuing projects and activities conducted in fiscal year 1974 and for which appropriations would be available in its appropriation act for fiscal year 1975. The amount provided by the House of Representatives in H.R. 15472 to liquidate fiscal year 1973 and 1974 REAP obligations in fiscal year 1975 was \$285.5 million. Moreover, the

B-114833

Senate, after July 1, 1974, approved the same amount (\$285.5 million) for this purpose when it enacted H.R. 15472. That amount would have been appropriated had H.R. 15472 not been vetoed on other grounds. Since the Congress has manifested its intent to appropriate the entire \$285.5 million needed, it is our view that pursuant to the 1975 Continuing Resolution, the Department of Agriculture is authorized to expend funds to liquidate REAP obligations incurred pursuant to the contract authorization levels set in the 1973 and 1974 appropriations acts in amounts totaling up to \$285.5 million.

A copy of this decision is being sent to the Secretary of the Treasury.

R. F. KELLEN

Acting Comptroller General
of the United States