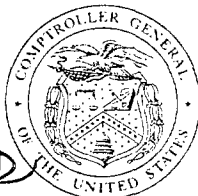


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DECISION



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

[Amount of Appropriated Funds]

10,019

FILE: B-194362

DATE: MAY 1 1979

MATTER OF: Elderly Feeding Program under the fiscal
year 1979 continuing resolution

DIGEST: Term "current rate for operations" as used in continuing resolutions is equivalent to total funds which were available for obligation for program during previous fiscal year. Fiscal year 1979 continuing resolution appropriates for Department of Agriculture portion of Elderly Feeding Program only total amount of funds which were available for program during fiscal year 1978, despite fact that increase in mandatory level of assistance will force reduction in number of meals supported by program.

This decision is in response to an inquiry from the Secretary of Agriculture concerning the amount of funds appropriated to the Department of Agriculture for the Elderly Feeding Program by the "Joint Resolution Making continuing appropriations for the fiscal year 1979, and for other purposes," Pub. L. No. 95-482, 92 Stat. 1603, approved October 18, 1978. It is the Secretary's position that the continuing resolution appropriated sufficient funds to enable the Department to provide commodities or cash for 148 million meals at the rate per meal mandated by section 311 of the Older Americans Act of 1965, as amended, 42 U.S.C.A. § 3030a. For the reasons indicated below, it is our opinion that the continuing resolution appropriated only the total amount of funds that were available for obligation for the Elderly Feeding Program in fiscal year 1978.

The continuing resolution, in section 101(a), appropriates:

"Such amounts as may be necessary for continuing the following activities, not otherwise provided for, which were conducted in fiscal year 1978, but at a rate for operations not in excess of the current rate:

* * * * *

"activities under the Older Americans Act including provision of cash or commodities * * *." (Emphasis added.)

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The role of the Department of Agriculture in the Elderly Feeding Program is set forth in section 311(a) of the Older Americans Act, supra, which provides:

"(1) Agricultural commodities and products purchased by the Secretary of Agriculture under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), shall be donated to a recipient of a grant or contract to be used for providing nutrition services in accordance with the provisions of this title.

* * * * *

"(4) In donating commodities under this subsection, the Secretary of Agriculture shall maintain an annually programmed level of assistance of not less than 15 cents per meal during fiscal year 1976, 25 cents per meal during fiscal year 1977 and fiscal year 1978, and 30 cents per meal during the three succeeding fiscal years. The amount specified in this paragraph shall be adjusted on an annual basis for each fiscal year after June 30, 1975, to reflect changes in the series for food away from home of the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor. * * *

Subsection (c)(1) of section 311 permits any state to elect to receive cash in lieu of the donated commodities it would otherwise receive under the program.

According to the Secretary's inquiry, the level of assistance mandated by the Older Americans Act for fiscal year 1979, as adjusted to reflect changes in the Consumer Price Index, is 38.5 cents per meal. The Secretary also indicates that based on the number of served meals which were assisted by the Department in the fourth quarter of fiscal year 1978, it is expected that 148 million assisted meals will be served in fiscal year 1979. The Secretary asserts that the "rate for operations" specified by the continuing resolution is equivalent to the amount of funds necessary to assist 148 million meals at a level of 38.5 cents per meal, or approximately \$57 million.

The 1979 continuing resolution appropriates sufficient funds to continue the Elderly Feeding Program "at a rate for operations not in excess of the current rate." This Office has repeatedly interpreted the term "current rate" as used in continuing resolutions as referring to a sum of money, rather than a program level. We have held that "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. B-115398.33, March 20, 1979; B-152554, November 4, 1974; B-164031(1), December 13, 1972; B-152554, December 6, 1963. Thus, a continuing resolution which contains the words "at a rate for operations not in excess of the current rate" appropriates only the amount of funds required for the program to have available for obligation in the current fiscal year the same amount it had available for obligation in the previous fiscal year.]

In those instances, such as the present one, in which the program in question has been funded by 1-year appropriations in prior years, the amount appropriated by the continuing resolution is equal to the total funds appropriated for the program in the previous fiscal year. The Agriculture and Related Programs Appropriations Act, 1978, Pub. L. No. 95-97, 91 Stat. 810, 826, appropriated \$30 million for the Elderly Feeding Program. (There were no supplemental appropriations for this program during fiscal year 1978. Therefore, the 1979 continuing resolution appropriated a total of \$30 million for the Department of Agriculture portion of the Elderly Feeding Program.)

We realize that our determination will necessitate a reduction in the number of meals assisted by the Department under the program in fiscal year 1979. However, although section 311 of the Older Americans Act mandates a level of assistance, it does not require that a minimum number of meals be assisted. If the Congress desires the program to assist the full 148 million meals projected by the Secretary, a supplemental appropriation will be necessary.

R. F. KELLER

Deputy Comptroller General
of the United States