B-255529

January 10, 1994

The Honorable Harold Rogers
Ranking Minority Member
Subcommittee on Commerce, Justice,
State, the Judiciary, and Related Agencies
Committee on Appropriations
House of Representatives

Dear Mr. Rogers:

In your letter of October 18, 1993, you asked several questions relating to the Administration's apportionment and obligation of funds appropriated for payments to the United Nations by the "Joint Resolution Making continuing appropriations for the fiscal year 1994, and for other purposes," Public Law 103-88, 107 Stat. 977 (continuing resolution). Specifically, you question whether the funds intended for the United Nations in the appropriation "Contributions to International Organizations" (International Organizations) and in the appropriation "Contributions for International Peacekeeping Activities" (Peacekeeping) were properly apportioned and obligated.

On September 24, 1993, the State Department's Associate Controller for Budget and Planning wrote to the Office of Management and Budget (OMB), requesting "an advance apportionment" for the two appropriation accounts. Acknowledging that the request was being submitted in advance of enactment of either a regular appropriation or a continuing resolution, the Associate Controller stressed the need to make large payments to the United Nations immediately at the beginning of fiscal year 1994. He stated that the urgency of making these payments could not be overstated and that they were vital to achieving United States foreign policy objectives. In response to this request, on October 1, 1993, after the enactment of the continuing resolution, OMB apportioned $233,074,000 of the funds appropriated for International Organizations, and $322,942,000 of the funds appropriated for Peacekeeping. The State Department immediately obligated these funds.

In our opinion the apportionment and obligation of these funds complied with both the continuing resolution and the provisions of law governing the apportionment of appropriated funds. Enclosed is a more detailed discussion of the issues raised in your letter.

We trust that this letter is responsive to your questions. As agreed with of your staff, unless you release it earlier, this letter will be available to the public 15 days from today.

Sincerely yours,

Comptroller General
of the United States

Enclosure

ENCLOSURE

ISSUES RAISED BY THE APPORTIONMENT AND OBLIGATION OF CERTAIN FUNDS UNDER THE FISCAL YEAR 1994 CONTINUING RESOLUTION

This enclosure discusses in detail the questions raised in the October 18, 1993 letter of Representative Harold Rogers. To simplify this enclosure we have reordered and combined some of the questions.

I.

Is the advance apportionment and subsequent obligation of funds in compliance with the continuing resolution?

In our opinion, these actions were in compliance with the resolution. In analyzing this question we must examine two issues: Were the amounts apportioned and obligated available under the continuing resolution at the beginning of the fiscal year? Are there any restrictions in the continuing resolution that would preclude the actions taken by State and OMB?

Amount Available

The Congress enacted the continuing resolution to provide funding for programs covered by the appropriations acts that had not yet been enacted at the start of fiscal year 1994. The resolution appropriated "[s]uch amounts as may be necessary" to continue projects or activities carried out in fiscal year 1993 for which funding would be provided in one of the unenacted appropriations acts. Public Law 103-88, 107 Stat. 977. Subsection 101(b) of the resolution provided that if the version of an act that had passed the House of Representatives as of October 1, 1993, appropriated a different amount than the version that had passed the Senate as of the same date, then the project or activity would be continued at the lowest of the House-passed rate, the Senate-passed rate, or the current rate. 102 Stat. 978.[1] Further, if funding for a project or activity was provided only in the House or Senate version, the project or activity would be continued at the lower of the rate provided by that chamber or the current rate. Id.

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[1]The term "current rate," as used in continuing resolutions, is equivalent to the total appropriations or total funds that were available for a program during the previous fiscal year. 58 Comp. Gen. 530, 533 (1979).

The proposed Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1994, H.R. 2519, had passed both the House and Senate as of October 1, 1993. Both the House and Senate versions provided funding for the Peacekeeping appropriation, although at different levels; however, only the Senate version contained an appropriation for International Organizations. Since, under the continuing resolution, the amount appropriated for Peacekeeping was the lowest of the House amount, the Senate amount, or the current rate, the amount available, the lowest of the three, was the House amount of $422,499,000. Similarly, since, under the resolution, the amount appropriated for International Organizations was the lower of the Senate amount or the current rate, the amount appropriated was the Senate amount of $904,926,000. (In fiscal year 1993, Congress appropriated $913,214,000 to this account.)

The enacting clause of the continuing resolution stated that sums were being appropriated for fiscal year 1994. The fiscal year began October 1, 1993. Section 106 of the continuing resolution provided that the appropriations being made were to remain available until the enactment of the regular appropriation for a program or until October 21, 1993, whichever was earlier. 107 Stat. 979.[2] Thus the resolution was to last at most for 21 days.

Despite the temporary nature of continuing resolutions, it has long been our position that they appropriate the full annual amount for a program. As we stated in an October 9, 1970 letter to Senator William Proxmire (quoting a 1963 decision to the Administrator of the National Aeronautics and Space Administration dealing with a 1-month fiscal year 1964 continuing resolution):

> "Therefore while obligations incurred by an agency during any particular month may exceed the June 1963 obligations, 1/12 of obligations incurred for fiscal year 1963, or obligations incurred during some other portion of fiscal year 1963, it does not necessarily follow that there has been a violation of section 101(b) [stating that the rate for operations shall not exceed the current rate]. Variations in the monthly or quarterly obligations are recognized in the apportionment procedure authorized by the antideficiency act . . . . Any mathematical formula not recognizing such variations in the many complex governmental programs would not seem practicable."

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[2]The initial continuing resolution was extended through October 28, 1993, by Public Law 103-113. The Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1994, Public Law 103-121, became law on October 27, 1993.

B-152554, October 9, 1970, p. 3. Similarly in a 1974 decision dealing with the funding level for the Military Assistance Program (MAP), we stated:

> "Initially, it is noted that section 101(b) of the continuing resolution does not by its terms specify anything other than a 'current' rate. In the absence of a more specific definition, our Office has held on several occasions that the 'current' rate does not literally restrict agency obligations during any portion of a fiscal year to an amount less than the annual amount. . . . Thus section 101(b) does not expressly limit MAP obligations during the second quarter of fiscal year 1975 to an amount less than [the full annual appropriation], minus obligations incurred during the first quarter."

B-152554, November 4, 1974, p. 5.

The amount that should be apportioned or obligated during the period of the continuing resolution depends on the needs of each particular program. As we indicated in another letter to Senator Proxmire, dated February 17, 1972:

> "[I]t must be recognized that, with respect to a number of programs, particularly where grant or other assistance funds are involved, a large portion of the funds normally are obligated during the early part of the fiscal year. The pattern of obligations is much different than that where, for example, an appropriation is primarily available for salaries and administrative expenses. In such case the expenditures would be comparatively constant throughout the year. The pattern of the obligations, however, is primarily an administrative matter and one which, after the final appropriation is made,[3] is for approval of the Director of the Office of Management and Budget in the apportionment process."

B-152554, February 17, 1972, p. 4.

Therefore, for the 21 days that the initial fiscal year 1994 continuing resolution was in effect $422,499,000 was available for Peacekeeping and $904,926,000 was available for International Organizations. The amounts apportioned and obligated by the Administration were within the amounts

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[3]At the time this letter was written, it was not the practice of OMB to apportion funds during the period of the continuing resolution. Instead OMB delayed apportionment until after enactment of the regular appropriation act for the fiscal year.

appropriated and were available for apportionment and subsequent obligation on October 1, 1993.[4]

Restrictions

We are aware of only one restriction in the continuing resolution that could have affected the actions taken by the Administration. Section 104 provides:

> "No appropriation or funds made available or authority granted pursuant to section 101 shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during the fiscal year 1993."

107 Stat. 979. The fiscal year 1993 Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, Public Law 102-395, contained appropriations both for International Organizations and for Peacekeeping. In our opinion, the language of these two appropriations was sufficiently broad[5] to have supported the activities for which the Administration apportioned and obligated funds under the continuing resolution. Therefore, appropriations were available for these activities in fiscal year 1993 and the Administration's actions did not violate the new project or activity restriction in section 104.

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[4]The regular appropriation act for fiscal year 1994, Public Law 103-121, reduced the amounts appropriated for Peacekeeping and International Organizations to $401,607,000 and $860,885,000, respectively. The amounts apportioned and obligated by the Administration were still less than these reduced amounts.

[5]The International Organizations appropriation was "[f]or expenses, not otherwise provided for, necessary to meet annual obligations of membership in international multilateral organizations, pursuant to treaties ratified pursuant to the advice and consent of the Senate, conventions or specific Acts of Congress . . . ." 106 Stat. 1828, 1866. The Peacekeeping appropriation was "[f]or payments, not otherwise provided for, by the United States for expenses of the United Nations peacekeeping forces, as authorized by law . . . ." Id.

II.

Were the International Organizations and Peacekeeping apportionments consistent with established principles of federal appropriations law?

In our opinion, these apportionments were in compliance with law. Appropriations available for obligation for a fixed period of time are required to be apportioned to prevent obligation or expenditure at a rate that would indicate the necessity for a deficiency or supplemental appropriation.[6] 31 U.S.C. § 1512(a). Apportionment may be by time periods or by program categories or by a combination of the two at the discretion of the apportioning official.[7]

To fulfill his responsibility to apportion funds for the executive branch of government under the continuing resolution, the Director of OMB issued Bulletin No. 93-19 on September 30, 1993. This bulletin automatically apportioned all funds appropriated by the continuing resolution at the lower of (1) a prorated level equal to 21/365 (5.8%) of the full annual rate or (2) a seasonal level based on the historic rate of obligation in previous years. The bulletin further provided that if the automatic apportionment was not sufficient to support agency operations, an agency could submit a written request for apportionment at a higher level. The State Department letter, although sent before issuance of OMB Bulletin No. 93-19, constituted written request for higher levels than permitted by the automatic apportionment.

To assure that the purpose of section 1512(a) is fulfilled, section 1515 of title 31 prohibits agencies from requesting, and the apportioning official from making, an apportionment that would indicate the necessity for a deficiency or supplemental appropriation except under limited circumstances. We have indicated that these provisions are not necessarily violated even if in requesting an

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[6]Section 110 of the continuing resolution waived the time restrictions on submission and approval of apportionments under 31 U.S.C. § 1513. 107 Stat. 979. However, this section did not waive any other provision of law governing the apportionment of funds.

[7]The President is the apportioning official for the executive branch. 31 U.S.C. § 1513(b). The President delegated the apportionment function to the Director of OMB in Executive Order No. 11541, as amended (set out as a note to 31 U.S.C. § 501).

apportionment the agency is also planning to seek (or has already sought) a supplemental appropriation. See 64 Comp. Gen. 728, 735 (1985). So long as the agency has in place a plan that would enable it to function through the end of the fiscal year should the Congress not enact a supplemental appropriation, its apportionment request does not violate section 1515.

We have been informed by State that neither of the apportionments it sought (and received) will necessitate a supplemental appropriation in fiscal year 1994. With respect to the International Organizations account, the amount already obligated represents the entire amount of the 1993 membership payment to the U.N., and the 1994 payment will not be paid until fiscal year 1995. With respect to Peacekeeping, although world events may compel the Secretary General of the United Nations to request additional payments from the United States this fiscal year, the President has not decided to seek a supplemental appropriation to make additional payments and State is prepared to operate for the remainder of the fiscal year within the amount of funds already appropriated for this account.

III.

Is there precedent for the early apportionment and obligation and did the early obligation deviate from State's normal pattern of obligation for the two accounts?

There is precedent for this practice in the International Organizations account. The State Department advises us that, since fiscal year 1981, its policy has been to defer payment of the United States' general assessment of United Nations contributions to the fourth quarter of the calendar year, which is the first quarter of the fiscal year. Thus the bulk of the funds appropriated for the general payment to the United Nations in the International Organizations account are usually apportioned for use, and are obligated, in the first quarter of the fiscal year. The apportionment documents (SF 132) indicate that for fiscal year 1992 about $665 million of the total $842 million appropriated for International Organizations was apportioned for use in the first quarter. Likewise, in fiscal year 1993, about $778 million of the $913 million appropriated for International Organizations was apportioned for the first quarter.

With respect to Peacekeeping, we have been informed by the Department of State that the normal practice is to make payments when bills are received to the extent funds are available. The payments in fiscal year 1994 followed this practice because there were large unpaid Peacekeeping bills when the continuing resolution was enacted. That the first

quarter payments this year appear to be larger than in the past was explained by State as follows:

> "Prior to FY 1992, the [Peacekeeping] account was relatively small, and funded established peacekeeping activities with predictable expenses that could reliably be anticipated when the President's Budget Request was submitted. We paid the [Peacekeeping] bills as we received them. . . It is only in recent years that we have had bills on hand at the start of the fiscal year and we continue the practice of paying these bills as soon after we receive them as we can afford to pay them. . . ."

Letter from Richard L. Greene, Acting Chief Financial Officer, United States Department of State, to Gary L. Kepplinger, Associate General Counsel, General Accounting Office, p. 5 (hereinafter referred to as Greene letter).

IV.

What circumstances justified the apportionment and obligation of such a substantial portion of the funds in the two accounts prior to the enactment of the regular appropriation act for fiscal year 1994? What would have been the consequences if this action had not been taken?

The State Department informed us that there was a critical need to make large payments to the United Nations from both accounts at the beginning of fiscal year 1994. The Secretary General of the United Nations had informed the Secretary of State that the United Nations would be unable to maintain critical operations unless the United States made immediate payments. The apportionment and obligation of Peacekeeping funds immediately at the start of the fiscal year was essential to continue peacekeeping operations throughout the world, which are considered central to the conduct of United States foreign policy.

According to State:

> "Without the timely payment of these U.S. contributions, the UN indicated it faced the real possibility of financial insolvency beginning in the early autumn months. This problem was particularly acute given added factors such as the considerable expansion of UN peacekeeping operations. . . ."

Greene letter, pp. 5-6.

V.

Was the apparent coordination between State and OMB of the apportionment and obligation prior to the enactment of the continuing resolution standard practice?

We do not consider State's request for apportionment prior to the enactment of the continuing resolution to be improper or unusual. Since agencies require their funds to be available immediately at the start of the fiscal year, and appropriations are often not enacted in advance of the beginning of the year, agencies may need to request apportionment even before their regular appropriations or a continuing resolution has been enacted.

With respect to its request for apportionment for fiscal year 1994, State informed us:

> "The gravity of the communications between the UN Secretary General and the Secretary of State as well as the President was such that there were discussions and coordination between the Department and OMB regarding how the UN's urgent fiscal needs could be met, assuming appropriation of funds under a [continuing resolution] or an appropriation act."

Greene letter, at 6.