~~48201~~
115306

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

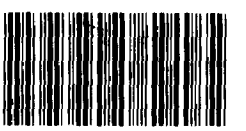
B-200685 May 13, 1981

To the President of the Senate and the
Speaker of the House of Representatives

On March 17, 1981, the President's seventh special message for ~~fiscal year~~ 1981 was transmitted to the Congress pursuant to the Impoundment Control Act of 1974. The special message proposes 81 rescissions of budget authority totalling $11.1 billion and one new deferral totalling $3.4 million as follows:

EXECUTIVE OFFICE OF THE PRESIDENT

R81-38 Council on Environmental Quality
and Office of Environmental Quality
1111453


115306

The justification and estimated effects statements accompanying rescission proposal R81-38 focus on the Executive's goal to eliminate duplicative regulatory activities. This rescission was proposed to further that goal by reducing the Council's staff and limiting its activities to those which are "statutorily mandated and which do not unnecessarily overlap with activities by other agencies." We have some questions concerning whether the activities being eliminated are duplicative regulatory activities.

The Council was established by the National Environmental Policy Act of 1969 (NEPA), Pub. L. No. 91-190, 42 U.S.C. 4321 et seq. In exercising its powers, functions, and duties, the Council already is directed by statute to take certain measures to avoid duplication of effort and expense in order to assure that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies. 42 U.S.C. 4345.

The Council is statutorily assigned specific duties under 42 U.S.C. 4344. Briefly, these include:

(1) assisting the President to prepare the Environmental Quality Report required by 42 U.S.C. 4341;

(2) gathering and analyzing information concerning conditions and trends in the quality of the environment both current and prospective, and submitting related studies to the President;

017005 / 115306 OGC-81-8

(3) reviewing and appraising activities of the Federal Government to determine their contribution to achieving NEPA's policy goals;

(4) recommending to the President national policies to improve environmental quality;

(5) studying and reporting on ecological systems and changes in the natural environment; and

(6) reporting to the President at least once each year on the state and condition of the environment.

In addition to these statutory responsibilities, the Council has been assigned related duties by a number of executive orders.

One activity that appears, at first glance, to be a duplicative regulatory activity is the administrative handling of Environmental Impact Statements (EISs). The Environmental Protection Agency (EPA) handles routine reviews of individual EISs, routine responses to citizen and congressional inquiries on EISs, and certain administrative requirements concerning the availability of EISs to the public. The Council may review EISs for specific purposes relating to its general oversight responsibility connected with the implementation of NEPA. An EIS also may be referred to the Council if it raises serious questions concerning the consistency between a proposed Federal action and the national environmental policy goals contained in NEPA.

This arrangement means that in isolated cases, both the Council and EPA may perform a review function in connection with a particular EIS. We question whether this is a duplicative regulatory activity because when reviews of EISs by both the Council and EPA occur, the review by the Council is for a different reason than for the routine review by EPA.

The Council's activities that will be affected by the rescission proposal, according to OMB representatives, include:

(1) the reduction in size and scope of the Council's annual report required by NEPA and the formalization of an increased role by EPA in preparing it;

(2) the reduction in special analytical studies and reports initiated by the Council; and

(3) the transfer of the existing data acquisition and analysis computer system developed by the Council to other agencies' computer systems.

We have not been able to identify exactly what are the "duplicative regulatory activities" mentioned in the special message which will be eliminated. The activities described above relate to the Council's mandated NEPA responsibilities. It appears that the effect of the rescission and other potential proposals by the Administration will be to transfer to other agencies functions not necessary for CEQ to fulfill NEPA's mandate rather than an actual elimination of duplicative regulatory activities.

We understand that the Council's staff will be reduced from approximately 49 full-time equivalent employees to 16. Dismissal letters with an effective date of May 2, 1981, have been sent to enough of the staff to reduce it below the proposed level of 16. We have not been able to determine what plans exist to bring the staff level back up to 16 after May 2, 1981, although we understand that some prospective employees are being interviewed.

GAO issued a report entitled "The Council on Environmental Quality: A Tool In Shaping National Policy" (CED-81-66; March 19, 1981) in which we stated that the role the Council plays is a needed one and will continue to be needed. We believe several questions about that role are raised by this proposed rescission: (1) Can the Council perform its mandated responsibilities with such a reduced staff? (2) Will its loss of staff continuity impair its effectiveness? (3) Given the relative significance of the proposed rescission, will the agency have the necessary funds to function after incurring the costs (e.g., payment for leave accrual) associated with dismissing this many people?

R81-39 Office of Science and Technology Policy
Salaries and Expenses
1112600

FUNDS APPROPRIATED TO THE PRESIDENT

R81-40 Appalachian Regional Development Programs
Appalachian Regional Development Programs
11X0090

R81-41 Disaster Relief
11X0039

R81-42 International Development Assistance
Sahel Development Program
11X1012

R81-43 Inter-American Foundation
Inter-American Foundation
11X4031

DEPARTMENT OF AGRICULTURE

R81-44 Agricultural Stabilization and
Conservation Service
Dairy and Beekeeper Indemnity Programs
1213314

This rescission proposal would eliminate all funding for the beekeeper indemnity program. The $200,000 in budget authority not proposed for rescission relates to the dairy portion of the program.

GAO identified various program weaknesses in our report entitled "Aspects of The Beekeeper Indemnity Payment Program" (B-176563, February 13, 1973), and pointed out the need for improvements in the program. This program has remained plagued by problems since we issued our report over 8 years ago. The Department of Agriculture's Office of Inspector General issued a report in January, 1980, which disclosed that weaknesses in the administration of the program have resulted in a high potential for fraud and abuse. The report identified several reasons why there was little assurance that program claims were reliable. A similar report also was issued in January, 1980, to the Committee on Appropriations, House of Representatives, by its Surveys and Investigations Staff.

All three reports generally pointed out that inspections performed under the program were inadequate, inconsistent, and inequitable, and that program deficiencies resulted in excessive claims. These reports support the President's justification for this rescission contained in the special message that the program is difficult to administer in a fair way.

R81-45 Rural Electrification Administration
Rural Communication Development Fund
12X4142

R81-46 Farmers Home Administration
Rural Development Planning Grants
1212068

The justification section of this proposal provides that some funding for rural development planning may be obtained through other Federal programs such as HUD's Community Development Block Grant (CDBG) program. Based on our conversations with various Administration officials, however, we are unable to determine how such Federal funds will in fact be used for rural development planning in fiscal year 1981 if this rescission is approved.

The regular CDBG program, 42 U.S.C. 5301 et seq., is a formula grant program with funds earmarked for urban areas, not rural areas. The Small City Development program, a component of the CDBG program, could serve some of the same clients as the Rural Development Planning program. However, these funds already have been committed and it would be up to the recipients of the funds from the Small City Development program to divert these funds to rural development planning. We are not able to determine how practical this would be so late in this fiscal year.

Funds from HUD's section 701 program for planning assistance in community planning and development, 40 U.S.C. 461, theoretically could have been used to offset the effects of this rescission. However, these funds also are proposed for rescission (R81-81).

Administration officials also told us that funds from the Urban Development Action Grant program (UDAG), 42 U.S.C. 5318, might be available, in some instances, for rural development planning. Since UDAG is targeted for cities and urban counties, whether UDAG, in fact, could be used for rural development planning is questionable. Also, we have been informed that there is a proposal in Congress to transfer unobligated funds under UDAG to the Export-Import Bank.

R81-47 Farmers Home Administration
Rural Community Fire Protection Grants
1212067

The amount of funds that practically could be rescinded is in doubt. Because of the small size of the appropriation, the entire amount was allotted in one lump sum, according to an OMB budget examiner. An official in FmHA's Budget Division stated that FmHA does not keep track of the obligations. Instead, FmHA transfers the allotment to the Forest Service, which administers this grant program. Forest Service budget and program officials said that they were not aware of the proposed rescission until GAO began inquiring about the rescission. An official from Forest Service's budget group said that as of March 26, 1981, they still had not received formal notification of the proposed rescission. He also said that they planned to determine the criteria for a valid obligation under OMB's instructions and query officials in their regional and area offices within 1 week to determine the status of grant applications and, thus, whether $1.5 million is available for rescission. Forest Service program officials said that there might be as little as

$150,000 unobligated. An OMB budget examiner said that he only became aware of the problem on March 25 and now recognizes that the amount of the rescission proposed may have to be reduced.

The special message cites Community Facility loans as an alternative source of funds for fire-fighting equipment. Forest Service and FmHA program officials advised us that those loans are made for only part of the purposes for which the Rural Community Fire Protection grants are used. For example, Community Facility loans are not available solely for the purpose of organizing and training a rural community's fire personnel to fight brush fires or to purchase small equipment items such as helmets, gloves, and individual air packs. However, funding for these activities might be made in connection with a loan for a fire truck or a building.

The special message also refers to the availablility of surplus government equipment from the Forest Service. Forest Service program officials said that excess government equipment which can be converted for use in fire fighting sometimes has been made available in conjunction with grants. Title to the equipment remains in the Forest Service. A Forest Service official stated that the Forest Service would not, even if it could, consent to such equipment being used as collateral for a loan. A FmHA official informed us that under their current administrative rules they would not guarantee a Community Facility loan if the only collateral available was property with title vested in other than the borrower. It was estimated that $6 to $8 million of the excess equipment distributed in FY 1980 went to local fire fighting groups and that most of it, in terms of dollar value, was rolling stock requiring conversion. Therefore, it appears that the availability of Community Facility loans as an alternative to this grant program is extremely limited.

R81-48 Farmers Home Administration
Rural Housing Supervisory Assistance Grants
1212062

DEPARTMENT OF COMMERCE

R81-49 Economic Development Administration
Economic Development Assistance Programs
1312050

R81-50 Regional Development Program
Regional Development Programs
13X2100

The suggested language of the rescission bill proposed by the President states, in part, that the balance remaining "shall be available only to the extent necessary to complete termination of the program." However, a portion of the funds which would remain if the rescission is enacted already has been awarded to grantees and obligated for projects. The suggested language may be interpreted by some to mean that the remaining balance can not be used to pay obligations already incurred. To eliminate any confusion concerning the effect of the rescission bill as it relates to funds already obligated or even expended, we suggest that the proposed statutory langauge be amended to provide that it is the balance of funds not already obligated or expended whose use is limited to complete termination of the program.

R81-51 United States Travel Service
Salaries and Expenses
1310700

R81-52 National Oceanic and Atmospheric Administration
Construction
13X1452

R81-53 National Oceanic and Atmospheric Administration
Coastal Energy Impact Fund
13X4315

R81-54 Science and Technical Research
Scientific and Technical Research Services
13X0500

R81-55 National Telecommunications and Information Administration
Salaries and Expenses
13X0550

R81-56 Maritime Administration
Research and Development
13X1716

The special message states that selected low priority long-term research activities will be limited, and that the research on the construction of new ship types and the potential market opportunities of Arctic shipping will not be expanded beyond existing activities. We have identified three research contract actions that have been cancelled and deleted from the program. These research contracts were for heavy fuel high speed diesels,

alcohol plant vessel design, and radio technologies for restricted water navigation. The contracts would have cost approximately $556,000.

DEPARTMENT OF EDUCATION

R81-57 Office of Elementary and Secondary Education
Equal Educational Opportunities
9110103

R81-58 Office of Special Education and Rehabilitative Services
Education for the Handicapped, Gifted and Talented
9110300
911/20300
910/10300

R81-59 Office of Special Education and Rehabilitative Services
Rehabilitation Services and Handicapped Research
9110301
91X0301

R81-60 Office of Postsecondary Education
College Housing Loans
91X4250

R81-61 Office of Educational Research and Improvement
Libraries and Learning Resources
9110104
911/20104
910/10104

R81-62 Office of Educational Research and Improvement
Institute of Museum Services
9110801

R81-63 Office of Educational Research and Improvement
School improvement programs
9110502

DEPARTMENT OF ENERGY

R81-64 Energy Programs
Fossil Energy Construction
89X0214

Deferral proposals D81-33 (January 15, 1981) and D81-33A (March 10, 1981) included $42 million for the Conoco high-BTU gasification demonstration plant. These funds now are proposed for rescission in R81-64. The deferrals were not revised to reflect this change when this rescission was proposed, and, accordingly, this deferral incorrectly has stood at $205 million since this rescission was proposed on March 17, 1981. OMB now has submitted a revision to deferral 33A in the ninth special message, April 27, 1981, to correct this problem.

The justification stated in the special message for the proposed rescission of funds for various projects is that the nature of these demonstrations, their design status, and the technical risk are such that they may qualify for financial assistance under the terms of the Synthetic Fuels Corporation.

Our report entitled "Comments on the President's February 18, 1981, Budget Proposals and Additional Cost-Saving Measures" (OPP-81-2, March 3, 1981), warned that since the Corporation is primarily production oriented with very ambitious goals to meet, the sponsors of these demonstration plants may not be able to compete for Corporation funding with sponsors of projects using commercially available technologies. Also, it has not been shown that private industry would be willing to fund construction of the high-cost, capital-intensive plants to demonstrate the more advanced, yet riskier technologies. If neither private industry nor the production oriented Corporation supports demonstration facilities, the Nation may become committed to less efficient and more costly technologies.

Our March 24, 1981, letter to the Chairman, House Committee on Science and Technology (B-202463), also raises questions concerning the ability of the Corporation to fund these demonstration projects. The letter points out that the Energy Security Act (Pub. L. No. 96-294) has prioritized the types of financial assistance authorized to be awarded by the Corporation. Price guarantees, purchase agreements, or loan guarantees are to be given first priority; loans, second priority; and joint-ventures, third priority. The demonstration project sponsors had a joint-venture type financial arrangement with DOE. If these sponsors request a similar financial arrangement from the Corporation and a substantial number of other applicants request other higher-priority forms of assistance, these statutory priorities may prevent Corporation funding of the projects.

Moreover, the March 24, 1981, letter states that even if the Corporation were to provide financial assistance in the form of a joint-venture, the project sponsors may not be able to satisfy the particular statutory requirements pertaining to the

maximum percentage the Corporation may finance. The Corporation is prohibited from financing more than 60 percent of the total costs of the synthetic fuel project; thus, the project sponsors would be required to provide the remaining 40 percent, which is more than some project sponsors had anticipated providing under agreements with DOE.

Each of the four project sponsors have commented on whether or not they intend to apply for financial assistance from the Synthetic Fuels Corporation. The low/medium-Btu sponsor stated that it will apply for a loan guarantee and purchase agreement, not a joint-venture. One high-Btu sponsor and the liquefaction sponsor stated that they are considering applying for joint-venture funding. The other high-Btu sponsor stated it is abandoning its plans for the project.

R81-65 Energy Programs
Energy Production, Demonstration, and Distribution
89X0219

This rescission proposal is for $12.649 million, but the estimated effects section reflects a total reduction in various programs of $13.3 million. The additional reduction of $651,000 beyond that reflected in the rescission proposal itself will result from the use of funds originally appropriated for these programs to pay for salaries. We understand from OMB, but have not verified, that these funds will be proposed for transfer to offset a supplemental appropriations request.

Three of the seven estimated effects of this rescission proposal totalling $400,000 are described in the special message as follows:

> "Terminate initiation of oil shale production goals ($120,000) given the creation of the SFC.
>
> "Terminate oil shale and tar sands alternative bidding systems studies ($90,000). These activities will be pursued by the DOI.
>
> "Terminate new onshore oil and gas leasing initiatives given the Administration's policy to consolidate all Federal leasing activities in DOI ($190,000)."

The projects listed for these three items are proposals listed in the fiscal year 1982 budget, not in the fiscal year

1981 budget. However, the total amount of monies is correctly stated. An official in DOE's Office of Leasing Policy told us that the actual fiscal year 1981 projects to be cancelled, which are not identified in the rescission proposal, are:

--Onshore oil and gas, coal, and geothermal permitting systems assessments for $300,000.

--Updating outer continental shelf oil and gas modeling for production goal setting for $100,000.

We were informed by DOE officials that the justification for these reductions in DOE's Federal leasing activities is that all activities of its Office of Leasing Policy will be transferred to the Department of the Interior (DOI). An official at OMB indicated that these functions were a "duplication of effort" with functions already carried out at Interior. He also noted that additional funds have been given to DOI for the acceleration of Federal mineral leasing activities under the Bureau of Land Management and the U.S. Geological Survey and for the streamlining of both onshore and offshore leasing activities. However, in examining the DOI fiscal year 1981 budget, there is no indication that such transfers have been made.

GAO testified in March 1977 in favor of transferring all energy leasing policy functions to DOE because DOI had not undertaken strengthening of its leasing program. However, if the transfer described by DOE consolidates all the leasing activities in DOI and DOI effectively addresses these functions, the transfer may be viewed as a positive move. However, existing DOI legislative authorities do not specifically address the energy policy mandate. In order to ensure continuation of DOE's energy leasing policy functions under DOI, the legislative authority also may need to be transferred.

R81-66 Energy Programs
Energy Information Administration
8910216

The effects of this rescission will be to reduce the Energy Information Administration's (EIA) efforts to collect and analyze information. The special message identifies the various activities performed by EIA which will be curtailed. EIA proposes scaling down data validation activities currently underway and, in fiscal year 1982, terminating validation activities and replacing them with a quality assurance function which would require lower budgetary and staffing levels. This rescission

proposal is not entirely consistent with GAO's position that there is a need to assure the accuracy and credibility of energy information used in formulating national energy policy.

GAO has issued several reports which emphasized the importance of independent verification of energy information. 1/ In a report entitled "Natural Gas Reserves Estimates: A Good Federal Program Emerging, But Problems and Duplication Persist" (EMD-78-68, June 15, 1979), we recommended that EIA strengthen its validation program to ensure that its data is accurate and complete, and that that number of staff positions in EIA be increased to fully staff the program.

EIA representatives told us that its proposed quality assurance function would enable it to determine the meaningfulness of its data, but it would not assure that the data is accurate. Although EIA's proposed approach may be feasible for much of the data it produces, we believe that, at a minumum, EIA should validate the accuracy of its key information systems and data, particularly those relating to petroleum and natural gas.

R81-67 Energy Programs
Economic Regulation
8910217

R81-68 Energy Programs
Geothermal Resources Development Fund
89X0206

R81-69 Energy Programs
Alternative Fuels Production
89X5180

R81-70 Departmental Administration
Departmental Administration
89X0228

Thus far, we have been able to identify the source of only $10 million of the $11.5 million proposed for rescission. Twelve projects are involved of which eight will be cancelled, three will be delayed and one will be completed on a smaller scale. The projects involved are described in enclosure I to this report.

1/ B-178205, February 6, 1974; OSP-76-21, June 15, 1976; EMD-77-16, January 27, 1977; EMD-77-31, March 24, 1977; EMD-77-34, April 28, 1977; EMD-77-48, July 25, 1977; EMD-78-68, June 15, 1979; and EMD-80-61, May 7, 1980.

The justification section of the special message states that the rescission will reduce Federal spending. This certainly is true from the standpoint of an immediate reduction in dollars spent. However, these projects have a payback period of between 1.6 and 8.1 years. Consequently, the Government would be paid back in a relatively short period of time. In the long term, the Government may save more money as a result of the energy that would be saved if the projects were immediately implemented than by the short term savings resulting from cancelling or delaying these projects.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

R81-71 Health Services Administration
Indian Health Facilities
75X0391

R81-72 National Institutes of Health
National Institute of Allergy and Infectious Diseases
7510885

R81-73 National Institutes of Health
National Institute of General Medical Sciences
7510851

The estimated effects sections for rescission proposals R81-72 and R81-73 state that the funds proposed for rescission will come, in part, from the Adminstration's proposal to eliminate the indirect costs and institutional allowances presently paid under the National Research Service Awards program. The suggested rescission language accompanying these rescission proposals provides that funds may be expended without regard to section 472(b)(5) of the Public Health Service Act, 42 U.S.C. 289l-1(b)(5), which states that a National Research Service Award may provide for payment of the cost of support services.

The institutes affected by these rescission proposals already have made awards which included payment for the types of costs as provided for in section 472(b)(5). We understand that the agency is examining whether payment for these costs now can be deleted from the awards already made.

R81-74 Alcohol, Drug Abuse, and Mental Health Administration
Construction and Renovation, Saint Elizabeth's Hospital
75X1312

R81-75 Office of the Assistant Secretary for Health
Salaries and Expenses
7511101

R81-76 Health Care Financing Administration
Payments to Health Care Trust Funds
7510580

R81-77 Health Care Financing Administration
Program Management
7510511

R81-78 Social Security Administration
Refugee Assistance
7510473

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

R81-79 Housing Programs
Subsidized Housing Programs
86X0139

R81-80 Solar Energy and Energy Conservation Bank
Assistance for Solar and Conservation Improvements
861/20179

R81-81 Community Planning and Development
Planning Assistance
86X0104

The estimated effects section of the special message does not fully describe the likely effects of the rescission. As noted in the GAO comments on the President's February 18, 1981, budget proposals (OPP-81-22, dated March 18, 1981), termination of the Planning Assistance Program has greater effects on areawide planning organizations than stated in the proposals. Areawide planning organizations are the largest recipients of Planning Assistance Program funds. They do not qualify, however, for direct funding under block grant or general revenue sharing funds. Unless States and localities, which can receive these funds directly, provide funding in turn to areawide planning organizations, the organizations will likely be forced to curtail much of their planning efforts.

R81-82 Community Planning and Development
Rehabilitation Loan Fund
86X4036

R81-83 Neighborhoods, Voluntary Associations,
and Consumer Protection
Housing Counseling Assistance
8610156

R81-84 Neighborhoods, Voluntary Associations,
and Consumer Protection
Neighborhood Self-Help Development Program
860/10175
861/20175

The special message states that all the funds for the Neighborhood Self-Help Development Program (NSDP) should be rescinded because, among other reasons, the program duplicates activities funded by the Neighborhood Reinvestment Corporation (NRC) and the Community Development Block Grant program (CDBG). Based on our discussions with agency officials, we believe that the programs are not duplicative and primarily reach different beneficiaries and projects, although there are some common elements among the three programs.

NRC's activities include the establishment, support and expansion of neighborhood housing programs in urban neighborhoods, and support of neighborhood preservation projects. CDBG funds are distributed to local units of Government for community development programs, including financing for acquiring real property and rehabilitating publicly-owned real property. NSPD funds, on the other hand, are provided to existing voluntary, nonprofit neighborhood organizations. The funds can be used only for specific neighborhood housing and community development projects which directly benefit the residents of a low or moderate income neighborhood. Additionally, residents must support the project and, to the extent feasible, be involved in the project. The funds are not available for purely public works projects or economic development projects which will not primarily benefit the residents of the neighborhood in which the project will be located.

Additionally, the administrative apparatus of the NSDP differs from NRC and CDBS, so that it is questionable that neighborhood organizations served by NSDP will be recipients of alternative Federal funds. NSDP reviews project proposals of competing neighborhood organizations to promote and encourage private lending activities for housing rehabilitation. NRC scrutinizes and

selects communities for participation. CDBG provides Federal funding to local governments, giving local officials the administrative authority and discretion to dispense with funding to neighborhoods. Thus, the communities in which neighborhood organizations are located may not be selected for participation in NRC programs and the neighborhood organizations may not be connected to the local political process to receive CDBG awards. Therefore, the justification and estimated effects have been overstated in terms of duplication. We believe that the rescission proposal should be evaluated in terms of the merits of NSDP, rather than by the argument that the program is duplicative of other programs.

We note that the suggested language accompanying rescission R81-84 proposes the rescission of "unobligated funds" without specifying an amount certain for rescission. The proposed language is as follows:

> "All unobligated funds provided under this head in the Department of Housing and Urban Development - Independent Agencies Appropriation Acts, 1981, and previous years are rescinded. In addition all recoveries of prior obligation are rescinded as they become available."

We assume that this approach is suggested because it would not be possible to determine precisely the amount of unobligated funds as of the time of rescission. However, in order to avoid problems which might arise if the unobligated balances are overestimated, we suggest that the following sentence be added to the proposed rescission language:

> "Amount so rescinded shall remain available for restoration if, and solely to the extent, necessary to liquidate valid obligations incurred prior to rescission."

The same comments apply to rescission R81-92, which also proposes the rescission of unobligated balances. Similar concerns exist with respect to rescission R81-82, which proposes the rescission of unreserved balances, but excludes necessary funds to pay certain costs.

DEPARTMENT OF THE INTERIOR

R81-85 Office of Water Research and Technology
Salaries and Expenses
141/20115
1410115

R81-86 U.S. Fish and Wildlife Service
Construction and Anadromous Fish
14X1612

R81-87 National Park Service
Urban Park and Recreation Grants
14X0720

R81-88 National Park Service
Land and Water Conservation Fund
14X5005

R81-89 National Park Service
Historic Preservation Fund
141/25140
140/15140

R81-90 National Park Service
Construction (Trust Fund)
14X8215

R81-91 Office of Surface Mining Reclamation
and Enforcement
Regulation and Technology
1411801

DEPARTMENT OF LABOR

R81-92 Employment and Training Administration
Temporary Employment Assistance
161/20173

The Chairman of the Committee on Education and Labor, House of Representatives requested GAO, in a letter dated March 17, 1981, to address various issues concerning this rescission proposal and the deferral proposal D81-36A involving funds for the title II-D CETA program. Our response to the Chairman's letter is contained in enclosure II to this report.

DEPARTMENT OF STATE

R81-93 Bureau of Refugee Programs
Migration and Refugee Assistance
1911143

R81-94 Bureau for International Narcotics Matters
International Narcotics Control
1111022

DEPARTMENT OF TRANSPORTATION

R81-95 Urban Mass Transportation Administration
Urban Mass Transportation Fund
(Waterborne Transportation Demonstration Project)
69X1119
699/11119
690/11119

R81-96 Research and Special Program Administration
Cooperative Automotive Research
69X0107

DEPARTMENT OF THE TREASURY

R81-97 Bureau of Government Financial Operations
Biomass Energy Development
20X0114

ENVIRONMENTAL PROTECTION AGENCY

R81-98 Research and Development
(Pollution Control and Abatement)
681/20107

R81-99 Abatement, Control and Compliance
681/20108

R81-100 Construction Grants
68X0103

The justification section of the special message states the Administration's goal to relieve the Federal Government's burden of financing projects that improve the environment marginally or not at all. GAO has issued reports over the past 3 years which endorse this goal. 2/ However, neither the rescission proposal nor other documents supporting the proposal (see, e.g., White House Report, "A Program for Economic Recovery," February 18, 1981) address certain estimated effects of this rescission which we believe Congress should determine in order to judge the desirability of rescinding $1.7 billion. These include--

---

2/ CED-78-6, December 20, 1977; CED-78-76, May 12, 1978; CED-79-77, May 15, 1979; CED-80-40, December 28, 1979; CED-80-86, July 2, 1980; and CED-81-9, November 14, 1980.

(1) The impact of the rescission of funds on meeting congressionally mandated goals contained in 33 U.S.C. 1251 and 1281 for improving water quality. The water pollution program already is behind schedule and EPA has estimated that $120 million will be needed to construct and repair municipal wastewater treatment facilities and sewers between 1980 and 2000. The rescission of $1.7 billion could further put the program behind schedule.

(2) The impact of inflation on the cost of delaying projects, as a result of the rescission, which ultimately will be completed.

GAO has recommended that the Clean Water Act, 33 U.S.C. 1251 et seq., be amended to provide EPA more flexibility in choosing projects for Federal financial assistance. We have been particularly concerned that the Act requires that secondary and advanced treatment facilities be built. GAO concluded in our May 1978 and July 1980 reports that certain projects had no appreciable impact on water quality and that EPA should be allowed to consider impact in approving projects. GAO also concluded in its November 1980 report that wastewater treatment projects seldom have met the performance standards they were designed to achieve and that Congress should require EPA to test various alternatives to the present construction grants funding program.

The rescission bill suggested by the President in the special message provides that if a State's unobligated balance is less than its pro rata share of the funds rescinded, the balance will be distributed among the States whose unobligated balance exceeds their pro rata share of the rescission. Such a provision is necessary to protect States which have already incurred obligations and might have to absorb those obligations out of their own funds. However, this procedure also has the effect of penalizing States which did not quickly obligate their grant funds.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

R81-101 Research and Development
801/20108

VETERANS ADMINISTRATION

R81-102 Construction, Major Projects
36X0110

ACTION

R81-103 Operating Expenses, Domestic Programs
4410103

This rescission proposal has been reduced from $3,207,000 to $200,000 in the ninth special message (R81-103A), dated April 27, 1981. We have been informed that the reduction of $3,007,000 will be proposed for rescission if additional funds are appropriated to this account after June 5, 1981, when the continuing resolution, Pub. L. No. 96-536, expires.

ARMS CONTROL AND DISARMAMENT AGENCY

R81-104 Arms Control and Disarmament Activities
9410100

CORPORATION FOR PUBLIC BROADCASTING

R81-105 Public Broadcasting Fund
2020151
2030151

We were asked by the Chairman of the Subcommittee on Telecommunications, Consumer Protection, and Finance, House Committee on Energy and Commerce, in a letter dated March 4, 1981, to respond to questions concerning the authority of the President to propose a rescission under the Impoundment Control Act of funds appropriated to the Corporation. Our response is contained in enclosure III to this report.

FEDERAL MEDIATION AND CONCILIATION SERVICE

R81-106 Salaries and Expenses
9810100

This proposed rescission is inconsistent with a position taken by GAO in a letter dated April 3, 1980, to former Senator Jacob Javits. In that letter we stated our belief that rapid implementation of the Labor-Management Cooperation Act grant program to fund labor-management committees is important and should not be delayed. Therefore, we suggested that the Director of the Service take immediate steps to implement the program by preparing a detailed program plan and by drafting procedures and regulations utilizing regularly appropriated funds.

In an earlier report entitled "The Federal Role in Improving Productivity--Is the National Center for Productivity and Quality of Working Life the Proper Mechanism?" (FGMSD-76-26, March 23, 1978), we recommended to the Congress that leadership responsibility for improving labor-management cooperation in all sectors be assigned to the Federal Mediation and Conciliation Service.

FEDERAL TRADE COMMISSION

R81-107 Salaries and Expenses
2910100

The Commission's Deputy Executive Director disagreed with the estimated effects as stated in the proposed rescission. He provided several points of disagreement. First, 90 percent of the investigations currently being pursued in the regional offices have national importance. Secondly, already burdened States and local governments are not equipped to handle a large volume of additional complaints or investigations. Finally, elimination of the regional offices reduces the Commission's budget by 20 percent, but results in increases of other costs. For example, without regional assistance, travel cost would increase from $1,000 per employee to $1,375.

MARINE MAMMAL COMMISSION

R81-108 Salaries and Expenses
9512200

MERIT SYSTEMS PROTECTION BOARD

R81-109 Salaries and Expenses
4110100

NATIONAL SCIENCE FOUNDATION

R81-110 Research and Related Activities
491/20100

R81-111 Science and Engineering Education Activities
4910106

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

R81-112 Salaries and Expenses
9512100

OFFICE OF THE FEDERAL INSPECTOR, ANGTS

R81-113 Salaries and Expenses
5210100

PENNSYLVANIA AVENUE DEVELOPMENT COPORATION

R81-114 Salaries and Expenses
4210100

SELECTIVE SERVICE SYSTEM

R81-115 Salaries and Expenses
9010400

SMALL BUSINESS ADMINISTRATION

R81-116 Salaries and Expenses
7310100

TENNESSEE VALLEY AUTHORITY

R81-117 Tennessee Valley Authority Fund
64X4110

WATER RESOURCES COUNCIL

R81-118 Water Resources Planning
85X0100

DEPARTMENT OF AGRICULTURE

R81-119 Farmers Home Administration
Rural Housing Insurance Fund
12X4141

R81-120 Farmers Home Administration
Agricultural Credit Insurance Fund
12X4140

The special message provides that the budgetary resources presently available for this account is $7.8736 billion. This figure is incorrect; we have verified that the amount actually available is $1.2236 billion.

With respect to the $80 million proposed rescission for the Farm Ownership Program, two agency officials informed us that the number of loans estimated to be made would be reduced by 970, rather than the 470 stated in the special message.

A problem may exist with the proposed rescission of $3.85 million for the Resource Conservation and Development program. An agency official told us that the Office of General Counsel, Department of Agriculture, has been asked to determine when loans "in the pipeline" become valid obligations. Agency loan approval officers in the field have not been notified of the rescission proposal and proposed loan obligations continue to be sent to Washington. An OMB official told us that the proposed rescission may have to be reduced to address these problems.

R81-121 Farmers Home Administration
Rural Development Insurance Fund
12X4155

In GAO's report "Rural Water Problems: An Overview" (CED-80-120, August 19, 1980), we raised a number of questions for Federal and State agencies to consider in planning and administering rural water development. The report noted that rural water systems often cannot raise the funds needed to expand, repair, and replace central water systems, and cannot afford the high cost of commercial loans. Financial assistance primarily comes from the Water and Waste Disposal Loan program which will be reduced by $160 million by this rescission and, on a smaller scale, from HUD's Small Cities Block Grant program. Demand for financial aid has exceeded the funds available from both programs.

R81-122 Rural Electrification Administration
Rural Electrification and Telephone
Revolving Fund
12X4230

The part of the suggested rescission bill concerning rural telephone loans which accompanied this rescission proposal is in error. Line 6 reads "rural electrification loans; and a reduction of $125,000 for rural." Line 6 should read "rural electrification loans; and a total level of $125,000,000 for rural."

Based on the current legislative calendar, the 45-day period of continuous session during which the funds may be withheld pending congressional consideration of a rescission bill will end on Sunday, May 17, 1981.

DEPARTMENT OF COMMERCE

D81-103 Minority Business Development Agency
Minority Business Development
13X0201

We have reviewed the seventh special message. Except as noted above, we have identified no additional information that would be useful to the Congress in its consideration of the President's proposals and we believe that the proposed deferral is in accordance with existing authority.

Milton J. Socolar

Acting Comptroller General
of the United States

Enclosures - 3

ENCLOSURE I

FY 1981 Rescission Proposal R81-70 ($ in Thousands)

Site	Project	Budget Authority	Proposed Rescission	Revised Budget	Payback (yrs.)	Effect on Project
Pantex Plant, Amarillo, TX	Alternate Energy Source (Fuel Conversion)	$ 3,000	-$ 2,000	$ 1,000	8.1	Delayed
Oak Ridge National Lab, Oak Ridge, TN	Energy Monitoring & Control System	2,000	- 1,800	200 1/	4.5	Delayed
Richland, WA	Heating Ventilating & Air Conditioning Heat Recovery & Night Setback	1,500	- 1,500	0	5.9	Cancelled
Argonne National Lab, Argonne, IL (81A605)	Automated Energy Management System	1,900	- 1,400	500 1/	5.3	Delayed
Various Locations (81A601)	Modifications for Energy Management					
a) Energy Technology Engineering Center, Santa Susana, CA	Automated Control of SCTI Lighting	4.5	4.5	0	1.6	Cancelled
b) Los Alamos Scientific Lab, Los Alamos, NM	Sigma Building Heating Ventilating & Air Conditioning Mods	1,200	- 1,200	0	3.4	Cancelled
c) Argonne National Lab-West, Idaho Falls, ID	Recovery Waste Heat from Stratification Layer	215	- 215	0	3.7	Cancelled
d) Rocky Flats Plant, Golden, CO	Energy Monitoring & Control System	1,050	- 1,050	0	4.1	Cancelled
e) Richland, WA	Building Insulation, 200 Areas	285	- 283	2 2/	7.3	Cancelled
f) Morgantown Energy Technology Center	Exhaust Air Heat Recovery	74	- 74	0	5.7	Cancelled

1/ Design only.

2/ Funds Obligated & Costed.

Site	Project	Budget Authority	Proposed Rescission	Revised Budget	Payback (yrs.)	Effect on Project
g) Inhalation Toxicology Research Institute, Lovelace, NM	Utilize Waste Heat From Exhaust Air	405	- 405	0	4.6	Cancelled
h) Various Locations	Process Metering	417	- 68.5	348.5	---	Smaller scope
Amount included in proposal R81-70			- 10,000			

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

B-200685

April 27, 1981

The Honorable Carl D. Perkins
Chairman, Committee on Education
and Labor
House of Representatives

Dear Mr. Chairman:

This responds to your March 17, 1981, letter in which you ask several questions regarding the President's proposed deferrals and rescission (proposals D81-36, 36A, and R81-92) of funds appropriated to carry out public service employment programs under titles II-D and VI of the Comprehensive Employment and Training Act (CETA), as amended, 29 U.S.C. §§853-859 and 961-970. Our preliminary views were informally discussed with representatives of your staff in a briefing on April 1, 1981. At that time we noted that we did not conduct a detailed audit of the matters raised in your letter because of the tight reporting deadline. Consequently, we limited our efforts to a review of departmental materials and discussions with headquarters agency personnel. Your questions and our summary answers are set out in part I below, followed by a more detailed discussion in part II.

I.

1. "Does the Department of Labor (hereafter referred to as D.O.L.) have the authority to reserve CETA, Title VI F.Y. 1981 budget authority and outlays based on a rescission request not acted on by Congress? Can D.O.L. retrieve such Title VI funds which have been obligated locally pursuant to valid authority?"

With reference to the first part of this question, DOL has not formally reserved title VI budget authority for formula grants to prime sponsors pending congressional consideration of the rescission. Nevertheless, we believe that DOL legally could withhold such budget authority for up to 45 days of continuous congressional session during consideration of the rescission proposal. With reference to the second part of the question, DOL's current actions and announced plans could, and likely will, result in "retrieving" title VI funds which have been obligated locally. However, such plans also are designed to hold harmless grantee prime sponsors whose costs exceed their reduced funding levels, provided that the prime sponsors have taken prescribed actions to control overexpenditures. To the extent that these plans succeed in satisfying prime sponsor obligations--and DOL officials believe that they will be

largely successful--we see no legal problem. Conceivably some prime sponsors may not be made whole under the DOL plans and will, therefore, submit claims or take other legal action against DOL. We are not in a position to speculate on what the outcome would be in these circumstances. However, we do not believe that this possibility invalidates DOL's basic actions and plans to date.

2. "Assuming D.O.L.'s authority to reserve for deferral unobligated F.Y. 1981 budget authority and outlays in various CETA programs based on deferral requests submitted to Congress, does the Department have the legal authority to deobligate additional funds which have already been contractually obligated at the local level pursuant to valid obligational authority? Can D.O.L. legally and properly require CETA prime sponsors and other grantees to unilaterally breach valid contracts and assume the resultant liability?"

As noted in response to your first question, DOL's actions and plans contemplate that prime sponsors will not have to absorb such liabilities so long as they take actions prescribed by DOL to control overexpenditures. Here again, we see no legal objection to DOL's actions and plans since they contain hold harmless features designed to avoid the potential consequences suggested in your question. If any such consequences do occur, notwithstanding DOL's announced plans and informal representations to us, the legal ramifications will have to be addressed at that time.

3. "Assuming D.O.L.'s legal authority to deobligate such legal contractual expenditures under the aegis of deferral, I would like the General Accounting Office to comment on the potentially detrimental policy implications such action would have on the Federal Government's future ability to contract with other parties."

It is difficult, at best, to estimate what impact Labor's actions will have on the Federal Government's future ability to contract with other parties. We believe, however, that Labor's planned efforts to minimize the impact of its actions both on prime sponsors and participants, if successful, will help to lessen any detrimental policy implications.

II.

The President has proposed a phaseout of the public service employment programs authorized by titles II-D and VI

of CETA. In late February 1981 a hiring freeze was announced for both the titles II-D and VI programs. In addition, the President has submitted to Congress under the Impoundment Control Act of 1974, 31 U.S.C. §§1401-1407, a deferral (D81-36A) of funds for the title II-D program now totaling $729,187,000, and a proposal to rescind (R81-92) budget authority for the title VI program.

By Field Memorandum No. 133-81, dated March 13, 1981, the Employment and Training Administration of DOL issued instructions in connection with the President's deferral and rescission proposals. Paragraph 4 of the Field Memorandum announced revised titles II-D and VI funding allocations to grantee prime sponsors had been calculated based on the deferral and rescission messages. The allocations reflected, on a national basis, a reduction in availability of 38.9 percent in the title II-D program and 32.2 percent in the title VI program. The revised title II-D allocations were made effective immediately. However, the revised title VI figures were not formally implemented. The Field Memorandum states with regard to title VI:

> " * * * the Title VI allocations are to be released for informational purposes only at this time. Revised Title VI annual plan subparts will be required when Congress has acted upon the Title VI rescission. Prime sponsors may, if they wish, voluntarily implement the Title VI reduction."

Paragraph 9 of the Field Memorandum elaborates upon the status of the title VI program as follows:

> " * * * Regional Offices should encourage prime sponsors to proceed <u>voluntarily</u> with the Title VI reductions and modifications. Where prime sponsors agree to such a procedure, appropriate Title VI funds should be immediately deobligated and revised plans submitted within 30 days. Prime sponsors which agree to the voluntary reduction and modification should be informed that all funds will be restored should Congress not agree to rescission." (Emphasis in original.)

Paragraph 5 of the Field Memorandum recognized that prime sponsors could be caught short by the downward revision in funding levels, and addresses this situation as follows:

> "Department of Labor Plans to Cover Shortfalls Created by Revised Titles II-D and VI Allocations. It is anticipated that some prime sponsors will face severe funding problems due to the revised allocations. It will be necessary to immediately identify prime sponsors whose revised allocations are less than accrued expenditures to date. It will also be necessary to identify those prime sponsors which will be unable to close down operations before accrued costs exceed the revised allocations.
>
> "It is the Department's intent to provide additional funds to those prime sponsors which were or are unable to close down operations before accrued costs exceeded their revised Titles II-D and VI allocations. These funds will be provided only to prime sponsors which incurred costs over and above their revised allocations as a result of such requirements as layoff notices. * * *
>
> "Funds will not be provided to prime sponsors who fail to act promptly to control overexpenditures or for those which deliberately overexpend."

Paragraph 5 goes on to specify procedures and time limits to be followed by prime sponsors for layoff notices. It also identifies available sources of funds which the DOL intends to utilize "to assist those prime sponsors faced with controllable overexpenditures where the prime sponsors have acted in good faith to avoid or limit such overexpenditures."

Other portions of the Field Memorandum deal with the procedural protections to be afforded participants in connection with layoffs (Paragraph 4(d)), and efforts to be made to "transition" participants to other activities (Paragraph 4(g)).

Your questions deal primarily with the funding aspects of the Field Memorandum and their impact on prime sponsors. It is our understanding, based on discussions with DOL officials, that the full amount of formula grants under titles II-D and VI of CETA are obligated at the Federal level (see 31 U.S.C. §200) at the time each grant is made. From this point on, the grantee can draw down against the full amount of the grant. However, the CETA program regulations--specifically 20 C.F.R. §676.16(a)--permit Federal program officials to alter fund allocation levels over the course of the grant period:

> " * * * the RA [Regional Administrator] may require modifications of the CETP [Comprehensive Employment and Training Plan] only once each fiscal quarter with the exception of changes in the funding allocation level or to insure compliance with the Act and regulations * * *."

Since prime sponsors are required to comply with the CETA regulations as a condition to their grants (see 20 C.F.R. §§676.10-2, 676.10-3), DOL regards the above-quoted regulation as permitting it to make unilateral modifications in the allocation levels as frequently as necessary. In fact, we have been advised by DOL officials that this provision of the regulations has been invoked in the past to reduce funding levels for various reasons not involving deferrals or proposed rescissions of budget authority. 1/

We do not question in the abstract DOL's authority under the regulations discussed above to unilaterally reduce funding levels. It is necessary, however, to consider the application of the regulations in relation to proposed deferrals and rescissions under the Impoundment Control Act and the consequences on prime sponsors who are caught in a "shortfall" situation as a result of reduced funding.

1/ Before the issuance of Field Memorandum No. 133-81, the title VI funding levels for fiscal year 1981 had to be reduced to reflect funding Acts made by the continuing appropriations legislation which now funds the program, Pub. L. No. 96-536 (December 16, 1980), 94 Stat. 3166, 3171.

We will first consider the Impoundment Control Act issues. The Impoundment Control Act generally authorizes the withholding of budget authority during the pendency before Congress of proposed deferrals and rescissions. Deferrals, of course, are withholdings of budget authority which are implemented by Executive action and generally can continue until the end of the fiscal year in which they are implemented unless either House of Congress passes an impoundment resolution disapproving them. See 31 U.S.C. §§1401(1) and 1403. A rescission proposal under the Act is, in effect, a request by the President that Congress repeal in whole or in part certain budget authority. See generally 31 U.S.C. §§1401(3) and 1402. 2/ Section 1402(b) of title 31 provides with respect to rescissions proposed by the President in a special message:

> "Any amount of budget authority proposed to be rescinded * * * in such special message shall be made available for obligation unless, within the prescribed 45-day period, the Congress has completed action on a rescission bill rescinding all or part of the amount proposed to be rescinded * * *."

Our Office traditionally has construed this language as authorizing the withholding of budget authority proposed for rescission during the prescribed 45 days of continuous session following submission to the Congress of the President's proposal.

Given DOL's authority under its program regulations to unilaterally reduce funding levels and the authority to withhold funds under the Impoundment Control Act pending congressional consideration of deferrals and rescissions, we believe that DOL has considerable flexibility. The Department has reduced prime sponsor funding levels in connection with the deferral of title II-D budget authority, thereby deobligating a portion of the title II-D grants. This action does not violate the Impoundment Control Act.

2/ A proposal by the President to reserve for the balance of a fiscal year budget authority provided only for 1 fiscal year is also treated as a rescission. However, this concept is not relevant here since the title II-D funds being deferred for the balance of fiscal year 1981 are 2-year appropriations.

On the other hand, DOL has not formally reduced prime sponsor funding levels in order to deobligate or otherwise "retrieve" title VI budget authority which has been proposed for rescission. As noted previously, the Field Memorandum states that the reduced title VI levels have not been implemented, but are "voluntary" at this time. As we understand the present situation, therefore, title VI grantees remain free to draw down at the higher levels now in effect. In any event, we see no legal reason why Labor could not implement the title VI funding reductions at this time, thereby deobligating the funds proposed for rescission in the same manner that the deferred title II-D funds have been deobligated. This would be consistent with our view that the Executive has authority to withhold funds pending congressional consideration of a rescission proposal. Of course, funds so withheld must be released if a rescission has not been enacted within 45 days of continuous session following submission of the President's special message.

We next consider DOL's actions and plans in terms of their impact on grantees. We believe it is, at best, doubtful that DOL could exercise its regulatory authority to reduce funding levels in a manner that would result, by design or necessary effect, in grantees having to absorb liabilities which they had properly incurred pursuant to the grant. However, we are satisfied that this is not the case with respect to the DOL actions and plans here involved.

As noted previously, Field Memorandum No. 133-81 clearly provides for notifying grantees of the actual (in the case of title II-D) and potential (in the case of title VI) reductions in funding levels; outlines actions which grantees are expected to take in order to control overexpenditures; and indicates an intent to hold harmless grantees who have incurred, or may incur, costs beyond their revised allocations even though they have taken the prescribed actions to control overexpenditures. In addition to reviewing the provisions of the Field Memorandum, we have discussed implementation of these provisions with DOL officials. The revised title II-D funding levels have been implemented; thus grantees are now legally bound by such revised levels. The DOL officials are confident that they will have adequate funds to meet the hold harmless provisions of the Field Memorandum for these grantees. We understand that the primary source for this purpose will be title II-D discretionary funds. Even if the discretionary funds are not sufficient, the Field Memorandum identifies other potential sources. Ultimately the title II-D funds being deferred for carryover into fiscal year 1982 could be used for this purpose.

While the situation with respect to title VI grantees is more complicated, the DOL officials likewise believe that they can hold harmless grantees who take prompt action to control overexpenditures. While the revised title VI funding levels have not been implemented, the Field Memorandum provides for formally notifying grantees of what their revised amounts will be if the title VI rescission is enacted. Such notice would seem sufficient to inform title VI grantees that they act at their own risk should they fail to take action to control overexpenditures in anticipation of the revised allocations. The DOL officials believe that they will have sufficient funds to hold harmless title VI grantees who take the control actions specified in the Field Memorandum. However, they doubt that funding would be available to cover any grantees which fail to take control actions and continue to spend at their current levels. In any event, given the notice that has been afforded to title VI grantees, it appears questionable whether DOL would have any obligation to attempt to hold harmless grantees caught short by virtue of their own actions in this situation.

Fundamentally, therefore, it is Labor's intent to make whole title II-D and title VI grantees to the extent that they incur liabilities as a result of actions which DOL requires of them. While DOL cannot guarantee that sufficient funds will be available for this purpose, we have no basis to question their intent in this regard or their belief that they will be able to comply with such intent. If they cannot honor this intent, it is certainly possible that grantees could have valid claims against DOL. However, we are not in a position to speculate on what might happen in this situation. The other conceivable source of claims would be title VI grantees who continue to operate without taking prescribed actions in anticipation of the reduced funding levels. Again, we are not in a position to speculate on the results should this occur. However, as noted previously, it is questionable whether grantees would have legally valid claims in these circumstances.

With regard to your final question, it is difficult to foresee what impact, if any, DOL's actions would have on the Federal Government's future ability to contract with other parties. We believe that DOL's actions and plans to minimize the adverse impact of the funding levels on both grantees and program participants would at least mitigate any adverse effects on the Government's future program actions. Of course, the success of the hold harmless measures will certainly be a factor as well.

We have discussed in detail above DOL's actions with regard to grantees. Labor also has attempted to minimize the impact of the CETA phasedown on program participants. Specifically, prime sponsors have been instructed to make every effort to transition title II-D and VI participants into other activities. This includes:

--accelerating the "transitioning" of participants into permanent unsubsidized private sector employment;

--transitioning participants into other CETA-funded activities, such as titles II-B and C and vacant positions in the Private Sector Initiative Programs, or for eligible Aid to Families with Dependent Children participants, to the Work Incentive Program;

--referring applicants to the local Job Service Office;

--encouraging local governments and other employing agencies to absorb the public service employees into their regular work forces; and

--referring participants to other non-CETA funded skills training institutions such as community colleges and other vocational and technical institutions.

All programs administered by the Employment and Training Administration are being required to make the "transitioning" of participants their number one priority.

In addition, the Secretary of Labor has requested a $245 million reprogramming of fiscal year 1981 title II-D funds to CETA title III for the purpose of providing States with money to pay unemployment benefits to enrollees who are laid off. A special account will be established with each State through which costs will be paid for benefits attributable to work performed after December 5, 1980. Costs attributable to work performed by public service employees prior to December 5 are financed from the Federal Unemployment Benefits Account (FUBA). The reprogramming is being requested because the Omnibus Reconciliation Act of 1980, Pub. L. 96-499, December 5, 1980, prohibited financing of unemployment costs from the FUBA for work performed after December 5.

We are unable to determine at this point the extent that DOL's actions will mitigate hardship on CETA participants.

We trust the foregoing is responsive to your March 17, 1981, letter. Please do not hesitate to call upon us if we can be of further assistance.

Sincerely yours,

Milton J. Socolar
Acting Comptroller General

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

B-202472

March 25, 1981

The Honorable Timothy E. Wirth
Chairman, Subcommittee on Telecommunications
Consumer Protection, and Finance
Committee on Energy and Commerce
United States House of Representative

Dear Mr. Chairman:

This responds to your letter, dated March 4, 1981, concerning the President's recent proposal under the Impoundment Control Act that a portion of funds appropriated to the Corporation for Public Broadcasting for fiscal years 1982 and 1983 be rescinded. Specifically, you asked for our opinion on (1) the legality of the President's rescission proposal, and (2) without regard to the President's authority, whether there is any bar to Congress' acting this year to reduce the Corporation's fiscal year 1982 appropriation. For the reasons stated below, we conclude that under the Impoundment Control Act, funds appropriated to the Corporation may not be withheld from availability during the 45-day withholding period prescribed by the Act. We also conclude, that the Congress is not barred from reducing a portion of the fiscal year 1982 appropriation for the Corporation.

PROVISIONS GOVERNING THE CORPORATION

The Corporation for Public Broadcasting was established by title II of the Public Broadcasting Act of 1967, Pub. L. 90-129. The present funding provisions were established in amendments to the Act, the Public Broadcasting Financing Act of 1975, Pub. L. 94-192, and the Public Telecommunications Financing Act of 1978, Pub. L. 95-567. The 1978 Act revised and restructured the financing provisions. The provisions governing the Corporation are found in 47 U.S.C. 396.

The Corporation was established as a non-profit corporation which is not an agency or establishment of the United States Government. 31 U.S.C. 396(b). Beginning in 1975, Congress provided multi-year appropriation authorizations for the Corporation. Further, in the fiscal year 1977 HEW appropriations act (Pub. L. 94-439), enacted September 30, 1976, the Congress established the principle of "forward funding" for the Corporation in advance of the year in which the appropriation is to be spent by providing a 2-year advance appropriation. The Congress has continued advance appropriations for the Corporation in subsequent appropriations acts.

The 1975 legislation established the Public Broadcasting Fund as a fund in the Treasury administered by the Secretary. The 1975 and 1978 acts authorized a matching appropriation based on the amount of non-Federal money received by the Corporation from private sources during a specified prior period. Once the Corporation certified the amount of non-Federal financial support received for such period, the Secretary was directed to disburse to the Corporation the amount authorized for that year from amounts appropriated to the Fund.

Prior to 1978, the Corporation received its appropriation from the Fund on a lump-sum basis at the beginning of the fiscal year. However, the Corporation distributed funds to its grantees over the course of the year. Cash in excess of the Corporation's immediate needs was invested in Government securities. During consideration of the 1978 act, the Senate Committee on Commerce expressed concern that this investment practice resulted in interest earnings by the Corporation in excess of its immediate cash needs. The effect was to supplement the appropriation to the Fund while, at the same time, increasing the borrowing costs of the Treasury. S. Rep. No. 95-858, at page 14 (1978).

Accordingly, the 1978 act added the present provision that funds be disbursed by the Secretary of the Treasury on a quarterly basis, in such amounts as the Corporation certifies necessary to meet its obligations in the succeeding quarter. 47 U.S.C. 396(k)(2)(B). The Congress did not intend that this change in disbursement procedures to result in a change in the Corporation's ability to obtain necessary funds. Senate Report No. 95-858, at pages 14 and 15 states:

> "Without intending in any way to disparage the prudent business practices of the Corporation, or to suggest that the Department of the Treasury should in any fashion exercise review powers over the amounts withdrawn from the Fund by the Corporation, it is the view of the Committee that a more orderly, yet flexible, system of disbursement of these funds is necessary to assure proper management of Federally appropriated funds. * * * Under no circumstances should the Secretary of the Treasury review, disapprove, or modify the amount certified by the Corporation."

Similar langaguage is found in House Report No. 95-1178, at page 26 (1978).

APPLICABILITY OF IMPOUNDMENT CONTROL ACT

Because of the forward funding given the Corporation as discussed above, funds already have been appropriated to the Corporation for fiscal years 1982 and 1983, although these funds are not yet available for obligation or expenditure. The President proposed in his seventh special message for fiscal year 1981, dated March 17, 1981, to rescind certain funds appropriated to the Corporation for fiscal years 1982 and 1983 (R81-105). Rescission proposals submitted pursuant to section 1012 of the Impoundment Control Act, 31 U.S.C. 1402, typically are accompanied by a withholding of funds by the President for up to 45 days of continuous congressional session during consideration of the proposal. Because the funds involved in R81-105 are for fiscal years 1982 and 1983 and therefore are not yet available to the Corporation, there is obviously no withholding of funds involved here.

However, your letter suggests the broader question of whether the President could use the Impoundment Control Act to withhold funds appropriated to the Corporation. This question is important because of the possibility that an impoundment proposal might be submitted in the future concerning already available Corporation funds for which a withholding may be attempted.

Section 1001 of the Impoundment Control Act, 31 U.S.C. 1400, referred to as the disclaimer section, provides in part:

> "Nothing contained in this Act, or in any amendments made by this act, shall be construed as--
>
> * * * * *
>
> "(4) superseding any provision of law which requires the obligation of budget authority or the making of outlays thereunder."

As previously discussed, funds appropriated to the Corporation are statutorily required to be made available to it without review or control of the Secretary of the Treasury. Thus 47 U.S.C. 396(k)(2) provides in part:

> "(2)(A) * * * The Corporation shall determine the amount of non-Federal financial support received by public broadcasting entities * * * and shall certify such amount to the Secretary of the Treasury * * *. Upon receipt of such certification, the Secretary of the Treasury shall make available to the Corporation, from such funds as may be appropriated to the Fund, the amount authorized for each of the fiscal years pursuant to the provisions of this subsection.
>
> "(B) Funds appropriated and made available under this subsection shall be disbursed by the Secretary of the Treasury on a quarterly basis, in such amounts as the Corporation certifies will be necessary to meet its financial obligations in the succeeding quarter."

As stated on page 26 of the House Report to the 1978 amendments (H. Rep. 95-1178):

> "* * * The Treasury's role is intended to remain limited to disbursement of funds in accordance with the corporation's quarterly certification.* * *"

We view 47 U.S.C. 396(k)(2) as falling within the fourth disclaimer of the Impoundment Control Act, cited above. For purposes of the Impoundment Control Act, we see no distinction between a Congressional mandate to obligate or spend and the mandate in 47 U.S.C. 396(k)(2) to make funds available to the Corporation. Therefore, it is our opinion that the Impoundment Control Act cannot be used by the Executive branch to refuse to make funds available to the Corporation.

CONGRESSSIONAL AUTHORITY TO REDUCE APPROPRIATIONS

You also have asked whether there is any bar to Congress' acting this year to reduce the Corporation's fiscal year 1982 appropriation. This appropriation, which as explained above is presently unavailable to the Corporation, remains unobligated.

We find nothing in the provisions governing the Corporation, nor are we aware of any other provision of law, which would prohibit the Congress from reducing this appropriation.

Sincerely yours,

Milton J. Socolar

Acting Comptroller General
of the United States