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*CH*  
*R*  
The Honorable Les Aspin  
House of Representatives

Dear Mr. Aspin:

In accordance with your request of May 5, 1973, and subsequent discussions with our representatives, we are enclosing information concerning your five questions on the possible violation by the Department of Defense of the Anti-deficiency Act (31 U.S.C. 665(a)).

We do not plan to distribute this report further unless you agree or publicly announce its contents. We trust the information furnished is responsive to your request.

Sincerely yours,

*James B. Stets*  
Comptroller General  
of the United States

Enclosures - 4

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INFORMATION ON THE POSSIBLE VIOLATION BY THE  
DEPARTMENT OF DEFENSE OF THE ANTIDEFICIENCY ACT

QUESTION 1.

Under what authority was the President of the United States authorized to ~~exempt the operation and maintenance appropriations for fiscal year 1973 from the apportionment requirement provisions of the Antideficiency Act (3679 Rev. Stat.)?~~

ANSWER

Section 713(a) of the fiscal year 1973 Department of Defense Appropriation Act, Public Law 92-570, authorizes the President to exempt appropriations, funds, and contract authorizations from the apportionment process as required by section 3679(c) of the Revised Statutes, as amended, known as the Antideficiency Act, whenever he deems it necessary in the interest of national defense. This limited authority does not exempt the Department from complying with other provisions of the Antideficiency Act.

On November 24, 1972, in a letter to the Office of Management and Budget (OMB), the President exempted the Army, Navy, and Air Force operation and maintenance appropriations from apportionments. (See enc. III.)

QUESTION 2.

Why did the Secretary of Defense delay advising the Appropriations Committees of the President's action, and were \$149 million of obligations incurred illegally because of such delay?

ANSWER

Section 713(d) of the fiscal year 1973 Appropriation Act states that the Secretary of Defense shall immediately advise the Congress when the President exercises his authority under subsection (a) of section 713 to exempt an appropriation from apportionment. In this instance, it was almost 4 months later (Mar. 16, 1973) that the Secretary of Defense notified the Congress. (See enc. IV.) The Department advised us that the oversight was attributable to the press of business while developing the fiscal year 1974 budget. It is our opinion that the Department's failure to immediately notify the Congress has no effect on the legality of the obligations incurred since the act does not specifically state that obligations cannot be incurred before the Secretary of Defense notifies the Congress.

QUESTION 3.

Was there a violation of the Antideficiency Act by the Department in connection with obligations of \$149 million made during the third quarter of fiscal year 1973 in support of military activities in Southeast Asia?

ANSWER

The House Appropriations Committee report dated May 3, 1973, on the Second Supplemental Appropriations Bill, 1973, noted:

"Data submitted to the Committee subsequent to the hearings indicate that in the third quarter of this fiscal year, January, February and March 1973, \$149 million above budgeted amounts has been obligated in support of military activities in Southeast Asia."

The \$149 million involved obligations of the military personnel and operation and maintenance appropriations for fiscal year 1973, which had been used at a faster rate than contemplated at the time the appropriations were made. Department records show that it did not exceed its obligational authority during the first three quarters of fiscal year 1973. (See enc. II.)

QUESTION 4.

What recourse was available to the Department if the Congress did not approve the increase of \$500 million in the transfer authority contained in section 735 of the General Provisions of the fiscal year 1973 Department of Defense Appropriation Act requested by the President on March 21, 1973?

ANSWER

In hearings before the Defense Appropriations Subcommittee of the House Appropriations Committee on the Second Supplemental Appropriations Bill for fiscal year 1973, the Department informed the Subcommittee:

"We have been obligating at a deficiency rate in the accounts that are involved in these proposed reprogramming actions. At this point in the fiscal year, there are severe restrictions in the course of action that would be available to save funds should the reprogramming actions be denied. Actions that would have to be considered would be to stand down forces, cut back flying hour and steaming hour programs, make major reductions in training scheduled in the last

2 months of the fiscal year, stop or reduce military formations and enlistments, cease delivery of material to the Government of Vietnam in some accounts, reduce the rate of fill of requisitions in the supply system, defer maintenance, possibly split fund some maintenance. Many actions will have an impact on the following fiscal year and build in unanticipated backlogs of deferred costs."

QUESTION 5.

Has the Congress been placed in a position that it cannot disapprove the additional transfer authority and the reprogramming requests?

ANSWER

In our opinion, the President's action in exempting the operation and maintenance appropriations from apportionment had no effect on the prerogatives of the Congress to approve or disapprove the additional transfer authority or the requests for reprogramming.

We note that the Second Supplemental Appropriation Act, 1973, enacted on July 1, 1973, as Public Law 93-50, omitted any authorization to increase the Department's transfer authority under the provisions of Section 735 of the Department of Defense Appropriation Act, 1973.

STATUS OF DEPARTMENT OF DEFENSE  
MILITARY PERSONNEL AND OPERATION AND  
MAINTENANCE APPROPRIATIONS  
FIRST, SECOND, AND THIRD QUARTERS OF FISCAL YEAR 1973  
(Millions of dollars)

<u>Appropriation</u>	<u>First quarter (note c)</u>		
	<u>TOA</u> <u>(notes a</u> <u>and b)</u>	<u>Cumula-</u> <u>tive</u> <u>obligha-</u> <u>tion</u>	<u>Unobli-</u> <u>gated</u> <u>balances</u>
<b>MILITARY PERSONNEL:</b>			
Army	\$2,349	\$2,201	\$ 148
Navy	1,905	1,856	49
Air Force	<u>2,030</u>	<u>2,014</u>	<u>16</u>
Total	6,284	6,071	213
Retired pay, Defense	<u>1,445</u>	<u>1,074</u>	<u>371</u>
Total	<u>\$7,729</u>	<u>\$7,145</u>	<u>\$ 584</u>
<b>OPERATION AND MAINTENANCE:</b>			
Army	\$3,139	\$2,176	\$ 963
Navy	3,008	1,949	1,059
Air Force	2,352	2,228	124
Defense agencies	453	374	79
Other	<u>45</u>	<u>10</u>	<u>35</u>
Total	<u>\$8,997</u>	<u>\$6,737</u>	<u>\$2,260</u>

<sup>a</sup>TOA--total obligational authority.

<sup>b</sup>Appropriations Act (Public Law 92-570) not passed until October 26, 1973.

<sup>c</sup>First-quarter authority based upon congressional "continuing resolution."

Second quarter			Third quarter		
TOA (note a)	Cumulative obligations	Unobligated balances	TOA (note a)	Cumulative obligations	Unobligated balances
\$ 8,642	\$ 4,296	\$ 4,346	\$ 8,642	\$ 6,512	\$2,130
7,259	3,627	3,632	7,264	5,478	1,786
<u>7,537</u>	<u>3,896</u>	<u>3,641</u>	<u>7,724</u>	<u>5,885</u>	<u>1,839</u>
23,438	11,819	11,619	23,630	17,875	5,755
<u>4,359</u>	<u>2,167</u>	<u>2,192</u>	<u>4,359</u>	<u>3,269</u>	<u>1,090</u>
<u>\$27,797</u>	<u>\$13,986</u>	<u>\$13,811</u>	<u>\$27,989</u>	<u>\$21,144</u>	<u>\$6,845</u>
\$ 8,597	\$ 4,216	\$ 4,381	\$ 8,710	\$ 6,274	\$2,436
7,238	3,708	3,530	7,323	5,336	1,987
7,764	4,090	3,674	7,764	5,827	1,937
1,487	725	762	1,487	1,092	395
<u>51</u>	<u>24</u>	<u>27</u>	<u>51</u>	<u>35</u>	<u>16</u>
<u>\$25,137</u>	<u>\$12,763</u>	<u>\$12,374</u>	<u>\$25,335</u>	<u>\$18,564</u>	<u>\$6,771</u>

THE WHITE HOUSE  
WASHINGTON

November 24, 1972

MEMORANDUM FOR THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET

Subject: Exemption of Department of Defense Appropriations from Apportionment

Your memorandum of November 17, 1972, advises that the activity in Southeast Asia has generated the need for additional funds. This situation makes it advisable to exempt certain Defense appropriations from apportionment.

Under the authority vested in me by subsection (a) of section 713 of the Department of Defense Appropriation Act, 1973, and deeming such action in the interest of national defense, I hereby exempt the below listed appropriations from the provisions of subsection (c) of section 3679 of the Revised Statutes, as amended:

Operation and maintenance, Army, 1973  
Operation and maintenance, Navy, 1973  
Operation and maintenance, Air Force, 1973

These exemptions shall remain in effect during the current fiscal year, unless expressly revoked.



COPY

16 MAR 1973

Honorable George H. Mahon  
Chairman, Department of Defense  
Subcommittee  
Committee on Appropriations  
House of Representatives

Dear Mr. Chairman:

As required by Subsection (d) of Section 713 of the Department of Defense Appropriation Act, 1973 you are advised that the following appropriations were exempted by the President on November 24, 1972, from the provisions of Subsection (c) of Section 3679 of the Revised Statutes, as amended, pursuant to Subsection (a) of Section 713 of the Department of Defense Appropriation Act, 1973.

Operation and Maintenance, Army, 1973  
Operation and Maintenance, Navy, 1973  
Operation and Maintenance, Air Force, 1973

With best regards,

Sincerely,

/s/W. P. Clements, Jr.  
Deputy

Identical ltr sent to:

Honorable John L. McClellan  
Chairman, Department of Defense  
Subcommittee  
Committee on Appropriations  
United States Senate