

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



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B-205053

May 24, 1982

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

On March 18, 1982, the President's tenth special message for fiscal year 1982 was transmitted to the Congress pursuant to the Impoundment Control Act of 1974. The special message proposes one rescission of budget authority totalling \$215.2 million, five new deferrals totalling \$58.9 million and revisions to two previously reported deferrals which increase the amounts deferred by \$14.6 million. Our report follows.

POSTAL SERVICE

R82-26 Payment to the Postal Service Fund  
18X1001

Pursuant to section 2003(e)(2) of title 39, United States Code, as added by section 1725 of Pub. L. 97-35, the Secretary of the Treasury is required to make available to the Postal Service 25 percent of its annual appropriated funds at the beginning of each quarter of each fiscal year. According to the Postal Service's National Financial Branch Manager, no funds are currently being withheld, and as of April 1, 1982, \$625,852,800, out of total budget authority of \$834,470,400, had been made available, leaving \$208,617,600. In order to effect the proposed rescission of \$215,230,000, over \$6 million would have to be returned to the Treasury.

DEPARTMENT OF ENERGY

D82-236 Energy Programs  
Fossil Energy Research and  
Development  
89X0213



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The subject deferral was disapproved in its entirety by the House of Representatives on April 29, 1982, in House Resolution 411. Pursuant to section 1013(b) of the Impoundment Control Act, 31 U.S.C. 1403, the impounded funds were made available for obligation on April 30, 1982.

The question of the legality of the stated purpose of the deferral--to preserve the funds for use in calendar year 1983 to cover termination costs related to placing various Federal facilities in "mothball" status--will be addressed by this Office at the request of the House Committee on Science and Technology (B-206940.2).

D82-228A Energy Programs  
Energy supply research and development  
activities, Operating expenses  
89X0224

DEPARTMENT OF HEALTH AND HUMAN SERVICES

D82-237 Social Security Administration  
Limitation on Administrative Expenses  
(Construction)  
75X8704

DEPARTMENT OF THE INTERIOR

D82-238 National Park Service  
Urban Park & Recreation Grants  
14X1031

D82-239 National Park Service  
Land and Water Conservation  
Fund  
14X5005

The Administration is currently withholding a portion of the unobligated prior year balances of funds appropriated for State grants. According to the estimated effect section of the President's special message, "[f]unding availability for outdoor recreation grants provided to the States will be reduced by \$2,821,000." Because Congress intended to mandate the spending of amounts appropriated for State grants under the Land and Water Conservation Fund (LWCF) Act (16 U.S.C. §§4601-4 to 4601-11), the fourth disclaimer of the Impoundment Control Act (31 U.S.C. §1400(4)), precludes the Administration from lawfully withholding the funds.

In our report to Congress B-205053, March 10, 1982, we identified the fourth disclaimer of the Impoundment Control Act as limiting the authority, which otherwise inures to the

President under that Act, to withhold budget authority made available by "mandatory" spending statutes. To characterize a statute as mandatory, our analysis requires examining the statutory scheme for evidence of a congressional direction to make the funds available for a particular program, once the potential recipient has satisfied all conditions.

In the case of the LWCF Act, several of the statutory provisions evidence the mandatory nature of the Act. First, section 6(b) of the Act, as amended, 16 U.S.C. 4601-8(b) (Supp. III 1979), sets out an apportionment formula and states that sums appropriated and available for State purposes for each fiscal year shall be apportioned among the several States by the Secretary in accordance with that formula. Second, section 6(d) of the Act, as amended, supra, requires submission of a comprehensive statewide outdoor recreation plan as a condition for receiving funds and specifies the contents of such a plan. Third, section 6(b)(4) of the Act, as amended, supra, directs that apportioned amounts "shall be available" for payment to States.

Furthermore, in the event sums are unobligated or unexpended, section 6(b)(4), as amended, supra, states in part:

"Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year \* \* \* and for two fiscal years thereafter shall be reapportioned by the Secretary in accordance with paragraph (2) of this subsection \* \* \*." (Emphasis added.)

Paragraph (2), referred to in the quoted language, requires the Secretary of the Interior to make apportionments to the individual States based on need, as will best accomplish the purposes of the program. While the Secretary has discretion to determine the relative need of each State, he is nevertheless required to reapportion the unobligated balances.

The statutory scheme of the LWCF Act sufficiently evidences a congressional mandate that the funds be made available to the States. We therefore conclude that the withholding of funds reported in D82-239 is unauthorized under section 1001(4) of the Impoundment Control Act.

D82-240      National Park Service  
                 Historic Preservation Fund  
                 142/35140

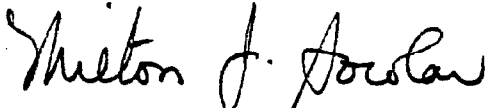
The special message states that the deferred funds will be used in fiscal year 1983 to cover the cost of administering grants made to States in prior years. The deferral is part of the President's budget request for fiscal year 1983, which provides for no additional historic preservation grants in fiscal year 1983. In our report entitled, "Are Agencies Doing Enough or Too Much for Archeological Preservation? Guidance Needed," (CED-81-61) dated April 22, 1981, we found that reducing Federal funding for State historical preservation offices would seriously impede, and ultimately increase the cost of, the Federal program to determine archeological significance.

DEPARTMENT OF THE TREASURY

D82-23A Office of Revenue Sharing  
State and Local Government  
Fiscal Assistance Trust Fund  
20X8111

The data in this deferral are generally correct as of January 30, 1982. However, the amount listed as "other budgetary resources," \$109,811,628, was correct as of September 30, 1981, rather than January 30, 1982. The amount of these resources as of the later date was \$105,631,551, according to agency officials.

We have reviewed the tenth special message. Except as noted above, the proposed deferrals are in accordance with existing authority. We have included in this report any information identified by us which would be useful to the Congress in its consideration of the President's proposals.

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Comptroller General  
of the United States