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

B-205053

June 15, 1982

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

On April 23, 1982, the President's eleventh special message for fiscal year 1982 was transmitted to the Congress pursuant to the Impoundment Control Act of 1974. The special message proposes one revision to a previously reported rescission reducing the amount proposed by \$3.4 billion, three new deferrals of budget authority totalling \$87.5 million and two revisions to existing deferrals increasing the amount deferred by \$1 million. Our report follows:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

R82-21A Subsidized Housing Programs  
86X0139

This revised report reduced by \$3.4 billion the amount originally proposed for rescission in this account in the President's eighth special message for fiscal year 1982, dated February 5, 1982 (R82-21). The reduction reflected a decision to increase financing for Section 8 housing from 40,000 to 70,000 units.

All the withheld funds were released by OMB on April 26, 1982, after the 45-day statutory withholding period expired without favorable congressional action on the rescission proposal.

DEPARTMENT OF AGRICULTURE

D82-3A Forest Service  
Expenses, Brush Disposal  
12X5206

DEPARTMENT OF STATE

D82-241 Migration and refugee assistance  
1921143



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022457

The special message states that the funds in this account are being deferred pending congressional action on the President's request to transfer the funds to another account, in order to help offset supplemental requirements of the State Department for emergency overseas security needs. Similarly, two deferrals reported in the President's eighth special message for fiscal year 1982 (D82-16A, D82-229), involved withholdings of funds pending congressional action on requests to transfer the funds to other accounts. As promised in our report on the eighth special message, we address herein the proper classification under the Impoundment Control Act of such withholdings.

In 1977, GAO and OMB agreed that withholdings based on transfer requests would be classified as deferrals or proposed rescissions depending on the executive branch's motive in seeking the transfer. If the transfer request was motivated by a desire or intent not to use funds for their original purpose, a proposed rescission was deemed appropriate. On the other hand, if it appeared that the executive branch still recognized a need to use the funds for their original purpose but was merely subordinating this need to a higher priority use in the transferee account, a deferral was the appropriate classification.

The fiscal year 1982 deferral and proposed transfer of funds appropriated for the SRC-I project prompted concern over the application of that test. The President had proposed in the previous fiscal year that SRC-I funds be rescinded. He also had proposed in his fiscal year 1982 budget that no funds be provided for the project. Even though these proposals taken in their totality suggested to us that the President had determined that funds not be spent on the SRC-I project, OMB classified the withholding as a deferral. Efforts by GAO to have OMB reclassify the deferral as a rescission, after we pointed out the significance of the President's earlier proposals, were unsuccessful.

Our concerns with classifying the withholding of SRC-I funds as a deferral were heightened by OMB's response to congressional actions on the President's transfer proposal. OMB continued to withhold the funds after Congress rejected various proposals to transfer these funds, and, therefore, the justification for the deferral (to withhold funds in order for Congress to act on the transfer proposal) appeared to have lost whatever validity it may have had. These concerns prompted us

in a December 21, 1981, letter to the Director of OMB, to set forth for prospective application the proposition that withholdings based on transfer requests should be classified as rescissions, rather than deferrals.

The Director of OMB recently stated in his April 6, 1982, letter to the Chairman of the Task Force on Enforcement, Credit, and Multiyear Budgeting, House Committee on the Budget, that the "motive" test correctly interprets the Impoundment Control Act and reflects legislative intent. We understand the "motive" test to require that withholdings incident to a transfer proposal be classified as rescissions in some cases and deferrals in others. We would view situations like that presented in the SRC-I case to require a rescission proposal, even under this "motive" test.

Neither the Impoundment Control Act nor its legislative history addresses the issue of classifying withholdings incident to a transfer proposal. The issue is a perplexing one, and there may be no ideal solution. Upon reexamination, we find that none of the tests we have considered for determining the proper classification of withholdings based on transfer requests is universally appropriate. The problem, of course, is that objectively assessing motive is difficult, thereby necessitating a high degree of reliance on our part as monitors of the impoundment process upon the good faith of the executive branch. Upon full reconsideration of the legal issues involved, and in the expectation of good faith application of the "motive" test for impoundments pursuant to transfer requests, we will not apply the position presented in our December 21 letter that all withholdings incident to a transfer proposal be treated as rescissions. We will have to examine each transfer request deferral that is submitted, and in situations where the withholding is based on a determination by the Executive never to use the funds for their original purpose, a rescission proposal will be required. On the other hand, where we find no evidence that the reserve of funds has been effected other than to facilitate a request to transfer the reserved funds to another account, we will not question the President's characterization of such a withholding as a deferral.

Where OMB determines a deferral to be the appropriate classification, we would encourage that a date be specified in the special message beyond which the funds involved would not be withheld pending transfer. This would alleviate one of our primary concerns with the SRC-I deferral, discussed previously. It would substantiate the determination that the executive

branch intended to use the funds in the original account, if the transfer were refused. Of course, in the case of fiscal year funds, this date could not extend beyond the time when the funds could reasonably be used in the fiscal year. A withholding beyond that date would require a rescission proposal under section 1012(a) of the Impoundment Control Act, 31 U.S.C. 1402(a).

We are satisfied that none of the three current deferrals (D82-16A, D82-229, D82-241) is based on a determination by the Executive never to use the funds in the original account. Accordingly, all three withholdings properly may be characterized as deferrals.

The funds for drainage of anthracite mines, covered by D82-16A, are used to match State funds which, according to the special message, are not likely to be made available this year. The deferred funds are no-year funds which the special message indicates will be made available in the original account in future years, if the transfer request is not approved. With regard to the deferral of funds for migration and refugee assistance (D82-241), an agency official advised us that based on the best current estimate of the refugee situation, the \$40 million proposed for transfer will not be needed this year. Thus, the failure to use the funds proposed for transfer in D82-16A and D82-241 is based on a lack of need for the funds in the original account due to factors outside the Executive's control, rather than a determination by the Executive never to use the funds in the original accounts.

The third deferral (D82-229) involves a request to transfer unanticipated prior-year balances from the CETA account to other Labor Department accounts. We have been advised that the Executive has not yet determined what disposition it will propose for the deferred funds if the transfer request is not approved. We also understand that the funds can be prudently used for CETA purposes through late September 1982. We will continue to monitor the status and disposition of the funds.

D82-242 Migration and Refugee Assistance  
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D82-230A United States bilateral science  
and technology agreements  
19X1151

B-205053

DEPARTMENT OF TRANSPORTATION

D82-243 Federal Railroad Administration  
Commuter Rail Transfer  
69X0747

We have reviewed the eleventh special message. 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.

A handwritten signature in cursive script that reads "Milton J. Fowler". The signature is written in black ink and is positioned above the printed title.

Acting Comptroller General  
of the United States