

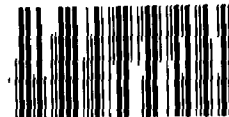
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Comptroller General
of the United States

Washington, D.C. 20548

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131112

September 22, 1986

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

This letter reports on the status of budget authority the deferral of which the Congress disapproved in the Urgent Supplemental Appropriation Act for fiscal year 1986, Pub. L. No. 99-349 (Urgent Supplemental). The enclosed list sets forth the activities for which the deferred funds were provided. With respect to one deferral, "Rehabilitation Loan Fund" (D86-50), some doubt exists, because of the operation of the Balanced Budget and Emergency Deficit Control Act, Pub. L. No. 99-177 (Balanced Budget Act), how much of the deferred budget authority the Urgent Supplemental requires the Office of Management and Budget (OMB) to release. All budget authority withheld pursuant to the other deferrals listed in the enclosure, which the Congress directed be made available for obligation, has been released by OMB for obligation.

Of the \$131,132,949 of deferred budget authority in the "Rehabilitation Loan Fund,"^{1/} OMB continues to withhold \$48,809,349, as an "unapportioned balance of revolving fund." OMB explains that obligation of this "unapportioned balance" of budget authority would violate the limitation imposed on loan obligations by the Balanced Budget Act through the sequestration order.

As part of the process of controlling the size of the federal deficit, the Balanced Budget Act requires the Directors of OMB and the Congressional Budget Office to estimate, by account, the budget base levels of total revenues and total outlays for each fiscal year. Pub. L. No. 99-177,

^{1/} On February 5, the President reported a deferral of \$135,534,949. That amount was subsequently reduced to \$131,132,949, reflecting the Balanced Budget Act sequestration and other releases.

§ 251(a)(2). The sequestration percentage is applied to the budget base, and outlays are reduced accordingly.

For the most part, the budget base for a particular account equals the amount appropriated to that account. Id., § 251(a)(6). For revolving funds, such as the Rehabilitation Loan Fund, however, there may be only an indefinite appropriation. The Department of Housing and Urban Development's fiscal year 1986 appropriations act provides that

"[d]uring 1986, collections, unexpended balances of prior appropriations (including any recoveries of prior reservations) and any other amounts in the [Rehabilitation Loan Fund] are available and may be used for commitments for loans and operating costs"

Pub. L. No. 99-160, 99 Stat. 909, 913 (1985).

The Balanced Budget Act conference agreement defines the budget base, in such instances, as the estimated loan level for the fiscal year, and directs that the sequestration percentage be applied to this amount. H.R. Rep. No. 433, 99th Cong., 1st Sess. 94-95 (1985). The conference agreement further stipulates that the post-sequestration loan level constitutes a de facto loan limitation. Id.

The sequestration order, effective March 1, 1986, S. Doc. 24, 99th Cong., 2d Sess. (February 1, 1986), established a budget base for the Rehabilitation Loan Fund of \$85 million, based on anticipated fiscal year 1986 loan obligations, and a sequester of \$3,655,000. In accordance with the conference agreement, the resulting \$81,345,000 became a limit on fiscal year 1986 loan obligations from the Fund. Because \$11 million had previously been made available for loan obligations, the sequestration order and its \$81,345,000 limitation on loan obligations, in effect, reduced the amount available for

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obligation in this account from the \$131,132,949 originally deferred to \$70,345,000.^{2/}

The Congress then disapproved the deferral in the Urgent Supplemental:

"The Congress disapproves the following proposed deferrals relating to the Department of Housing and Urban Development as set forth in the message of February 5, 1986, which was transmitted to the Congress by the President: . . . (5) D86-50 relating to Community Planning and Development, 'Rehabilitation loan fund'. The five disapprovals shall be effective upon enactment into law of this Act and the amounts of the proposed deferrals disapproved herein shall be made available for obligation." Emphasis added.

This language, enacted on July 2, refers only to the \$131,132,949 deferral which was reported on February 5; it does not appear to recognize the Balanced Budget Act limitation.

Enactment of the Urgent Supplemental thus created something of a dilemma. Release and obligation of the full amount deferred would have complied with the Urgent Supplemental, but would have resulted in outlays beyond the level which the Balanced Budget Act procedures were designed to achieve. OMB chose to give effect to the Balanced Budget Act and released \$70,345,000 for new loan obligations.

^{2/} The remainder of the \$131,132,949 was apportioned as follows: \$3,343,600 for loan servicing, which, according to OMB, reflects the Fund's total needs for loan servicing for the remainder of the fiscal year; \$8,635,000 for transfer to the "Salaries and Expense" account of the Department of Housing and Urban Development, as directed by the Urgent Supplemental; \$48,809,349 as an "unapportioned balance."

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A further complication followed shortly. On July 7, the Supreme Court struck down the Balanced Budget Act procedure, because of the power vested in the Comptroller General. Bowsher v. Synar, No. 85-1377. To assure the orderly working of the Act in the current fiscal year, during which many of the budget reductions required by the March sequestration order had already been executed, the Congress on July 31 passed and the President signed a law ratifying that order. Pub. L. No. 99-366, 100 Stat. 773.

We might have concluded, before July 31, that the Urgent Supplemental, as the most recent expression of the will of the Congress, required the apportionment of the full amount of the original deferral, although this proposition is not entirely free from doubt. However, the enactment on that date of the ratification would, by the same reasoning, support the view that the de facto limitation resulting from the Balanced Budget Act should be given effect, notwithstanding the earlier Urgent Supplemental.

As a result of these events, it is unclear whether the Congress intended continued compliance with the Balanced Budget Act limitation, and thus release of only \$70,345,000, or whether the Congress intended that the entire amount of the deferral as originally reported, \$131,132,949, be released for obligation without regard to that limitation. Under the circumstances, we do not believe that OMB's action should be treated as an unreported impoundment. We suggest that, if the Congress intends that the Administration obligate the \$48,809,349 which OMB has not apportioned, the Congress legislatively clarify its intent.

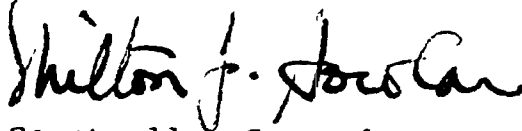
With regard to another deferral, "Energy supply, research and development" (D86-38), OMB, owing to a mathematical mistake, did not initially release for obligation the total amount disapproved. OMB corrected the error after we pointed it out.

Finally, while OMB has released the entire \$577,533,903 deferred in the Strategic Petroleum Reserve-Petroleum account (D86-10A), \$20,505,999 was apportioned for obligation this fiscal year, with the remaining \$557,027,904 apportioned for obligation in fiscal year 1987. At the current rate of expenditure, the Administration will fill the reserve at 50,000 barrels per day. Although this is greater than the



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minimum fill-rate of 35,000 barrels per day, set by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272, § 7102, 100 Stat. 82, 141), the Administration has the capacity to fill at 100,000 barrels per day.

for 
Comptroller General
of the United States

Enclosure

Deferrals Disapproved by Urgent Supplemental

Department of Agriculture

- D86-3. Timber Salvage Sales^{1/}
- D86-60. Rural Housing Insurance Fund

Department of Commerce

- D86-36. Economic development assistance programs

Department of Energy

- D86-6A. Fossil energy research and development^{2/}
- D86-9A. Energy conservation^{3/}
- D86-10A. Strategic Petroleum Reserve Petroleum Account
- D86-37. Strategic Petroleum Reserve^{4/}
- D86-38. Energy supply, research and development^{5/}

^{1/} The Congress disapproved \$3,153,000 of the deferral.

^{2/} The Congress disapproved all of the deferral but \$2,607,000.

^{3/} The Congress disapproved all of the deferral but \$6,556,000.

^{4/} \$156,759,000 of the deferred amount was released by OMB on April 11, 1986 pursuant to a GAO decision (B-220532, February 25, 1986).

^{5/} The Congress disapproved \$23,156,000 of the deferral.

Department of Housing and Urban Development

- D86-41. Annual contributions for assisted housing
- D86-45. Housing for the elderly or handicapped fund
- D86-46. Nonprofit sponsor assistance
- D86-48. Community development grants
- D86-50. Rehabilitation loan fund

Department of Transportation

- D86-53A. Maritime Administration,
Operations and training^{6/}

^{6/} \$8,500,000 of the deferred amount was released by OMB on April 8, 1986 pursuant to a GAO decision (B-220532, March 11, 1986).

