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

June 1, 1976

B-115398

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Speaker of the House
President of the Senate

On April 13, 1976, the President submitted to the Congress his 13th special message for fiscal year 1976 pursuant to the Impoundment Control Act of 1974. The revised deferral (D76-12B) submitted in the message increases by \$3.9 million the amount previously deferred for the Department of the Interior, Bureau of Land Management, Public Lands Development Roads and Trails program.

The Impoundment Control Act requires the Comptroller General to review each message and report to the House and Senate concerning the facts surrounding each action, including the probable effect thereof and, in the case of deferrals, to render a judgment on whether the deferral is in accordance with existing legal authority. The Comptroller General is required to notify the Congress if supplementary information revising earlier messages necessitates changes in his original reports.

Part of the budget authority proposed for deferral in this message was the subject of a rescission proposal (R76-40) submitted by the President in his 10th special message, dated January 23, 1976. The rescission bill (H.R. 11665) enacted on March 25, 1976, rescinded \$4.9 million of the \$8.8 million proposed for rescission in special message R76-40. For the remaining \$3.9 million, the Senate Committee on Appropriations in its report (S. Rep. No. 94-640) stated:

"The Committee recommends rescission of \$4,900,000 in contract authority for fiscal year 1976 provided by the Federal-Aid Highway Act, but disapproves the President's accompanying proposal to rescind another \$3,900,000 available for fiscal year 1977. The latter amount should be deferred pending congressional action on the Bureau's fiscal year 1977 road construction program.

"The Committee will extend consideration to a rescission of contract authority available for

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fiscal year 1977 after a final determination by the Congress of the Bureau's total road construction program for that year." (Emphasis added).

As noted, the instant deferral message increases the amount being deferred by \$3.9 million--a part of the budget authority proposed for rescission in rescission request R76-40 but rejected by the Congress--and is offered in response to the quoted excerpt from the Senate committee's report.

In our opinion, submitting a deferral of budget authority in this case after a rescission request has been rejected for the same budget authority violates section 1012(b) of the Impoundment Control Act which provides:

"(b) REQUIREMENT TO MAKE AVAILABLE FOR OBLIGATION.-- Any amount of budget authority proposed to be rescinded or that is to be reserved as set forth 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 or that is to be reserved."

We believe the Act does not provide authority in this particular case for the President to submit a deferral message following rejection by the Congress of a rescission proposal for the same funds. However, since the deferral was offered in response to the express wishes of the Senate Committee on Appropriations, in a report on a bill favorably acted upon by the Congress, and since we understand the deferred amount will be reconsidered by the Congress in its FY 1977 appropriations process, we plan no action pending further congressional actions.

Sincerely yours,

Acting Comptroller General
of the United States