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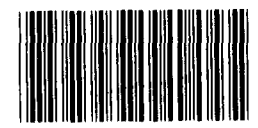
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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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B-205053

March 25, 1982



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

This letter reports a deferral of \$216,520,000 in budget authority provided for the Coast Guard's acquisition, construction, and improvement (AC&I) account which should have been, but was not, reported to the Congress pursuant to the provisions of the Impoundment Control Act, 31 U.S.C. 1401 et seq.

The Department of Transportation and Related Agencies Appropriation Act, 1982, Pub. L. No. 97-102, 95 Stat. 1443 (December 23, 1981), provides \$384 million for the Coast Guard's AC&I account. 1/ The Department of Defense Appropriation Act, Pub. L. No. 97-114, 95 Stat. 1574 (December 29, 1981), provided \$300 million more for the AC&I account. Thus the total amount of new budget authority provided to the Coast Guard for its AC&I account in fiscal year 1982 is \$684 million.

The Coast Guard plans to obligate approximately \$405 million from the account in fiscal year 1982, \$358 million in fiscal year 1983, and \$22.8 million in fiscal year 1984. These amounts include unobligated carryover balances in addition to the \$684 in new budget authority for 1982. The amount of anticipated 1983 obligations also includes the Administration's request of \$19.2 million in new 1983 budget authority for the AC&I account.

It is our view that a portion of the budget authority which is legally available for the AC&I account in 1982 but which the Coast Guard does not intend to obligate in fiscal year 1982 constitutes a deferral of budget authority within the meaning of section 1011 of the Impoundment Control Act, 31 U.S.C. 1401. Under section 1013 of the Act, 31 U.S.C. 1403, the deferral should have been reported to the Congress in a special message submitted by the President.

1/ This amount results from an initial appropriation of \$400 million, 95 Stat. 1443, which was then reduced by \$16 million, 95 Stat. 1464.

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CONGRESSIONAL FUNDING OF THE COAST  
GUARD AC&I ACCOUNT

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The President's budget submission to Congress requested \$375 million for the Coast Guard's AC&I account for fiscal year 1982. The House Committee on Merchant Marine and Fisheries recommended an authorization level of \$425 million. H. R. Rep. No. 97-62, at 13 (1981). The Senate Committee on Commerce, Science, and Transportation recommended an authorization level of \$537.2 million. S. Rep. No. 97-45 at 5, 10-21 (1981). In its report, the Senate Committee stated that:

"The Committee added \$162.2 million to the President's request in order to permit continuation of multi-year vessel, aircraft, and shore facility replacements and improvements while commencing a number of essential new programs." Id. at 10.

The report then identified 26 items which were added by the Committee above those requested by the President. The Coast Guard's fiscal year 1982 authorization act, Pub. L. No. 97-136, 95 Stat. 1705 (December 29, 1981), enacted the funding level recommended by the Senate Committee.

The House Committee on Appropriations recommended an appropriation of \$391 million. H. R. Rep. No. 97-186, 11 (1981). The Senate Committee on Appropriations recommended in its report, S. Rep. No. 97-253, 65 (1981), an appropriation of \$537 million. In the Department of Transportation Appropriation Act the Congress appropriated \$384 million, to remain available through fiscal year 1986.

However, in the DOD Appropriation Act, Pub. L. No. 97-114, 95 Stat. 1565, 1574 (December 29, 1981), the Congress appropriated an additional \$300 million for the Coast Guard's AC&I account. <sup>2/</sup> This amount was added by the Senate Committee on Appropriations. S. Rep. No. 97-273, 81-83 (1981). In its report, the Senate Committee on Appropriations stated:

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<sup>2/</sup> This appropriation was made under the heading "Shipbuilding and Conversion, Navy," for allocation to the Coast Guard's AC&I account.

The Committee recommends an appropriation of \$300 million to supplement the capital investment program of the U.S. Coast Guard. There was no budget estimate for this initiative.

"This funding is established with a provision for its immediate transfer to the U.S. Coast Guard, thus insuring Coast Guard participation in the expansion and modernization of military aircraft, vessels, and equipment. \* \* \*"  
Id. at 82.

The Committee went on to state that while this action resulted in an appropriation level that was still less than the amount initially requested by the Coast Guard in the fiscal year 1982 budget formulation process, the Committee recommendation would help correct serious deficiencies identified by the Committee in the Coast Guard's capital program.

#### COAST GUARD SPENDING PLANS

The Coast Guard has devised a plan to utilize the funds already provided by Congress for the AC&I account over fiscal years 1982, 1983, and 1984. The Coast Guard plans to obligate approximately \$405 million in fiscal year 1982 of the total amount of budget authority available to it. It does not expect to obligate approximately \$306 million of the 1982 budget authority now available to it until fiscal year 1983.

We reviewed various documents and interviewed cognizant Coast Guard officials in order to ascertain whether the Coast Guard's plans for use of the funds now available to it in the AC&I account involve any impoundment actions. Our review focused on the \$306 million of the fiscal year 1982 budget authority that the Coast Guard indicates will not be obligated until fiscal year 1983.

The information available to us shows that this \$306 million in anticipated obligations falls into two basic categories. The first category consists of amounts that are being applied to fiscal year 1982 requirements, but where it does not appear that obligations actually will be incurred during fiscal year 1982 for various program-related reasons. An example is the Coast Guard Cutter GLACIER maintenance project, for which the Coast Guard anticipates \$6.5 million in fiscal year 1983 obligations. The Coast Guard expects to advertise the bid package

in August of 1982, but does not expect to make an award until November of this year. Based on our preliminary analysis of information provided us by the Coast Guard, we are satisfied that the funds made available for this project, and the other projects in this category, are not being impounded. To the extent that obligations will not be incurred for these projects during fiscal year 1982, this results from normal programmatic considerations and does not involve formal or de facto impoundments.

However, we also have identified a large portion of the funding now available for fiscal year 1982 which the Coast Guard has not attempted to obligate. This category consists of a total of \$216,520,000 in funds programmed for the Medium Endurance Cutter (WMEC) acquisition, the Medium Range Search (HU-25A) Aircraft, and the Short Range Recovery Helicopter procurement. A detailed breakdown of the Coast Guard's plans for these funds is presented in the enclosure to this report. In summary, while funds are being obligated for these projects in 1982, additional funds programmed for the projects are being held for application to (1) 1983 contract actions related to the projects such as spare parts, retrofitting and acquisition of additional items, and (2) 1983 cost escalation under the contracts. We understand that it is the Coast Guard's normal practice to fund these types of costs from appropriations made in the year the costs are incurred. Thus a portion of the current year funding normally would not be held for application to the subsequent year's contract actions or escalation. Further, we understand from our discussions with Coast Guard officials that these funds are being held for application to 1983 requirements in view of the Administration's request of only \$19.2 million in new 1983 budget authority for the AC&I account.

#### COAST GUARD DEFERRAL OF FUNDS

We conclude that the \$216,520,000 amount of the AC&I account described above has been subjected to a deferral of budget authority within the application of the Impoundment Control Act. Since the executive branch has not reported this deferral, we are now reporting it to the Congress in accordance with section 1015(a) of the Act, 31 U.S.C. 1405(a).

Section 1011(1) of the Impoundment Control Act, 31 U.S.C. 1401(1), defines "deferral of budget authority" to include--

"(A) withholding or delaying the obligation or expenditure of budget authority (whether by establishing reserves or otherwise) provided for projects or activities; or

"(B) any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority \* \* \*."

Based on our review, it is clear that the Coast Guard has made a conscious decision to withhold the application of the \$216,520,000 in order to offset fiscal year 1983 requirements that cannot be met under the Administration's \$19.2 million budget request for 1983. This is not an illegal action on the part of the Coast Guard, and it may be prudent from the Coast Guard's viewpoint. Nevertheless, this action falls squarely within the definition of a deferral of budget authority under the Impoundment Control Act.

We note that the Coast Guard's AC&I account has been the subject of previous deferrals reported by the executive branch under the Impoundment Control Act when the executive branch sought to delay the application of multi-year funding from one year to the next. One recent instance was D80-59, reported in the President's seventh special message for fiscal year 1980 (April 16, 1980), which deferred \$33.8 million in the AC&I account. This deferral was based on reducing the number of Coast Guard vessels to be procured during fiscal year 1980 under "Project 1201" from five to four. Procurement of the remaining vessel was postponed until the succeeding fiscal year in order to reduce fiscal year 1981 outlays. 3/

The deferral in the present case has not been accomplished through a formal reserve of funds at the Office of Management and Budget or at any other executive branch level. Nevertheless, the effect is the same as if a formal reserve had been established. As discussed above, the fundamental effect of the Coast Guard's plan for the \$216,520,000 is to defer the application of these funds made available for use in 1982 to meet 1983 requirements.

#### APPLICATION OF THE IMPOUNDMENT CONTROL ACT

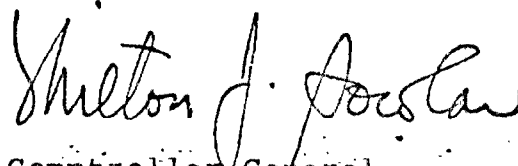
Section 406 of the DOT Appropriation Act, 95 Stat. 1466, alters the normal operation of the Impoundment Control Act for purposes of the accounts specified in section 406, including the AC&I account. Section 406 states in pertinent part:

3/ Also see deferrals D78-21 and D77-23, which likewise involve postponing the use of multi-year budget authority.

"Notwithstanding any other provision of law, or of this Act, any proposal for deferral of budget authority under section 1013 of the Impoundment Control Act of 1974 (31 U.S.C. 1403) with respect to budget authority for expenses related to \* \* \* Acquisition, construction, and improvements \* \* \* shall, upon transmittal to the Congress, be referred to the House and Senate Committees on Appropriations and any amount of budget authority proposed to be deferred therein shall be made available for obligation unless, within a 45-day period which begins on the date of transmittal and which is equivalent to that described in section 1011 (3) and (5) of the Impoundment Control Act of 1974 (31 U.S.C. 1401 (3) and (5)), the Congress has completed action on a bill approving all or part of the proposed deferral."

Thus section 406, in effect, applies the procedural aspects of the Impoundment Control Act normally applicable to proposed rescissions to any deferrals submitted for the specified accounts.

Under section 1015(a) of the Impoundment Control Act, 31 U.S.C. 1405(a), a special impoundment message from the Comptroller General has the same effect as if the message had been submitted by the President. Accordingly, by application of section 406 of the DOT Appropriation Act, the 45-day period begins on the date this message is transmitted to the Congress. If Congress fails to complete action on a bill approving all or part of this deferral within the 45-day period, the Coast Guard then will be required to make the funds available for obligation at that time. We estimate the 45-day period to expire on May 27, 1982.

*for*   
Comptroller General  
of the United States

Enclosure

FISCAL YEAR 1982 FUNDS  
DEFERRED IN COAST GUARD ACQUISITION  
CONSTRUCTION AND IMPROVEMENT ACCOUNT

<u>PROJECT</u>	<u>AMOUNT PROGRAMMED FOR PROJECT</u>	<u>AMOUNT DEFERRED FOR 1983 REQUIREMENTS</u>	<u>BREAKDOWN OF AMOUNT DEFERRED</u>
Medium Endurance Cutter (WMEC)	\$270,030,000	\$ 99,700,000	\$24,400,000 - escalation 75,300,000 - contract- related costs (spare parts, outfit items, potential for change orders, retrofits)
Medium Range Search (HU-25A) Aircraft	44,430,000	9,600,000	4,448,000 - escalation 5,027,000 - contract- related costs (spare parts, support equip- ment) 125,000-administration
Short Range Recovery Helicopter	214,340,000	107,220,000	22,342,000 - escalation 37,022,000 - contract- related costs (spare parts, provisioning) 46,400,000 - 12/1/82 option for procurement of 21 additional heli- copters 253,000-administration 1,203,000 - training support
		<u>\$216,520,000</u>	
	TOTAL		