



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

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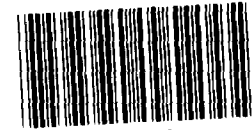
July 30, 1981

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

On June 19, 1981, the [president's eleventh special message for fiscal year 1981] was transmitted to the Congress pursuant to the Impoundment Control Act of 1974. The special message proposes six rescissions of budget authority totalling \$321.0 million, 13 new deferrals totalling \$220.1 million, and revisions to five previously reported deferrals totalling \$78.1 million, as follows:

DEPARTMENT OF AGRICULTURE

R81-160 Forest Service
Construction and Land Acquisition
12X1103



DEPARTMENT OF EDUCATION

R81-161 Office of Postsecondary Education
Student Financial Assistance
911/20200

This proposal concerns the direct student loan program established under Title IV, Part E of the Higher Education Act, 20 U.S.C. §1087aa et seq. The statute provides for Federal capital contributions to student loan funds maintained by institutions of higher education and for reimbursement to those institutions for loans canceled pursuant to 20 U.S.C. §1087ee. Section 1087ee(b) prohibits the use for loan cancellations of funds appropriated for capital contributions.

The special message is unclear as to which funds are being proposed for rescission. The justification section discusses cancellation of student loans under 20 U.S.C. §1087ee, while the estimated effects section addresses the effect of the proposed rescission on the Federal capital contributions to the direct loan funds. OMB officials have advised us that the ultimate intent of the proposal is to eliminate loan cancellations as a budgetary line item without affecting current loan cancellation agreements, by using \$14.8 million of the funds provided for Federal capital contributions to reimburse cancellations under those agreements. The proposed rescission thus contemplates two consequences: the amount provided for loan

cancellations in fiscal year 1981 (\$14.8 million) will be rescinded, and then an equal amount from Federal capital contributions will be applied to loan cancellations. The message estimates that the substitution of funds would decrease the number of student loans available in 1981-1982 from 800,000 to 780,000.

An OMB official advised us that \$14.8 million for loan cancellation currently is being withheld. We examined the statutory scheme implementing the loan program and conclude that, pending Congressional consideration of the rescission proposal, the Executive Branch may not use the Impoundment Control Act to withhold the \$14.8 million earmarked for loan cancellations.

Section 1001 of the Impoundment Control Act, 31 U.S.C. §1400, referred to as the "disclaimer section," provides in part:

"Nothing contained in this Act, or in any amendments made by this Act, shall be construed as--

* * * * *

"(4) superseding any provision of law which requires the obligation of budget authority or the making of outlays thereunder."

Cancellation of student loans is authorized by section 465(b) of the Higher Education Act, 20 U.S.C. §1087ee(b), which provides:

"The Secretary shall pay to each institution for each fiscal year an amount equal to the aggregate of the amounts of loans from its student loan fund which are canceled pursuant to this section for such year, minus an amount equal to the aggregate of the amounts of any such loans so canceled which were made from Federal capital contributions to its student loan fund provided by the Secretary under section 468 [20 U.S.C. §1087hh]. None of the funds appropriated pursuant to section 461(b) [20 U.S.C. 1087aa(b)] shall be available for payments pursuant to this subsection." (Emphasis added.)

It is our view that section 465(b) mandates the reimbursement of canceled loans. Accordingly, we have concluded that, under the disclaimer section of the Impoundment Control Act, cited above, the funds appropriated for loan cancellation may not be withheld pending Congressional consideration of the proposal.

The rescission proposal purports to observe the requirements of section 465(b) with regard to loan cancellation agreements now in effect by paying for canceled loans with funds appropriated for Federal capital contributions. The last sentence of section 465(b), however, specifically prohibits using those funds to reimburse for canceled loans. Moreover, such a substitution in effect would result in withholding funds which otherwise would be available for direct loans. We examined the statutory provisions establishing the direct student loan program, however, and conclude that those funds also may not be withheld before Congress acts on the rescission proposal.

The statutory scheme for direct student loans in Title IV, Part E of the Higher Education Act, provides for mandatory apportionment of all funds appropriated under the Act. Specifically, section 461(c), 20 U.S.C. §1087aa(c), provides that all appropriations shall be available for apportionment and payment of Federal capital contributions. Section 462(a), 20 U.S.C. §1087bb(a), requires the Secretary of Education to apportion all the appropriated funds among the States according to the formula specified in the statute. Moreover, section 462(b)(2), 20 U.S.C. §1087bb(b)(2), directs payment to eligible institutions of higher education as follows:

"The Secretary shall pay to each applicant under this subsection which has an agreement with him under section 463 [20 U.S.C. §1087cc], from the amount apportioned to the State in which it is located, the amount requested in such application."
(Emphasis added.)

In our view, these statutory provisions require that all appropriations be obligated upon requests meeting the statutory requirements and vest no discretion in the Secretary to withhold funds once the statutory criteria are met. Accordingly, we regard sections 461 and 462 as falling within the fourth disclaimer, cited above, and we conclude that these funds may not be withheld pending consideration by Congress of the rescission proposal.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

R81-162 Human Development Services
Grants to States for Social and Child
Welfare Services
75X1634

This rescission proposal would reduce the funds available to States receiving entitlements under Title XX of the Social Security Act, as amended. The special message states that, if enacted, this rescission would require revised allotments for the States. Five States would have to return Federal funds because the funds already received would have been in excess of their revised allotments. An OMB official advised us that \$100 million currently is being withheld.

We examined the statutory scheme established in Title XX and conclude that, in accordance with the disclaimer section of the Impoundment Control Act, discussed above, the Executive Branch may not use the Impoundment Control Act to withhold these funds pending Congressional consideration of the rescission proposal.

Section 2002(a)(1) of Title XX of the Social Security Act, 42 U.S.C. §1397a(a)(1), provides in part:

"From the sums appropriated therefor, the Secretary shall * * * pay to each State, for each quarter, an amount equal to 100 per centum of the expenditures during that quarter for child day care services * * * to the extent permitted by paragraph (17), 90 per centum of the total expenditures during that quarter for the provision of family planning services and 75 per centum of the total expenditures during that quarter for the provision of other services [specified in this section] * * *." (Emphasis added.)

In addition, section 2002(b)(1)-(3), 42 U.S.C. §1397a(b)(1)-(3), requires the Secretary to make quarterly estimates and then payments of the States' entitlements. The section provides that the funds are deemed obligated upon making of the estimates.

Section 2002 of Title XX directs the Secretary to make payments to States out of the funds appropriated under Title XX for the social services specified in the statute. See H.R. Rep. No. 93-1490, 13 (1974). We view the language of Title XX as mandatory and, therefore, as vesting no discretion in the Secretary over the payment of State entitlements. Accordingly, we regard section 2002 as falling within the fourth disclaimer of the Impoundment Control Act, cited above, and we conclude that the Act may not be used to withhold the funds pending Congressional consideration of the rescission proposal.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

R81-163 Community Planning and Development
Urban Development Action Grants
869/10170
860/20170
861/30170

The proposed rescission bill accompanying the special message provides for the rescission of any amounts recovered from obligations made prior to October 1, 1980, which are or become available. This amount is estimated in the special message to be \$130 million. HUD officials told us that this estimate was based on figures submitted to OMB in April 1981, and reflected upper-limit estimates for recoveries of prior year obligations. An official at HUD indicated that the actual amount available for rescission probably will be more than \$48 million, but substantially less than the \$130 million estimate in the special message. The actual amounts recovered will not be known until the end of fiscal year 1981. In addition, the future year outlay savings projected in the rescission proposal will change each year in proportion to the total amount actually recovered.

R81-164 Community Planning and Development
Community Development Grants
869/10162
860/20162
861/30162

The proposed rescission bill accompanying the special message provides for the rescission of any amounts recovered from obligations made under the Community Development Block Grant program prior to October 1, 1980, which are or become available. This amount is estimated in the special message to be \$50 million. HUD officials told us that this estimate was based on figures submitted to OMB in April 1981, and reflected upper-limit estimates

for those recoveries. Agency officials now estimate that funds actually recovered and available for rescission probably will be no more than \$15 million. The actual amounts recovered will not be known until the end of fiscal year 1981 and the future year outlay savings projected in the message will change each year in proportion to the total amount actually recovered.

ENVIRONMENTAL PROTECTION AGENCY

R81-165 Salaries and Expenses
6810200

Based on the current legislative calendar, the 45-day period of continuous session during which the funds may be withheld pending congressional consideration of a rescission bill will end on September 23, 1981.

U.S. DEPARTMENT OF AGRICULTURE

D81-107 Foreign Assistance Programs
Expenses, Public Law 480, Foreign
Assistance Programs, Agriculture
12X2274

The special message states that \$8 million of the \$28 million deferral is attributed to savings resulting from changes in some country allocations. We have been informed that the \$8 million allocation to Bolivia has been deleted from the program. OMB officials told us that they identified a total of \$13 million in savings: the \$8 million previously allocated to Bolivia; and \$5 million from other sources which will go into a contingency fund. There may not be a direct dollar-for-dollar correlation between the amount deferred and the amount saved by the removal of Bolivia from the program. We were told that if Bolivia fulfills certain program requirements and it is returned to the program, funds to Bolivia could come from the contingency fund, rather than from a reduction in the deferral.

D81-108 Soil Conservation Service
Watershed and Flood
Prevention Operations
12X1072

D81-1A Forest Service
Timber Salvage Sales
12X5204

The timber salvage sales funds have been the subject of deferral proposals in fiscal years 1978-1981. Deferral proposal D81-1A reflects an increase of \$236,739 in the amount previously proposed for deferral in the President's first special message for fiscal year 1981 and is attributed to the fact that the actual unobligated balance carried over in fiscal year 1981 was greater than originally estimated.

We stated in our report on the President's first special message for fiscal year 1981 that section 14(h) of the National Forest Management Act of 1976, Pub. L. 94-588, 16 U.S.C. §472a(h), provides that deposits in the timber salvage sales fund are to remain available until expended to cover the cost of accomplishing the purposes for which deposited. However, section 14(h) also provides that sums found to be in excess of the cost of accomplishing the statutory purposes shall be transferred to miscellaneous receipts in the United States Treasury. We commented that some of the funds currently on deposit may be in excess of what is needed, in view of the fact that deferrals have been proposed in each of the last 4 years and total budgetary resources available also have increased.

Although no funds have yet been returned to the Treasury, Forest Service Manual 2435.4, dated October 15, 1979, provides that all salvage sale funds in excess of 150 percent of the latest 3-year average of actual costs will be returned to the Treasury beginning in fiscal year 1982. Forest Service officials have informally advised us that the latest deferral proposal represents a technical adjustment only and does not signify a retreat from their plan to transfer funds to the Treasury beginning in fiscal year 1982.

The return of funds was delayed until 1982 because the Forest Service felt it needed time to develop the timber sales program and to account for the time between various components of the program. As the agency begins implementing its plan under section 14(h), we would expect that the need for deferral of funds in this account will decrease.

DEPARTMENT OF DEFENSE--CIVIL

D81-81A	Corps of Engineers--Civil Construction, general 96X3122
D81-109	Corps of Engineers--Civil Operation and Maintenance, general 96X3123

D81-110 Corps of Engineers--Civil
Flood control, Mississippi River
and Tributaries
96X3112

DEPARTMENT OF HEALTH AND HUMAN SERVICES

D81-111 Human Development Services
Grants to States for Social and Child
Welfare Services
75X1634

D81-112 Office of Refugee Resettlement
Refugee Assistance
751/20473

There appears to be some confusion over the nature of this deferral involving funds that expire on September 30, 1982. The deferral is identified in the special message as a part-of-year deferral, which suggests that the funds will be released during the approximately 2 months remaining in this fiscal year. However, agency officials told us that OMB budget examiners informed them that these funds would not become available until fiscal year 1982. This confusion apparently stems from OMB's plan, stated in the outlay effects of the special message, to shift outlays to fiscal year 1982. The agency understood that the deferral would shift, not only outlays, but also the availability of the funds into the next fiscal year. OMB has assured us that it will contact the agency to resolve this confusion.

The special message states that the deferral will merely shorten the time between when refugee services are contracted for and when they are provided. The estimated effects section states that the deferral should not cause a significant interruption in the provision of services to refugees in most States. Agency officials told us that the program will suffer from the delay, and that some States indicated that disruptions in funding may force them to reduce their participation in the program. The effect alleged by the agency stems, in part, from the fact that some States operate on a fiscal year different from that of the Federal Government. In States where the fiscal year has or is about to end, existing contracts providing for refugee assistance will expire before October 1, 1981. This deferral will reduce the funds available to some of these States for new contracts. Consequently, some of these States will not be able to provide various types of social services assistance to refugees until additional funds become available. An official in

the Office of Refugee Resettlement told us that refugee services may be seriously affected in California, which was to receive \$24 million of the \$35 million to be deferred. Additionally, Massachusetts, Florida, Pennsylvania and other States also may be affected by the deferral of these funds.

The special message states that funds may not be adequate to meet State needs for fiscal year 1981 and that the deferral is being proposed pending the completion of a study of this situation. Agency officials told us that they are preparing a request to OMB for reapportionment and release of the deferred funds because a need for these funds can be demonstrated.

DEPARTMENT OF THE INTERIOR

- D81-113 Bureau of Land Management
Acquisition, Construction, and Maintenance
14X1110
- D81-71A Bureau of Land Management
Oregon and California Grant Lands
14X5136
- D81-114 Bureau of Reclamation
Construction Program
14X0684
- D81-115 Bureau of Reclamation
General Investigations
14X5060
- D81-116 National Park Service
Construction
14X1039
- D81-117 U.S. Geological Survey
Surveys, Investigations and research
1410804
- D81-15A Bureau of Mines
Drainage of anthracite mines
14X0956

A deferral of \$764,000 originally was reported to the Congress in the President's first special message for fiscal year 1981 on October 1, 1980. The current special message states that the deferral was increased in January 1981 to \$1,728,080.

In the third quarter, \$737,377 was released and apportioned. This amount is identified in the special message as a part-of-year deferral. Due to this release of \$737,377, D81-15A now represents an entire year deferral of \$990,703.

The justification section states that the January 1981 increase in the deferral was not reported to Congress because of administrative oversight. Agency officials acknowledge that this account has not been closely scrutinized because program activity has been low. The low level of activity is due, in part, to overlapping public health and safety provisions in other Federal programs and restrictions tied to matching grants for mine drainage projects. In addition, we have been advised that rescission of the amount deferred may be requested because Pennsylvania officials have said they do not intend to make State funds available to match the remaining Federal funds.

DEPARTMENT OF STATE

D81-37A United States Emergency Refugee and
Migration Assistance Fund, Executive
11X0040

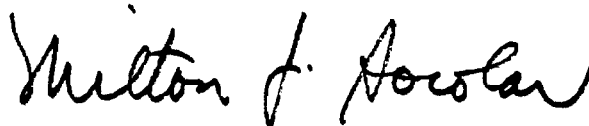
NATIONAL ENDOWMENT FOR THE ARTS

D81-118 Salaries and Expenses
Matching Grants
5910100
591/20100

NATIONAL ENDOWMENT FOR THE HUMANITIES

D81-119 Salaries and Expenses
Matching Grants
5910200
591/20200

We have reviewed the eleventh special message. Except as noted above, we have identified no additional information that would be useful to the Congress in its consideration of the President's proposals and we believe that the proposed deferrals are in accordance with existing authority.



Acting Comptroller General
of the United States