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STATEMENT OF
ROBERT F. KELLER, ASSISTANT COMPTROLLER GENERAL OF THE UNITED STATES
BEFORE THE
SUBCOMMITTEE ON SEPARATION OF POWERS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

Mr. Chairman and Members of the Subcommittee:

We are pleased to appear before you today to discuss the functions of the General Accounting Office insofar as they relate to the withholding of funds by the Executive Branch after congressional action making funds available for expenditure.

Executive impounding of funds has a number of facets both factually and legally. It may occur at various levels within the Executive Branch of Government and involve problems of statutory and constitutional construction and policy considerations. It is a problem that has become quite significant within the past thirty years. This topic has been the subject of extensive writings. One recent example is by Senator Church, in the Stanford Law Review, entitled: "Impounding of Appropriated Funds: The Decline of Congressional Control Over Executive Discretion," 22 Stan. L. Rev. 1240-1253 (1970).

Previous witnesses before your Committee have no doubt mentioned the complex issues involved, such as:

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- Are appropriations made by the Congress to be considered as a mandate to spend the full amount or are they a ceiling on amounts to be expended?
- Is a deferral of expenditure for a project or activity a frustration by the Executive Branch of the action of Congress if the project or activity is prosecuted at a later point in time?
- The authority in the "Anti-deficiency Act" for the President, acting through the Office of Management and Budget, in making apportionments to establish reserves to provide for contingencies and for savings when made possible by changes in requirements, greater efficiency of operations, or other developments subsequent to the date appropriations are made available.
- The responsibility of the President to see that all laws are faithfully executed which requires that spending authorities be balanced against expenditure limitations which may be enacted by the Congress as well as against public debt limitations.

These are difficult problems and can only be judged by the considerations, both factual and legal, in the individual case.

The General Accounting Office is not in a position to resolve these issues and any opinion which ^{we} might have in an individual case would

for all practical purposes be advisory only. Our enforcement power is that of disallowance of expenditures. We have no power to direct an expenditure except in the limited area of settlement of claims.

The General Accounting Office was established by the Budget and Accounting Act, 1921, to examine the manner in which Government agencies discharge their financial responsibilities with regard to public funds appropriated or otherwise made available to them by the Congress, and to make recommendations looking to greater economy and efficiency in public expenditures.

Our present audit authority with respect to the Government as a whole is derived from two sources. Section 321 of the Budget and Accounting Act, 1921, provides in part "The Comptroller General shall investigate, at the seat of Government or elsewhere, all matters relating to the receipt, disbursement, and application of public funds." Section 111(d) of the Accounting and Auditing Act of 1950 provides, "The auditing for the Government, conducted by the Comptroller General of the United States, an agent of the Congress, be directed at determining the extent to which accounting and related financial reporting fulfill the purposes specified, financial transactions have been consummated in accordance with laws, regulations, or other legal requirements, and adequate internal financial control over operations is exercised and afford an effective basis for the settlement of accounts of accountable officers."

In carrying out our work with respect to an agency activity, or program, the following matters are examined:

- Whether the agency is carrying out only those activities or programs authorized by the Congress and is conducting them in the manner contemplated, and to an increasing degree, whether they are accomplishing the objectives intended.
- Whether the programs and activities are conducted and expenditures are made in an efficient and economical manner and in compliance with the requirements of applicable laws and regulations.
- Whether the resources of the agency, including funds, property, and personnel, are adequately controlled and utilized in an effective, efficient and economical manner.
- Whether all revenues and receipts arising from the operations are collected and properly accounted for.
- Whether reports by the agency to the Congress and the central control agencies disclose properly the information required for the purposes of the reports.

In summary, the thrust of our audits and reviews relates to the legality of activities and programs; the efficiency and effectiveness with which they are carried out; and whether the funds utilized have

been properly accounted for. We have issued numerous reports to the Congress on these matters, but we have not geared our audits and reviews to emphasize whether agencies should have expended fully the funds that were made available for their use, nor have we challenged actions by the Executive Branch with respect to impounding or withholding of appropriations. It may be that in particular cases we have reported that a program or activity was not completely carried out as a result of fund reservation.

Senator Church in his law review article suggested as one possible solution to the problem of executive impounding of appropriated funds that "The duties of the General Accounting Office, an arm of the legislative branch, might be augmented to include supervision of expenditures in order to identify when impounding has occurred." We have some question, however, as to whether this would be the most productive use of our staff resources when direct reporting to the Congress by the Office of Management and Budget whenever funds are reserved, also suggested by Senator Church, would seem to be a more effective means for Congress to obtain the information it requires. However, should the Congress decide that our Office can assist in the solution we will be glad to cooperate fully.

This concludes my statement, Mr. Chairman.