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GAO has had to report comparatively few unreported impoundments, and the overall quality of impoundment reports has improved since the first Presidential "special message" was sent to the Congress. Findings/Conclusions: Generally, the President has complied with the language and spirit of the Impoundment Control Act, although some impoundments either were not reported to the Congress or were reported so late that the purpose of the act was frustrated. During GAO's 2-year analysis, most impoundments concerned domestic programs in housing, environmental, and community development and the closely related areas of highway and road development. Defense impoundments ranked third. Budget authority for science, research, and development activities was impounded least often. Proposed rescissions--permanent withdrawals of budget authority--have been rejected by the Congress more often than proposed deferrals of budget authority. Recommendations: Certain provisions of the the Impoundment Control Act should be amended in order to define key terms, give the Congress more flexibility with respect to disapproving proposed deferrals of budget authority, and clarify certain aspects of its operation. The Director of the Office of Management and Budget should expedite the processing of impoundment reports; indicate the proposed duration of partial-year deferrals; indicate whether there have been previous impoundments proposed for each program in which withholdings currently are proposed; indicate whether congressional "add-ons" are the subject of impoundments; and identify executive branch officials who are familiar with each proposed impoundment. (Author/SC)

REPORT TO THE CONGRESS

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

Review Of The Impoundment Control Act Of 1974 After 2 Years

On balance, GAO feels that the President has done a good job of implementing the Impoundment Control Act. GAO has had to report comparatively few unreported impoundments, and the overall quality of impoundment reports has improved since the first "special message" was sent to the Congress. Nevertheless, further improvements can be made in the quality of impoundment reports. Recommendations to amend the Impoundment Control Act are included.

OGC-77-20

JUNE 3, 1977

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

B-115398

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

The Impoundment Control Act of 1974 was enacted in response to impoundments by the executive branch. This report discusses the operation of the act during its first 2 years and our recommendations to improve the statute.

We made our review pursuant to the Impoundment Control Act (31 U.S.C. 1400); the Budget and Accounting Act, 1921 (31 U.S.C. 53); and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of this report are being sent to the Director, Office of Management and Budget; interested congressional committees; Members of Congress; heads of executive departments; and other interested parties.

Elmer B. Staats

Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT TO THE CONGRESS

REVIEW OF THE IMPOUNDMENT CONTROL ACT OF 1974 AFTER 2 YEARS
Office of Management and Budget

DIGEST

The Impoundment Control Act requires that all reductions of budgetary outlays below levels set by the Congress be reported to the Congress and provides ways for the Congress to express its approval or disapproval. Impoundments not approved by the Congress must be discontinued. (See ch. 1.)

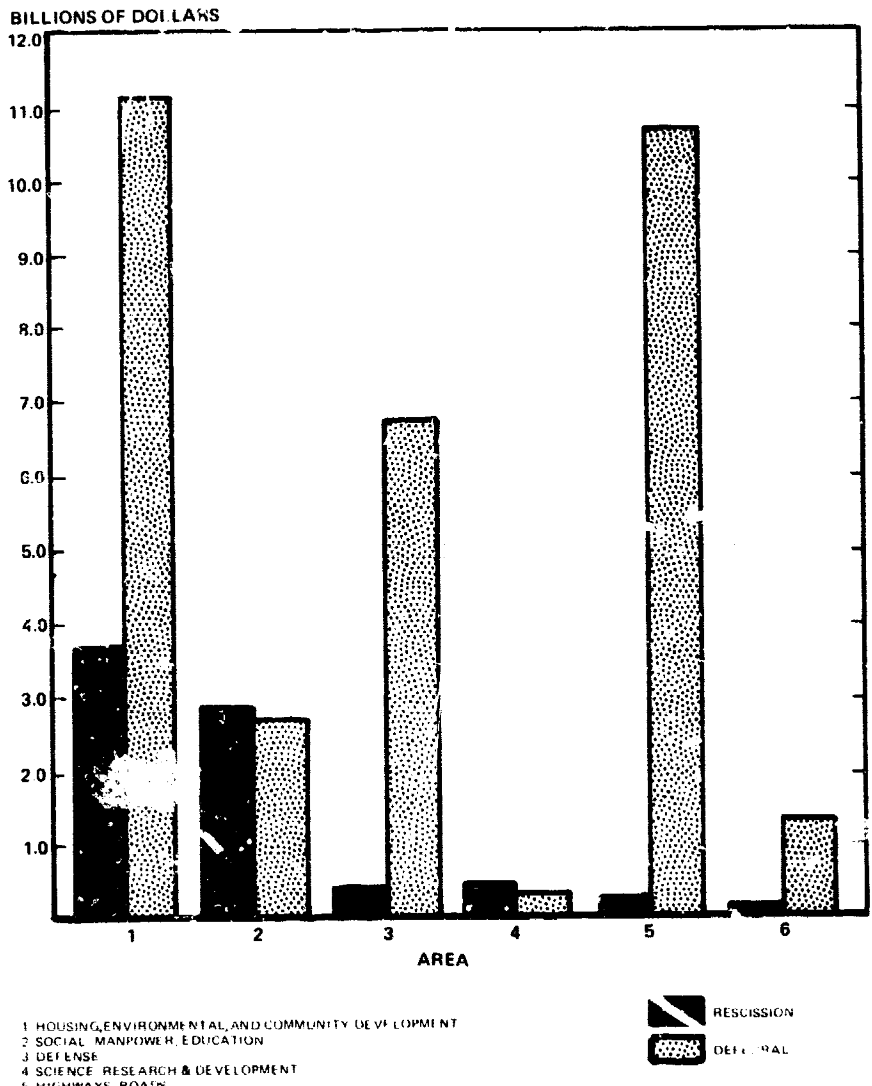
Generally, the President has complied with the language and spirit of the act, enacted in 1974 in response to a sharp increase in presidential impoundments. However, some impoundments either were not reported to the Congress or were reported so late that the purpose of the act was frustrated. (See p. 4.)

This report includes a number of recommendations to the Office of Management and Budget to improve the timeliness and the content of executive branch impoundment reports to the Congress. (See ch. 2.)

Under the act, the Comptroller General is authorized to bring suit to compel the release of impounded budget authority. Using this authority, GAO sued to compel the Department of Housing and Urban Development to release funds for the section 235 homeownership program. This case ended when the Department of Housing and Urban Development released the funds before the lawsuit was decided on its merits.

During GAO's 2-year analysis, most impoundments concerned domestic programs in housing, environmental, and community development and the closely related areas of highway and road development. Defense impoundments ranked third. Budget authority for science, research, and development activities was impounded least often. The following graph depicts how much budget authority was impounded during fiscal years 1975 and 1976.

AMOUNTS IMPOUNDED DURING FISCAL YEARS 1975 AND 1976



Under the act, proposed rescissions--permanent withdrawals of budget authority--require affirmative congressional action within 45 days of continuous congressional session to become effective. Lacking affirmative action by the Congress, the impounded funds involved must be made available for obligation. Deferrals--temporary impoundments--stand unless either House, by simple (impoundment) resolution, rejects a proposed withholding. Proposed rescissions have been rejected by the Congress more often than proposed deferrals.

GAO's analysis points out the desirability of amending certain provisions of the act in order to define key terms, give the Congress more flexibility with respect to disapproving proposed deferrals of budget authority, and clarify certain aspects of its operation. Specific legislative language for effecting the changes recommended is included in the report. (See ch. 4.)

The Office of Management and Budget agreed with some of GAO's recommendations concerning the content of executive branch impoundment reports and disagreed with others. (See ch. 2 for details.) The Office did not comment upon GAO's legislative proposals to amend the act. (See app. VIII.)

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ABBREVIATIONS

Abbreviation	Meaning
act	Impoundment Control Act of 1974, 31 U.S.C. 1400
Admin.	Administration
AEC	Atomic Energy Commission
Agriculture	Department of Agriculture
AMTRAK	National Railroad Passenger Corporation
BIA	Bureau of Indian Affairs
Bldgs.	Buildings
Comm.	Commission
Commerce	Department of Commerce
Com. Pln. & Dev.	Community Planning and Development
Conserv.	Conservation
Const.	Construction
DOD	Department of Defense
DOL	Department of Labor
DOT	Department of Transportation
EDA	Economic Development Administration
EPA	Environmental Protection Agency
ERDA	Energy Research and Development Administration
FAA	Federal Aviation Administration
FEA	Federal Energy Administration
FmHA	Farmers Home Administration
GAO	General Accounting Office
GSA	General Services Administration
HEW	Department of Health, Education, and Welfare
H.Res.	House Resolution
HUD	Department of Housing and Urban Development
ICC	Interstate Commerce Commission
Ins.	Insurance
Interior	Department of the Interior
IRS	Internal Revenue Service
Justice	Department of Justice
Mgt.	Management
NIH	National Institutes of Health
NASA	National Aeronautics and Space Administration
NOAA	National Oceanographic and Atmospheric Administration
OE	Office of Education
Off.	Office
OMB	Office of Management and Budget
Pub. L.	Public Law
Rev. Bicent.	Revolution Bicentennial
S.Res.	Senate Resolution
State	Department of State
Stds.	Standards
Treasury	Department of the Treasury

CHAPTER 1

INTRODUCTION

Impoundment is not new. Even in the early years of the Federal Government, the executive branch withheld moneys appropriated by the Congress. But only in recent years has impoundment become a frequently used presidential tool to override congressional budget plans.

Such use of impoundment has resulted in many lawsuits by private citizens against the Government to release the impounded funds. Although the courts, for the most part, ordered release of such funds, impoundments became even more numerous. The Congress, therefore, wishing to reassert its control over the Federal budget, enacted the Impoundment Control Act of 1974 (31 U.S.C. 1400, *et seq.*) to tighten its control over impoundments. This act gives the Congress ultimate control over executive branch impoundments. It requires that all impoundments be reported to the Congress and to the Comptroller General. There are two categories of impoundments under the act: rescissions and deferrals.

Section 1012 of the act provides that if the President determines that a program will not require all or part of any budget authority, or that such budget authority should be rescinded for fiscal policy or other reasons--including the termination of authorized projects or whenever all or part of budget authority provided for only one fiscal year (one-year money) is to be reserved from obligation for such fiscal year--he is to transmit a "special message" to Congress requesting a *rescission* of the budget authority. The request must include the amount of budget authority involved; the appropriation account or agency affected; the reasons for the requested rescission or for placing the budget authority in reserve; the fiscal, economic, and budgetary effects; and all other related material. Unless both Houses of Congress act on the full amount of such a request within 45 days (of continuous session), the budget authority for which the rescission was requested must be made available for obligation.

Section 1013 of the act provides for a second type of special message concerning proposed *deferrals*. This category includes any withholding or delaying of the availability for obligation of budget authority within the current fiscal year (whether by establishing reserves or otherwise), or any other type of executive action or inaction that effectively precludes

the obligation or expenditure of budget authority, including authority to obligate by contract in advance of appropriations as specifically authorized by law. Such action or inaction may occur at the level of the Office of Management and Budget or at the departmental and agency levels.

The deferral special message from the President contains basically the same types of information included in a rescission special message. However, the congressional action differs in that the President is required to make the budget authority available for obligation if either House of Congress passes an "impoundment resolution" disapproving such proposed deferral at any time after receiving it. Deferrals may not extend beyond the fiscal year in which they are proposed.

Provision is made in the act for impoundments that the Comptroller General finds have not been reported by the President to the Congress. In such circumstances the Comptroller General is authorized to report the impoundments to the Congress and, when he does, his report is treated as having come from the President.

If the Congress rejects an impoundment and the executive branch then refuses to release the funds, the Comptroller General can bring suit, and the United States District Court for the District of Columbia--the only court authorized to initially consider an impoundment suit by the Comptroller General--can compel the release of the impounded funds.

In light of the importance of this statute, of the Comptroller General's role in the act's administration, and of our experiences in implementing the act since July 1974, we believe it is appropriate to review the first 2 years of the statute's operation. Our primary objectives are:

1. To see how well the act has worked,

2. To provide an overview of the Congress' actions under the act,

3. To review executive branch activities in reporting impoundments,

4. To identify areas needing improvement and to recommend appropriate amendments.

This report should be useful to the Congress and to others affected by the act. We hope that the suggested

legislative changes discussed in chapter 4 receive favorable congressional consideration. They would streamline, strengthen, and clarify the act.

In preparing this report, we reviewed all impoundments reported to the Congress during fiscal years 1975-76; all reports to the Congress made thereon by the Comptroller General; and all opinions of this Office on the operation of the act.

CHAPTER 2

HOW WELL THE EXECUTIVE BRANCH

HAS DONE

Generally, the executive branch has complied with the language and spirit of the act. However, it has initiated impoundments that either were not reported to the Congress or were reported so late as to frustrate the act's intentions. Also, while impoundment reports have continually been improved, further improvements could better inform the Congress on the nature and extent of the withholdings proposed.

Unreported impoundments

Since July 1974, we have reported 10 impoundments to the Congress not reported by the executive branch. (See app. IV.C.) Except for two, the executive branch has agreed with our reports on these withholdings.

In one case, the Department of Housing and Urban Development disagreed with our reported rescission proposal of section 236 (rental housing) operating subsidy moneys (see app. IV, C.8.), contending that such funds were not subject to the act. However, the courts have disagreed with the rationale supporting HUD's view. Lawsuits involving the section 236 program are still in litigation.

In the second instance, the Department of Transportation disagreed with our report of an undisclosed deferral of AMTRAK operating grant funds. (See app. IV.C.9.) This issue was resolved, however, when DOT released the impounded funds to AMTRAK without an impoundment resolution being passed.

Timeliness of executive reports

Under the Antideficiency Act, 31 U.S.C. 665, appropriations must be apportioned within 30 days of their enactment or 20 days prior to the beginning of the fiscal year for which the appropriation is first available, whichever date is later.

OMB's delay in meeting this requirement has caused us to report withholdings to the Congress. On January 10, 1975, we reported that the executive branch failed to apportion the fiscal year 1976 appropriation for the Departments of Labor and Health, Education, and Welfare within the period

prescribed, and that such failure essentially constituted impoundments that should have been, but were not, reported to the Congress. (See app. IV.C.2.)

Other circumstances have arisen where apportionment was timely but where reserves established as part of apportionment were not reported to the Congress until some time later. Our reports to the Congress on the President's 18th and 20th special messages for fiscal year 1976 dealt with this issue. We found that funds had been withheld about a month before the Congress was notified, although the act requires that the Congress be promptly notified of such budgetary reserves. While we recognize that processing impoundments through the Executive Office of the President takes time, a 1-month delay is unsatisfactory--especially concerning rescissions, where inadequate time may remain after the 45-day period (during which proposed rescissions are to be considered by the Congress) for the executive agencies to use the budget authority because the period of time during which the funds are legally available for use will have lapsed.

Delays in reporting impoundments do not comply with either the language or spirit of the act. Also, the Antideficiency Act and the Impoundment Control Act prescribe clear guidelines on apportioning budget authority and reporting budgetary reserves. We recommend that the Director of OMB expedite the report processing to avoid recurrence of these problems.

OMB comment and our evaluation

OMB's response to this recommendation was that delays in reporting impoundments occur when it "batches" proposed rescissions and deferrals together in one report rather than send each item to the Congress separately. To do otherwise would, in OMB's view, impose an unnecessary paperwork requirement on the President and the Congress.

While we recognize that, to some degree, the speed in reporting routine matters to the Congress should be balanced against administrative efficiencies, we believe that not all delays are the result of "batching" for administrative convenience. Therefore, we urge OMB to place greater weight on the needs of the Congress to receive timely reports.

Quality of reports

As is expected with implementing any new statute, there is an initial period when difficulties are encountered or new, experimental techniques are applied. The Impoundment Control Act proved no exception, and consequently OMB's early impoundment reports needed improvement.

We discussed with OMB how those reports could be improved. OMB readily cooperated. For example, it now indicates the period of availability of impounded funds and gives more information about proposed withholdings. However, additional improvements are needed.

Deferral ending dates

The reports should provide the expected ending dates of proposed deferrals. Such information is particularly important in the case of annual budget authority withheld for part of a fiscal year, because we must decide when the deferral may become a de facto rescission proposal--when too little time will remain in which to use the funds, thereby necessitating reclassifying the proposed deferral action to accord with the fact that the funds involved will not be obligated. Section 1013 of the act indeed requires an indication of "the period of time during which the budget authority is proposed to be deferred." Presently, however, no specific dates are being given. (In ch. 4 we further address this matter and propose that the Congress require this information.)

OMB comment and our evaluation

OMB disagreed with this recommendation on the basis that no one is certain when many partial-year deferrals will end.

We think there is a firm statutory basis for including such information in deferral messages. Moreover, a date, even if it were estimated, should be provided. In our view, this practice would aid GAO and responsible committees in their oversight of affected programs and, therefore, offsets any incidental burden resulting from the need to submit supplementary reports as release dates become more clear.

Noting prior impoundments

OMB should state whether there have been previous impoundments proposed for each program in which withholdings currently are proposed. Such information should help the

Congress because knowing the prior history of withholdings would enable it to identify and more closely examine programs that have been the subject of repeated impoundment requests. OMB agrees with this recommendation.

Reporting "add-ons"

Impoundments of congressional "add-ons"--amounts appropriated for programs in excess of executive branch funding requests--should be identified in the message. Such information helps to identify where the act possibly is being used to reinstitute executive branch fiscal policy that the Congress, through the appropriations process, has already rejected. We have been asked for such information on a number of occasions by congressional staff members.

OMB comment and our evaluation

OMB agreed to include this information when the "add-on" influences the decision to propose an impoundment. OMB did not agree to the recommendation when a proposed impoundment has a substantive basis and is only coincidentally part of the "add-on."

Under the act, we are responsible for reviewing impoundments and, in the case of deferrals, stating whether there is a legal basis for the action taken. In this light, we think impoundments of all "add-ons" should be identified since we may disagree with OMB on whether a substantive basis, other than the congressional action in legislating the "add-on," exists for a proposed impoundment.

Identifying responsible officials

Because congressional staffs often contact us for information on the status of impounded budget authority, OMB should identify, for each withholding, cognizant executive branch officials who can be readily contacted to clarify or further explain a proposed withholding.

OMB comment and our evaluation

OMB does not agree that this information is needed because concerned congressional committees know the budget officers for each program. OMB says budget officers are the individuals who can best represent the policies underlying an impoundment.

In view of the fact that many inquiries come from Members of Congress who may not be assigned to a committee having jurisdiction over a program affected by impoundment, and since such Members or their staffs may not know what budget officers may be responsive to their questions, furnishing this information would be particularly helpful.

Conclusions

On balance, we think the executive branch has done well in implementing the act--we have had to report comparatively few unreported impoundments. Although the overall quality of impoundment reports has improved since the first special message was sent to the Congress, further improvements can be made.

Recommendations to the Director, OMB

In summary, we recommend that the Director of OMB

--expedite the processing of impoundment reports,

--indicate the proposed duration of partial-year deferrals,

--indicate whether there have been previous impoundments proposed for each program in which withholdings currently are proposed,

--indicate whether congressional "add-ons" are the subject of impoundments, and

--identify cognizant executive branch officials who are familiar with each proposed impoundment.

CHAPTER 3

LITIGATION UNDER THE ACT

Since July 1974, we have sent to the Congress three 25-day letters pursuant to section 1016 of the act indicating our intention to file suit in order to terminate impoundments. These letters concerned a number of HEW health services programs, the HUD section 236 (rental housing) program, and the HUD section 235 (homeownership) program. The HEW suit was not necessary because the funds were made available. The 236 suit became unnecessary because court orders prevented HUD from releasing the funds--these funds are no longer impounded by executive branch action. (See app. IV,D.)

The HUD section 235 suit, however, was initiated. In this case, Staats v. Lynn, issues ranged from the construction of the act to the constitutional role of GAO in the Government. (App. VII presents a detailed chronology of our lawsuit against HUD and OMB.)

The issues presented for judicial decision concerned not only whether GAO could constitutionally sue to have the act enforced, but also whether the Congress could require the executive branch to execute the law--ultimately, whether the act was enforceable as written. Attending these complex issues were other arguments central to the scope and operation of the act. As expected, this case drew attention not only from Members of Congress but also from those interested in constitutional law and the operation of the Government.

Although the case was briefed thoroughly on both sides, a judicial opinion on the merits was not obtained. Late in the briefing stages of the lawsuit, HUD released the impounded funds and reinstituted the HUD section 235 program. Shortly thereafter, the court agreed to dismiss the action on the grounds of its having been mooted by the release of the budget authority.

CHAPTER 4

AREAS OF DIFFICULTY IN ADMINISTERING THE ACT

As indicated in chapter 1 and summarized in appendixes II, III, and VI, we have, since passage of the act, reviewed many impoundments and issues related to the act's interpretation and implementation. In carrying out our responsibilities under the act, as well as monitoring the executive branch's implementation of the act, we have identified areas of difficulty in the act's administration. Some of these difficulties have caused recurring problems.

By and large, we believe the basic elements of the act are sound. However, it can be strengthened, streamlined, and, in some respects, clarified. In a letter dated November 20, 1975, to the Chairman of the House Committee on the Budget, we noted some of the difficulties we have had in carrying out our responsibilities under the act. (See app. VI.) We have since reviewed the recommendations made at that time and have identified additional matters that merit attention.

Recommendations to the Congress

Set out below is a section-by-section discussion of the amendments we recommend that the Congress make to the Impoundment Control Act. (App. I is a draft bill that, if enacted, would effect these changes.)

SECTION 1001

RECOMMENDATION: Repeal Section 1001

Section 1001 was enacted to make clear that passage of the act was not intended to affect: (1) constitutional claims of the President or the Congress on impoundment powers, (2) pending lawsuits challenging impoundments, or (3) laws mandating the expenditure of budget authority in response to previous impoundments.

Section 1001 was a transitional provision whose objectives have been realized and, therefore, repealing it would not affect the act. For example, the lawsuits that were pending at the time of the passage of the act have now ended, the President generally is complying with those laws requiring the expenditure of funds, and the constitutional impasse

between the Congress and the President over the power to impound that precipitated passage of the act in the first place has abated. Accordingly, there is no reason that section 1001 need be retained.

Furthermore, the disclaimers of section 1001 have been variously interpreted. Whatever--if any--purpose they still serve would be clarified by amendments to the main body of the act.

SECTION 1002

RECOMMENDATION: Amend the Antideficiency Act to eliminate the requirement that impoundments initiated pursuant to its provisions be reported under the act.

Requiring that all withholdings of budget authority, regardless of their reason, be reported under the act has caused the executive branch, the Congress, and this Office to process, review, and deal with many routine financial transactions. As shown in app. I, 157 routine deferrals (not including supplementary reports) have been reported since the statute's enactment. The legislative history of the act clearly shows (1) that it was not these routine impoundments that gave rise to the act but, rather, it was those impoundments for which no statutory basis existed and for which the President claimed an undefined and disputed inherent authority to impose and (2) that the Congress did not intend to question those withholdings of budget authority that were authorized by specific laws. Thus, the requirement to report routine Antideficiency Act impoundments (and any deferrals authorized by other statutes) should be eliminated.

Although such impoundments should not be reported formally, this Office would still be free to take those steps necessary to assure that all policy-based impoundments are reported to the Congress pursuant to the procedures of the act that empower us to send messages where the President should but does not.

SECTION 1011

RECOMMENDATION 1: Amend the definition of "deferral."

Consistent with our view that section 1013 should only be used when the President proposes to withhold funds without specific statutory authority--as is provided under

the Antideficiency Act or other laws relating to a particular program--the definition of "deferral" should be revised to eliminate coverage of <u>all</u> temporary impoundments. Rather, the definition should specify that deferrals to be reported under section 1013 should only be those temporary impoundments that are without statutory basis--typically, the so-called fiscal policy and program implementation deferrals.

RECOMMENDATION 2: <u>Amend section 1011 to define "rescission proposal."</u>

While, for the most part, there has been little dispute over what is meant by "rescission proposal," the act should, nevertheless, be amended to make clear what exactly is involved in a rescission proposal--that is, every type of executive action or inaction that effectively precludes the prudent obligation and expenditure of budget authority. One immediate benefit of defining this term is to include in the definition "de facto rescission proposals," which are not now expressly covered by the act.

RECOMMENDATION 3: <u>Amend the act so that rescission proposals pend for 60 calendar days rather than for 45 days of continuous congressional session.</u>

The existing provisions allowing for rescission proposals to stand for 45 days of continuous session cause significant extensions of proposed rescissions which are ultimately rejected by the Congress. Much of this extended time is the result of congressional recesses which, in some cases, have resulted in funds rejected for rescission lapsing because too little time remained in which to use the budget authority involved. Our analysis of all rescissions submitted during fiscal years 1975 and 1976 discloses that operation of the 45-day provision has allowed withholdings pending rescission to average 80 calendar days.

Instead of the present provisions, we suggest that withholdings pending rescission be permitted for 60 calendar days from the date an impoundment is reported to the Congress. This will allow all parties to the impoundment process--the Congress, the executive branch, and this Office--to determine immediately the latest date on which withholdings pending rescission approval must cease.

RECOMMENDATION 4: Section 1011 should be amended to define a "Rescission Resolution" that can specifically reject a rescission proposal.

Because "45 days" is provided to obtain approval of proposed rescissions, most of those involved with the act have been concerned that there is no clear way to determine when the Congress has "completed action" on a rescission bill. The consensus appears to be that 45 days of continuous session must pass before a rescission request is actually rejected. To avoid this, the part of section 1011 that defines "rescission bill" should be amended to allow direct, affirmative denial of proposed rescissions. (See our March 5, 1976, letter to Senator Hollings, app. VI.)

RECOMMENDATION 5: Amend section 1011 to allow for partial impoundment resolutions.

Presently an impoundment resolution must be on an "all or nothing" basis--the Congress cannot reject part of a deferral. We think the Congress should be able to determine how much of a deferral can stand without being required to accept or reject the amount in total. This would make the impoundment resolution procedure consistent with the rescission bill procedure (wherein the Congress can accept all or part of a proposed rescission).

Of course, a problem would arise when the two Houses act differently on the same deferral. Two possible solutions would be to give effect to the wishes of the House that acts first, or give effect to the lesser of the two amounts approved for deferral. We favor the latter because it does not give rise to any uncertainty regarding how much of a proposed deferral has been rejected.

SECTIONS 1011, 1012 AND 1013

RECOMMENDATION: Budget authority provided by continuing resolution should be excluded from the act.

In regular appropriation actions, the Congress primarily provides specific amounts of budget authority for programs. Under the act, the President then can propose permanent or temporary withdrawals of budget authority against each specific program.

In contrast, budget authority provided by continuing resolution is mainly based upon the rate of prior program

activity or upon a number of general conditions. Such budget authority does not ordinarily extend to specific amounts for specific programs. Because of its temporary nature, continuing resolution authority is excluded from the time constraints for apportionment of budget authority.

We have had difficulty in applying the act to continuing resolution budget authority. In order to determine how much is being withheld, amounts provided under a continuing resolution must be regarded in precisely the manner that amounts provided by regular appropriations are viewed--that is, as both the maximum and the minimum level of funding available for the program. As we understand it, the House views continuing resolution authority as maximum amounts to be expended sparingly while the Senate feels that spending should proceed at the full rates authorized. The executive branch rarely has proposed a rescission of continuing resolution budget authority. Deferrals frequently proposed seem based generally upon a policy of waiting to see what the Congress finally does in the regular appropriation acts involved. Whether a rescission or a deferral is proposed, its status is tenuous since it is often effectively cancelled by the regular appropriation action taken.

Because of these difficulties and the absence of agreement by the two Houses of Congress, we suggest excluding from the act budget authority provided under continuing resolutions. Adopting this recommendation would not significantly affect the act's operation since the new congressional budget procedures will probably result in fewer continuing resolutions.

SECTION 1012

RECOMMENDATION: Amend section 1012 to indicate that another means exists by which rescission requests may be rejected.

As noted in our discussion of section 1011, the act should be amended to allow for explicit rejection of a rescission request by a means other than by waiting 45 days. Accordingly, subsection (b) of section 1012 should be amended to provide specifically for rescission disapproval procedures which, if carried out before expiration of the assigned waiting period, would require immediate action to make the funds involved available for obligation.

SECTION 1013

RECOMMENDATION 1: <u>Amend section 1013 to exclude the requirement for reporting deferrals authorized by law, or deferrals for administrative or routine purposes.</u>

The legislative history of the act suggests that the Congress' interest was to require reports only on those deferrals which represent fiscal or program policy differences between the executive branch and the Congress and not those authorized by law. The wording of section 1013, however, covers <u>all</u> deferrals, thereby including those that are authorized by other statutes as well as those which are purely routine or administrative. OMB's policy has been "when in doubt, report." Consequently, of the 277 deferrals reported as of September 30, 1976, 157 were generally routine delays that could be expected to be small. Three of these deferrals (D76-13, D76-39, and D76-110) were overturned by an impoundment resolution, while, of the 120 policy deferrals proposed, 37 were disapproved.

Amending section 1013 to exclude authorized and routine deferrals would complement our suggested amendments to section 1002 eliminating Antideficiency Act impoundments from being reported and to section 1011(1) defining "deferral."

RECOMMENDATION 2: <u>Amend section 1013 to require a statement of deferral duration.</u>

As discussed in chapter 2, we feel a potential for abuse exists regarding deferrals that are reported without specifying the impoundment duration intended. Often the logical consequence of such deferrals is that, at some time, they will mature into rescissions, or are, even at the outset, de facto rescission proposals--a part or all of the sums withheld will not be spent due to limitations on the period of availability of the budget authority. To avoid this problem, section 1013 should be amended to require a statement specifying how long a deferral is to exist. In addition, the act should provide that at the end of a proposed deferral period, the deferred moneys should either be released for obligation or a supplementary deferral message proposing the withholding of the funds for an additional period of time should be submitted. This recommendation would better inform the Congress on the precise duration of deferrals.

SECTION 1015

RECOMMENDATION 1: Amend section 1015 to provide for the "relating-back" of a delayed OMB report.

Difficulty arises when the Comptroller General reports an unreported rescission or deferral proposal and then, later, the President reports the same impoundment to the Congress. The problem, with respect to rescissions, is when the 45-day waiting period under section 1012 begins--when the Comptroller General first reports the matter to the Congress or when the President later reports. To solve this problem and achieve conformity with the provisions of section 1015(a), the section should be amended to make clear that the later presidential report relates back to the date of the Comptroller General's message.

RECOMMENDATION 2: Amend section 1015 to state expressly that when the Comptroller General reports that an improperly classified impoundment has been sent by the President, his report converts the matter to the proper category and nullifies the original presidential message.

We have dealt with proposed impoundments that we have concluded were improperly classified, i.e., proposed rescissions reported as proposed deferrals, and vice versa. Presently, when this situation occurs, the Comptroller General reclassifies the impoundment to the proper category and nullifies the original presidential message, but only by using several sections of the act together rather than by using just one section. In other words, the Comptroller General must first report the improper categorization under section 1015(b); state that the President has failed to send the required message (correctly describing the action proposed) under section 1015(a); and nullify the presidential message using section 1013(c). Taken together, these actions mean that the Congress has before it a message from the Comptroller General that is treated like a presidential message (section 1015(a)) and a nullification of the presidential message because it was sent pursuant to the wrong section (section 1013(c)).

To avoid the confusion resulting from the required interplay of sections 1015 and 1013, the act should be amended to clarify the conversion and nullification procedure.

SECTION 1016

RECOMMENDATION 1: <u>Amend the section to delete the 25-day waiting period.</u>

Presently, after the Comptroller General notifies the Congress of his intention to file a lawsuit seeking to terminate an impoundment, he must wait 25 days of continuous session before the litigation can begin. We see no reason for this wait. If it is to allow for the political processes to operate and force the release of funds or to allow the Congress to pass a law mandating the moneys be released, such actions would not be hampered by deleting this waiting period requirement, since it would take far longer for the issues to be joined in any lawsuit. At present, this waiting period only delays <u>initial</u> action in releasing impounded budget authority.

RECOMMENDATION 2: <u>Amend the section to provide that budget authority that is required to be released and for which the Comptroller General has instituted suit will not lapse during the lawsuit.</u>

At present the act's intent can be thwarted if money rejected for deferral or rescission lapses before we can get a final court order releasing the funds. As shown by our impoundment case (see app. VII), suits <u>can</u> be mooted. Accordingly, this section would be apropos for indicating that the Impoundment Control Act, per se, requires all impounded budget authority subject to litigation initiated under section 1016 to be recorded as obligations of the United States Government pursuant to 31 U.S.C. §200, so as to permit the Comptroller General to sue without having to seek a court order preventing a lapse from occurring. If the Comptroller General loses the case, the money would lapse.

SECTION 1017

RECOMMENDATION: <u>Amend section 1017 to allow for rejection of a rescission prior to the running of 60 calendar days.</u>

As noted, having to wait 45 days of continuous session to know whether a rescission is rejected is generally unsatisfactory. We think 45 days are wasted in merely <u>waiting</u>. Section 1017 should be amended to allow for a simple resolution

of either House stating that that House rejects the rescission request. In such a case, the money would have to be released as of the passage of that resolution or, if no resolution passes, upon the expiration of the 45-day waiting period.

PROPOSED NEW SECTION

RECOMMENDATION: Amend the act to provide expressly for deferrals after a prior deferral or rescission was rejected.

Presently--arguably--once a rescission or deferral is rejected, the money that was the subject of the impoundment must immediately be made available for obligation. This requirement does consider that, in implementing the program, the President must still use sound financial practices. Therefore we think a new section should be added allowing for deferrals of funds after prior deferrals or rescissions of the money are turned down, if the new deferral furthers good administrative practice or is based on circumstances or conditions unknown--and which reasonably could not have been known --when the prior rescission or deferral was considered.

In no event, however, should the President be allowed to defer after having been turned down on an impoundment based on the same grounds.

CHAPTER 5

OVERVIEW OF REPORTED IMPOUNDMENTS

AND CONGRESSIONAL ACTIONS

Review of impoundments

During the first 2 years of the act, almost $41 billion in impoundments was reported. While domestic programs were frequent areas of impoundment, defense and science program funds also were withheld.

Our review showed that in the first year, more than 2-1/2 times as much money was impounded than during the second year ($29.2 billion vs. $11.8 billion). (App. III presents detailed analyses of impoundments for fiscal years 1975 and 1976.)

Congressional actions

During fiscal years 1975 and 1976, the Congress disapproved approximately 39 percent of the dollar value of impoundments proposed. Of almost $41 billion impounded, the Congress, using sections 1012 and 1013 of the act, disapproved $16.1 billion of the proposals.

Two-year analysis

As shown in app. II, the executive branch proposed deferrals amounting to over $33 billion in the 2-year period. The Congress passed impoundment resolutions covering $9.7 billion of these actions--a disapproval rate of over 29 percent.

The Congress failed to agree to over 81 percent of the almost $8 billion proposed for rescission during fiscal years 1975 and 1976. It took no action on, and therefore disapproved, over $6.4 billion in proposed rescissions.

One-year analysis

For fiscal year 1975, the Congress disapproved 68.43 percent ($2.9 billion) of the $4.3 billion proposed for rescissions and, with respect to deferrals, disapproved 37 percent ($9.3 billion) of the $24.9 billion proposed.

The Congress' rejection of rescissions during fiscal year 1976 rose sharply to 96.39 percent of the $3.6 billion

for cancellation. It approved only $138.3 million in rescission requests.

Congressional disapproval of deferrals dropped from a rate of 37 percent during fiscal year 1975 to only 4.81 percent in fiscal year 1976. Specifically, the Congress rejected $393 million of the $8.1 billion deferred during fiscal year 1976.

Appendix II, parts E through V, presents the relative congressional rates of disapproval for each functional area of impoundment by type, amount, and fiscal period. As these figures indicate, the Congress tends to reject proposed rescissions in domestic programs.

DRAFT BILL TO AMEND THE IMPOUNDMENT CONTROL ACT OF 1974

95th Congress
1st Session

S. ________

H.R. ________

A BILL

To amend the Impoundment Control Act of 1974, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Impoundment Control Act Amendments of 1977."

Sec. 101. Section 1001 of the Impoundment Control Act of 1974 is repealed.

Sec. 102. The last sentence of Section 3679(c)(2) of the Revised Statutes, as amended (31 U.S.C. 665), is amended to read as follows:

> "Reserves established pursuant to this subsection are not to be reported under the Impoundment Control Act of 1974, as amended."

Sec. 103. Sections 1011-1017 of the Impoundment Control Act of 1974 are amended to read as follows:

> "Sec. 1011. For purposes of this part--
>
> "(1) 'deferral of budget authority' means every type of executive action or inaction, other than administrative and routine actions, not specifically authorized by law that results in withholding, delaying, or effectively precluding, the obligation or expenditure of budget authority, including the exercise of authority to obligate in advance of appropriations as specifically authorized by law;

"(2) 'rescission of budget authority' means every type of executive action or inaction that effectively precludes the obligation or expenditure of budget authority and that, if continued, would cause such budget authority to lapse, including situations where budget authority cannot be prudently obligated within its remaining period of availability;

"(3) 'Comptroller General' means the Comptroller General of the United States;

"(4) 'rescission bill' means a bill or joint resolution which only rescinds, in whole or in part, budget authority proposed to be rescinded in a special message transmitted by the President under section 1012, and upon which the Congress completes action before the end of the first period of 60 calendar days after the date on which the President's message is received by the Congress;

"(5) 'rescission resolution' means a simple resolution of either House of Congress that expresses its disapproval of a rescission proposal transmitted under section 1012;

"(6) 'impoundment resolution' means a simple resolution of either House of Congress that expresses its disapproval of all or part of a deferral transmitted to the Congress under section 1013;

"(7) 'budget authority' means authority provided by law to enter into obligations that will result in immediate or future outlays involving Government funds, except that such term does not include authority provided under continuing appropriations acts, or authority to insure or guarantee the repayment of indebtedness incurred by another person or government."

RESCISSION OF BUDGET AUTHORITY

"Sec. 1012. (a) Transmittal of Special Message.--Whenever the President determines that all or part of any budget authority will not be required to carry out the full objectives or scope of programs for which it is provided or that such budget authority should be rescinded for fiscal policy or

other reasons (including the termination of authorized projects or activities for which budget authority has been provided), or whenever all or part of budget authority provided for only one fiscal year is to be reserved from obligation for such fiscal year, the President shall transmit to both Houses of Congress a special message specifying--

"(1) the amount of budget authority which he proposes to be rescinded or which is to be so reserved;

"(2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific project or governmental functions involved;

"(3) the reasons why the budget authority should be rescinded or is to be so reserved;

"(4) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed rescission or of the reservation; and

"(5) all facts, circumstances, and considerations relating to or bearing upon the proposed rescission or the reservation and the decision to effect the proposed rescission or the reservation, and to the maximum extent practicable, the estimated effect of the proposed rescission or the reservation upon the objects, purposes, and programs for which the budget authority is provided.

"(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:

"(1) within the prescribed 60-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; or

"(2) if at any time after such special message has been transmitted, either house

of the Congress passes a rescission resolution rejecting such rescission proposal.

"Sec. 1013. (a) TRANSMITTAL OF SPECIAL MESSAGE.--Whenever the President, the Director of the Office of Management and Budget, the head of any department or agency of the United States, or any officer or employee of the United States proposes the deferral of budget authority provided for a specific purpose or project, the President shall transmit to the House of Representatives and the Senate a special message specifying--

"(1) the amount of the budget authority proposed to be deferred;

"(2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific projects or governmental functions involved;

"(3) the specific dates during which the budget authority is proposed to be deferred;

"(4) the reasons for the proposed deferral;

"(5) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed deferral; and

"(6) all facts, circumstances, and considerations relating to or bearing upon the proposed deferral and the decision to effect the proposed deferral, including an analysis of such facts, circumstances, and considerations in terms of their application to any legal authority and specific elements of legal authority invoked by him to justify such proposed deferral, and to the maximum extent practicable, the estimated effect of the proposed deferral upon the objects, purposes, and programs for which the budget authority is provided.

A special message may include one or more proposed deferrals of budget authority. A deferral may not be proposed for any period of time extending beyond the end of the fiscal year in which the special message proposing the deferral is transmitted to the House and the Senate.

"(b) REQUIREMENT TO MAKE AVAILABLE FOR OBLIGATION.--Any amount of budget authority proposed to be deferred, as set forth in a special message transmitted under subsection (a), shall be made available for obligation if either House of Congress passes an impoundment resolution disapproving such proposed deferral. In the event both Houses of Congress pass impoundment resolutions disapproving part of a proposed deferral of budget authority and the impoundment resolutions reject different amounts for continued deferral, the impoundment resolution that disapproves the greater amount shall control.

"(c) EXCEPTION.--The provisions of the section do not apply to any budget authority proposed to be rescinded or that is to be reserved as set forth in a special message required to be transmitted under section 1012.

TRANSMISSION OF MESSAGES: PUBLICATION

"Sec. 1014. (a) DELIVERY TO HOUSE AND SENATE.--Each special message transmitted under section 1012 or 1013 shall be transmitted to the House of Representatives and the Senate on the same day, and shall be delivered to the Clerk of the House of Representatives if the House is not in session, and to the Secretary of the Senate if the Senate is not in session. Each special message so transmitted shall be referred to the appropriate committee of the House of Representatives and the Senate. Each such message shall be printed as a document of each House.

"(b) DELIVERY TO COMPTROLLER GENERAL.--A copy of each special message transmitted under section 1012 or 1013 shall be transmitted to the Comptroller General on the same day it is transmitted to the House of Representatives and the Senate. In order to assist the Congress in the exercise of its functions under sections 1012 and 1013, the Comptroller General shall review each

such message and inform the House of Representatives and the Senate as promptly as practicable with respect to--

"(1) in the case of a special message transmitted under section 1012, the facts surrounding the proposed rescission or the reservation of budget authority (including the probable effects thereof); and

"(2) in the case of a special message transmitted under section 1013, (A) the facts surrounding each proposed deferral of budget authority (including the probable effects thereof) and (B) whether or not (or to what extent), in his judgment, such proposed deferral is in accordance with existing statutory authority.

"(c) TRANSMISSION OF SUPPLEMENTARY MESSAGES.--If any information contained in a special message transmitted under section 1012 or 1013 is subsequently revised, the President shall transmit to both Houses of Congress and the Comptroller General a supplementary message stating and explaining such revision. Any such supplementary message shall be delivered, referred, and printed as provided in subsection (a). The Comptroller General shall promptly notify the House of Representatives and the Senate of any changes in the information submitted by him under subsection (b) which may be necessitated by such revision.

"(d) PRINTING IN FEDERAL REGISTER.--Any special message transmitted under section 1012 or 1013, and any supplementary message transmitted under subsection (c), shall be printed in the first issue of the Federal Register published after such transmittal.

"(e) CUMULATIVE REPORTS OF PROPOSED RESCISSIONS, RESERVATIONS, AND DEFERRALS OF BUDGET AUTHORITY.--

"(1) The President shall submit a report to the House of Representatives

and the Senate, not later than the 10th day of each month during a fiscal year, listing all budget authority for that fiscal year with respect to which, as of the first day of such month--

"(A) he has transmitted a special message under section 1012 with respect to a proposed rescission or a reservation; and

"(B) he has transmitted a special message under section 1013 proposing a deferral.

Such report shall also contain, with respect to each such proposed rescission or deferral, or each such reservation, the information required to be submitted in the special message with respect thereto under section 1012 or 1013.

"(2) Each report submitted under paragraph (1) shall be printed in the first issue of the Federal Register published after its submission.

REPORTS BY COMPTROLLER GENERAL

"Sec. 1015. (a) FAILURE TO TRANSMIT SPECIAL MESSAGE.--If the Comptroller General finds that the President, the Director of the Office of Management and Budget, the head of any department or agency of the United States, or any other officer or employee of the United States--

"(1) is to establish a reserve or proposes to defer budget authority with respect to which the President is required to transmit a special message under section 1012 or 1013; or

"(2) has ordered, permitted, or approved the establishment of such a reserve or a deferral of budget authority;

and that the President has failed to transmit a special message with respect to such reserve or deferral, the Comptroller General shall make a report on such reserve or deferral, the Comptroller General shall make a report on such reserve or deferral and any available information concerning it to both Houses of Congress. The provisions of this part shall apply with respect to such reserve or deferral in the same manner and with the same effect as if such report of the Comptroller General were a special message transmitted by the President under section 1012 or 1013, and, for purposes of this part, such report shall be considered a special message transmitted under section 1012 or 1013.

"(b) INCORRECT CLASSIFICATION OF SPECIAL MESSAGE.--If the President has transmitted a special message to both Houses of Congress in accordance with section 1012 or 1013, and the Comptroller General believes that the President so transmitted the special message in accordance with one of those sections when the special message should have been transmitted in accordance with the other of those sections, the Comptroller General shall make a report to both Houses of the Congress setting forth his reasons.

"(c) CONVERSION OF IMPOUNDMENT TO PROPER CATEGORY.--Whenever pursuant to subsection (b) of this section the Comptroller reports that the President has transmitted a special message incorrectly identifying the type of impoundment proposed to be taken, such Comptroller General's report shall be treated as automatically nullifying the original Presidential special message and converting the impoundment to the proper category. In the case of deferrals converted to rescissions, the 60-day period shall commence on the first day after the date on which the Comptroller's report is received by the Congress.

"(d) PRE-DATING OF TARDY EXECUTIVE IMPOUNDMENT REPORTS.--Whenever, pursuant

to subsection (a) of this section, the Comptroller General notifies the Congress of an unreported deferral or rescission of budget authority, and the President later notifies the Congress of such withholdings, the time period for computing the appropriate 60-day period shall commence on the first day after the date the Comptroller General's report was first received by the Congress."

SUITS BY COMPTROLLER GENERAL

"Sec. 1016. (a) If, under section 1012(b) or 1013(b), budget authority is required to be made available for obligation and such budget authority is not made available for obligation, the Comptroller General is hereby expressly empowered, through attorneys of his own selection, to bring a civil action in the United States District Court for the District of Columbia to require such budget authority to be made available for obligation, and such court is hereby expressly empowered to enter in such civil action, against any department, agency, officer, or employee of the United States, any decree, judgment, or order which may be necessary or appropriate to make such budget authority available for obligation. The courts shall give precedence to civil actions brought under this section, and to appeals and writs from decisions in such actions, over all other civil actions, appeals, and writs.

"(b) all budget authority that is the subject of special messages transmitted pursuant to section 1012 or 1013 and that is the subject of litigation initiated by the Comptroller General pursuant to this section shall be recorded as obligations of the United States for such time as may be necessary to permit, in the case of proposed rescissions, the orderly operation of the procedures prescribed by section 1012 for the approval or disapproval of rescissions and for judicial determinations of the merits any litigation instituted pursuant to the Act.

PROCEDURE IN HOUSE AND SENATE

"Sec. 1017. (a) REFERRAL.--Any rescission bill or rescission resolution, introduced with respect to a proposed rescission of budget authority, or impoundment resolution, introduced with respect to a proposed deferral of budget authority, shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be.

"(b) DISCHARGE OF COMMITTEE.--

"(1) If the committee to which a rescission bill, rescission resolution, or impoundment resolution has been referred has not reported it at the end of 60 calendar days after its introduction it is in order to move either to discharge the committee from further consideration of the measure or to discharge the committee from further consideration of any other rescission bill or rescission resolution with respect to the same proposed rescission of budget authority, or impoundment resolution with respect to the same proposed deferral, as the case may be, which has been referred to the committee.

"(2) A motion to discharge may be made only by an individual favoring the rescission bill or rescission or impoundment resolution, may be made only if supported by one-fifth of the Members of the House involved (a quorum being present), and is highly privileged in the House and privileged in the Senate (except that it may not be made after the committee has reported a rescission bill or rescission or impoundment resolution with respect to the same proposed rescission of budget authority or the same proposed deferral, as the case may be); and debate thereon shall be limited to not more than 1 hour, the time to be divided in the House equally between those favoring and those opposing the rescission bill or rescission or impoundment resolution, and to be divided in the Senate equally between, and controlled by, the majority leader and the

minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(c) FLOOR CONSIDERATION IN THE HOUSE.--

"(1) When the committee of the House of Representatives has reported, or has been discharged from further consideration of, a rescission bill or rescission or impoundment resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the rescission bill or rescission or impoundment resolution. The motion shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(2) Debate on a rescission bill or rescission or impoundment resolution shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the bill or resolution. A motion further to limit debate shall not be debatable. In the case of a rescission or impoundment resolution, no amendment to, or motion to recommit, the resolution shall be in order. It shall not be in order to move to reconsider the vote by which a rescission bill or rescission impoundment resolution is agreed to or disagreed to.

"(3) Motions to postpone, made with respect to the consideration of a rescission bill or rescission or impoundment resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

"(4) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any rescission bill or rescission or impoundment resolution shall be decided without debate.

"(5) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of any rescission bill or rescission or impoundment resolution and amendments thereto (or any conference report thereon) shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions, amendments, and conference reports in similar circumstances.

"(d) FLOOR CONSIDERATION IN THE SENATE.--

"(1) Debate in the Senate on any rescission bill or rescission or impoundment resolution, and all amendments thereto (in the case of a rescission bill) and debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

"(2) Debate in the Senate on any amendment to a rescission bill shall be limited to 2 hours, to be equally divided between and controlled by, the mover and the manager of the bill. Debate on any amendment to an amendment, to such a bill, and debate on any debatable motion or appeal in connection with such a bill or rescission or impoundment resolution shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill or resolution, except that in the event the manager of the bill or resolution, is in favor of any such amendment, motion, or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. No amendment that is not germane to the provisions of a rescission bill shall be received. Such leaders, or either of them, may, from the time under their control on the passage of a rescission bill or rescission or impoundment resolution, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

"(3) A motion to further limit debate is not debatable. In the case of a rescission bill, a

motion to recommit (except a motion to recommit with instructions to report back within a specified number of days, not to exceed 3, not counting any day on which the Senate is not in session) is not in order. Debate on any such motion to recommit shall be limited to one hour, to be equally divided between, and controlled by, the mover of the motion and the manager of the bill. In the case of a rescission or impoundment resolution, no amendment or motion to recommit is in order.

"(4) The conference report on any rescission bill shall be in order in the Senate at any time after the third day (excluding Saturdays, Sundays, and legal holidays) following the day on which such a conference report is reported and is available to Members of the Senate. A motion to proceed to the consideration of the conference report may be made even though a previous motion to the same effect has been disagreed to.

"(5) During the consideration in the Senate of the conference report on any rescission bill, debate shall be limited to 2 hours, to be equally divided between, and controlled by, the majority leader and minority leader or their designees. Debate on any debatable motion or appeal related to the conference report shall be limited to 30 minutes, to be equally divided between, and controlled by, the mover and the manager of the conference report.

"(6) Should the conference report be defeated, debate on any request for a new conference and the appointment of conferees shall be limited to 1 hour, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee, and should any motion be made to instruct the conferees before the conferees are named, debate on such motion shall be limited to 30 minutes, to be equally divided between, and controlled by, the mover and the manager of the conference report. Debate on any amendment to any such instructions shall be limited to 20

minutes, to be equally divided between, and controlled by, the mover and the manager of the conference report. In all cases when the manager of the conference report is in favor of any motion, appeal, or amendment, the time in opposition shall be under the control of the minority leader or his designee.

"(7) In any case in which there are amendments in disagreement, time on each amendment shall be limited to 30 minutes, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee. No amendment that is not germane to the provisions of such amendments shall be received."

Sec. 104. The Impoundment Control Act of 1974 is amended by adding at the end thereof the following new section:

"Sec. 1018. EXECUTIVE ACTION AFTER REJECTION OF PROPOSED RESCISSION OR DEFERRAL.--(a) Except as provided in subsection (b), the President, the Director of the Office of Management and Budget, the head of any department or agency of the United States, or any officer or employee of the United States may continue to withhold budget authority that was the subject to a special message under sections 1012 or 1013 and that must be made available for obligation pursuant to subsection (b) of section 1012 or 1013 only when he determined that to do so is in accordance with authority conferred by the Antideficiency Act, as amended, or other specific statutory authority. The Congress and the Comptroller General shall be immediately notified of any such continued withholdings of the budget authority and the reasons therefor.

"(b) No deferral or rescission may be submitted pursuant to the sections 1012 and 1013 of this act when the budget authority that is the subject of the deferral or rescission has previously been required to be made available for obligation pursuant to subsections 1012(b) or 1013(b), unless the new deferral or rescission is based on circumstances or conditions unknown at the time the original deferral or

rescission was considered, and which reasonably could not have been known if in existence at the time the previous deferral or rescission proposal was considered."

Section 105. The amendments made by this Act shall go into effect sixty days after the date of enactment and shall not affect impoundments reported to the Congress before that time.

LISTING OF IMPOUNDMENTS

FOR FISCAL YEARS 1975 AND 1976

I. LISTING OF IMPOUNDMENTS

A. Proposed Rescissions, Fiscal Year 1975

Proposal number	Agency or program	Amount	Date proposed	Approved	45 days ended
R75-1	Appalachian Regional Commission 1/	$40,000,000	9/20/74	H.R.17505A/ $40,000,000	12/10/74
R75-2	Rural Electrification Administration 1/	455,635,000	"		
R75-3	Agricultural Conservation Program 1/	85,000,000	10/4/74		
R75-4	Agriculture-- Forest Service, Forest Roads and Trails 5/	61,611,064 B/		H.R.17505 $61,611,000	
R75-5	HUD--College Housing 1/	14,518,000		H.R.17505 $14,518,000	
R75-6	Interior--Public Lands Development 5/	4,891,000		H.R.17505 $4,891,000	
R75-7	Interior--National Park Service Road Construction 5/	10,461,028 C/		H.R.17505 $10,461,028	
R75-8	Agriculture--Stabilization and Conservation Service 1/	21,212,940 D/	11/26/74	H.R.3260E/ $7,856,470	3/17/75
R75-9	Agriculture--Forest Service 1/	4,921,000			
R75-10	Agriculture--Forest Service 1/	10,000,000			
R75-11	Commerce--Social and Economic Statistics Administration 6/	373,000		H.R.3260 $373,000	
R75-12	Commerce--Economic Development Administration 6/	2,000,000			

NOTE: Footnotes for section A are explained on pages 42 and 43.

Proposal number	Agency or Program	Amount	Date proposed	Approved	45 days ended
R75-13	Commerce--Domestic and International Business Administration 6/	$12,000,000	11/26/74 (Cont.)	H.R.3260 $12,000,000	
R75-14	Commerce--U.S. Travel Service 6/	250,000	11/26/74 (Cont.)	H.R.3260 $250,000	
R75-15	Commerce--NOAA 6/	3,227,000 F/		H.R.3260 $927,000	
R75-16	Patent Office 3/	700,000		H.R.3260 $700,000	
R75-17	Operation and Maintenance, Army 3/	41,000,000		H.R.3260 $20,500,000	
R75-18	Operation and Maintenance, Navy 3/	27,500,000		H.R.3260 $13,750,000	
R75-19	Operation and Maintenance, Marine Corps 3/	5,000,000		H.R.3260 $2,500,000	
R75-20	Operation and Maintenance, Air Force 3/	40,000,000		H.R.3260 $20,000,000	
R75-21	Operation and Maintenance Defense Agencies 3/	1,900,000		H.R.3260 $950,000	
R75-22	Operation and Maintenance, Army Reserve 3/	1,800,000		H.R.3260 $900,000	
R75-23	Operation and Maintenance, Navy Reserve 3/	1,100,000		H.R.3260 $550,000	
R75-24	Operation and Maintenance, Air Force Reserve 3/	400,000		H.R.3260 $200,000	
R75-25	Operation and Maintenance, Army National Guard 3/	1,400,000		H.R.3260 $700,000	
R75-26	Operation and Maintenance, Air National Guard 3/	500,000		H.R.3260 $250,000	
R75-27	Aircraft Procurement, Army 3/	5,700,000 G/			

Proposal number	Agency or program	Amount	Date proposed	Approved	45 days ended
R75-28	Aircraft Procurement, Air Force 3/	$152,500,000 H/	11/26/74 (Cont.)	H.R.3260 $122,900,000	
R75-29	HEW--Health Resources Administration 2/	284,719,332 I/			
R75-30	Federal Bureau of Investigation 6/	$5,300,000			
R75-31	Immigration and Naturalization Service 6/	1,300,000			
R75-32	Bureau of Prisons 6/	5,250,000		H.R.3260 $5,250,000	
R75-33	Bureau of Prisons 6/	1,750,000		H.R.3260 $1,750,000	
R75-34	Drug Enforcement Administration 6/	2,400,000		H.R.3260 $2,400,000	
R75-35	State--Contributions to Int'l Organizations 6/	2,000,000		H.R.3260 $2,000,000	
R75-36	State--Int'l Trade Negotiations 6/	100,000		H.R.3260 $100,000	
R75-37	Treasury--Office of the Secretary 6/	310,000		H.R.3260 $310,000	
R75-38	Treasury--Federal Law Enforcement Training Center 6/	60,000		H.R.3260 $60,000	
R75-39	Treasury--Bureau of Accounts 6/	630,000		H.R.3260 $630,000	
R75-40	Treasury--U.S. Customs Service 6/	3,000,000			
R75-41	Treasury--Internal Revenue Service 6/	530,000		H.R.3260 $530,000	
R75-42	Treasury--Internal Revenue Service 6/	9,230,000			

Proposal number	Agency or program	Amount	Date proposed	Approved	45 days ended
R75-43	Treasury--Internal Revenue Service 6/	$10,240,000	11/26/74 (Cont.)		
R75-44	GSA--Public Bldg. Serv.	20,022,900		H.R.3260 $20,022,900	
R75-45	Special Action Office for Drug Abuse Prevention 4/	$2,760,000		H.R.3260 $2,760,000	
R75-46	Special Action Office for Drug Abuse Prevention 2/	2,240,000		H.R.3260 $2,240,000	
R75-47	Agriculture--Extension Service 2/	3,200,000	1/30/75		3/17/75
R75-48	Agricultural Stabilization and Conservation Service 1/	156,250,000			
R75-49	Agriculture--Forestry Incentives Program 1/	25,000,000		H.R.4075 J/ $10,000,000	
R75-50	Agriculture--FmHA, Rural Development Grants 1/	3,750,000			
R75-51	Agriculture--FmHA, Rural Community Fire Protection Grants 1/	3,500,000			
R75-52	Commerce--U.S. Travel Service 6/	4,999,704		H.R.4075 $4,999,704	
R75-53	DOD--Special Foreign Currency Program 6/	915,000		H.R.4075 $915,000	
R75-54	DOD--Special Foreign Currency Program 6/	40,000		H.R.4075 $40,000	
R75-55	HEW--Health Services Administration 2/	39,677,000 K/			
R75-56	HEW--Center for Disease Control 2/	9,805,000			

Proposal number	Agency or program	Amount	Date proposed	Approved	45 days ended
R75-57	HEW--NIH, National Cancer Institute 4/	$123,006,000	1/30/75 (Cont.)		
R75-58	HEW--NIH, National Heart and Lung Institute 4/	37,730,000			
R75-59	HEW--NIH, National Institute of Dental Research 4/	$7,489,000			
R75-60	HEW--NIH, National Institute of Arthritis, Metabolism and Digestive Diseases 4/	28,473,000			
R75-61	HEW--NIH, National Institute of Neurological Diseases and Stroke 4/	30,283,000			
R75-62	HEW--NIH, National Institute of Allergy and Infectious Diseases 4/	13,975,000			
R75-63	HEW--NIH, National Institute of General Medical Sciences 4/	30,794,000			
R75-64	HEW--NIH, National Institute of Child Health and Human Development 4/	23,978,000			
R75-65	HEW--NIH, National Eye Institute 4/	6,512,000			
R75-66	HEW--NIH, National Institute of Enviromental Health Sciences 4/	6,922,000			
R75-67	HEW--NIH, Research Resources 4/	46,865,000 L/			
R75-68	HEW--NIH, Fogarty Int'l Center for Advanced Study in the Health Sciences 4/	1,020,000			

Proposal number	Agency or program	Amount	Date proposed	Approved	45 days ended
R75-69	HEW--NIH, National Library of Medicine 4/	$385,000	1/30/75 (Cont.)		
R75-70	HEW--Alcohol, Drug Abuse and Mental Health 4/	106,220,000 M/			
R75-71	HEW--Health Resources 2/	26,254,000 N/			
R75-72	HEW--OE, Elementary and Secondary Education 2/	$35,856,250			
R75-73	HEW--OE, Education of the Handicapped 2/	102,500,000			
R75-74	HEW--OE, Occupational, Vocational, and Adult Education 2/	39,712,000			
R75-75	HEW--OE, Higher Education 2/	58,300,000			
R75-76	HEW--OE, Library Resources 2/	52,225,000 O/			
R75-77	HEW--Social and Rehabilitation Service, Public Assistance 2/	12,900,000			
R75-78	HEW--Social and Rehabilitation Service 2/	29,848,000			
R75-79	HEW--Human Development 2/	41,582,000			
R75-80	DOL--Community Service Employment for Older Americans 2/	12,000,000			
R75-81	Consumer Product Safety Commission 2/	1,709,000		H.R.4075 $500,000	
R75-82	Federal Highway Admin. 5/	11,443,000	4/18/75		6/12/75
R75-83	HEW--Health Services Admin. 2/	1,623,000			6/12/75

Proposal number	Agency or program	Amount		Date proposed	Approved	45 days ended
R75-84	HEW--Alcohol, Drug Abuse, and Mental Health Admin. 2/	$14,250,000		4/18/75 (Cont.)		
R75-85	HEW--Health Resources 2/	.2,000,000				
R75-86	HEW--Health Resources Admin. 2/	220,450,000				
R75-87	Community Services Admin. 2/	28,000,000		5/8/75		7/2/75
D75-48	HUD--Homeownership Assistance 1/	264,117,000	P/	11/6/74		2/28/75
D75-141	Commerce, Job Opportunities Program 2/	125,000,000	Q/	2/14/75		4/16/75
	HUD--Housing for the Elderly 1/	180,500,000	R/	6/3/75		
	HUD--College Housing 1/	964,000,000	S/	6/19/75	H.R.8070 T/ $964,000,000	

Categorization of impoundments in major functional area:

1/ Housing, Environmental, and Community Development
2/ Social, Manpower, Education
3/ Defense
4/ Science, Research & Development
5/ Highways, Roads
6/ Other

A/ Pub. L. No. 93-529, December 21, 1974
B/ R75-4A changed R76-4 ($63,553,000)
C/ R75-7A changed R76-7 ($14,000,000)
D/ R75-8A changed R76-8 ($11,212,940)
E/ Pub. L. No. 94-14, April 8, 1975
F/ R75-15A changed R76-15 ($550,000)
G/ R75-27A change R76-27 ($13,500,000)
H/ R75-28A changed R76-28 ($248,000,000)
I/ R75-29A changed R76-29 ($372,465,933)
J/ Pub. L. No. 94-15, April 8, 1975
K/ GAO (report 2/14/75) corrected amount from $25,681,000 to include D75-142.

(Footnotes, continued)

L/ GAO (report 2/14/75) corrected amount from $40,560,000 to include D75-143.
M/ GAO (report 2/14/75) corrected amount from $103,894,000 to include D75-144.
N/ GAO (report 2/14/75) corrected amount from $25,477,000 to include D75-145.
O/ GAO (report 2/14/75) corrected amount from $49,433,000 to include D75-148.
P/ Deferral proposed by the President but reclassified by the Comptroller General to a rescission.
Q/ Deferral proposed by the President but reclassified by the Comptroller General to a rescission.
R/ Reported by the Comptroller General on June 3, 1975.
S/ Reported by the Comptroller General on June 19, 1975.
T/ Pub. L. No. 94-116, October 17, 1975.

B. Proposed Deferrals, Fiscal Year 1975

Proposal number 1/	Agency or program	Amount	Date proposed	Disapproved
D75-1	Corps of Engineers A/	$108,000	9/20/74	
D75-2*	HEW--OE, Library Resources B/	10,874,500 2/		
D75-3*	HEW--OE, University Community Services B/	5,812,500 3/		
D75-4*	HEW--OE, Land Grant Colleges B/	9,500,000		
D75-5*	HEW--OE, Higher Education, State Post-Secondary Education B/	700,000 4/		
D75-6*	HEW--OE, School Impact Aid B/	4,000,000 5/		
D75-7*	HEW--Rehabilitation Services B/	10,000,000 6/		
D75-8*	HEW--Child Welfare Services B/	750,000 7/		
D75-9	EPA--Water Program Operations Construction Grants A/	9,000,000,000		
D75-10	GSA--Auto Data Processing Fund F/	18,300,000		
D75-11*	Agriculture Research Service, Construction D/	770,000		
D75-12	Commerce--NOAA, Fisheries Loan Fund F/	5,292,329 8/		
D75-13	Interior--Oregon and California Grant Lands A/	17,029,088 9/		
D75-14	Interior--Bureau of Reclamation A/	1,055,000		

NOTE: Footnotes for section B are explained on pages 55 and 56.

Proposal number	Agency or program	Amount	Date proposed	Disapproved
D75-30	Commerce--NOAA, Coastal Zone Management A/	$2,175,000 16/	10/4/74 (Cont.)	
D75-31	Commerce--Scientific and Technical Research D/	2,468,000		
D75-32	DOD--Shipbuilding and Conversion, Navy C/	1,793,590,000 17/		
D75-33	DOD--Military Construction C/	634,321,109 18/		
D75-34	DOD--Special Foreign Currency Program F/	955,000		
D75-35	Soldiers' and Airmen's Home B/	434,000 19/		
D75-36	Panama Canal (Capital Outlay) F/	500,000		
D75-37	DOD--Wildlife Conservation A/	432,287 20/		
D75-38	HEW--Health Services Admin., Health Service Delivery B/	2,250,000		
D75-39	HEW--Health Services Admin., Indian Health Facilities B/	88,000		
D75-40	HEW--NIH, Buildings and Facilities A/	7,806,433 21/		
D75-41	HEW--Scientific Activities Overseas D/	15,148,000 22/		
D75-42	HEW--OE, Higher Education B/	72,789,590 23/		
D75-43	HEW--Research and Training Activities Overseas D/	8,158,000		
D75-44	HEW--Social Security Admin., Limitation on Construction B/	20,575,621 24/		

Proposal number	Agency or program	Amount	Date proposed	Disapproved
D75-15	Interior--Bureau of Reclamation A/	$1,150,000	9/20/74 (Cont.)	
D75-16	State-- International Center F/	500,000		
D75-17*	Federal Highways E/	9,136,486,441 10/		S.Res. 69 $9,136,486,441 4/24/75
D75-18	Foreign Claims Settlement Commission F/	10,500,000		
D75-19	Agency for Int'l Development F/	20,000,000	10/4/74	
D75-20	Agriculture--Special Foreign Currency Program F/	2,516,000		
D75-21	Agriculture--Emergency Conservation Measures A/	11,687,589 11/		
D75-22	Agriculture--Marketing Services F/	1,459,209 12/		
D75-23	Perishable Agriculture Commodities Act Fund F/	511,330 13/		
D75-24*	Agriculture--Forest Service Forest Roads and Trails E/	420,000,000		
D75-25	Agriculture--Forest Service Forest Fire Prevention A/	173,499 14/		
D75-26	Agriculture--Forest Service Expenses, Brush Disposal A/	26,141,027 15/		
D75-27	Commerce--Financial and Technical Assistance F/	1,780,000		
D75-28	Commerce--U.S. Travel Service F/	4,891,000		
D75-29	Commerce--Construction of Facilities F/	231,000		

Proposal number	Agency or program	Amount	Date proposed	Disapproved
D75-45	HEW--Model Secondary School for the Deaf B/	$803,000	10/4/74 (Cont.)	
D75-46	HEW--Howard University B/	6,323,110 25/		
D75-47	HUD--Nonprofit Sponsor Assistance A/	7,995,000		
D75-48*	HUD--Homeownership Assistance	26/		
D75-49*	HUD--Com. Pln. & Dev., Open Space Land Programs A/	55,161,000		
D75-50*	HUD--Com. Pln. & Dev., Grants for Neighborhood Facilities A/	48,000		
D75-51	HUD--Com. Pln. & Dev., Grants for Basic Water and Sewer Facilities A/	401,734,000		
D75-52*	HUD--Com. Pln. & Dev., Public Facilities Loans A/	183,934,414 27/		
D75-53	HUD--Com. Pln. & Dev., New Community Assistance A/	1,799,000		
D75-54*	Interior--Public Lands Development Roads and Trails E/	30,000,000		
D75-55	Interior--Land and Water Conservation Fund F/	30,000,000		
D75-56	Interior--Federal Aid in Fish Restoration and Mgt. F/	6,077,116 28/		
D75-57	Interior--Federal Aid in Wildlife Restoration F/	18,790,813 29/		

Proposal number	Agency or program	Amount		Date proposed	Disapproved
D75-58	Interior--National Wildlife Refugee Fund F/	$3,642,000		10/4/74 (Cont.)	
D75-59	Interior--Water Resources Development Projects F/	4,000			
D75-60*	Interior--Road Construction E/	312,098,456			
D75-61	Interior--U.S. Geological Survey, Mineral Leasing Act F/	27,059	30/		
D75-62	Interior--Drainage of Anthracite Mines A/	3,575,000			
D75-63*	Interior--BIA, Road Construction E/	135,174,958	31/		
D75-64	Interior--BIA, Oklahoma Indians B/	105,000			
D75-65	Justice--Bureau of Prisons, Buildings and Facilities F/	19,320,000			
D75-66	State--Buildings Abroad F/	33,310,000			
D75-67	State--Construction, U.S.-Mexico Boundary A/	4,696,000			
D75-68	DOT--Acquisition, Construction, and Improvement F/	7,614,000			
D75-69	DOT--Civil Supersonic Aircraft F/	8,113,000			
D75-70	DOT--FAA, Airport and Airway Trust Fund A/	260,824,000			
D75-71	DOT--National Scenic and Recreational Highway E/	90,000,000			

Proposal number	Agency or program	Amount	Date proposed	Disapproved
D75-72	DOT--Rail Crossing A/	$8,015,000		
D75-73	AEC--Capital Equipment D/	1,500,000		
D75-74	EPA--Water Program Operations A/	2,000,000		
D75-75	EPA--Abatement Control Water Planning and Standards A/	30,000,000		
D75-76	Treasury--Loans for Capital Outlay (D.C.) A/	96,800,000		
D75-77	Federal Energy Admin. F/	11,929,000		
D75-78	American Rev. Bicent. Administration F/	11,000,000		
D75-79	American Rev. Bicent. Administration F/	6,310,000		
D75-80	Railroad Retirement Board B/	4,716,000		
D75-81*	DOD--Corps of Engineers A/	43,945,000		H.Res. 241 $43,945,000 3/12/75
D75-82*	DOD--Corps of Engineers A/	14,503,000		H.Res. 242 $14,503,000 3/12/75
D75-83*	Interior--Reclamation Loan Program A/	900,000		H.Res. 243 $900,000 3/12/75
D75-84*	Interior--Reclamation Construction A/	17,955,000		H.Res. 244 $17,955,000 6/5/75
D75-85*	Interior--Reclamation of Colorado Basin A/	2,525,000		H.Res. 245 $2,525,000 3/12/75

Proposal number	Agency or program	Amount	Date Proposed	Disapproved
D75-86*	Interior--Reclamation of Upper Colorado River A/	$1,730,000	10/4/74 (Cont.)	H.Res. 246 $1,730,000 3/12/75
D75-87	Health Resources B/	100,000		
D75-88	Agriculture--Youth Conservation Corps B/	3,081,000	11/13/74	
D75-89	Labor--Pension Guaranty Fund B/	343,000		
D75-90*	Forest Service A/	6,865,000	11/26/74	
D75-91*	Commerce--Social and Economic Statistics Admin. F/	327,000		
D75-92*	Commerce--Domestic and International Business F/	750,000		
D75-93*	Commerce--U.S. Travel Service F/	1,419,729		
D75-94*	Commerce--NOAA F/	6,800,000		H.Res. 309 $4,073,000 3/25/75
D75-95*	Commerce--NOAA A/	1,000,000		
D75-96*	National Fire Prevention and Control Administration D/	500,000		
D75-97*	Commerce--National Bureau of Stds., Off. of Telecommunications D/	4,628,318 32/		
D75-98*	Commerce--Maritime Administration F/	55,750,000 33/		
D75-99*	Commerce--Maritime Administration D/	7,768,000 34/		
D75-100*	Commerce--Maritime Administration F/	1,300,000		

Proposal number	Agency or program	Amount	Date Proposed	Disapproved
D75-101	HEW--Health Resources Administration B/	$3,550,000	11/26/74 (Cont.)	
D75-102	HEW--Health Resources Administration B/	740,000 35/		
D75-103	HEW--OE, Elementary and Secondary Education B/	9,278,000		
D75-104	HEW--OE, Elementary and Secondary Education B/	6,562,500		
D75-105	HEW--OE, Elementary and Secondary Education B/	1,900,000		
D75-106	HEW--Office of the Secretary F/	1,902,000		
D75-107*	HUD--Community Planning and Development A/	50,000,000		S.Res. 23 $50,000,000 3/13/75
D75-108*	HUD--Research and Technology D/	8,000,000		
D75-109*	Interior--Land and Water Conservation Fund A/	20,000,000		
D75-110*	AEC F/	4,000,000		
D75-111*	AEC D/	8,000,000		S.Res. 80 $8,000,000 5/7/75
D75-112*	AEC D/	6,700,000		S.Res. 79 $6,700,000 5/7/75
D75-113*	AEC D/	2,700,000		S.Res. 78 $2,700,000 5/7/75
D75-114*	AEC D/	8,000,000		S.Res. 77 $8,000,000 5/7/75

Proposal number	Agency or program	Amount	Date proposed	Disapproved
D75-115*	AEC D/	4,000,000	11/26/74 (cont.)	S.Res. 32 $4,000,000 5/7/75
D75-116*	AEC D/	$4,700,000		S.Res. 76 $4,700,000 5/7/76
D75-117*	AEC F/	12,000,000		S.Res.75 $12,000,000 5/7/76
D75-118*	AEC F/	12,000,000		
D75-119*	AEC D/	10,000,000		
D75-120*	AEC D/	1,500,000		
D75-121*	AEC D/	12,100,000		
D75-122	AEC D/	13,000,000		
D75-123	AEC D/	13,900,000		
D75-124*	NASA D/	20,000,000		
D75-125*	NASA D/	16,000,000		
D75-126*	NASA D/	36,000,000		
D75-127*	National Foundation on the Arts and Humanities B/	18,000,000		
D75-128*	National Science Foundation D/	15,000,000		
D75-129*	National Science Foundation D/	5,000,000		

Proposal number	Agency or program	Amount	Date proposed	Disapproved
D75-130*	Small Business Administration F/	36,000,000		
D75-131	Commerce--NOAA D/	$1,870,933	12/27/74	
D75-132	HEW--Social and Rehabilitation Service B/	50,000,000		
D75-133*	Interior--Helium Fund F/	47,500,000		
D75-134	DOL--Manpower Administration D/	5,000,000		
D75-135	DOL--Manpower Administration B/	200,000		
D75-136	DOL--Departmental Mgt. F/	60,000		
D75-137	GSA F/	2,184,134		
D75-138*	Advisory Commission on Intergovernmental Relations F/	50,000		
D75-139	Water Bank Program A/	1,265,572	1/30/75	
D75-140	Commerce--Special Foreign Currency F/	1,500,496		
D75-141	Job Opportunities Program	36/		
D75-142	HEW--Health Services Adm.	37/		
D75-143	HEW--NIH, Research Resources	38/		
D75-144	HEW--Alcohol, Drug Abuse, and Mental Health	39/		
D75-145	HEW--Health Resources Admin.	40/		
D75-146	HEW--Health Resources Admin., Health Facilities Const. B/	301,340,000		

Proposal number	Agency or program	Amount	Date proposed	Disapproved
D75-147	HEW--OE, Higher Education B/	$298,714,000	1/30/75 (cont.)	
D75-148	HEW--OE, Library Resources B/	41/		
D75-149	HEW--Gallaudet College B/	1,267,482		
D75-150	DOL--Special Foreign Currency Departmental Mgt. F/	200,000		
D75-151	DOT--Traffic and Highway Safety E/	1,800,000		
D75-152*	Air and Water Control A/	9,375,000		
D75-153*	Health Services Admin. B/	1,000,000	4/18/75	
D75-154	General Revenue Sharing F/	93,419,866		
D75-155	Procurement, Army C/	200.000		
D75-156	Procurement, Army C/	66,349,000		
D75-157	Other Procurement, Army C/	6,200,000		
D75-158	Family Housing, DOD A/	41,314,000		
D75-159	HEW--Health Resources Admin. B/	81,439,000		
D75-160	HEW--OE, Emergency School Aid B/	161,493,000		
D75-161	Foreign Military Credit Sales F/	71,930,000	5/8/75	

Impoundments categorized by major functional areas:

A/ Housing, Environmental, and Community Development
B/ Social, Manpower, Education
C/ Defense
D/ Science, Research & Development
E/ Highways, Roads
F/ Other

1/ Policy deferrals in this column are marked with an asterisk.
2/ D75-2A changed D75-2 ($5,437,000).
3/ D75-3A changed D75-3 ($2,906,000).
4/ D75-5A changed D75-5 ($350,000).
5/ D75-6A changed D75-6 ($16,000,000).
6/ D75-7A changed D75-7 ($5,000,000).
7/ D75-8A changed D75-8 ($375,000).
8/ D75-12A changed D75-12 ($4,039,000).
9/ D75-13A changed D75-13 ($23,693,000).
10/ D75-17A changed D75-17 ($10,727,590,427).
11/ D75-21A changed D75-21 ($5,000,000).
12/ D75-22A changed D75-22 ($903,000).
13/ D75-23A changed D75-23 ($341,000).
14/ D75-25A changed D75-25 ($152,000).
15/ D75-26A changed D75-26 ($18,747,000).
16/ D75-30A changed D75-30 ($3,175,000).
17/ D75-32B changed D75-32A ($1,244,760,000) and D75-32 ($497,990,000).
18/ D75-33A changed D75-33 ($156,893,000).
19/ D75-35A changed D75-35 ($613,000).
20/ D75-37B changed D85-37A ($342,532) and D75-37 ($297,000).
21/ D75-40B changed D75-40A ($6,432,000) and D75-40 ($10,441,111).
22/ D75-41A changed D75-41 ($21,714,000).
23/ D75-42A changed D75-42 ($8,788,000).
24/ D75-44B changed D75-44A ($12,527,621) and D75-44 ($15,393,000).
25/ D75-46A changed D75-46 ($11,490,000).
26/ Comptroller General reclassified D75-48 as a rescission--total included in 1975 rescissions.
27/ D75-52A changed D75-52 ($199,290,000).
28/ D75-56A changed D75-56 ($6,924,000).
29/ D75-57A changed D75-57 ($19,375,000).
30/ D75-61A changed D75-61 ($28,000).
31/ D75-63A changed D75-63 ($110,423,000).
32/ D75-97A changed D75-97 ($3,718,000).
33/ D75-98A changed D75-98 ($5,750,000).
34/ D75-99A changed D75-99 ($3,468,000).
35/ D75-102A changed D750102 ($1,400,000).
36/ Comptroller General reclassified D75-141 as a rescission--total included in 1975 rescissions.
37/ Comptroller General reclassified D75-142 as a rescission--total included in 1975 rescissions (see R75-55).

(Footnotes, continued)

38/ Comptroller General reclassified D75-143 as a rescission--total included in 1975 rescissions (see R75-67).
39/ Comptroller General reclassified D75-144 as a rescission--total included in 1975 rescissions (see R75-70).
40/ Comptroller General reclassified D75-145 as a rescission--total included in 1975 rescissions (see R75-71).
41/ Comptroller General reclassified D75-148 as a rescission--total included in 1975 rescissions (see R75-76).

C. Proposed Rescissions, Fiscal Year 1976

Proposal number	Agency or program	Amount	Date proposed	Approved	45 days ended
R76-1	National Scenic and Recreational Highway E/	$90,000,000	7/1/75		9/26/75
R76-2	Access Highways to Public Recreation Areas E/	25,000,000		H.R.8365 1/ $15,000,000	
R76-3	Treasury--Federal Law Enforcement Training Center F/	8,665,000			
R76-4	Agriculture--Forest Service, Roads and Trails E/	25,723,000	7/26/75		10/22/75
R76-5	HEW--Human Development B/	7,000,000			
R76-6	Interior--Bureau of Mines, Helium Fund F/	47,500,000		H.R.9600 2/ $47,500,000	
R76-7	Community Services Administration D/	2,500,000			
R76-8	Community Services Administration B/	7,500,000			
R76-9	HEW--OE, Elementary and Secondary Education B/	210,403,852 3/	11/18/75		2/20/76
R76-10	HEW--OE, School Impact Aid B/	243,773,154 4/			
R76-11	HEW--OE, Education for the Handicapped B/	36,375,000			
R76-12	HEW--OE, Occupational, Vocational, and Adult Education B/	14,240,950			
R76-13	HEW--OE, Higher Education B/	768,139,840			

NOTE: Footnotes for section C are explained on pages 60 and 61.

Proposal number	Agency or program	Amount	Date proposed	Approved	45 days ended
R76-14	HEW--OE, Library Resources B/	$28,975,000	11/18/75 (cont.)		
R76-15	Agriculture--Research Service D/	225,000	11/29/75		2/23/76
R76-16	Agriculture--Water Bank Program A/	12,500,000			
R76-17	Agriculture--Forestry Incentives A/	18,750,000			
R76-18	Agriculture--FmHA, Rural Water and Waste Disposal Grants A/	150,000,000			
R76-19	Agriculture--FmHA, Rural Development Grants A/	12,344,000			
R76-20	Agriculture--FmHA, Rural Housing for Domestic Farm Labor A/	9,375,000			
R76-21	Agriculture--FmHA, Mutual Self-Help Housing A/	12,286,529			
R76-22	Agriculture--FmHA, Self-Help Housing Land Development Fund A/	1,498,032			
R76-23	Agriculture--FmHA, Rural Housing Insurance A/	10,000,000			
R76-24	Agriculture--FmHA, Rural Community Fire Protection Grants A/	4,375,000			
R76-25	Agricultural Marketing Service F/	2,000,000			
R76-26	HUD--State and Housing Finance and Development Agencies A/	600,000,000			

Proposal number	Agency or program	Amount	Date proposed	Approved	45 days ended
R76-27	Consumer Product Safety Comm. B/	$6,431,000 5/	11/29/75 (cont.)	H.R.11665 6/ $2,656,000	
R76-28	HUD--Rehabilitation Loan Fund A/	62,670,000 7/	1/6/76		3/12/76
R76-29	Agriculture--FmHA Rural Housing Ins. Fund A/	500,000,000	1/23/76		3/19/76
R76-30	Agriculture--Special Milk Program B/	40,000,000			
R76-31	Commerce--Economic Development Assist. B/	4,000,000			
R76-32	Corps of Engineers E/	3,600,000			
R76-33	HEW Health Services Admin. B/	127,804,000			
R76-34	HEW--Indian Health Services B/	5,294,000			
R76-35	HEW--Preventive Health Services B/	7,690,000			
R76-36	HEW--Alcohol, Drug Abuse, and Mental Health B/	56,500,000			
R76-37	HEW--Health Resources B/	69,000,000			
R76-38	HEW--OE, Indian Education B/	15,000,000			
R76-39	HEW--Human Development B/	2,000,000			
R76-40	Interior--Bureau of Land Mgt., Roads and Trails E/	8,800,000		H.R.11665 $4,900,000	
R76-41	Interior--Road Construction E/	58,500,000		H.R.11665 $58,500,000	

Proposal number	Agency or program	Amount	Date proposed	Approved	45 days ended
R76-42	State--Mutual Educational and Cultural Exchange B/	$8,000,000	1/23/76 (cont.)	H.R.11665 $8,000,000	
R76-43	Community Services Administration B/	2,500,000			
R76-44	Selective Service System C/	1,775,000		H.R.11665 $1,775,000	
R76-45	Office of Drug Abuse Policy B/	250,000	7/1/76		9/18/76
R76-46	Agriculture--Food and Nutrition Program B/	9,350,000	7/28/76		9/29/76
R76-47	HEW--OE, Elementary and Secondary Education B/	3,000,000			
R76-48	HEW--OE, School Assistance in Federally Affected Areas B/	24,000,000			
R76-49	HEW--OE, Education for the Handicapped B/	90,000,000			
R76-50	Int'l Security Assistance, Foreign Military Credit Sales C/	126,750,000	9/7/76		
	HUD--Section 236 A/	26,300,000 8/			

Impoundments categorized by major functional areas:

A/ Housing, Environmental, and Community Development
B/ Social, Education, Manpower
C/ Defense
D/ Science, Research & Development
E/ Roads, Highways
F/ Other

(Footnotes, continued)

1/ Pub. L. No. 94-134, November 24, 1975.
2/ Pub. L. No. 94-111, October 13, 1975.
3/ R76-9A changed R76-9 ($220,403,852).
4/ R76-10A changed R76-10 ($220,968,452).
5/ R76-27A changed R76-27 ($5,225,000).
6/ Pub. L. No. 94-249, March 25, 1976.
7/ R76-28A changed R76-28 ($60,670,000).
8/ Reported by the Comptroller General.

D. Proposed Deferrals, Fiscal Year 1976

Proposal number 1/	Agency or program	Amount	Date proposed	Disapproved
D76-1	Foreign Agricultural Service F/	$2,109,608 2/	7/1/76	
D76-2	Commerce--NOAA Fisheries Loan Fund F/	5,114,132 3/		
D76-3	Commerce--NOAA D/	2,197,341 4/		
D76-4	Shipbuilding, Navy C/	1,793,509,000		
D76-5	Military Construction C/	5/		
D76-6	DOD--Wildlife Conser., Military Reservations A/	215,000 6/		
D76-7	HEW--NIH, Buildings and Facilities D/	2,163,894		
D76-8	HEW--Office of the Assistant Secretary of Health D/	14,319,098 7/		
D76-9	HEW--OE, Higher Education B/	309,546,680 8/		
D76-10	HEW--Howard University B/	13,525,566 9/		
D76-11	HEW--Research and Training Activities Overseas D/	2,347,783 10/		
D76-12	Interior--Bureau of Land Management, Public Lands Development E/	20,000,000 11/		
D76-13	Interior--Bureau of Reclamation A/	1,030,000		S.Res. 226 $1,030,000
D76-14	Interior--Upper Colorado River Storage Project A/	1,150,000		

NOTE: Footnotes for section D are explained on pages 70 and 71.

Proposal number	Agency or program	Amount	Date proposed	Disapproved
D76-15	Interior--Land and Water Conservation Fund A/	$30,000,000	7/1/75 (Cont.)	
D76-16	Interior--Fish and Wildlife Service A/	6,330,000		
D76-17	Interior--Fish and Wildlife Service A/	21,470,250		
D76-18	Interior--Road Construction, National Park Service E/	138,858,397 12/		
D76-19	Interior--U.S. Geological Survey A/	30,300 13/		
D76-20	Interior--Road Construction, BIA E/	31,339,161 14/		
D76-21	DOT--U.S. Coast Guard F/	15/		
D76-22	DOT--FAA, Civil Supersonic Aircraft Development Termination F/	16/		
D76-23	DOT--FAA, Airport and Airway Trust Fund A/	276,101,000 17/		
D76-24	Treasury--General Revenue Sharing F/	82,407,250 18/		
D76-25	Treasury--General Revenue Sharing F/	113,731,858 19/		
D76-26	Payment of Vietnam Prisoner of War Claims F/	11,081,000		
D76-27	American Revolution Bicentennial Admin. F/	1,000,000		
D76-28*	Agricultural Conservation Program A/	63,333,333 20/	7/26/75	
D76-29*	Agriculture--Water Bank Program A/	1,071,765 21/		

Proposal number	Agency or program	Amount	Date proposed	Disapproved
D76-30*	Agriculture--Forestry Incentives Program A/	$7,500,000 22/	7/26/75 (Cont.)	
D76-31*	Agriculture--FmHA, Rural Water and Waste Disposal Grants A/	75,000,000 23/		
D76-32*	Agriculture--FmHA, Rural Housing for Domestic Farm Labor Grants A/	2,500,000 24/		
D76-33*	Agriculture--Mutual and Self-Help Housing Grants A/	3,300,000 25/		
D76-34*	Agriculture--Self-Help Housing Land Development Fund A/	1,625,000		
D76-35*	Agricultural Marketing Service F/	800,000 26/		
D76-36*	Agriculture--Forest Roads and Trails E/	302,681,943 27/		
D76-37	Agriculture--Brush Disposal A/	22,321,000 28/		
D76-38	Agriculture--Forest Service A/	152,664 29/		
D76-39	HEW--Indian Health Facilities B/	1,000,000		S.Res. 366 $1,000,000
D76-40*	HEW--Alcohol, Drug Abuse, and Mental Health D/	4,910,000 30/		
D76-41*	HEW--Health Resources Administration B/	22,000,000		
D76-42*	HEW--OE, School Impact Aid B/	68,350,000		
D76-43*	HEW--OE, Higher Education B/	9,500,000		

Proposal number	Agency or program	Amount	Date proposed	Disapproved
D76-44*	HEW--OE, Library Resources B/	$10,437,250	7/26/75 (Cont.)	
D76-45*	HEW--Public Assistance B/	3,000,000 31/		
D76-46	Interior--Bureau of Mines A/	3,725,248 32/		
D76-47*	EPA--Abatement and Control A/	4,000,000		
D76-48	GSA--Rare Silver Dollar Program F/	1,849,831 33/		
D76-49*	Community Services Administration A/	16,500,000		S.Res. 267 $16,500,000
D76-50*	Community Services Administration B/	14,500,000		
D76-51*	HEW--OE, Elementary and Secondary Education B/	8,000,000	9/10/75	
D76-52*	HEW--OE, Elementary and Secondary Education B/	2,968,002		
D76-53	Office of the Secretary of Treasury A/	39,370,000		
D76-54	HEW--Social Security Admin., Limitation on Construction B/	26,210,304 34/	9/24/75	
D76-55*	DOT--National Scenic and Recreation Highway E/	90,000,000		
D76-56	National Commission on Productivity & Work Quality F/	1,500,000		
D76-57*	HEW--Health Services Administration B/	1,623,000 35/	10/20/75	

Proposal number	Agency or program	Amount	Date proposed	Disapproved
D76-58*	HEW--NIH, National Cancer Institute D/	$7,000,000	10/20/75 (Cont.)	
D76-59*	HEW--NIH, National Heart and Lung Institute D/	12,700,000 36/		
D76-60*	HEW--NIH, National Institute of Dental Research D/	518,000		
D76-61*	HEW--NIH, National Institute of Neurological and Communicative Disorders and Stroke D/	682,000		
D76-62*	HEW--NIH, National Institute of General Medical Science D/	5,812,000 37/		
D76-63*	HEW--NIH, National Institute of Child Health and Human Development D/	1,234,000		
D76-64*	HEW--NIH F/	884,000 38/		
D76-65*	HEW--Assistant Secretary for Health F/	773,000 39/	11/18/75	
D76-66	State--International Center F/	2,571,783		
D76-67	Treasury--General Revenue Sharing F/	1,096,362 40/		
D76-68*	Agricultural Research Service D/	7,570,000	11/29/75	H.Res. 910 S.Res. 313 $7,570,000
D76-69*	Agriculture--Animal and Plant Health Inspection Service F/	6,314,000		S.Res. 324 H.Res. 911 $6,314,000
D76-70*	Agricultural Conservation Program A/	90,000,000		H.Res. 912 $90,000,000

Proposal number	Agency or program	Amount	Date proposed	Disapproved
D76-71	Agriculture--Commodity Credit Corp. F/	$2,787,000	11/29/75	
D76-72*	Agriculture--FmHA Rural Water and Waste Disposal Grants A/	50,000,000		H.Res. 914 $50,000,000
D76-73*	Agriculture--Watershed and Flood Prevention Operations A/	22,500,000		H.Res. 915 $22,500,000
D76-74*	Agriculture--Resource Conservation Development A/	4,960,000		H.Res. 916 $4,960,000
D76-75	Commerce--NOAA, Fishermen's Guaranty Fund F/	152,834 41/		
D76-76*	Commerce--Scientific and Technical Research D/	1,187,000		
D76-77*	DOL--Working Capital Fund E/	997,000		
D76-78*	DOL--Pension Guaranty Fund G/	1,431,000		
D76-79*	EPA--Research and Development D/	2,000,000		H.Res. 920 $2,000,000
D76-80*	EPA--Research and Development D/	4,600,000		H.Res. 921 $4,600,000
D76-81*	EPA--Abatement and Control A/	3,750,000		H.Res. 922 $3,750,000
D76-82*	EPA--Abatement and Control A/	10,000,000		H.Res. 923 $10,000,000
D76-83*	EPA--Abatement and Control A/	15,000,000		H.Res. 924 $15,000,000
D76-84*	NASA--Research and Program Management F/	2,900,000		

Proposal number	Agency or program	Amount	Date proposed	Disapproved
D76-85	State--Refugee and Migration B/	28,492,695	11/29/75 (cont.)	
D76-86	Military Construction C/	$177,693,273 42/	1/6/76	
D76-87	Panama Canal F/	154,657		
D76-88*	HEW--NIH, National Institute of Arthritis, Metabolism, and Digestive Diseases D/	2,752,000		
D76-89*	HEW--NIH, Research Resources D/	42,896,000		
D76-90	State--Acquisition, Operation and Maintenance of Bldgs. F/	2,275,000		
D76-91	DOT--Coast Guard, Acquisition, Construction, and Improvement F/	1,061,000		
D76-92	DOT--FAA, Construction A/	9,400,000 43/		
D76-93	DOT--FAA, Civil Supersonic Aircraft Development Termination F/	2,299,301 44/		
D76-94	ICC--Payments for Directed Rail Service F/	13,700,000		
D76-95*	Agriculture--Watershed and Flood Prevention Operations A/	18,000,000	1/23/76	H.Res.1032 $18,000,000
D76-96*	Corps of Engineers F/	700,000		S.Res. 408 $700,000
D76-97*	HEW--Heath Services Admin. Indian Health Facilities B/	13,908,000		S.Res. 366 $13,908,000
D76-98*	Justice--Law Enforcement Assistance Admin. B/	15,000,000		H.Res.1058 $15,000,000

Proposal number	Agency or program	Amount	Date proposed	Disapproved
D76-99	DOL--Employment and Training Admin. B/	$900,000,000 45/	1/23/76	
D76-100*	National Science Foundation D/	10,000,000		
D76-101*	Youth Conservation Corps B/	23,680,000	2/6/76	S.Res. 385 $23,680,000
D76-102	Interior--Land Management, Oregon and Calif. Grant Lands A/	3,272,211 46/		
D76-103*	Interior--BIA B/	10,881,000		S.Res. 388 $10,881,000
D76-104*	Agricultural Stabilization Conservation Service Water Bank Program A/	8,071,770	3/18/76	
D76-105*	Agricultural Special Supplement Food Program B/	61,000,000		H.Res. 1129 $61,000,000
D76-106	Commerce--Special Foreign Currency F/	1,220,000		
D76-107	Commerce--Maritime Admin., Ship Construction F/	247,000,000 47/		
D76-108	Shipbuilding, Navy C/	2,245,945,000		
D76-109*	DOL--Employment and Training Admin. B/	18,750,000 48/		
D76-110	Interior--Bureau of Mines A/	688,430	5/13/76	H.Res. 1428 $688,430
D76-111	American Revolution Bicentennial Admin. F/	500,000		
D76-112	DOL--Special Foreign Currency F/	135,938	7/6/76	

Proposal number	Agency or Program	Amount	Date proposed	Disapproved
D76-113	National Comm. on Observance of Int'l Women's Year 1975 B/	$4,427,000	7/6/76	
D76-114	Emergency Refugee and Migration Assistance B/	15,000,000	7/28/76	
D76-115*	HEW--Health Resources Admin., Special Medical Facilities B/	4,000,000		S.Res. 554 $4,000,000
D76-116	ERDA--Operating Expenses D/	16,000,000		
D76-117	FEA Strategic Petroleum Reserve F/	299,000,000		
*	Youth Conservation Program B/	10,000,000 49/		S.Res. 205 $10,000,000
*	DOT--Federal Railroad Grants A/	15,000,000 50/		

Impoundments categorized by major functional area:

A/ Housing, Environmental, and Community Development
B/ Social, Manpower, Education
C/ Defense
D/ Science, Research & Development
E/ Highways, Roads
F/ Other

1/ Policy deferrals are marked in this column with an asterisk.
2/ D76-1A changed D76-1 ($2,232,494).
3/ D76-2A changed D76-2 ($7,252,329).
4/ D76-3A changed D76-3 ($1,354,933).
5/ Duplicate reports submitted D76-5 total is included in D76-86.
6/ D76-6A changed D76-6 ($432,233).
7/ D76-8A changed D76-8 ($3,652,000).
8/ D76-9B changed D76-9A ($272,615,939) and D76-9 ($3,652,000).
9/ D76-10B changed D76-10A ($12,225,040) and D76-10 ($8,174,482).
10/ D76-11C changed D76-11B ($4,251,885) and D76-11A ($8,306,986) and D76-11 ($7,306,986).
11/ D76-12B changed D76-12A ($16,100,000) and D76-12 ($25,847,000).
12/ D76-18A changed D76-18 ($238,092,459).

13/ D76-19A changed D76-19 ($28,700).
14/ D76-20B changed D76-20A ($69,339,161) and D76-20 ($68,469,958).
15/ Duplicate report submitted D76-21; total included in D76-91.
16/ Duplicate report submitted D76-22; total included in D76-93.
17/ D76-23B changed D76-23A ($82,340,000) and D76-23 ($75,823,895).
18/ D76-24B changed D76-24A ($81,000,000) and D76-24 ($93,419,866).
19/ D76-25F changed D76-25E ($113,731,836), D76-25D ($95,016,857), D76-25B ($75,856,186), D760-25A ($57,586,899) and D76-25 ($38,391,266).
20/ D76-28B changed D76-28 ($31,666,666).
21/ D76-29A changed D76-29 ($535,882).
22/ D76-30A changed D76-30 ($3,750,000).
23/ D76-31A changed D76-31 ($37,500,000).
24/ D76-32A changed D76-32 ($1,250,000).
25/ D76-33A changed D76-33 ($2,050,000).
26/ D76-35A changed D76-35 ($400,000).
27/ D76-36A changed D76-36 ($280,000,000).
28/ D76-37A changed D76-37 ($27,113,027).
29/ D76-38A changed D76-38 ($95,499).
30/ D76-40C changed D76-40B ($2,753,000), D76-40A ($2,426,000) and D76-40 ($3,409,000).
31/ D76-45B changed D76-45A ($2,000,000) and D76-45 ($1,000,000).
32/ D76-46A changed D76-46 ($3,375,248).
33/ D76-48A changed D76-48 ($1,790,000).
34/ D76-54B changed D76-54A ($15,098,131) and D76-54 ($14,909,621).
35/ D76-57A changed D76-57 ($1,082,000).
36/ D76-59A changed D76-59 ($2,700,000).
37/ D76-62A changed D76-62 ($2,318,000).
38/ D76-64A changed D76-64 ($572,000).
39/ D76-65A changed D76-65 ($753,000).
40/ D76-67A changed D76-67 ($11,833,495).
41/ D76-75A changed D76-75 ($151,834).
42/ D76-86B changed D76-86A ($173,750,273) and D76-86 ($596,073,662).
43/ D76-92A changed D76-92 ($8,678,656).
44/ D76-93A changed D76-93 ($2,179,123).
45/ D76-99A changed D76-99 ($1,800,000,000).
46/ D76-102A changed D76-102 ($3,016,211).
47/ D76-107A changed D76-107 ($231,000,000).
48/ D76-109A changed D76-109 ($15,000,000).
49/ Reported by Comptroller General.
50/ Reported by Comptroller General.

E. Analysis of Proposed Rescissions During Fiscal Year 1975

Total proposed: $4,292,500,218

Total approved: $1,355,295,102

Total disapproved: $2,937,205,116

Percent disapproved: 68.43

F. Analysis of Proposed Rescissions for Fiscal Year 1975 by Major Functional Area

Area: Housing, Environmental, and Community Development

Total proposed: $2,228,403,940

Total approved: $1,036,374,470

Total disapproved: $1,192,029,470

Percent disapproved: [illegible]3.49

Percent of all rescissions proposed during 1975: 51.91

Area: Social, Manpower, and Education

Total proposed: $1,143,850,582

Total approved: $2,740,000

Total disapproved: $1,141,110,582

Percent disapproved: 99.76

Percent of all rescissions proposed during 1975: 26.65

Area: Defense

Total proposed: $278,800,000

Total approved: $183,200,000

Total disapproved: $95,600,000

Percent disapproved: 34

Percent of all rescissions proposed during 1975: 6.5

Area: Science, Research & Development

Total proposed: $466,412,000

Total approved $2,760,000

Total disapproved: $463,652,000

Percent disapproved: 99

Percent of all rescissions proposed during 1975: 10.87

Area: Highways, Roads

Total proposed: $88,406,092

Total approved: $76,963,028

Total disapproved: $11,443,064

Percent disapproved: 12.94

Percent of all rescissions proposed during 1975: 2.06

Area: Other

Total proposed: $86,627,604

Total approved: $53,257,604

Total disapproved: $33,370,000

Percent disapproved: 38.52

Percent of all rescissions proposed during 1975: 2.02

G. Analysis of Proposed Deferrals During Fiscal Year 1975

Total proposed: $24,915,743,508

Total disapproved: $9,318,217,441

Percent disapproved: 37

H. Analysis of Proposed Deferrals for Fiscal Year 1975 by Major Functional Area

Area: Housing, Environmental, and Community Development

Total proposed: $10,355,716,909

Total disapproved: $131,558,000

Percent disapproved: 1.27

Percent of all proposed deferrals during 1975: 41.48

Area: Social, Manpower, and Education

Total proposed: $1,148,729,303

Total disapproved: 0

Percent of all deferrals proposed during 1975: 4.61

Area: Defense

Total proposed: $2,500,660,109

Total disapproved: 0

Percent of all deferrals proposed during 1975: 10.04

Area: Science, Research & Development

Total proposed: $218,511,251

Total disapproved: $34,100,000

Percent disapproved: 15.61

Percent of all deferrals proposed during 1975: 0.88

Area: Highways, Roads

Total proposed: $10,125,559,855

Total disapproved: $9,136,486,441

Percent disapproved: 90.2

Percent of all deferrals proposed during 1975: 41

Area: Other

Total proposed: $586,566,081

Total disapproved: $16,075,000

Percent disapproved: 2.74

Percent of all deferrals proposed during 1975: 2.35

I. Total Fiscal Year 1975 Impoundments

Total withheld: $29,208,243,726

Total disapproved: $12,255,422,557

Percent disapproved: 41.96

J. Percent of Proposed Impoundments (Rescissions and Deferrals for Fiscal Year 1975) by Major Functional Area

Area: Housing, Environmental, and Community Development

43.02

Area: Social, Manpower, and Education

7.85

Area: Defense

9.52

Area: Science, Research & Development

2.34

Area: Highways, Roads

39.97

Area: Other

2.3

K. Analysis of Proposed Rescissions During Fiscal Year 1976

Total proposed: $3,606,363,357

Total approved: $138,331,000

Total disapproved: $3,470,032,357

Percent disapproved: 96.39

L. Analysis of Proposed Rescissions for Fiscal Year 1976 by Major Functional Area

Area: Housing, Environmental, and Community Development

Total proposed: $1,420,098,561

Total approved: 0

Percent disapproved: 100

Percent of all rescissions proposed during 1976: 39.36

Area: Social, Manpower, and Education

Total proposed: $1,787,226,796

Total approved: $10,656,000

Total disapproved: $1,776,570,796

Percent disapproved: 99.4

Percent of all rescissions proposed during 1976: 49.53

Area: Defense

Total proposed: $128,525,000

Total approved: $1,775,000

Total disapproved: $126,750,000

Percent disapproved: 98.62

Percent of all rescissions proposed during 1976: 3.56

Area: Science, Research & Development

Total proposed: $2,725,000

Total approved: 0

Percent disapproved: 100

Percent of all rescissions proposed during 1976: .08

Area: Highways, Roads

Total proposed: $211,623,000

Total approved: $78,400,000

Total disapproved: $133,223,000

Percent disapproved: 62.95

Percent of all rescissions proposed during 1976: 5.86

Area: Other

Total proposed: $58,165,000

Total approved: $47,500,000

Total disapproved: $10,665,000

Percent disapproved: 18.34

Percent of all rescissions proposed
during 1976: 1.61

M. Analysis of Proposed Deferrals During Fiscal Year 1976

Total proposed: $8,171,629,912

Total disapproved: $393,081,430

Percent disapproved: 4.81

N. Analysis of Proposed Deferrals for Fiscal Year 1976
by Major Functional Area

Area: Housing, Environmental, and Community Development

Total proposed: $827,367,971

Total disapproved: $215,928,430

Percent disapproved: 26.1

Percent of all proposed deferrals
during 1976: 10.12

Area: Social, Manpower, and Education

Total proposed: $1,597,230,497

Total disapproved: $139,469,000

Percent disapproved: 8.73

Percent of all proposed deferrals
during 1976: 19.55

Area: Defense

Total proposed: $4,217,147,273

Total disapproved: 0

Percent of all proposed deferrals
during 1976: 51.61

Area: Science, Research & Development

Total proposed: $140,889,116

Total disapproved: $14,170,000

Percent disapproved: 10.06

Percent of all proposed deferrals during 1976: 1.72

Area: Highways, Roads

Total proposed: $582,879,501

Total disapproved: 0

Percent of all proposed deferrals during 1976: 7.13

Area: Other

Total proposed: $806,115,554

Total disapproved: $23,514,000

Percent disapproved: 2.92

Percent of all deferrals proposed during 1976: 9.86

O. Total Fiscal Year 1976 Impoundments

Total withheld: $11,779,993,269

Total disapproved: $3,863,113,787

Percent disapproved: 32.79

P. Percent of Proposed Impoundments (Rescissions and Deferrals for Fiscal Year 1976) by Major Functional Area

Area: Housing, Environmental, and Community Development

19.08

Area: Social, Manpower, and Education

28.73

Area: Defense

36.89

Area: Science, Research & Development

1.22

Area: Highways, Roads

6.74

Area: Other

7.34

Q. Analysis of Proposed Rescissions During Fiscal Years 1975-76

Total proposed: $7,900,863,575

Total disapproved: $6,407,237,473

Percent disapproved: 81.1

R. Analysis of Proposed Rescissions for Fiscal Years 1975-76 by Major Functional Area

Area: Housing, Environmental, and Community Development

Total proposed: $3,648,502,501

Total disapproved: $2,612,128,031

Percent disapproved: 71.59

Percent of all rescissions proposed: 46.18

Area: Social, Manpower, and Education

Total proposed: $2,931,077,378

Total disapproved: $2,917,681,378

Percent disapproved: 99.54

Percent of all rescissions proposed: 37.10

Area: Defense

Total proposed: $407,325,000

Total disapproved: $222,350,000

Percent disapproved: 54.59

Percent of all rescissions proposed: 5.16

Area: Science, Research & Development

Total proposed: $469,137,000

Total disapproved: $466,377,000

Percent disapproved: 99.41

Percent of all rescissions proposed: 5.94

Area: Highways, Roads

Total proposed: $300,029,092

Total disapproved: $144,666,064
Percent disapproved: 48.22

Percent of all rescissions proposed: 3.8

Area: Other

Total proposed: $144,792,604

Total disapproved: $44,035,000

Percent disapproved: 30.41

Percent of all rescissions proposed: 1.83

S. Analysis of Proposed Deferrals During Fiscal Years 1975-76

Total proposed: $33,087,373,420

Total disapproved: $9,711,298,871

Percent disapproved: 29.35

T. Analysis of Proposed Deferrals for Fiscal Years 1975-1976 by Major Functional Area

Area: Housing, Environmental, and Community Development

Total proposed: $11,163,084,880

Total disapproved: $347,486,430

Percent disapproved: 3.11

Percent of all deferrals proposed: 33.74

Area: Social, Manpower, and Education

Total proposed: $2,745,959,800

Total disapproved: $139,469,000

Percent disapproved: 5.08

Percent of all deferrals proposed: 8.3

Area: Defense

Total proposed: $6,717,807,382

Total disapproved: 0

Percent of all deferrals proposed: 20.3

Area: Science, Research & Development

Total proposed: $359,400,367

Total disapproved: $48,270,000

Percent disapproved: 13.44

Percent of all deferrals proposed: 1.09

Area: Highways, Roads

Total proposed: $10,708,439,356

Total disapproved: $9,136,486,441

Percent disapproved: 85.32

Percent of all deferrals proposed: 32.36

Area: Other

Total proposed: $1,392,68[illegible],635

Total disapproved: $39,587,000

Percent disapproved: 2.8

Percent of all deferrals proposed: 4.21

U. Total Fiscal Years 1975-76 Impoundments

Total withheld: $40,988,236,995

Total disapproved: $16,118,536,344

Percent disapproved: 39.32

V. Analysis of Proposed Impoundments for Fiscal Years 1975-76 by Major Functional Area

Area: Housing, Environmental, and Community Development

Total proposed: $14,811,487,381

Total disapproved: $2,959,614,461

Percent disapproved: 19.98

Percent of all impoundments proposed: 36.14

Area: Social, Manpower, and Education

Total proposed: $5,677,037,178

Total disapproved: $3,057,150,378

Percent disapproved: 53.85

Percent of all impoundments proposed: 13.85

Area: Defense

Total proposed: $7,125,132,382

Total disapproved: $22,350,000

Percent disapproved: 3.12

Percent of all impoundments proposed: 17.38

Area: Science, Research & Development

Total proposed: $828,537,367

Total disapproved: $514,647,000

Percent disapproved: 62.12

Percent of all impoundments proposed: 2.02

Area: Highways, Roads
Total proposed: $11,008,468,448

Total disapproved: $9,281,152,505

Percent disapproved: 84.31

Percent of all impoundments proposed: 26.86

Area: Other

Total proposed: $1,537,474,239

Total disapproved: $83,622,000

Percent disapproved: 5.44

Percent of all impoundments proposed: 3.75

ANALYSES OF IMPOUNDMENTS FOR

FISCAL YEARS 1975 AND 1976

This appendix briefly reviews impoundments during fiscal years 1975 and 1976. The discussion provides an overall picture of impoundment activities, both generally and by functional areas, for the 2-year period.

General 2-year Analysis

During fiscal years 1975 and 1976, the executive branch impounded, in both rescission and deferral proposals, almost $41 billion in budget authority. Housing, environmental, and community development programs were most frequently impounded. Science, research and development activities were least affected by impoundment.

Impoundments for fiscal year 1975 ($29.2 billion) were just over 2-1/2 times the amount withheld for fiscal year 1976 ($11.8 billion).

There was a sharp rise in 1976 in impoundments of budget authority for social, manpower, and education programs.

General 1-year Analysis

Rescission requests have been used more often than deferrals to impound funds for housing, environmental and community development programs and for social, manpower and education activities. Rescissions were used less frequently to impound funds for highway and road development programs.

As shown in app. I, deferrals have been the most frequently used type of impoundment. They accounted for over $33 billion of withholdings in the 2-year period, while rescissions were $7.9 billion.

Deferrals of housing, environmental, and community development program budget authority dropped from 41.48 percent of all fiscal year 1975 deferrals to only 10.12 percent in fiscal year 1976. Defense deferrals rose approximately 50 percent from fiscal years 1975 to 1976. Also, deferral amounts for highway and road programs declined sharply over the 2 fiscal years.

Finally, housing, environmental, and community development programs were the most likely area of deferrals, followed closely by road and highway building deferrals.

Excluding impoundments for miscellaneous activities, the average amount withheld for all categories for both types of impoundment during fiscal years 1975 and 1976 was 24.06 percent of all impoundments. This compares with an average 19.6 percent impoundment rate for rescission proposal categories 1-5 during the 2-year period and a 15.5 percent rate for each category in deferral proposals for the 2 years.

Functional Area Analyses

Housing, environmental, and community development programs

These programs have been most frequently impounded--they had the highest and second highest percentages of proposed rescissions in fiscal years 1975 and 1976, respectively, and the highest percentage of deferrals in fiscal year 1975. They were the most frequent subjects of all withholdings (rescissions and deferrals) in fiscal year 1975.

Over the 2-year period, housing, environmental, and community development programs ranked number one of all proposed impoundments.

Social, manpower, and education programs

These programs ranked second as the subject of all proposed rescissions over the 2-year period. They were the most frequent areas of rescission proposal in fiscal year 1976 and ranked second only to housing, environmental, and community development rescission proposals in fiscal year 1975.

While proposed deferrals in this area did not rank high in either fiscal year 1975 or in the 2-year period, impoundments in this area were second highest of all withholdings in fiscal year 1976 and proposed deferrals were number two of all fiscal year 1976 deferrals.

Defense programs

Defense impoundments ranked third of all withholdings over the 2-year period and were the most frequent subject of all impoundments in fiscal year 1976.

Proposed rescissions of budget authority for defense ranked fourth of the six areas in both fiscal years as well as over the 2-year period.

On the other hand, deferrals of such budget authority were the highest in fiscal year 1976, ranked third in fiscal year 1975, and were third highest over the 2-year period.

Science, research and development activities

These activities were least often the subject of impoundment over the 2-year period.

Proposed impoundments in this area ranked fifth of all withholdings in fiscal year 1975 and last (sixth) in fiscal year 1976.

Rescission proposals for these programs constituted only .08 percent of the rescission requests in fiscal year 1976 and 10.87 percent of fiscal year 1975 rescission proposals.

Highways and Roads

Proposed impoundments in this area were second highest of all withholdings during the 2-year period. Proposed deferrals of budget authority for highway and road development were the second most frequent of all deferrals over fiscal years 1975 and 1976 and were just fractionally less than the highest areas for proposed deferrals (housing, environmental, and community development programs) in fiscal year 1975.

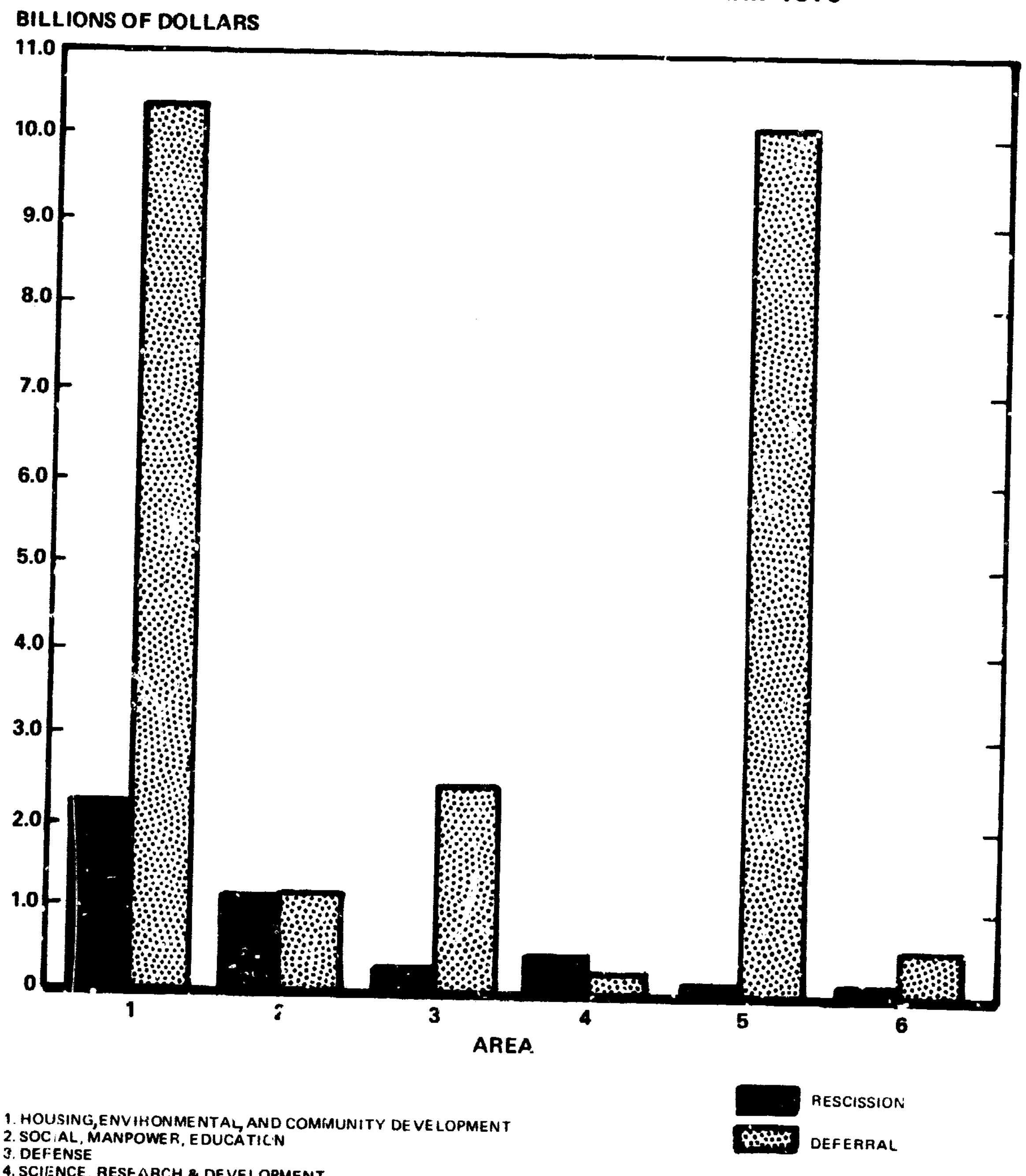
This area did not comprise any significant percentage of proposed rescissions--it was fifth of six of all impoundments over the 2-year period.

Recapitulation

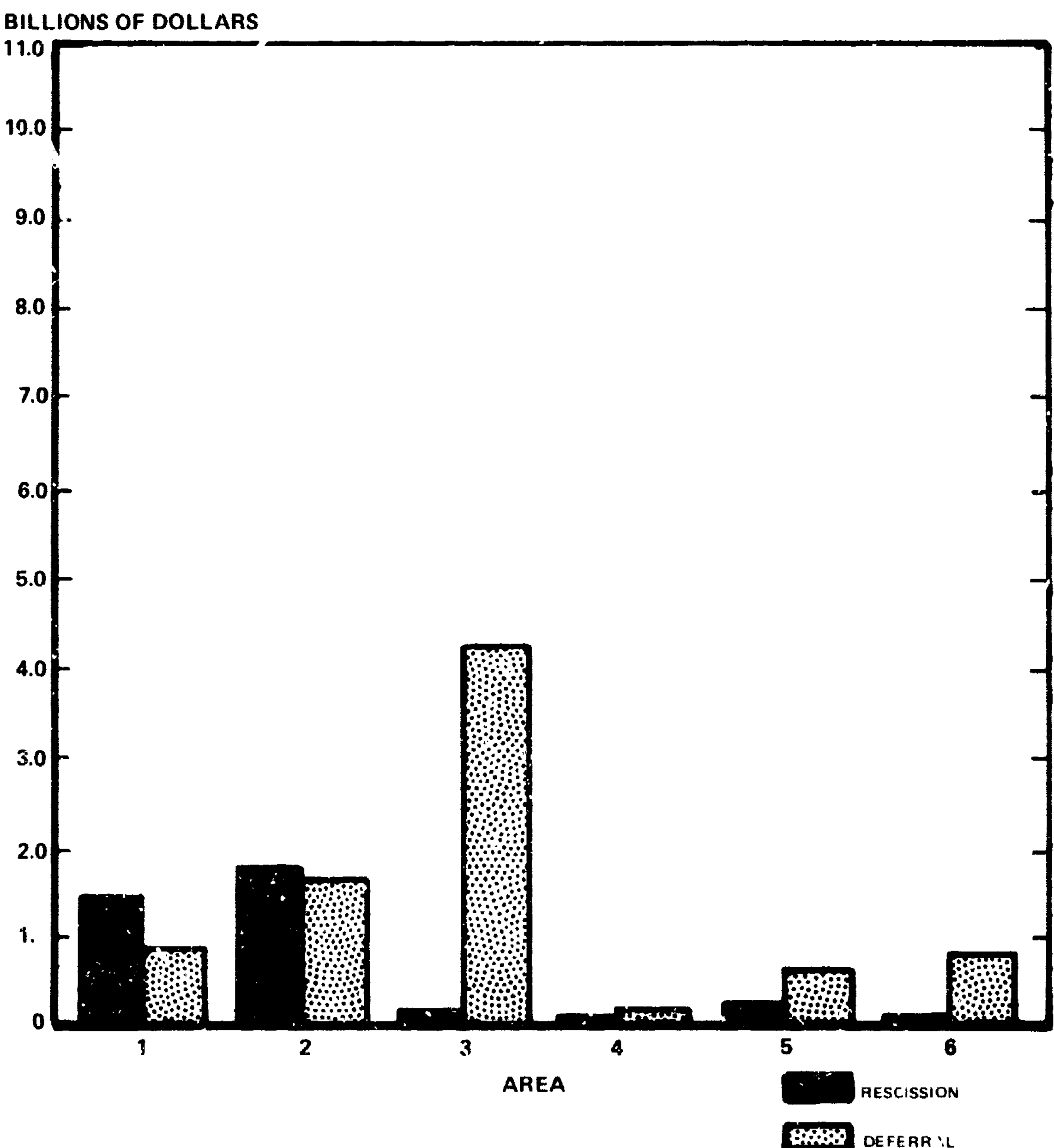
The act has been used to withhold budget authority most frequently in programs for housing, environmental, and community development and for the closely related areas of highway and road activities. Substantial amounts also have been withheld for social, manpower, and education activities. Only a slightly smaller amount was impounded for defense programs.

Impoundments of budget authority for domestic programs were much more than those for defense and international activities.

Following is a series of graphs showing (1) the amounts withheld for each fiscal year and (2) the proportion that these amounts represent of all impoundments.

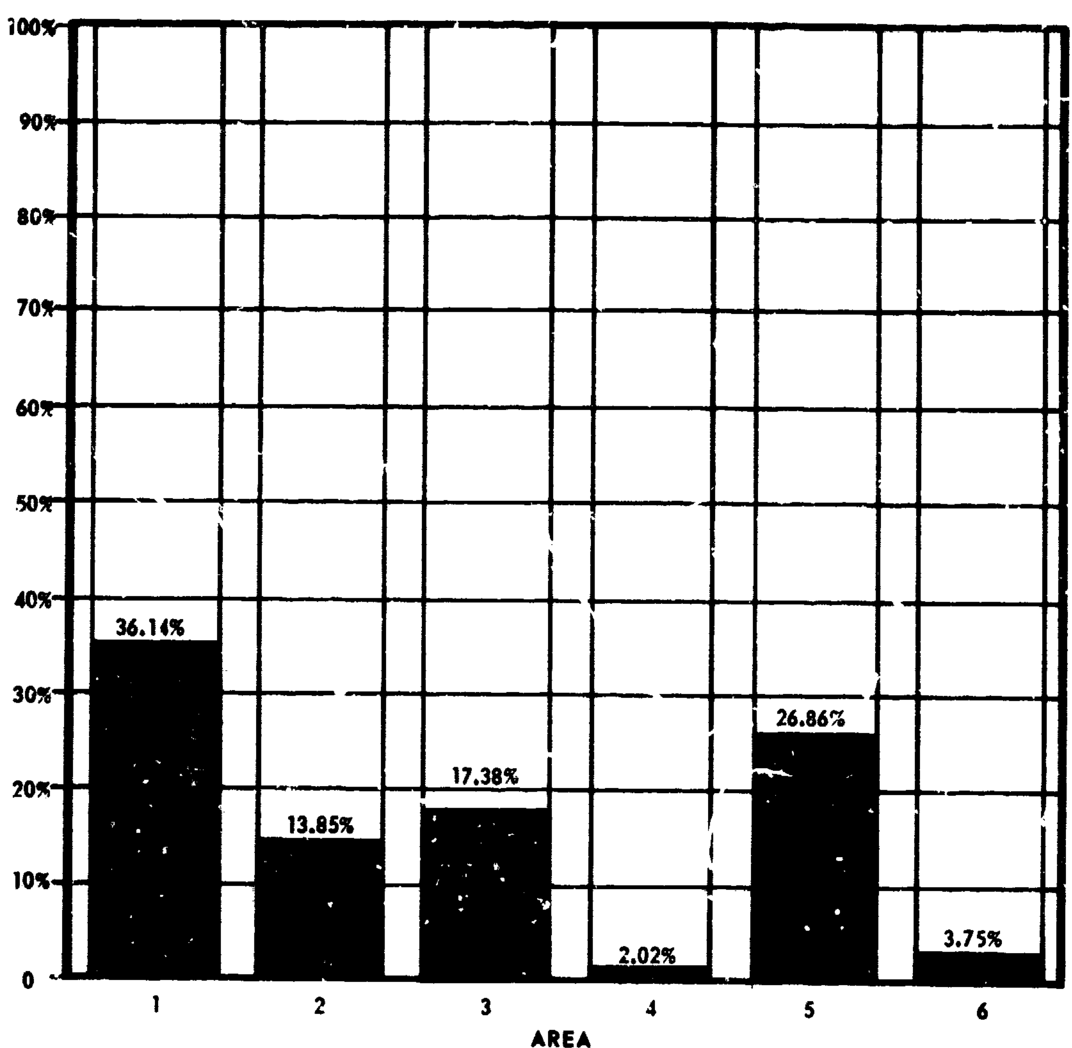

AMOUNTS IMPOUNDED DURING FISCAL YEAR 1975
BILLIONS OF DOLLARS
11.0
10.0
9.0
8.0
7.0
6.0
5.0
4.0
3.0
2.0
1.0
0
1
3
4
5
6
AREA
RESCISSION
DEFERRAL
1. HOUSING, ENVIRONMENTAL, AND COMMUNITY DEVELOPMENT
2. SOCIAL, MANPOWER, EDUCATION
3. DEFENSE
4. SCIENCE, RESEARCH & DEVELOPMENT
5. HIGHWAYS, ROADS
6. OTHER

AMOUNTS IMPOUNDED DURING FISCAL YEAR 1976



1. HOUSING, ENVIRONMENTAL, AND COMMUNITY DEVELOPMENT
2. SOCIAL, MANPOWER, EDUCATION
3. DEFENSE
4. SCIENCE, RESEARCH & DEVELOPMENT
5. HIGHWAYS, ROADS
6. OTHER

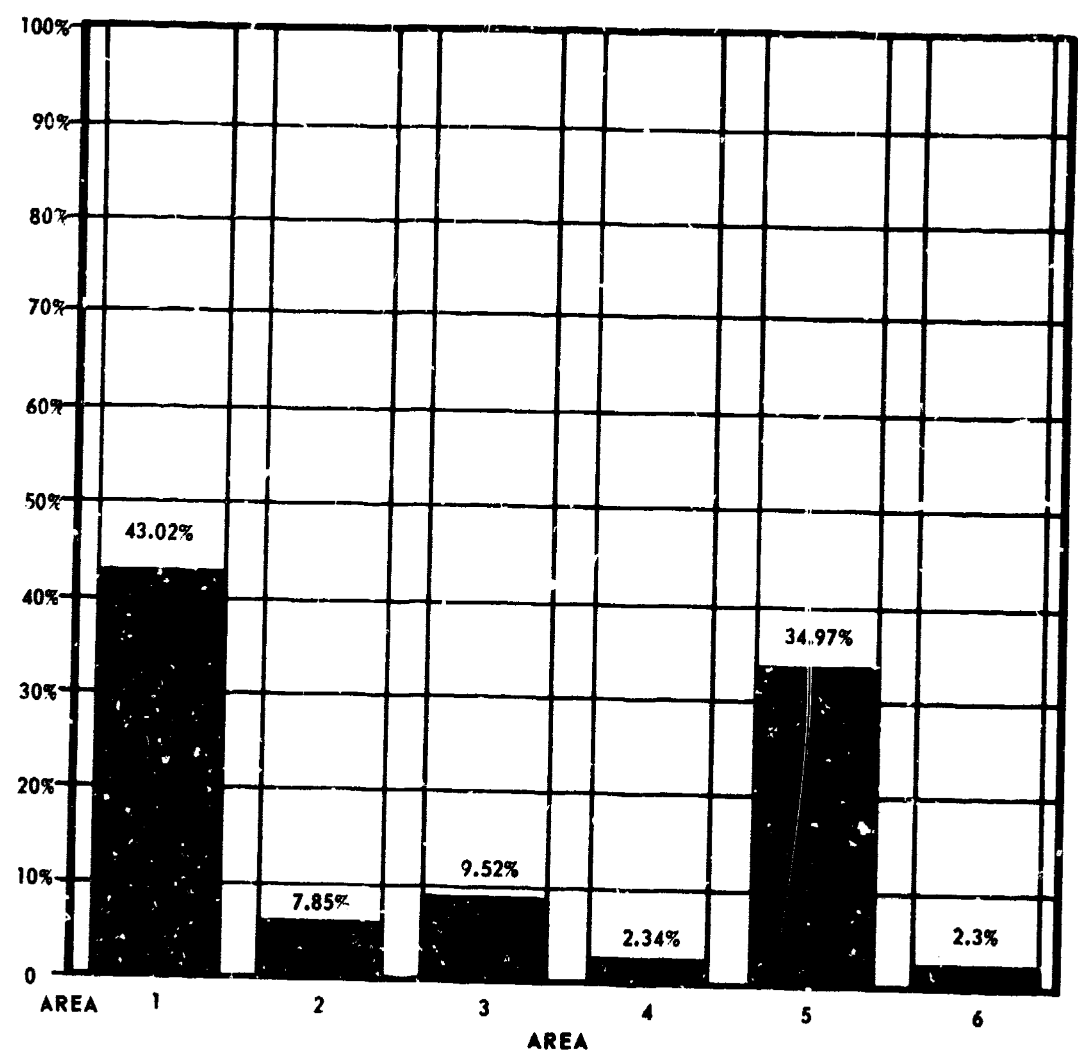
RESCISSIONS AND DEFERRALS: FISCAL YEARS 1975-1976
TOTAL AMOUNT IMPOUNDED BY
MAJOR FUNCTIONAL AREA



1. HOUSING, ENVIRONMENTAL, AND COMMUNITY DEVELOPMENT
2. SOCIAL, MANPOWER, EDUCATION
3. DEFENSE
4. SCIENCE, RESEARCH & DEVELOPMENT
5. HIGHWAYS, ROADS
6. OTHER

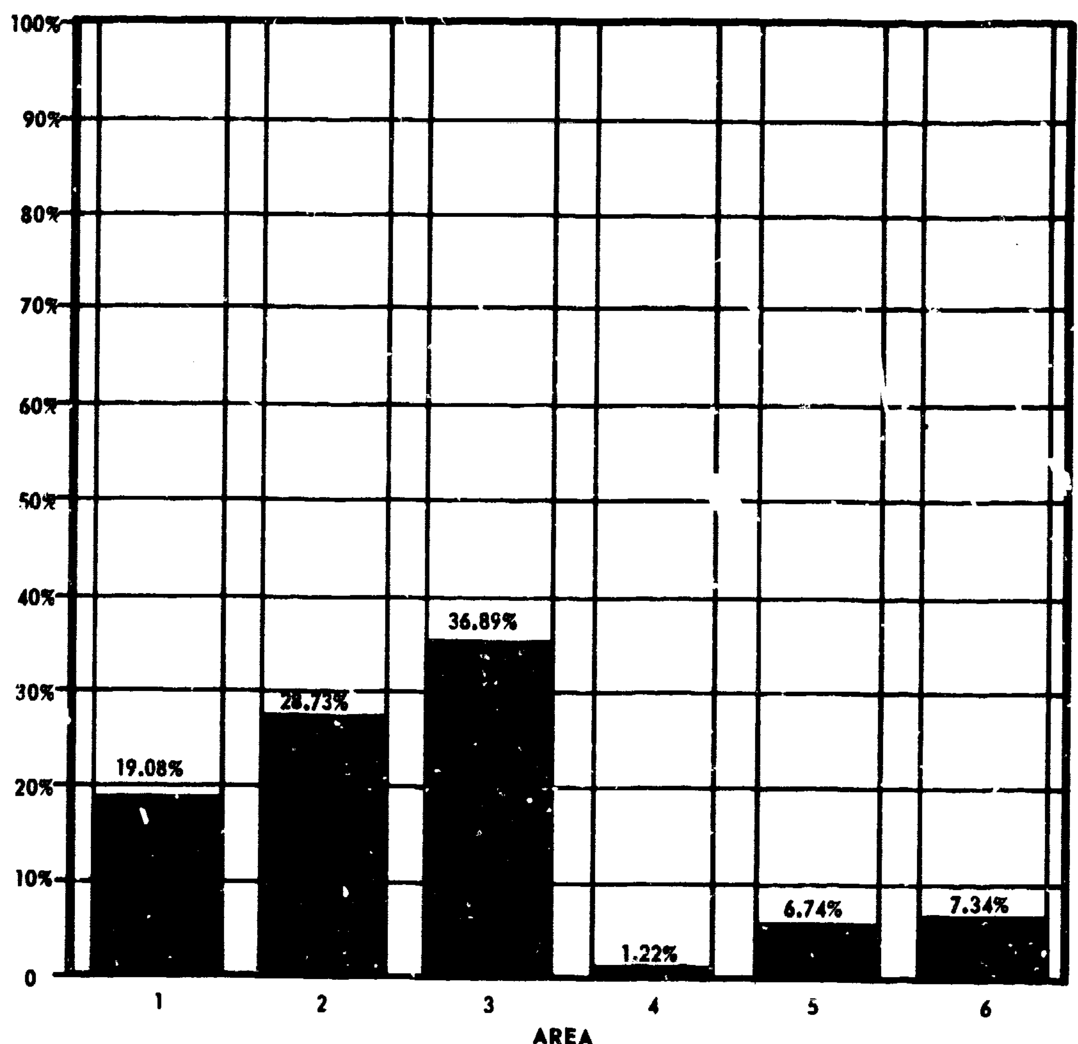
APPENDIX III

RESCISSIONS AND DEFERRALS: FISCAL YEAR 1975 PERCENT OF TOTAL AMOUNT IMPOUNDED BY MAJOR FUNCTIONAL AREA



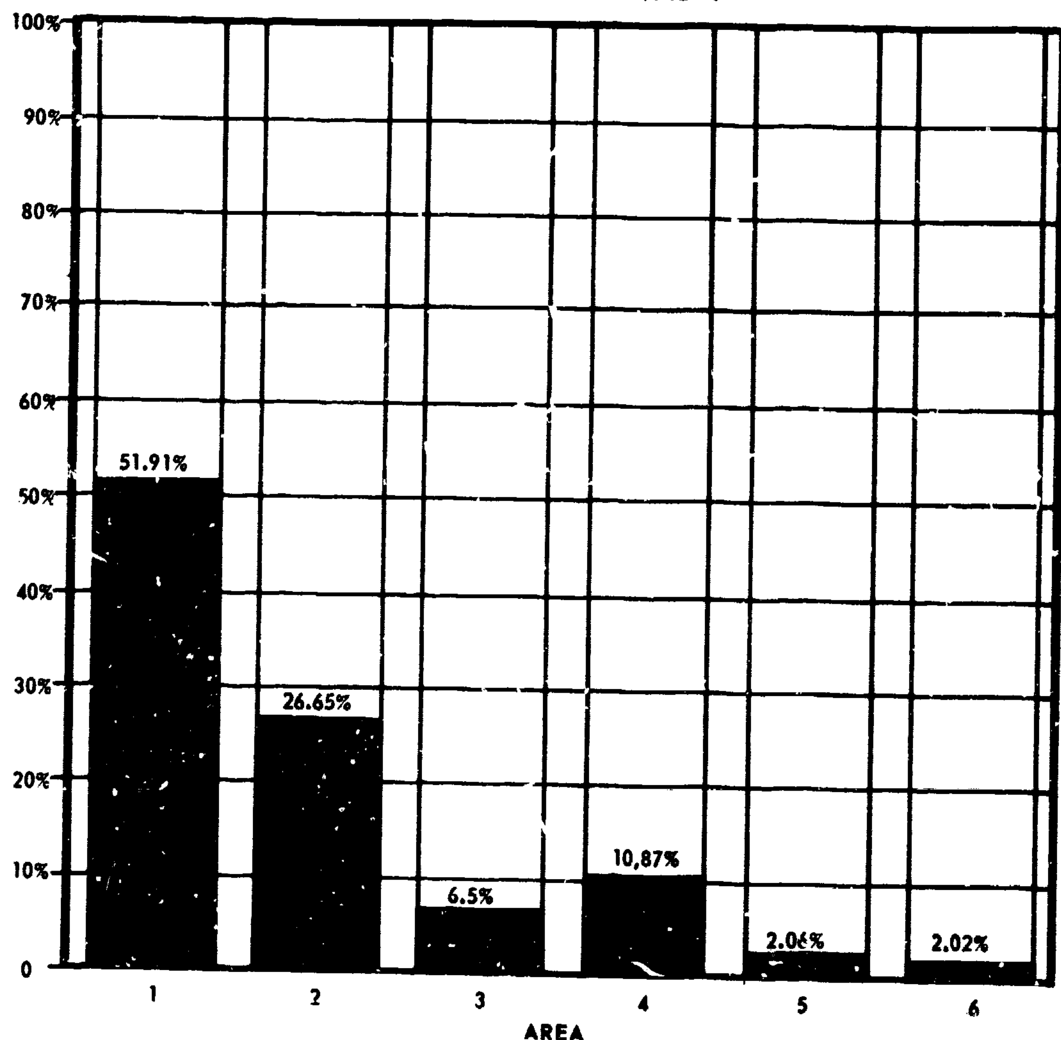
1. HOUSING, ENVIRONMENTAL, AND COMMUNITY DEVELOPMENT
2. SOCIAL, MANPOWER, EDUCATION
3. DEFENSE
4. SCIENCE, RESEARCH & DEVELOPMENT
5. HIGHWAYS, ROADS
6. OTHER

**RESCISSIONS AND DEFERRALS: FISCAL YEAR 1976
PERCENT OF TOTAL AMOUNT IMPOUNDED
BY MAJOR FUNCTIONAL AREA**



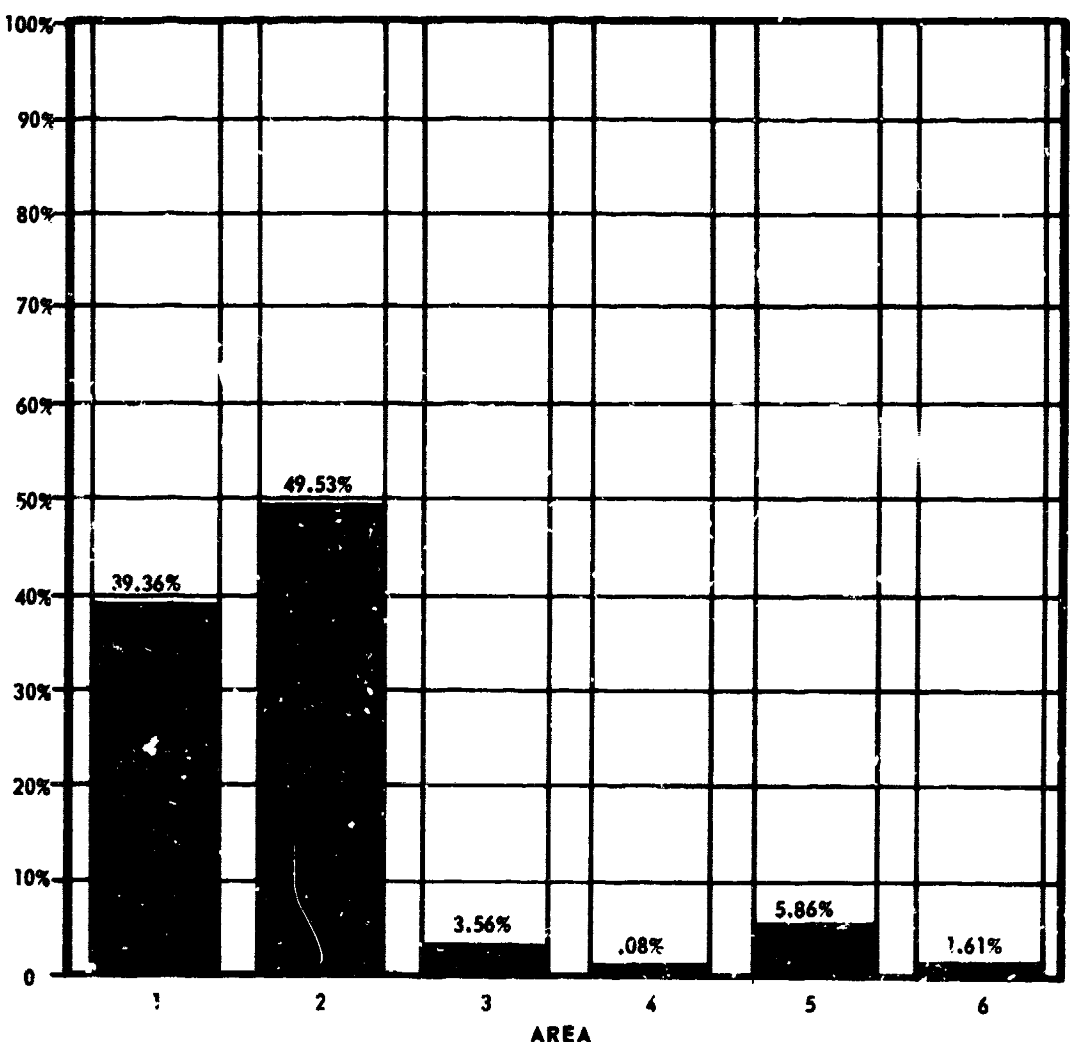
1. HOUSING, ENVIRONMENTAL, AND COMMUNITY DEVELOPMENT
2. SOCIAL, MANPOWER, EDUCATION
3. DEFENSE
4. SCIENCE, RESEARCH & DEVELOPMENT
5. HIGHWAYS, ROADS
6. OTHER

RESCISSIONS: FISCAL YEAR 1975
PERCENT OF TOTAL AMOUNT PROPOSED FOR RESCISSION
BY MAJOR FUNCTIONAL AREAS



1. HOUSING, ENVIRONMENTAL, AND COMMUNITY DEVELOPMENT
2. SOCIAL, MANPOWER, EDUCATION
3. DEFENSE
4. SCIENCE, RESEARCH & DEVELOPMENT
5. HIGHWAYS, ROADS
6. OTHER

RESCISSIONS: FISCAL YEAR 1976
PERCENT OF TOTAL AMOUNT PROPOSED
FOR RESCISSION BY FUNCTIONAL AREA



1. HOUSING, ENVIRONMENTAL, AND COMMUNITY DEVELOPMENT
2. SOCIAL, MANPOWER, EDUCATION
3. DEFENSE
4. SCIENCE, RESEARCH & DEVELOPMENT
5. HIGHWAYS, ROADS
6. OTHER

100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0

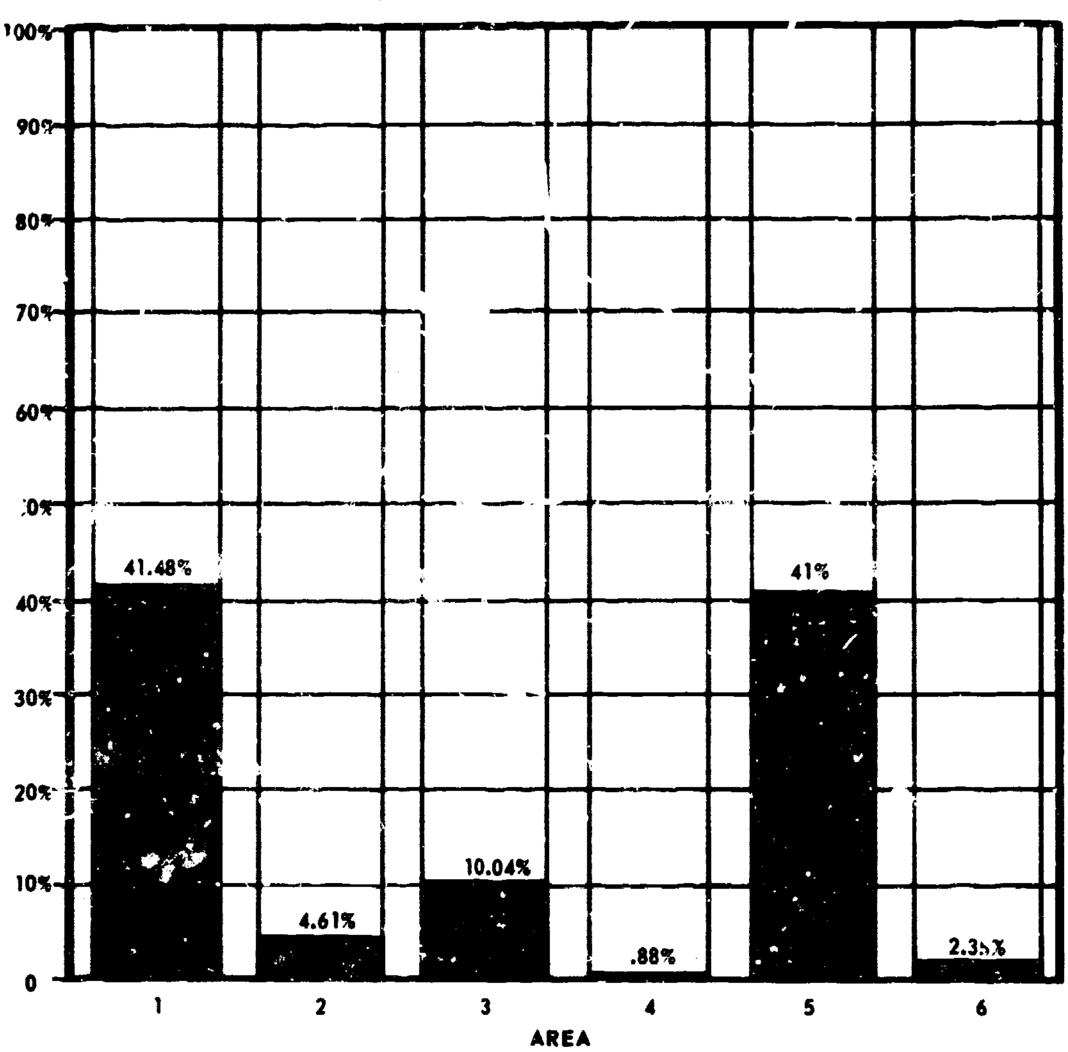
46.18%
37.10%
5.16%
5.94%
3.8%
1.83%

1 2 3 4 5 6

AREA

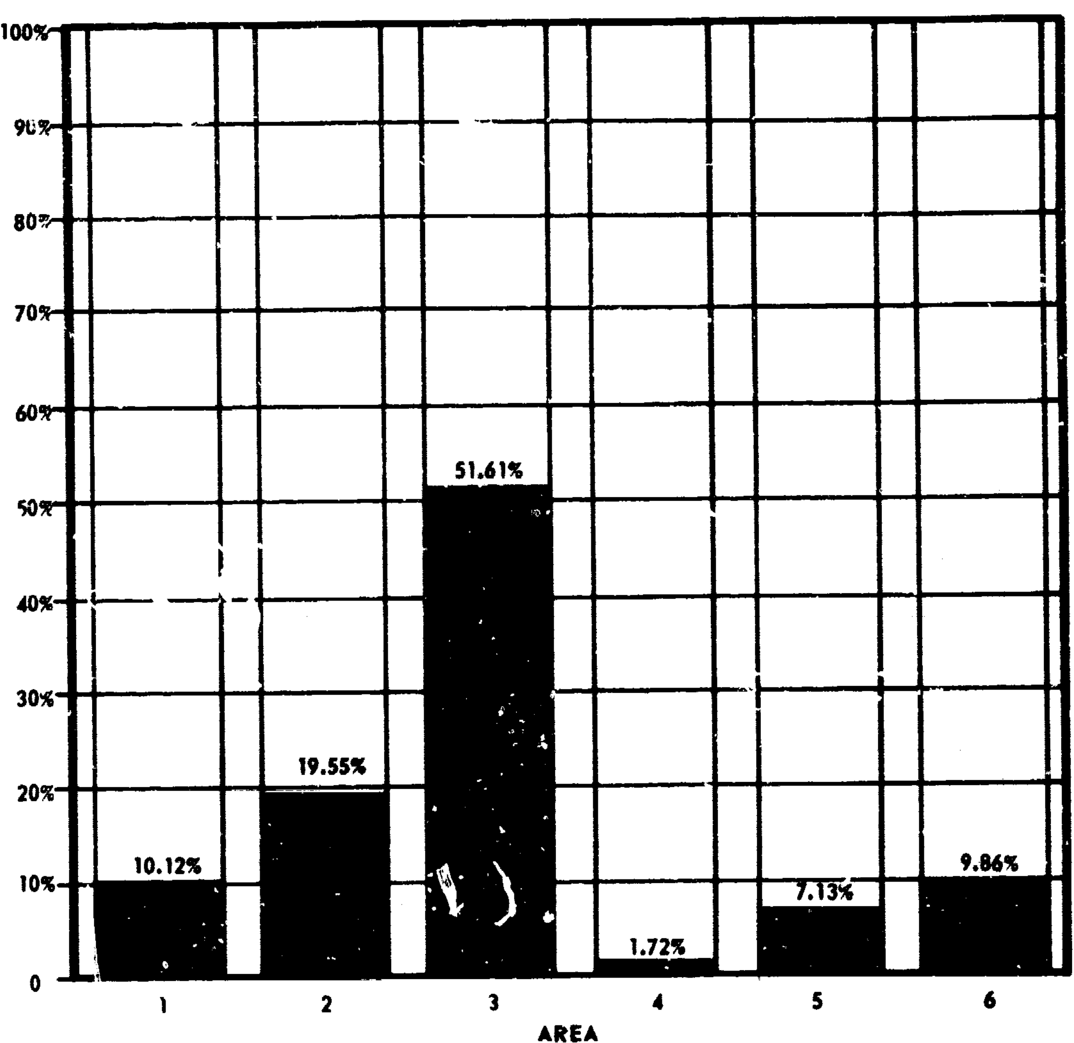
1. HOUSING, ENVIRONMENTAL, AND COMMUNITY DEVELOPMENT
2. SOCIAL, MANPOWER, EDUCATION
3. DEFENSE
4. SCIENCE, RESEARCH & DEVELOPMENT
5. HIGHWAYS, ROADS
6. OTHER

DEFERRALS: FISCAL YEAR 1975
PERCENT OF TOTAL AMOUNT DEFERRED
BY MAJOR FUNCTIONAL AREAS



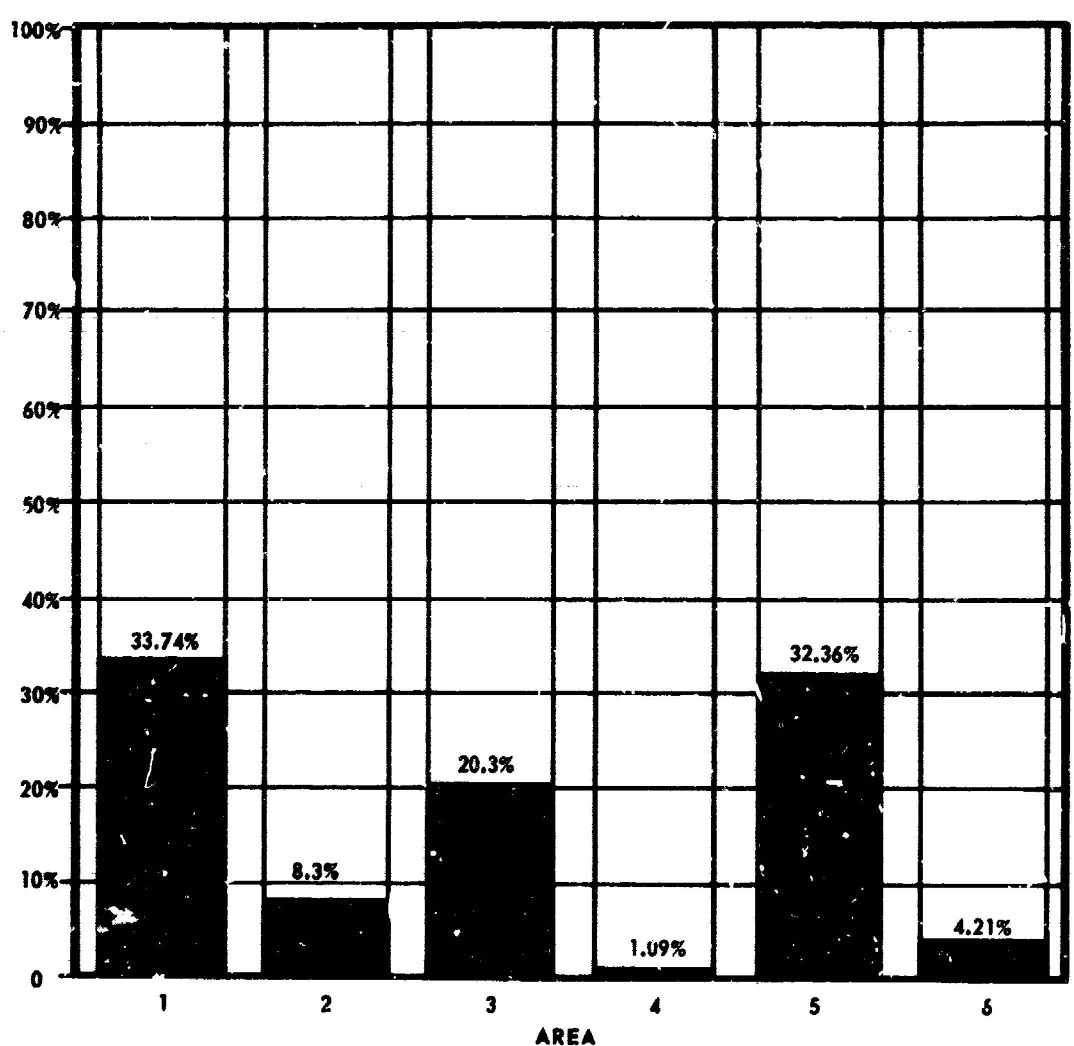
1. HOUSING, ENVIRONMENTAL, AND COMMUNITY DEVELOPMENT
2. SOCIAL, MANPOWER, EDUCATION
3. DEFENSE
4. SCIENCE, RESEARCH & DEVELOPMENT
5. HIGHWAYS, ROADS
6. OTHER

DEFERRALS: FISCAL YEAR 1976
PERCENT OF TOTAL AMOUNT DEFERRED
BY MAJOR FUNCTIONAL AREA



1. HOUSING, ENVIRONMENTAL, AND COMMUNITY DEVELOPMENT
2. SOCIAL, MANPOWER, EDUCATION
3. DEFENSE
4. SCIENCE, RESEARCH & DEVELOPMENT
5. HIGHWAYS, ROADS
6. OTHER

DEFERRALS: FISCAL YEARS 1975-1976
PERCENT OF TOTAL AMOUNT DEFERRED
BY MAJOR FUNCTIONAL AREA



1. HOUSING, ENVIRONMENTAL, AND COMMUNITY DEVELOPMENT
2. SOCIAL, MANPOWER, EDUCATION
3. DEFENSE
4. SCIENCE, RESEARCH & DEVELOPMENT
5. HIGHWAYS, ROADS
6. OTHER

COMPTROLLER GENERAL ACTIVITIES

A. List of Reports for Fiscal Year 1975

1. Report dated October 15, 1974, on the first special message (September 20, 1975).

2. Report dated November 1, 1974, reporting an undisclosed deferral of Corps of Engineers budget authority.

3. Report dated November 6, 1974, on the second special message--also converts a deferral to rescission (HUD §235 program).

4. Report dated November 18, 1974, on third and fourth special messages (October 31, 1974).

5. Report dated December 11, 1974, on the fifth special message (November 13, 1975).

6. Report dated December 21, 1974, on the legal authority of the first through fourth special messages.

7. Report dated December 23, 1974, on the sixth special message (November 26, 1975).

8. Report dated January 10, 1975, reporting an undisclosed deferral of Labor-HEW appropriation due to late apportionment.

9. Report dated January 16, 1975, on the seventh special message (December 27, 1974).

10. Report dated February 7, 1975, report and summary (January 30, 1975).

11. Report dated February 14, 1975, on the eighth special message (January 30, 1975).

12. Report dated February 28, 1975, on two unreported rescissions.

13. Report dated March 6, 1975, on status of budget authority rejected for rescission.

14. Report dated March 24, 1975, on status of budget authority.

15. Report dated March 28, 1975, on unreported rescission by the Office of Education.

16. Report dated April 1, 1975, on status of budget authority.

17. Report dated April 15, 1975, on status of budget authority.

18. Report dated March 29, 1975, on status of budget authority.

19. Report dated March 30, 1975, on status of budget authority.

20. Report dated May 9, 1975, update on March 29, 1975, letter of unreported rescission.

21. Report dated May 12, 1975, on the 9th and 10th special messages (April 18, 1975).

22. Report dated May 15, 1975, on status of budget authority.

23. Report dated May 21, 1975, on the 11th special message (May 8, 1975).

24. Report dated June 3, 1975, on unreported rescission for HUD §202 Elderly Housing.

25. Report dated June 19, 1975, on unreported college housing rescission.

26. Report dated June 23, 1975, on status of budget authority.

B. List of Fiscal Year 1976 Reports

1. Report dated July 9, 1975, on unreported deferral of Youth Conservation Corps.

2. Report dated July 16, 1975, on release of $10 million for Youth Conservation Corps.

3. Report dated July 17, 1975, on 1st special message (July 1, 1975).

4. Report dated August 6, 1975, followup on HUD §202 Elderly Housing, unreported rescission.

5. Report dated August 12, 1975, on 2nd special message (July 26, 1975).

6. Report dated September 26, 1975, on 3rd special message (September 10, 1975).

7. Report dated November 3, 1975, release letter.

8. Report dated November 4, 1975, on 4th special message (September 24, 1975).

9. Report dated November 5, 1975, on 5th special message (October 3, 1975).

10. Report dated November 6, 1975, on status of budget authority.

11. Report dated November 7, 1975, on 6th special message (October 20, 1975).

12. Report dated December 12, 1975, on 7th special message (November 18, 1975).

13. Report dated December 15, 1975, on status of budget authority.

14. Report dated January 6, 1976, on 8th special message (December 1, 1975).

15. Report dated January 6, 1976, on release letter.

16. Report dated January 15, 1976, on release letter.

17. Report dated January 29, 1976, on 9th special message (January 6, 1976).

18. Report dated February 20, 1976, on 10th special message (January 23, 1976).

19. Report dated February 27, 1976, on 11th special message (February 6, 1976).

20. Report dated March 22, 1976, on status of release letter.

21. Report dated March 26, 1976, on release.

22. Report dated April 6, 1976, on status of budget authority.

23. Report dated April 9, 1976, on 12th special message (March 18, 1976).

24. Report dated April 20, 1976, on unreported rescission of §236.

25. Report dated April 30, 1976, on status of budget authority.

26. Report dated May 3, 1976, on status of budget authority.

27. Report dated May 25, 1976, on 14th special message (April 26, 1976).

28. Report dated May 26, 1976, on 15th special message (May 13, 1976).

29. Report dated June 1, 1976, on 13th special message (April 13, 1976).

30. Report dated July 7, 1976, 25-day letter on R76-33.

31. Report dated July 7, 1976, 25-day letter on HUD §236.

32. Report dated July 15, 1976, on 16th special message (July 1, 1976).

33. Report dated July 20, 1976, on 17th special message (July 6, 1976).

34. Report dated July 28, 1976, on status of budget authority.

35. Report dated July 29, 1976, on unreported AMTRAK deferral.

36. Report dated August 27, 1976, on 18th special message (July 28, 1976).

37. Report dated September 7, 1976, on 19th special message (August 24, 1976).

38. Report dated September 10, 1976, on release of AMTRAK budget authority.

39. Report dated September 14, to terminate 25-day period on Rescission R76-33 (July 7, 1976).

40. Report dated September 21, 1976, on 21st special message (September 14, 1976).

41. Report dated September 24, 1975, on 20th special message (September 7, 1976).

42. Report dated September 24, 1976, on release of budget authority.

43. Report dated September 30, 1976, on release of budget authority.

44. Report dated October 15, 1976, on 22nd special message (September 28, 1976).

C. Unreported Impoundments

1. Report dated November 1, 1974, on unreported deferral for the Corps of Engineers.

2. Report dated January 10, 1975, on unreported deferral of Labor-HEW appropriation due to tardy apportionment.

3. Report dated February 28, 1975, on two unreported rescissions.

4. Report dated March 28, 1975, on unreported rescission of Office of Education. (Report later withdrawn.)

5. Report dated June 3, 1975, on unreported rescission of §202.

6. Report dated June 19, 1976, on unreported rescission of College Housing.

7. Report dated July 7, 1975, on unreported deferral of Youth Conservation Corps.

8. Report dated April 20, 1976, on unreported rescission of HUD §236 program.

9. Report dated July 29, 1976, on unreported AMTRAK deferral.

D. 25-day Letters

1. Letter dated March 6, 1975, on HUD §235 program.

2. Letter dated July 7, 1976, on Rescission R76-33.

3. Letter dated July 7, 1976, on HUD §236.

E. Litigation

One case--HUD §235--(see ch. 4).

CONGRESSIONAL ACTIONS

I. Fiscal Year 1975

A. Rescissions:

1. Approved $1,355,295,102 in rescission proposals.

2. This represents disapproval of 68.43 percent of $4,292,500,218 proposed for rescission,

B. Deferrals:

1. Disapproved $9,318,217,441 in proposals.

2. This was a disapproval of 37 percent of the $24,915,743,508 proposed.

C. Summary (Rescissions and Deferrals)

1. Disapproved $12,255,422,557 of the $29,208,243,726 impounded.

2. Disapproved 41.96 percent of the proposals.

II. Fiscal Year 1976

A. Rescissions:

1. Approved $138,331,000 in rescission proposals.

2. This represents disapproval of 96.39 percent of $3,608,363,357 proposed for rescission.

B. Deferrals:

1. Disapproved $393,081,430 in proposals.

2. This was a disapproval of 4.81 percent of the $8,171,629,912 proposed.

C. Summary (Rescissions and Deferrals)

1. Disapproved $3,863,113,787 of the $11,779,993,269 impounded.

2. Disapproved 32.79 percent of the proposals.

III. Fiscal Years 1975-76

A. Rescissions:

1. Disapproved $6,407,237,473 in rescission proposals.

2. Disapproved 81.1 percent of the $7,900,863,575 proposed.

B. Deferrals:

1. Disapproved $9,711,298,871 in proposals.

2. Represents disapproval of 29.35 percent of the $33,087,373,420 proposed.

C. Overall Summary, Fiscal Years 1975 and 1976

1. Disapproved $16,118,536,344 of the $40,988,236,995 impounded.

2. Disapproved 39.32 percent of the proposals.

SIGNIFICANT

COMPTROLLER GENERAL OPINIONS

INTERPRETING OR APPLYING THE ACT

In order to provide a complete record of our activities under the act, there follows (1) a listing and summary of significant GAO opinions and letters on the act and (2) copies of such opinions.

A. DIGESTS OF OPINIONS:

1. Opinion to the Congress, December 4, 1974:

DIGEST:

General Accounting Office interpretation of Impoundment Control Act of 1974 is that amendment to Antideficiency Act eliminates that statute as a basis for fiscal policy impoundments; President must report to Congress and Comptroller General whenever budget authority is to be withheld; duration of, and not reason for, impoundment is criterion to be used in deciding whether to treat impoundment as rescission or deferral; the Comptroller General is to report to Congress as to facts surrounding proposed rescissions and, in the case of deferrals, also whether action is in accordance with law; the Comptroller General is authorized to initiate court action to enforce provisions of the act requiring release of impounded budget authority; the Comptroller General is to report to Congress when President has failed to transmit a required message; and the Comptroller General can reclassify deferral messages to rescission messages upon determination that withholding of budget authority precludes prudent obligation of funds with remaining period of availability. (Printed as House Document 93-404, 93d Congress, 2d Session.)

2. Letter to Senator Muskie, December 18, 1974:

   DIGEST:

   Deferrals may be effected for periods greater than one fiscal year so long as a new proposal is transmitted each fiscal year and the remaining period of availability of the funds does not suggest the existence of a de facto rescission proposal.

   Funds proposed for rescission may be withheld during the 45-day pendency of the proposal.

3. Letter to Senator Eastland, dated December 23, 1974:

   DIGEST:

   Reclassification of deferral to rescission nullifies President's deferral message and has same effect as if rescission were proposed by President.

   When reclassification to rescission takes place, 45-day period runs from date on which Congress receives Comptroller General's message reclassifying the impoundment.

4. Letter to Chairman Mahon, House Committee on Appropriations, January 23, 1975:

   DIGEST:

   The full use of budget authority within an appropriations account, albeit in different proportions for the authorized purposes than originally intended, does not constitute a proposed rescission vis-a-vis the activities that are not funded to the full extent planned.

5. Letter to Chairman Randolph, Senate Committee on Public Works, Feburary 27, 1975:

   DIGEST:

   Partial release of sums proposed for deferral necessitates supplementary message.

6. Letter to Rep. Addabbo, May 8, 1975:

<u>DIGEST</u>:

Comptroller General's authority to sue to compel the release of impounded budget authority is limited to situations where proposed rescissions and deferrals are rejected and the impoundment has not ended.

Anticipated receipts from the sale of Federally held securities do not constitute "budget authority" under the Act. Thus, the cancellation of such sale does not constitute an impoundment.

7. Letter to Chairman Mahon, House Committee on Appropriations, May 9, 1975:

<u>DIGEST</u>:

Applications of the act to budget authority provided in continuing resolutions requires that amounts provided be considered as both ceilings and floors in authorized levels of program activity.

Rescission proposal on continuing resolution not required early in fiscal year while President awaiting congressional action on regular appropriations But at point where remaining time suggests insufficient opportunity to use funds, rescission message is required.

8. Letter to Senator Kennedy, May 30, 1975:

<u>DIGEST</u>:

Decision not to apportion budget authority constitutes an impoundment of the unapportioned sums.

9. Opinion dated June 11, 1975.

<u>DIGEST</u>:

Neither "delay" by Department of Agriculture (DA) in promulgating regulations to implement §2 of Pub. L. No. 93-347, which authorized payment to States of 50 percent of all food stamp program administrative

costs, nor DA's failure to eventually provide for such payments prior to October 1, 1974 constitutes "deferral of budget authority" within the ambit of Impoundment Control Act, Pub. L. No. 93-344, title X, since DA's approach to implementation of 50 percent payments does not involve formal reserve or withholding of budget authority, and October 1 implementation date has been ratified by the Congress.

10. Letter to Rep. Nedzi (and others in Michigan congressional delegation), October 16, 1975:

DIGEST:

Delays in processing State claims for reimbursement by the Federal Government do not, per se, constitute impoundments when such delays are the result of administrative procedures designed to confirm allowability and accuracy of the claim and not policy related determinations to withhold the funds.

11. Letter to Chairman Adams, House Committee on the Budget, October 24, 1975:

DIGEST:

President not required to transmit supplementary messages on deferrals that are no longer viable. Such information is included in monthly cumulative reports.

12. Letter to Chairman Adams, House Committee on the Budget, November 20, 1975:

DIGEST:

Suggested amendments to the act.

13. Letter to Senator Hollings, March 5, 1976:

DIGEST:

The 45-day period for consideration of rescissions might be accelerated by passage of rescission bills within that period that rescinds all or part of proposed sum.

Better case for acceleration made if legislation expressly rejects all or part of the rescission proposal.

14. Letter to Rep. Ottinger, August 12, 1976 (similar letter to Senator Magnuson).

<u>DIGEST</u>:

Failure to transmit impoundment message promptly after budget authority has been apportioned and reserved from availability does not comply with the act.

15. Letter to Senator Magnuson, September 24, 1976:

<u>DIGEST</u>:

No statutory basis exists to begin counting of 45-day period on rescission requests from when impoundment began rather than day after Congress notified of the impoundment.

16. Letter to Rep. Florio, September 28, 1976:

<u>DIGEST</u>:

Determination of whether impoundment exists in situations where appropriations act only recommends level of program activity turns upon consideration of actual levels of activity, budget proposal, and whether actual levels are reasonable in light of congressional recommendation and program demand and staffing.

B. COPIES OF OPINIONS:

Following are the texts of the above-digested letters and opinions.

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

B-115398 December 4, 1974

Speaker of the House
President pro tempore of the Senate

The purpose of this letter is to provide you with our views concerning the interpretation and application of the Impoundment Control Act of 1974, Title X of Public Law 93-344, 88 Stat. 297, 332 (July 12, 1974).

Recent years have witnessed disagreement between the Executive Branch and the Legislative Branch over which has ultimate control over Government program and fiscal spending policy. The Executive Branch, largely on grounds of fiscal responsibility, has sought to curtail or eliminate numerous programs funded by the Congress. The courts have held, for the most part, that such Executive attempts to avoid implementation of Government programs through the withholding of budget authority constituted illegal impoundments. Nevertheless, and despite a reasonably clear understanding of the limits of Executive authority, the power to impound budget authority was easy to xercise and challenges to that power difficult and time c.,suming to resolve.

The Impoundment Control Act of 1974 was designed to tighten congressional control over impoundments and establish a detailed procedure under which the Legislative Branch could consider the merits of impoundments proposed by the Executive Branch. The act fundamentally calls for the Executive Branch to report and explain to the Congress all proposed impoundments with ultimate authority to effectuate such proposals dependent upon congressional action. The basic scheme of the act's operative provisions is contained in four key elements:

1. All budget authority to be withheld by the Executive Branch from obligation or expenditure--either permanently or temporarily--must be reported to the Congress.

2. Budget authority intended for permanent withdrawal must be rel ased for obligation and expenditure if the Congress fails within 45 days to pass legislation authorizing the withdrawal.

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3. Budget authority intended for temporary withdrawal within a fiscal year may be withheld as proposed if the Congress fails to act; either House may require release of such deferred budget authority by passing a simple resolution to that effect.

4. The Comptroller General of the United States is empowered to seek court enforcement of any required release of budget authority.

The net result of the procedure established is that the propriety of any proposed impoundment will depend upon action (or inaction) by the Congress in connection with a contemporaneous consideration of such proposal. Earlier actions by the Congress either authorizing or denying authority for particular impoundments are of no ultimate consequence except as they might affect the outcome of considerations under the act of 1974.

A controversy has developed over whether application of the act as outlined above serves to strengthen or weaken congressional control over impoundments. With respect to permanent withdrawals of budget authority, it is clear that the intent is to require an act of Congress to clothe the Executive Branch with requisite authority. If the Congress fails to act, the President may not impound.

As to temporary withdrawals, however, it is contended that the President by virtue of congressional inaction acquires authority to defer where otherwise none exists--that the President, by proposing a deferral of budget authority, becomes vested through congressional inaction with authority which the Congress otherwise may have previously denied him. Under this interpretation, the act, in legitimizing otherwise impermissible deferrals of budget authority, might be regarded as weakening rather than strengthening congressional control over impoundments, albeit either House has it within its power to deny deferral authority through passage of a simple resolution.

The Impoundment Control Act of 1974 and its legislative history are considerably less than clear concerning the act's intended design. The act cannot be analyzed without producing a series of anomalous results which its history fails to

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explain away. Nevertheless there is an unmistakable philosophy underlying the act that does provide a rational and realistic basis for viewing the act as a means by which the Congress strengthened its control over Executive impoundments.

The fact is that prior to enactment of the Impoundment Control Act, the Executive Branch engaged in numerous impoundments, whether authorized or not, often without the Congress having a clear picture of precisely what was involved. Under the act, however, each withdrawal of budget authority becomes highly visible, allowing the Congress to consider its merit as of the time it is proposed. Rescissions or permanent withdrawals of budget authority are made difficult for the Executive Branch in that both Houses of Congress must support them through positive action to establish the requisite authority. Deferrals or temporary withdrawals are made easier in that inaction by the Congress establishes the requisite authority. However, to counterbalance this ease, the act allows either House on its own to void such proposed action. There is no question but that a rescission is the more significant type of impoundment over which congressional control is unmistakably absolute. The essential difference is that simple inaction on a rescission proposal automatically results in release of the budget authority after 45 days. Congressional control over the less significant deferral is no less absolute, though affirmative action is required in the exercise of that control.

To point up the full ramifications of the provisions of the act, and their operative effect, there follows a detailed analysis of the issues involved.

THE BASIC PROVISIONS

The Impoundment Control Act of 1974 was the result of a conference that combined features of two differing approaches to impoundment control. As the Conference Report, H.R. Rep. No. 93-1101, 93d Cong., 2d Sess. 76-77 (1974), states, the House bill that went to conference provided for a procedure that would require impoundment actions to be reported to the Congress by the President within ten days after they were taken. In the event that either House passed a resolution of disapproval within sixty calendar days of continuous session after the date on which the Presidential message was received by Congress, the impoundment would have to cease. The Senate

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bill considered by the conferees circumscribed the authority in the Antideficiency Act, 31 U.S.C. §665, to place funds in reserve, and prohibited the use of budgetary reserves (except as provided specifically in appropriation acts or other laws) for fiscal policy purposes, or to achieve less than the full objectives and scope of programs enacted and funded by the Congress. The Senate bill authorized the Comptroller General to bring a civil action in the U.S. District Court for the District of Columbia to enforce those provisions.

Section 1001 of the act is a disclaimer section, stating, among other things, that nothing in the title shall be construed as asserting or conceding the constitutional powers or limitations of either the Congress or the President.

Section 1002 amends the Antideficiency Act to authorize reserves solely (except as provided specifically in appropriation acts or other laws) to provide for contingencies, or to effect savings whenever savings are made possible by or through changes in requirements or greater efficiency of operations. The section continues the requirement that whenever an officer responsible for making apportionments and reapportionments determines that any amount so reserved will not be required to carry out the full objectives and scope of the appropriation concerned, he shall recommend the rescission of that amount.

Section 1011 is a definition section.

Section 1012 provides that if the President determines that all or part of any budget authority will not be required to carry out the full objectives or scope of the programs, or that such budget authority should be rescinded for fiscal policy or other reasons, including the termination of authorized projects or whenever all or part of budget authority provided for only one fiscal year (one-year money) is to be reserved from obligation for such fiscal year, he shall transmit a special message to Congress requesting a rescission of the budget authority. The message is to include the amount of budget authority involved; the appropriation account or agency affected; the reasons for the requested rescission or placing the budget authority in reserve; the fiscal, economic, and budgetary effect; and all facts, circumstances, considerations, and effects of the proposed rescission or reservation. Unless both Houses of Congress complete action on a rescission bill within 45 days (of continuous session) of receipt

of the message, the budget authority for which rescission was requested must be made available for obligation.

Section 1013 provides for a second type of special message concerning proposed deferrals. This category includes any withholding or delaying of the availability for obligation of budget authority within the current fiscal year (whether by establishing reserves or otherwise), or any other type of Executive action or inaction that effectively precludes the obligation or expenditure of budget authority, including authority to obligate by contract in advance of appropriations as specifically authorized by law. Such action or inaction may occur at the level of the Office of Management and Budget, as through the apportionment process, or at the departmental and agency level. The deferral special message from the President shall contain basically the same types of information included in a rescission special message. However, the procedure for congressional action is different in that the President will be required to make the budget authority available for obligation only if either House of Congress passes an "impoundment resolution" disapproving such proposed deferral at any time after receipt of the special message. The authority to propose deferrals is limited to the fiscal year in which the special message making the proposal is submitted to the House and Senate.

Section 1014 provides that each Presidential special message--whether for rescission or for deferral--shall be referred to the appropriate committee of the House of Representatives and the Senate and printed as a document of each house and in the Federal Register. It further provides that a copy of each special message shall also be transmitted to the Comptroller General, who shall review each message and inform both houses of the facts surrounding the proposed action and its probable effects. In the case of deferrals, the Comptroller General must state whether or not (or to what extent) he determines the proposed deferral to be in accordance with existing statutory authority. Any revisions of proposed rescission or deferrals must be transmitted by the President in a supplementary message.

Section 1015 provides that if the Comptroller General finds that an action or inaction that constitutes a reserve or deferral has not been reported to Congress in a special

message as required, he shall report to Congress on such reserve or deferral. His report will have the same effect as if it had been transmitted by the President in a special message. Moreover, if the Comptroller General believes that the President has classified an action incorrectly, by covering it in a deferral special message when in fact a rescission is involved, or vice versa, he shall report to both houses setting forth his reasons.

Section 1016 provides that if budget authority is not made available for obligation as required by the act, the Comptroller General is empowered, through attorneys of his own choosing, to bring a civil action in the United States District Court for the District of Columbia in order to obtain any decree, judgment, or order that may be necessary or appropriate to make such budget authority available for obligation. However, no such action may be brought until the expiration of 25 calendar days of continuous session after the Comptroller General files with the Speaker of the House of Representatives and the President of the Senate an explanatory statement setting forth the circumstances giving rise to the action contemplated. The section provides that the courts must give precedence to this type of civil action.

Finally, section 1017 provides that congressional action with respect to a proposed rescission or deferral shall take the form of a "rescission bill" or an "impoundment resolution." Any rescission bill or impoundment resolution shall be referred to the appropriate committee of the House of Representatives or the Senate. If the committee fails to report a rescission bill or impoundment resolution at the end of 25 calendar days of continuous session after its introduction, it is in order to move to discharge the committee from further consideration. A motion to discharge may be made only by an individual favoring the bill or resolution; may be made only if supported by one-fifth of the Members of the House involved (a quorum being present); and is highly privileged in the House and privileged in the Senate.

BACKGROUND

In the past the Executive Branch generally has asserted three bases for its authority to impound funds: (1) the statutory provisions of a particular program; (2) statutory limitations upon overall budget outlays; and (3) the Antideficiency

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Act, 31 U.S.C. §665. In an opinion to the Chairman, Subcommittee on Separation of Powers, Committee on the Judiciary, U.S. Senate, B-135564, July 26, 1973, Committee Print 183, 93d Cong., 2d Sess., (1974), (hereafter "Committee Print"), we offered a detailed review of these assertions. Committee Print, pages 14-23.

The Antideficiency Act as general authority for the impoundment of funds probably has been the most contested of the bases claimed, with the President claiming broad impoundment powers thereunder. Our analysis of this stature concluded that the Antideficiency Act could not be viewed as authorizing the President to withhold funds for general economic, fiscal, or policy reasons. Committee Print, pages 17-20.

The Impoundment Control Act of 1974 is, in part, the Congressional response to claims by the Executive Branch that the Antideficiency Act granted general authority to impound funds. The act accomplishes two objectives: first, it amends the Antideficiency Act to clarify and limit its terms and, second, it establishes a procedure that provides a means for the Congress to pass upon Executive Branch desires to impound budget authority.

Prior to passage of the Impoundment Control Act, the relevant provisions of the Antideficiency Act, 31 U.S.C. §665(c)(2), stated:

> "In apportioning any appropriation, reserves may be established to provide for contingencies, or to effect savings whenever savings are made possible by or through changes in requirements, greater efficiency of operations, or other developments, subsequent to the date on which such appropriation was made available. Whenever it is determined by an officer designated in subsection (d) of this section to make apportionments and reapportionments that any amount so reserved will not be required to carry out the purposes of the appropriation concerned, he shall recommend the rescission of such amount in the manner provided in the Budget and Accounting Act, 1921, for estimates of appropriations."

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This subs on was amended by §1002 of the act to read as follows:

> "In apportioning any appropriation, reserves may be established solely to provide for contingencies, or to effect savings whenever savings are made possible by or through changes in requirements or greater efficiency of operations. Whenever it is determined by an officer designated in subsection (d) of this section to make apportionments and reapportionments that any amount so reserved will not be required to carry out the full objectives and scope of the appropriation concerned, he shall recommend the rescission of such amount in the manner provided in the Budget and Accounting Act, 1921, for estimates of appropriations. Except as specifically provided by particular appropriations Acts or other laws, no reserves shall be established other than as authorized by this subsection. Reserves established pursuant to this subsection shall be reported to the Congress in accordance with the Impoundment Control Act of 1974." (Emphasis added.)

The reason for this amendment was that the "other developments" language in 31 U.S.C. §665(c)(2) was being construed as encompassing--

> "* * * any circumstances which arise after an appropriation becomes available for use, which would reasonably justify establishment of a reserve." Committee Print, p. 19.

In this light, impoundments motivated by fiscal policy considerations were being justified on the basis that they were within the "other developments" language of the Antideficiency Act.

The legislative history of the amendment to 31 U.S.C. §665 underlines Congress' clear intent that the Antideficiency Act not be used as authority to withhold funds for fiscal policy

reasons. Rather, it was to be used only to establish reserves to provide for contingencies or to effect savings. For example, a statement by Representative Matsunaga, during the House debate on the Conference Report on H.R. 7130, the bill that became, in part, the Impoundment Control Act of 1974:

> "One of the most important features of the bill, Mr. Speaker, is the impoundment title, which tightens the language of the AntiDeficiency Act, thereby prohibiting 'reserves' for fiscal purposes. This provision is key to maintaining the balance of power among the three branches of Government." 120 Cong. Rec. H5205 (daily ed. June 18, 1974). (Emphasis added.)

Senator Muskie, during debate of S.1541, the bill that was the Senate-approved version of H.R. 7130, stated:

> "The purpose of title X [the impoundment control provisions of the Senate bill] is to define and clarify the authority of the President and other officers and employees of the executive branch to place appropriated funds in reserve. * * * the 'other developments' clause would be deleted by this bill because it has been treated by some officials of the executive branch as a justification for establishing reserves because of economic or other developments. Clearly that use was nev intended by the Congress. It is that use which has provoked this controversy over impoundments.
>
> Section 1001 further defines the boundaries of the Antideficiency Act for fiscal policy purposes or to achieve less than the full objectives and scope of programs enacted and funded by Congress. The apportionment process is to be used only for routine administrative purposes such as to avoid deficiencies in executive branch accounts, not for the making of policy or the setting of priorities. * * * Moreover, nothing in the language or legislative history of the Antideficiency Act

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> suggests in any way the Congress intended the executive branch to place funds in reserve as part of economic policy." 120 Cong. Rec. S4091 (daily ed. March 21, 1974).

See also Senator Muskie's comments at 120 Cong. Rec. S3997 (daily ed. March 20, 1974); Senator Irvin's summary of the Antideficiency Act amendment at 120 Cong. Rec. S3835 (daily ed. March 19, 1974); Senator Metcalf's statement at 120 Cong. Rec. S3846 (daily ed. March 19, 1974); the report of the Committee on Rules and Administration on S.1541, S. Rep. No. 93-688, 93d Cong., 2d Sess., 30, 72-75 (1974); and the Conference Report on H.R. 7130, H.R. Rep. No. 93-1101, 93d Cong., 2d Sess., 76 (1974).

Thus, in light of the section 1002 amendment to the Antideficiency Act and the clear and extensive legislative history of this provision, we conclude that budget authority may not be withheld except to provide for contingencies or to effect savings, or as specifically provided for in appropriations acts or other laws.

However, apart from this, there currently exists disagreement as to whether the act did or did not have the effect, in some circumstances, of providing authority, at the initiative of the President and with Congressional concurrence, to defer budget authority temporarily from obligation. Generally speaking, one interpretation is that the act provides no such authority while the other interpretation is that it does. These contrasting views are discussed below.

THE TWO INTERPRETATIONS

The First Interpretation

Section 1002 requires the Executive Branch to report the establishment of all reserves to the Congress, and permits creation of reserves solely to provide for "contingencies" or to effect "savings" or as may otherwise be authorized by other law. Remaining portions of the Impoundment Control Act of 1974 are not viewed as "other law."

It is further contended that section 1012, relating to "rescissions", prescribes the sole procedure available to the President when he wishes to avoid expenditure of all or part

of budget authority (1), which he does not believe will be required to carry out the full objectives or scope of programs for which it is provided, (2), the expenditure of which should be avoided for fiscal policy or other reasons, or (3), in the case of one-year funds, which he wishes to reserve from obligation for the entire year. Both Houses of Congress must pass a rescission bill within 45 days in response to his proposed rescission or the budget authority must be made available for obligation.

Section 1013 relating to deferrals is viewed as merely providing a mechanism for reports required by section 1002. Congress may, by resolution of either House, direct the obligation of reserves established pursuant to the Antideficiency Act or any other specific statutory authority, and reported under section 1013. Otherwise, the budget authority may be deferred as proposed under previously existing authority.

Therefore, under the first interpretation, whenever the President proposes to withhold budget authority for a purpose not authorized by the Antideficiency Act or other specific law, he must propose a rescission under section 1012. This conclusion is deemed supported by section 1013(c), which specifies that section 1012 is the exclusive recourse for the President whenever any of the three types of impoundments specified in section 1012 are involved.

Finally, when the President, either by act or omission, fails to submit a required message or, if he submits a message under section 1013 which should have been sent under section 1012, or vice versa, the Comptroller General, through his report pursuant to §1015(b), effectively rectifies the incorrectly classified message and converts it to the proper category.

In summary, this view of the act, stated simply, is that deferrals of budget authority may be proposed under section 1013 only if they are authorized by the Antideficiency Act, as amended by section 1002, or by appropriation acts or other laws; no deferral may be proposed under section 1013 on other grounds. It is urged, therefore, that if grounds other than those already authorized are the motivation for a proposed withholding of budget authority, the President must seek a rescission of the budget authority and transmit a special message under section 1012. Put another way, any budget

withholding action for which the President lacks statutory authority to undertake must be proposed under section 1012.

The Second Interpretation

Section 1002, which amends the Antideficiency Act, requires the Executive Branch to report the establishment of all reserves to the Congress. It authorizes the establishment of reserves pursuant to the Antideficiency Act itself, as amended, or as specifically provided in particular appropriations acts or other laws. Under this interpretation, the term "other laws" includes the remainder of the Impoundment Control Act of 1974.

Section 1012 provides the procedure when the President wishes permanently to withhold the obligation of all or part of budget authority. Both Houses of Congress must pass a rescission bill within 45 days or the budget authority must be made available for obligation.

Section 1013 applies when the President wishes to delay, for any period up to the end of the fiscal year in which the delay is proposed, the obligation of budget authority. Unless either House passes a resolution disapproving the proposed delay, the delay may continue for the period proposed.

Thus, under the second interpretation, the difference between sections 1012 and 1013 is not based on the existence or lack of prior legal authority supporting the proposed withholding of budget authority, but rather on the proposed duration of the withholding--permanent under section 1012, temporary under section 1013.

An important aspect of the control provided by the act under the second interpretation lies in the provisions for full disclosure to the Congress of Executive Branch plans with an opportunity for Congressional oversight and the exercise of a veto power. Finally, subsection 1015(a) requires the Comptroller General to monitor the budgetary actions of the executive branch. When the Comptroller finds that an action tantamount to deferral or rescission of budget authority has taken or will take place and that a required Presidential special message has not been sent, he is to report this to Congress, together with essentially the same facts required for the Presidential special message that should have been sent. Such a Comptroller General's report triggers the procedures

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under sections 1012 and 1013 in the same manner as if a Presidential special message had been sent.

Subsection 1015(b) requires the Comptroller General to report when, in his view, a Presidential special message has been "mislabeled," i.e., sent in accordance with the wrong section. Generally this report is informational. However, if the Comptroller General finds, in the case of a proposed deferral, that funds could be expected with reasonable certainty to lapse before they could be obligated or would have to be obligated imprudently to avoid that consequence, the action by the President is to be construed as a *de facto* rescission. The Comptroller General would then, in addition to the subsection 1015(b) message, send a section 1012 message, which section 1012 message would become the Congressional action document. The President's deferral message would become a nullity by virtue of the fact that subsection 1013(c) provides that section 1013 will not apply to actions required to be sent under section 1012.

DISCUSSION OF THE INTERPRETATIONS

Both interpretations outlined above have considerable merit. The act contains complex and difficult provisions on whose interpretation reasonable men may differ. The legislative history, while helpful in some areas, is in large part ambiguous. However, on balance, we must conclude that the second interpretation is the correct one, based primarily on the plain reading of the title.

First, the clear language of section 1013 does not limit the authority for proposed deferrals. The language of the section is very broad, providing that a message should be sent pursuant to the section whenever it is proposed that budget authority be deferred. The language is so broad, in fact, that it would include rescissions except that subsection 1013(c) specifically excludes "budget authority proposed to be rescinded or that is to be reserved as set forth in a special message required to be transmitted under section 1012." Clearly, the plain language permits the proposal of deferrals for any reason. It has been suggested that since section 1012 specifically lists "fiscal policy" withholdings as being reportable under that section, and section 1013 does not, all fiscal policy withholdings must be reported under section 1012. However, in that event, no deferrals could be

proposed under section 1013, since the list of purposes under section 1012 is comprehensive, and section 1013 lists no purposes whatever.

Second, we conclude further that the Impoundment Control Act of 1974, apart from section 1002, is "other law" within the meaning of section 1002. This is the necessary conclusion to be drawn from the fact that section 1002 is in fact an amendment to a statute (the Antideficiency Act) separate and apart from the remainder of the sections making up the Impoundment Control Act of 1974.

Third, the language of sections 1012 and 1013 conveys a clear impression that the use of the two sections depends not on the purpose or legal authority of a proposed withholding action, but upon its duration. It if is to be a permanent withholding of funds; i.e., the funds will never be spent, section 1012 is to be used. If the withholding action is to be only temporary, section 1013 is to be used.

Our interpretation of the provisions of the Act may lead, at first glance, to some apparently anomalous results. In particular, it means that an action by the President that is authorized by statute (e.g., a deferral clearly authorized by the Antideficiency Act) may be made unauthorized and terminated by a simple resolution by only one House. Similarly, a rescission that is authorized by a particular statute may, when submitted under section 1012, be rendered unauthorized and illegal if the Congress fails to pass a rescission bill within 45 days. We believe these results are understandable and reasonable in the context of the Act as a design to give the President the opportunity to initiate reconsideration of, and Congress the opportunity to reconsider, the expenditure of program funds under circumstances that may be different from those in existence when the original program was enacted. In addition, it should be noted that no program may be terminated without action by both Houses, and deferral actions cannot delay program funds for longer than one year.

A central premise of the argument against the second interpretation appears to be that the act cannot be interpreted so as to provide new authority for impoundments because, it is argued, the legislative history shows that the Senate, by its amendments to the Antideficiency Act, intended to reduce substantially the basis for Presidential impoundment, and all

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features of the Senate bill necessary to that purpose were incorporated in the Conference Report. In addition, it is said that the House version of the act merely provided a reporting and veto mechanism in the event unauthorized impoundments occurred. Therefore, it is argued, since the Senate bill would have reduced the President's power to impound and since the House bill would not have enlarged it, any argument that the act confers new power to the President to impound would mean that the sum of the legislative process in this case is greater than its parts. Finally, it is argued that the act cannot be interpreted to delegate new power of deferral by inadvertence or implication.

We cannot agree with this view of the act. As shown above, the plain language of the act supports the second interpretation. The legislative history of the act, particularly in the latter stages of floor debate after the House-Senate conference, is ambiguous, in part. However, some important light is shed by that history. The key point is the history of section 1013, which is virtually identical to the language of earlier bills developed in the House.

On March 6, 1973, Rep. Mahon introduced H.R. 5193. This bill is the basis for much of the act and clearly was the blueprint for section 1013. The bill was reviewed and revised by the House Committee on Rules. Rather than report out the bill with amendments, a new bill, H.R. 8480, was introduced. The substituted bill, however, retained the basic philosophy underlying H.R. 5193; i.e., the establishment of an impoundment control procedure through which Congress would review all impoundments and disapprove them through affirmative action. In the absence of affirmative action, the impoundment involved would stand. H.R. 8480 was, in turn, referred to the House Committee on Rules. Simultaneously, the House was studying another measure--H.R. 7130--which, in part, was also designed to deal with Executive Branch impoundment of funds. H.R. 7130 which was introduced on April 18, 1973, contained two titles. Title II, an impoundment control section, was adopted from H.R. 8480. See H.R. Rep. No. 93-658, 93d Cong., 1st Sess. 16 (1973). H.R. 7130 passed the House on December 5, 1973, and subsequently was the House bill that went to conference and led to the enactment of section 1013.

During the debate on H.R. 8480, it became clear that the Members of the House did consider that the bill would, to the

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extent that it allowed an impoundment to continue unless Congress acted affirmatively to stop the impoundment, grant the President an additional means to impound budget authority. See, generally, 120 Cong. Rec. H6597-6630 (daily ed. July 25, 1973). For example, Rep. Harrington said:

> "That measure [H.R. 8480] tinkers with the rules of the appropriations process, to make an Executive impoundment more accountable to the Congress. But it fails to address the underlying affront of impoundment to congressionally established priorities. In short, the bill makes a clear case for the legality of such actions by the Executive.
>
> Some have tried to argue that procedural legislation like H.R. 8480 does not legitimize the impoundment practice. But the facts show the opposite; if Congress does not act on the impoundment, it is legal--by necessary implication. If I were a judge, I could reach no other conclusion. It will not do to act on the supposition that congressional action implies no judgment on the impoundment of funds from substantive programs." 120 Cong. Rec. E5121 (daily ed. July 26, 1973). (Emphasis added.)

Similarly, Rep. Leggett, while supporting H.R. 8480, expressed these reservations during the debate (comparing the House and Senate bills):

> "While H.R. 8480 attempts to limit the President's ability to impound, both measures extend to the President de facto authority to impound for at least 60 days. The Madden [H.R. 8480] bill allows the President to impound pending congressional disapproval, while the Ervin bill would have impoundments lapse after 60 days if not approved by Congress. A dangerous precedent is set in both instances." 120 Cong. Rec. H6619 (daily ed. July 25, 1973). (Emphasis added.)

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And Rep. Danielson, speaking for an amendment to H.R. 8480, said:

> "The last point I wish to make is simply this: We must always be cautious in this Congress to cease delegating our powers to the Executive, be he Republican or Democrat. His party makes no difference. We must rid ourselves of this tendancy to delegate.
>
> Witness what can happen. In this instance, by a simple majority vote, 50 percent plus 1, we could delegate to the President the power to impound subject only to Congressional veto.
>
> Suppose we want to get this power back in the future? A President, Republican or Democrat might enjoy having this power of impoundment. So if we try to take back this power, what do we have to do?
>
> We have to pass another law repealing this law, and the President can very well veto it, whether he be Republican or Democrat." 120 Cong. Rec. H6600 (daily ed. July 25, 1973). (Emphasis added.)

In fact, this concern over the granting of "*de facto* authority" by H.R. 8480 was so great that several amendments were introduced that would have changed H.R. 8480 to the Senate approach of requiring the impoundment action to cease in the absence of positive congressional action within a certain period of time. The most important of these was an amendment by Rep. Pickle, which was defeated 318-96. 120 Cong. Rec. H6603 (daily ed. July 25, 1974).

While recognizing that the provisions of H.R. 8480 would indeed give the President said "*de facto* authority", the apparent philosophy behind the House bill was expressed by one of the floor leaders of the bill, Rep. Bolling:

> "Mr. Chairman, I do not really know how to go about opposing this [Pickle] amendment. I know it is well-intended.

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> No. 1. It imputes to the bill before us the ratifying of the President's power to impound. It does no such thing.
> The bill before us, H.R. 8480, is completely neutral. It deals with a fact, not a theory.
> There are impoundments. There is not hundreds of impoundments but there are thousands of impoundments. Some are the kinds of impoundments apparently some of my friends feel are the only impoundments; but there are a great many impoundments.
>
> * * * * *
>
> "What H.R. 8480 seeks to do is to provide for a regular procedure for dealing with the exceptional case when the Congress decides that a President has changed the policy--by impoundment unilaterally--that the Congress has already made, and the Congress does not approve the change.
> It is a very limited, very self-disciplined, very carefully contrived process.
> The committee very carefully considered the alternatives, because, after all, the other body has passed the other version a number of times, and we heard from the Senator from North Carolina; he was a witness before the committee. This was a matter which was very carefully considered."
> 120 Cong. Rec. H6602 (daily ed. July 25, 1973).

In other words, while the House bill was not considered a ratification of any impoundment power, it was a recognition that impoundment was taking place; that some impoundments, perhaps, should take place; and that Congress ought to have a means for control over impoundments and disapproving those it considered unwise or unjustified.

In summary, the House, while not ratifying or approving any particular impoundments, clearly did provide that, if the Congress did not disapprove a proposed impoundment, the impoundment would stand. In this sense, the House bill expanded Executive authority to impound.

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The purpose of the Senate bill that went to conference clearly was different. S. 373, introduced on January 16, 1973, by Senator Ervin and others, set forth a procedure to deal with impoundment of funds. Significantly, and unlike H.R. 8480, this bill required affirmative congressional action within a certain period of time to authorize impoundments. The Senate passed S.373 on May 10, 1973. The House amended the Senate-passed version of the bill and both chambers appointed conferees. That bill died in conference. S.1541 was introduced on April 11, 1973, by Senator Ervin and five other members of the Senate. The original version of this bill as well as that version of S.1541 that was reported out of the Senate Committee on Government Operations on November 28, 1973, did not contain any impoundment control provisions. However, the bill was then referred to the Committee on Rules and Administration on November 30, 1973. The latter Committee reported S. 1541 (S.Rep. No. 93-688, 93d Cong., 2d Sess.) in a modified form--a form which did incorporate an impoundment control title. As was the case in the House of Representatives, the Senate was concerned that there be made available to the Congress a means through which impoundments could be scrutinized. The Senate bill that went to conference tightened the authority in the Antideficiency Act to place funds in reserve by deleting the "other developments" clause. It also prohibited, except where provided for by appropriations acts or other laws, the use of budgetary reserves for fiscal policy purposes or to achieve less than the full objectives and scope of programs enacted and funded by the Congress, and authorized the Comptroller General to bring a civil suit action in the U.S. District Court for District of Columbia to enforce those provisions.

The Senate, on March 22, 1974, substituted the agreed upon text of S.1541 for the language of H.R. 7130. It was in this light that the two chambers went to conference.

The legislative history following the conference deliberations is ambiguous in that support can be found for either interpretation. See generally 120 Cong. Rec. H5177-5202 (daily ed. June 18, 1974); and 120 Cong. Rec. S11221-11257 (daily ed. June 21, 1974). In addition, we understand that some who participated in the debate adhere to an interpretation opposite to that which one would conclude from a reading of the record.

Under the circumstances, this portion of the history is not helpful as an aid to interpretation of the language of the act.

Finally, other arguments that have been raised against the second interpretation include the arguments (1), that the disclaimer section (section 1001) and the Antideficiency Act amendment (section 1002) preclude any assertion or concession of Presidential power to impound, except pursuant to explicit statutory authorization, and (2), that nowhere else in the act is there found such an assertion or concession.

These arguments ignore the fact, however, that the history of section 1013 in the House clearly shows that that provision was intended as a mechanism whereby impoundments could be reviewed and approved or disapproved by Congress, regardless of the presence or lack of independent statutory authorization. Thus, the disclaimer disclaims any assertion or concession of Presidential constitutional power, or approval of any impoundment except pursuant to statutory authorization. Section 1013 in a sense does provide such authorization, provided the Congress does not disapprove a proposed deferral. Similarly, the section 1002 amendment to the Antideficiency Act provides that no reserves shall be established other than as authorized by the Antideficiency Act, or "except as specifically provided by particular appropriation acts or other laws." Section 1013, we believe, as discussed above, must be included in the category "other laws."

CONCLUSION

We view the Impoundment Control Act of 1974 as providing a means for Congress to review Executive Branch actions or inactions amounting to withholding budget authority from obligation; a mechanism for Congress to affirm or disapprove withholdings that are based on statutory authority outside of the act and to reconsider (contemporaneous with the circumstances at the time proposed) and approve or disapprove withholdings that are submitted under the section 1013 procedure, but which otherwise have no statutory authority. As such, it does not, as section 1001 makes clear, assert or concede the constitutional powers or limitations of either Congress or the President.

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As we have stated, the act contains complicated provisions, the legislative history of which are, in large part, far from clear. Because of this, the title has presented difficult problems of interpretation. In addition, because of the act's importance, its interpretation and implementation have been the subject of keen interest by members of Congress and others. Consequently, because it is a close question involving difficult issues of interpretation of statutory language and legislative history, we suggest that Congress may want to re-examine the act and clarify its intent through further legislative action.

Sincerely yours,

(SIGNED) ELMER B. STAATS
Comptroller General
of the United States

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

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DEC 18 1974

The Honorable Edmund S. Muskie
Chairman, Committee on the Budget
United States Senate

Dear Senator Muskie:

We have received your letter of December 13, 1974, raising certain questions concerning our interpretation of the Impoundment Control Act of 1974, as expressed in our opinion dated December 4, 1974. Set forth below are your questions and our answers to them.

QUESTION:

> "First, what principles of statutory interpretation were used in reaching the conclusions contained in the December 4, opinion?"

No single canon of interpretation can purport to give a certain and unerring answer to the question of legislative intent or the meaning of a statute. Before the true meaning of a statute can be determined where there is genuine uncertainty as to how it should apply, consideration must be given to the problem in society to which the legislature addressed itself, prior legislative considera-tion of the problem, and the legislative history of the statute in question. See Sutherland, Statutory Construction, 4th Ed., §§45.05 and 45.02.

In this case, the problem addressed by the Congress, and even more the legislative response it fashioned, are the very matters in contention. Review of prior legislative considerations, and of the legislative history of the bill that emerged from Conference, was not particularly helpful. At the end, we relied upon the tradi-tional principle that Congressional intent must be ascertained essentially from the language of the statute itself.

QUESTION:

"Second, your opinion contained a number of assertions and conclusions for which no authority was cited. Please indicate all authorities upon which you relied for the following statements:

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"A. On page two, you described the 'basic scheme' of the Act as follows:

"2. Budget authority intended for permanent withdrawal must be released for obligation and expenditure if the Congress fails within 45 days to pass legislation authorizing the withdrawal.

"3. Budget authority intended for temporary withdrawal within a fiscal year may be withheld as proposed if the Congress fails to act; either House may require release of such deferred budget authority by passing a simple resolution to that effect. (Emphasis added)

"What is the authority for such conclusions? Where in the legislative history of Public Law 93-344 are the words 'permanent' or 'temporary' used to describe recissions and deferrals respectively?"

"F. On page thirteen, you state, 'The language of section 1012 and 1013 conveys a clear impression that the use of the two sections depends not on the purpose or legal authority of a proposed withholding action, but upon its duration.'

"What is the authority for that assertion? Where in the conference report or in the floor debates in either House is there support for that assertion?"

Our basis for these conclusions is the language of §§1002 and 1012-1013 of the act itself. The Conference Report and the floor debates following the Conference throw little light on this problem.

In §§1002 and 1012 a "rescission" is to be recommended when funds are not required to carry out the objectives and scope of the appropriation. As used in these sections, a "rescission" appears to mean that budget authority is to be permanently revoked. This meaning is consistent with that ordinarily accorded the term "rescission."

The term deferral is explained by §§1011 and 1013 as any withholding or delaying of budget authority that does not extend beyond the fiscal year in which it is proposed. Moreover, Section 1013, by its own provisions, deals with impoundments not covered by §1012 (see §1013(c)).

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Reading the two sections together, the conclusion seems inescapable that a "deferral" is what we characterize as a "temporary" withdrawal of authority, and a rescission is a "permanent" withdrawal.

"B. On page two, you state, 'The Impoundment Control Act of 1974 and its legislative history are considerably less than clear concerning the Act's intended design.' What is the basis for that conclusion?"

Primarily it is the legislative history of the act that is unclear in large part. See pages 18-19 of our December 4, 1974, opinion concerning the ambiguity of the legislative history following the House-Senate Conference. Had the Act itself been as clear as all would desire it would not have been subject to two reasonable but mutually exclusive interpretations.

"C. On page nine, you state, 'We conclude that budget authority may not be withheld except to provide for contingencies or to effect savings, or as specifically provided for in appropriations acts or other laws.' How is that conclusion consistent with your later conclusion that the President may use the deferral procedure for fiscal policy purposes?"

"D. On page thirteen, you state, 'Second, we conclude further that the Impoundment Control Act of 1974, apart from 1002, is 'other law' within the meaning of section 1002. This is the necessary conclusion to be drawn from the fact that section 1002 is in fact an amendment to a statute (the Anti-Deficiency Act) separate and apart from the remainder of the sections making up the Budget Impoundment and Control Act of 1974.' What is the authority for this assertion and conclusion?"

Section 1002 states explicitly that it is an amendment to the Antideficiency Act, 31 U.S.C. 665. The remainder of the act is not an amendment to 31 U.S.C. 665, and constitutes a structurally separate statute. Therefore, it appears the amendment to the Antideficiency Act was designed to eliminate that statute as the

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claimed basis for so-called policy impoundments. See pages 6-10 of our December 4, 1974 opinion. This in no way would affect the possibility that other statutes could serve as a basis for policy impoundments. Section 1002 appears to recognize this:

> "Except as specifically provided by particular appropriations Acts or other laws, no reserves shall be established other than as authorized by this subsection." (Emphasis supplied.)

Also, it must be emphasized that a policy impoundment will prevail only in those circumstances where the President proposes a deferral and neither of the Houses of Congress passes an impoundment resolution. Under these circumstances, §1013 of the act provides "other law" for withholding of budget authority.

Finally, if one construes the language of §1002 to mean that fiscal policy reserves cannot be established under any other law, then the creation of such reserves, it has been argued, would have to be proposed as "rescissions". Such a construction would be inconsistent with the clear import of §1013, which provides for the President proposing to defer for less than the fiscal year any budget authority.

"D. On page thirteen, you state, 'First, the clear language of section 1013 does not limit the authority for the proposed deferrals.' How do you reconcile that assertion with the 'clear language' of section 1012 which provides that the President is to seek rescission when he determines 'that all or part of any budget authority will not be required to carry out the full objectives or scope of programs for which it is provided or that such budget authority should be rescinded for fiscal policy or other reasons including the termination of authorized projects or activities for which budget authority has been provided), or whenever all or part of budget authority provided for only one fiscal year is to be reserved for obligation for such fiscal year?

"How do you reconcile your interpretation of Section 1013 with the 'clear language' of Section 1013(c) which states, 'The provisions of this section do not apply to any budget authority proposed to be rescinded or that is to be reserved as set forth in a special message required to be transmitted under section 1012'?"

The language of §1013 provides that an impoundment message should be sent pursuant to the section whenever it is proposed that budget authority be deferred. The language is so broad, in fact, that it would include rescissions except that subsection 1013(c) specifically excludes "budget authority proposed * * * in a special message required to be transmitted under §1012."

The fact that §1012 specifically lists "fiscal policy" rescissions as reportable under that section, and §1013 does not refer to "fiscal policy" deferrals, cannot be construed as meaning that all fiscal policy withholdings of whatever duration must be reported under §1012. The list of several purposes for impoundments under §1012, including for the purpose of "fiscal policy," virtually exhausts all reasonable possibilities of the purposes for which the President may propose to revoke obligational authority. Section 1013 lists no purposes whatever for which the President may propose to delay obligational authority. If §1012 were construed to embrace exclusively all withholdings undertaken pursuant to the purposes listed therein (including "fiscal policy"), then fiscal policy deferrals could not be proposed under §1013. But the language of §§1012 and 1013 simply does not support this result. The more reasonable interpretation, viewing the act as a whole, is that §1012 encompasses only those impoundments for fiscal policy or other reasons, the durations of which extend beyond the fiscal year in which they are proposed, i.e., "permanent."

"G. On page fourteen, you state, 'Deferral actions cannot delay program funds for longer than one year.' Yesterday in testimony before the Senate Budget Committee, Director Ash of OMB testified that the President could defer program funds for as many years as he wanted, so long as the authorization for such budget authority did not expire. Is Director Ash's interpretation of the law correct?

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> If the Director's interpretation is not correct, will the Comptroller General reclassify such deferrals as recissions and then sue to release the money if the Executive does not spend it?"

We agree with Director Ash's interpretation so long as the deferral is resubmitted each fiscal year, and only so long as there does not arise a de facto rescission due to the lack of sufficient remaining time to prudently obligate the funds involved. See page 12 of our December 4, 1974 opinion. The GAO under its responsibilities would, of course, question repeated deferrals to see if they should be submitted as rescissions.

> "H. On page eighteen, you describe the legislative history of the Impoundment Control Act in the Senate. You state that the Senate Rules Committee reported S. 1541 in 'a form which did incorporate an impoundment control title.' What is the legislative history in the Senate of Title X of S. 1541?"

As discussed at page 18 of our December 4, 1974, opinion, S. 1541 was introduced on April 11, 1973, by Senator Ervin and five others. It was referred to the Committee on Government Operations and subsequently reported out on November 28, 1973, without an impoundment control title. See S. Rep. No. 93-579.

The bill was later referred to the Committee on Rules and Administration on November 30, 1973. This Committee did report out the bill with impoundment control provisions. See S. Rep. No. 93-688.

The Senate passed S. 1541 on March 22, 1974, but then substituted its agreed upon text for H. 7130 on March 22, 1974. This bill was modified in conference.

> "I. On page one, you state, 'The act fundamentally calls for the Executive Branch to report and explain to the Congress all proposed impoundments with ultimate authority to effectuate such proposals dependent upon congressional action.' When the

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> President proposes a rescission, may the funds be withheld during the 45-day period pending Congressional action?"

Yes. We think the act provides that funds may be withheld during the pendency of a rescission request. Section 1012 states that, if after 45 days, a rescission bill has not been passed, the budget authority must be made available for obligation. To us, this implies that during the 45 days the money need not be made available for obligation.

QUESTION:

> "Third, does section 1013 provide any legal authority or statutory authority for an impoundment of budget authority? Did H.R. 7130 as passed by the House purport to provide any such legal or statutory authority to the President to defer budget authority temporarily from obligation?"

Yes, provided it is sustained by Congressional concurrence. Further, the legislative history of H.R. 7130 in the House makes it clear that the House recognized that H.R. 8480, the predecessor to H.R. 7130, did provide additional authority to the President, subject to Congressional concurrence. See pages 14-19 of our December 4, 1974, opinion.

Sincerely,

SIGNED ELMER B. STAATS

Comptroller General
of the United States

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

B-115398 December 23, 1974

The Honorable James O. Eastland
President pro tempore
United States Senate

Dear Senator Eastland:

On October 4, 1974, a special message was sent to the Congress by the President of the United States pursuant to the Impoundment Control Act of 1974. The message included a proposed deferral of $264,117,000 in budget authority for the Department of Housing and Urban Development, Housing Production and Mortgage Credit, Homeownership Assistance (referred to as Section 235 program). Enclosure I is a copy of this deferral.

The Impoundment Control Act of 1974 requires GAO to report to the Congress if the President has failed to transmit a rescission or deferral message when required, or if such a message has been misclassified. On November 6, we reported to the Congress that the President's October 4 deferral of Section 235 funds--

> "has been incorrectly classified and that it should have been proposed as a rescission. Accordingly, this Comptroller General report is submitted in compliance with the requirements of §1014(b)(2), regarding analysis of proposed deferrals and §1015(b), concerning incorrectly classified special messages, of the Impoundment Control Act of 1974."

We reclassified this deferral as a rescission (see Enclosure II) because we construe the intent of the Congress to be that, if funds cannot effectively be expended because of deferral, a rescission of all or part of the funds should be sought. In this specific instance, the budget authority was being deferred for the entire fiscal year ending June 30, 1975, and it would lapse 52 days later if contracts were not entered into. We concluded, therefore, that what had been presented was a <u>de facto</u> rescission because 52 days would not be sufficient time to prudently obligate the $264 million involved.

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Our reclassification of this deferral action to a rescission effectively nullified the President's deferral message and has the same effect as if it had been a rescission message transmitted by the President. If the Congress wants to approve the rescission and keep this budget authority from becoming available for obligation, it must complete action on a rescission bill before the prescribed 45-day period of continuous session expires. Inaction by the Congress will disapprove the rescission, and under the Act the budget authority would become available for obligation after the first 45 days of continuous session by the next Congress. However, a recent decision by the court upheld the President's claim of authority to suspend the Section 235 program. Commonwealth of Pennslyvania, et al., v. Lynn, United States Court of Appeals, District of Columbia Circuit, Civil Action No. 731835, decided July 19, 1974. The effect of this court decision on the ultimate release of the referenced funds is uncertain at this time.

The 45 calendar days of continuous session that the Congress has to complete action on a rescission bill begins on November 6, 1974, the day the Congress received the Comptroller General's report that the deferral of Section 235 funds was construed to be a de facto rescission. However, it appears that the 93d Congress will adjourn sine die before the expiration of 45 calendar days of continuous session after November 6, 1974. If this occurs the rescission message will be deemed to have been retransmitted on the first day of the 94th Congress and a new 45-day period will commence. Based on the Congress' planned schedule for 1974, this new 45-day period will not expire before March 10, 1975.

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General
of the United States

Enclosures

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

B-115398 January 23, 1975

The Honorable George H. Mahon, Chairman
Committee on Appropriations
House of Representatives

Dear Mr. Chairman:

Your letter of December 13, 1974, requests our consideration under section 1015 of the Impoundment Control Act of 1974, Pub. L. No. 93-344, title X, of two items contained in the attachment to the President's message to the Congress dated November 26, 1974, captioned "Supplement to Message on Budget Restraint--Actions Recommended," H. Doc No. 93-398. The two items, designed to reduce fiscal year 1975 and 1976 outlays, concern (1) reductions in minimum average personnel strengths for military reserve components and (2) "rephasing" of payments for military reenlistment bonuses. You suggest that, in each instance, the President has failed to request congressional concurrence in the rescission of moneys when the actions contemplated are in fact rescissions.

Based on our understanding of these proposals, we do not believe that either one presently constitutes a deferral or rescission of budget authority within the application of title X of Pub. L. No. 93-344. Each is discussed separately below.

Reduction in reserve component strengths.

Under part 1 of the President's November 26 message dealing with "new substantive legislation proposals," it is proposed to decrease the average Reserve Forces strength plan by approximately 22,000, thereby reducing outlays by approximately $63 million in fiscal year 1975 and $13 million in fiscal year 1976. See page 10 of the message. The message includes draft legislation to amend the current minimum average Reserve Forces strength levels specified in sections 401 and 403(a) of the Department of Defense Appropriation Authorization Act, 1975, approved August 5, 1974, Pub. L. No. 93-365, 88 Stat. 402, 403. You point out that Pub. L. No. 93-365 mandates higher average strengths than were requested in the 1975 budget, and that the Congress

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appropriated $93.5 million more than the 1975 budget request to maintain these strengths.

We agree that the minimum average reserve strengths established by Pub. L. No. 93-365 are mandatory. The executive branch apparently shares this view since it has proposed legislation to amend Pub. L. No. 93-365. However, it is our understanding that the executive branch proposal does not presently entail any actions beyond the submission of draft legislation, and that the current average strength requirements will be implumented unless and until amending legislation is enacted. Therefore, a proposal to rescind 1975 budget authority would be premature before the current statutory strength requirements were reduced.

The only other possibility which we could anticipate is that fiscal year 1975 appropriations provided to fund the current strength levels might be partially reserved pending congressional consideration of the draft legislation, under section 3679(c)(2) of the Revised Statutes (31 U.S.C. § 665), as amended by Pub. L. No. 93-344, § 1002, 88 Stat. 332. The establishment of any such reserve would require the immediate transmittal to the Congress of a special message pursuant to title X of Pub. L. No. 93-344.

Rephasing of payments for reenlistment bonuses.

Under part 5 of the President's November 26 message, dealing with "executive actions under current law," it is proposed to "rephase" the payment of reenlistment bonuses by converting from lump-sum payments upon reenlistment to annual payments over the entire reenlistment period. See page 91 of the message. It is indicated that this action would affect outlays by approximately $58 million in fiscal year 1975 and $1 million in fiscal year 1976. The message further states that "savings" resulting from this action will be made available to offset requirements for higher pay costs arising from pay raises effective October 1, 1974. While agreeing that the Department of Defense has legaal authority to set bonus payments, you suggest that, since the Congress appropriated funds for the purpose of reenlistment bonuses (as presently structured), the rephasing is a rescission of budget authority which should have been so reported to the Congress.

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Prior to enactment of the "Armed Forces Enlisted Personnel Bonus Revision Act of 1974," approved May 10, 1974, Pub. L. No. 93-277, 88 Stat. 119, reenlistment bonus authority consisted of two elements: (1) a regular reenlistment bonus payable, with specified exceptions and limitations, to reenlistees and reenlisting officers with prior enlisted service regardless of their military skill areas, 37 U.S.C. §§ 308(a) and (d) (1970); and (2) an additional "variable reenlistment bonus" (VRB) for reenlistees having having designated critical military skills, payable in equal yearly installments over the period of reenlistment, 37 U.S.C. § 308(g) (1970). Pub. L. No. 93-277, § 2(1), amended 37 U.S.C. § 308 by substituting for the prior two elements one so-called "selective reenlistment bonus" (SRB) for reenlistees having designated critical skills, carrying a greater maximum entitlement than the predecessor VRB. Subsection (b) of 37 U.S.C. § 308, as amended by Pub. L. No. 93-277, expressly authorizes SRB payments to be made on either a lump sum or installment basis. While the regular reenlistment bonus was eliminated, Pub. L. No. 93-277, § 3, provided for its continued payment to service members who would have been eligible for it prior to the change in the law.

It is our understanding that the present SRB and prior VRB programs have been budgeted for on the basis of estimated outlays necessary during a given fiscal year, consisting of new lump-sum bonus payments, first year payments on new bonuses scheduled to be paid in installments, and anniversary payments due on prior year installment bonuses. Thus the budget estimate depends, among other factors, on plans in terms of how new bonuses will be paid, i.e., the number or ratio of lump sum versus installment bonuses. See, e.g., Hearings before a Subcommittee of the House Committee on Appropriations, 93d Cong., 2d Sess. on Department of Defense Appropriations for 1975, 866-67, 962-89 (Part 3, Military Personnel); cf., House Committee on Armed Services, Subcommittee No. 4 Hearings on S. 2770, etc., 93d Cong., 2d Sess., 89-90 (H.A.S.C. No. 93-38).

Apparently the 1975 appropriation requests were originally justified and provided on the basis that most new bonuses would be paid in lump sums. The instant proposal involves a departure from the original plan in that new SRB's will now be paid largely or exclusively on an installment basis. However, it is also our understanding that the scope of the SRB

program and individual qualifications will not be affected. Accordingly, all members who become entitled to the SRB during fiscal year 1975, under applicable regulations, would eventually receive the full amounts of their entitlements, although payments will be less during the current year.

The central feature of the proposal, for purposes of your inquiry, relates to the disposition of the amounts of outlays to be "saved" by this proposal. The "savings" referred to in the President's message--$58 million for fiscal year 1975--presumably represent that portion of the amount justified and provided for lump-sum bonus payments which will no longer be needed when the estimated number of bonuses originally programmed for lump-sum payment are recalculated on an installment basis, i.e., the total amount estimated for lump-sum payments less the amount of first year installment payments for these bonuses. However, the President's message states that these outlay savings will be applied to offset increased salary costs, which would be payable from the same personnel appropriations. In this case this would have the effect of reducing, to the extent of the amount of savings referred to, the need for supplemental appropriations to meet increased salary costs. Accordingly, the full amount of 1975 personnel appropriations originally justified for payment of reenlistment bonuses will actually be expended within the scope of the personnel appropriations. The only difference is that a portion of this amount will be applied for a use other than that originally justified to the Congress, i.e., payment of salaries rather than reenlistment bonuses. Therefore, we do not believe that this action constitutes a rescission or deferral of budget authority for purposes of the Impoundment Control Act.

While the foregoing responds to your specific question, our review suggests a separate issue with respect to the funding approach being employed for the SRB program and the validity of the "savings" referred to in the President's message. In an opinion to the Secretary of Defense dated January 4, 1966, 45 Comp. Gen. 379 (copy enclosed), considering the VRB as authorized by 37 U.S.C. § 308(g) prior to enactment of Pub. L. No. 93-277, supra, we held that legal entitlement to the full bonus accrues upon completion of reenlistment procedures. Thus we observed, 45 Comp. Gen. at 381:

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> "* * * the purpose of the variable reenlistment bonus is to provide a substantial financial inducement to those enlisted members of the Armed Forces designated as having a critical military skill to reenlist following their first period of service. In brief, the Government offers this strong financial inducement solely in exchange for such a reenlistment. The reenlistment of a member accomplished pursuant to regulations to be prescribed as provided in subsection (g) constitutes an acceptance of the Government's offer and at that point the Government becomes obligated to pay the variable reenlistment bonus computed in accordance with the particular facts of the case. Hence, it is our view that the right to receive the variable reenlistment bonus vests in the enlisted member concerned upon completion of the reenlistment procedure. * * *"

The same conclusion seems equally applicable to the SRB as authorized by present 37 U.S.C. § 308. Considering this conclusion in terms of general principles governing the application of and accounting for appropriated funds, it would ordinarily follow that the full amount of SRB's contracted for during a given fiscal year should be recorded as obligations against personnel appropriations available during that fiscal year, irrespective of when such obligations are liquidated. See 31 U.S.C. §§ 665(a), 627 (1970); _cf._, 31 U.S.C. § 200(a) (1970). Under this approach, actual payments could still be made in installments as authorized by 37 U.S.C. § 308(b); but appropriation amounts thus obligated for SRB entitlements could not, of course, thereafter be applied to other uses.

As noted previously, appropriations for the SRB and VRB programs have been requested and apparently provided on the basis of annual outlays rather than obligations. However,

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we believe it could still be argued that, at least insofar as amounts were provided for lump-sum payments, the obligation approach should be followed. We are pursuing this issue with the Department of Defense; and we will advise you of the results of our review.

Sincerely yours,

(SIGNED) ELMER B. STAATS
Comptroller General
of the United States

Enclosure

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

B-115398

February 27, 1975

The Honorable Jennings Randolph
Chairman, Committee on Public Works
United States Senate

Dear Mr. Chairman:

This is in response to your letter to us of February 19, 1975, in which you asked our opinion of the effect of Train v. City of New York, No. 73-1377 (U.S. Feb. 18, 1975), decided by the Supreme Court on February 18, 1975, on certain deferrals before the Congress pursuant to the Impoundment Control Act of 1974. As you know, the court held in that case that the Administrator of the Environmental Protection Agency has no authority under section 205 of the Water Pollution Control Act (33 U.S.C. §1285 (Supp. II 1972)) to allot less than the full amounts authorized to be appropriated under section 207 of that act (33 U.S.C. §1287 (Supp. II 1972)).

Specifically, you asked the effect of the decision on D75-9, Environmental Protection Agency, Water Program Operations, and D75-17, Department of Transportation, Federal Highway Administration.

Deferral D75-9 involves the funds that were the subject of the Court's decision in Train. The funds must now be alloted in accordance with the Court's ruling. As you stated, $4 billion of the funds were released for allotment on January 28, 1975, and we understand that the remainder were ordered released for allotment on February 24, 1975.

Deferral D75-17 involves highway funds that also are the subject of litigation. This litigation includes State of Nebraska v. Brinegar et al., Civil 74-L-19 (D. Neb., December 20, 1974), filed February 13, 1974; State of Louisiana v. Brinegar, Civil Action No. 2145-73 (D.D.C., February 13, 1975; filed December 6, 1973; and State Highway Commissioner of Kansas v. Volpe, et al., Civil Action No. T-5273 (D. Kan., February 6, 1975), filed January 17, 1973. You note that the President on February 11, 1975 ordered $2 billion of these funds released. The Solicitor General, in a supplemental brief filed in Train, asserted that the Impoundment Control Act did not affect the Water Pollution

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funds. The Court in a footnote, quoting the disclaimer in section 1001(3) of the Act, stated that "The Act would thus not appear to affect cases such as this one, pending on the date of enactment of the statute." The Court concluded that the case before it had not been mooted by the act. Precisely how this decision affects the impoundment of the highway funds is not clear. The final disposition of the issue must await further judicial clarification. Meanwhile, we believe that the procedures provided by the act should be applied.

Finally, you asked, in connection with the highway and water pollution funds, whether or not a supplemental message is required when the President releases a part of deferred funds. As you noted, the President ordered partial releases of $2 billion and $4 billion, respectively, of those funds. We believe in those cases the President should have sent a supplemental message. See section 1014(c) of the act.

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General
of the United States

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

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MAY 8 1975

The Honorable Joseph P. Addabbo
Chairman, Subcommittee on SBA
Oversight and Minority Enterprise
Committee on Small Business
House of Representatives

Dear Mr. Chairman:

This is in response to your letter of March 26, 1975, with attachments, in which you asked that we consider whether certain actions of the Office of Management and Budget (OMB) in its management of funds appropriated to carry out §7(a) of the Small Business Act, as amended, Pub. L. 85-536, July 18, 1958, 72 Stat. 384, 15 U.S.C. §631, et seq., are in violation of the Impoundment Control Act of 1974, Pub. L. 93-344, July 12, 1974, 88 Stat. 297.

Specifically, you raise questions as to the propriety of (1) the President's deferral of $36 million available to implement the Small Business Act §7(a) direct loan program, 15 U.S.C. §636(a); (2) the President's unreported withholding of approximately an additional $96 million of funds available to implement this program; and (3) the Small Business Administration's (SBA) cancellation of sales of certain of its securities -- the proceeds of which could have been used to fund the §7(a) direct loan program or other related SBA activities. In addition, you questioned the adequacy of the President's deferral message of November 26, 1974, Message No. D75-130, wherein he proposed to defer the $36 million referred to above, and asked whether the action taken constitutes a de facto rescission.

I. THE AMENDMENT TO THE SECTION 7(a) DIRECT LOAN PROGRAM

In 1958 the Small Business Act was enacted. Among other things, §7(a) of the 1958 statute, 15 U.S.C. 636(a), authorized SBA, under certain conditions, to make loans directly to small business concerns.

To finance the operations of the §7(a) direct loan and other programs, §4(c) of the 1958 act, 15 U.S.C. 633(c), established a revolving fund. A subsequent enactment, Public Law 89-409, approved May 2, 1966, amended 15 U.S.C. 633(c) and, inter alia, denominated the revolving fund from which moneys are obtained to implement the

§7(a) direct loan program as the Business Loan Investment Fund (BLIF). As noted in an attachment to your letter, there is no ceiling on the amount of funds that may be appropriated to the BLIF, although the total amount of obligations that may be entered into by SBA and that may be outstanding at any one time under the §7(a) direct loan and certain other programs may not exceed $6 billion. 15 U.S.C. 633(c)(4). BLIF appropriations are available without fiscal year limitation.

Section 12 of the 1974 amendments to the Small Business Act, Public Law 93-386, approved August 23, 1974, 88 Stat. 742, added to the authorization act that set forth the §7(a) direct loan program the following new language:

> " During the fiscal year ending June 30, 1975, the Administrator shall make direct loans under this subsection in an aggregate amount of not less than $400,000,000." (Emphasis added.) Section 12 of Pub. L. 93-386, supra, 15 U.S.C. 636(a)(8).

The legislative history of the amendment establishes that this provision was added to the authorization act in response to OMB's past restriction on using BLIF funds in the §7(a) direct loan program. The reason given by OMB for this restriction was that the interest rate provided by the Small Business Act for the repayment of the direct loans was creating a Federal deficit because the Government was paying a higher rate of interest to the institutions from which it was borrowing money to fund the program. Accordingly, OMB used the BLIF funds that would have been used in the §7(a) direct loan program to carry out other BLIF-funded activities.

The congressional reaction to this was §12 of Pub. L. 93-386, supra. The Senate Committee on Banking and Currency, in its report on the bill that substantially was to become the 1974 act, stated:

> " * * * The Small Business Administration has submitted a budget identical to 1974 for direct and immediate participation loans during fiscal year 1975. While these figures are pale indeed to the more than $1 billion that SBA will make available in guarantees during 1974 and 1975, they could be reduced even further if the Office of Management and Budget impounds additional direct loan funds as it has done in previous years. The trend away from direct loans and more

towards bank guaranteed loans is indeed alarming small businessmen with millions of dollars in excess interest rates at a time when they least can afford to pay such rates. Under the guaranteed loan program SBA allows banks to charge an interest rate which is adopted on a quarterly basis by the Agency. Prior to adopting this method of setting interest rates, the SBA allowed the banks to charge whatever rate the banks desired and on occasion that rate approached 13%. Under the new SBA rate setting program, the rate has reached as high as 11% and currently is set at 10 1/2 %.

"Instead of assisting small businessmen with low cost direct loans as money has tightened, SBA has gone in just the opposite direction and has forced thousands of small businessmen to pay unnecessary extra interest charges.

"In 1965, for example, 92.2% of SBA's business loan activities were in the form of either direct or immediate participation. However, in 1973 direct and immediate participation loans had fallen to only 6.8% of the volume. Your Committee feels that since SBA has refused to reverse the trend through the suggestion route that it is now necessary to direct the change through the legislative route.

"For this reason, H.R. 15578 directs the Small Business Administration to make available $400 million in direct loans during fiscal year 1975. The $400 million represents roughly 1/3 of the authorization increase requested by SBA and will go a long way towards reversing the trend of requiring small businessmen to pay unnecessary high rates for loans.

"In the past, the Office of Management and Budget has given as its excuse for refusing to allow SBA to make more guaranteed loans the statutory interest rates on these loans of 5 1/2%. The Office of Management and Budget contends that it costs the government more to obtain the money than it would receive in interest from the Small Business Administration direct loans and

> thus the loans were being provided on a loss basis.
>
> "Your Committee has remedied that situation by removing the statutory interest rate of 5 1/2%. In its place the Committee has substituted a formula which sets the rate at the cost of money to the government plus 1/4% of 1% for servicing fees. Under present interest rates that formula would result in an interest of approximately 6 1/8% to 6 1/4% on a direct loan. While this raises the rate on direct loans in actuality, it is a large reduction in the amount the small businessman would have to pay if he was forced to obtain a bank guaranteed loan which currently is set at 10 1/2%.
>
> "The new rate will result in not only a lower interest rate to small businessmen, but will also turn the loans into a profitmaking situation for the Federal government." (Emphasis added.) S. Rep. No. 93-1178, 93d Cong., 2d Sess., 6 (1974).

See also remarks to the same effect by Mr. Hungate at 120 Cong. Rec. H7527 (daily ed. August 1, 1974); and those by Mr. Stephens at 120 Cong. Rec. H7520 (daily ed. August 1, 1974).

As further evidence of the mandatory nature of the amendment and in addition to the clear language of the statute and those excerpts of the legislative history referred to above, we invite your attention to the House's consideration of an amendment offered by Mr. Rousselot on August 1, 1974. This amendment would have changed the bill to read:

> "During the fiscal year ending June 30, 1975, the Administrator may make direct loans under this subsection in an aggregate amount of $400,000,000." (Emphasis added.) 120 Cong. Rec. H7531 (daily ed. August 1, 1974).

Mr. Rousselot stated in behalf of this amendment:

> "The language in section 11, as reported by the committee, would require the Administrator to spend $400 million in direct loans in fiscal year 1975.

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> "I believe my amendment making the direct loans of $400 million permissible rather than mandatory is necessary for the following reasons:
>
> "First. A hard-and-fast requirement that a given amount of funds must be provided for direct loans may force the Administrator to relax or abandon normal requirements for approval in order to fulfill the quota.
>
> "Second. The mandating of this expenditure essentially amounts to an evasion and frustration of the appropriations process. If this bill were to become law in its present form, the Committee on Appropriations would be required to approve an appropriation of $400 million for direct loans regardless of its evaluation. This procedure reduces congressional control over the budget at a time when increased control is essential, and I believe, it violates the spirit of Public Law 93-344, the budget control legislation which was passed by Congress, and signed into law less than 3 weeks ago.
>
> "This amendment is an opportunity to demonstrate by action, rather than just rhetoric, our commitment to budget control, and I believe that it must be adopted." (Emphasis added.) id.

The Rousselot amendment was defeated without extended debate. 120 Cong. Rec. H7531-H7532 (daily ed. August 1, 1974).

Section 12 of the 1974 amendments, enacted in response to past restrictions on the use of money for the §7(a) direct loan program, directed SBA to utilize at least $400 million for the §7(a) direct loan program in fiscal year 1975. Therefore, in light of the above, we believe that a strict interpretation of the statute requires the conclusion that SBA was mandated to utilize all legally available resources toward implementing §7(a) direct loans up to $400 million. But, as discussed below, it is questionable that such a strict interpretation is consistent with overall Congressional intent.

II. THE BLIF APPROPRIATIONS FOR FISCAL YEAR 1975:

While the amendment to the authorization act directed SBA to utilize during fiscal year 1975 at least $400 million in BLIF moneys for the §7(a) program, the direction was subject to the availability

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of funds as well as to other restrictions appropriation acts or other laws might place on the BLIF. See 15 U.S.C. 633(c)(5) and 31 U.S.C. 849.

The Congress considered the appropriation for SBA and certain other agencies for fiscal year 1975 both immediately before and after enactment of the 1974 amendments to the Small Business Act. The resulting act, Public Law 93-433, October 5, 1974, 88 Stat. 1187, appropriated $327,500,000 to the BLIF. See Title V of Public Law 93-433, 88 Stat. 1206, which states:

> "The Small Business Administration is hereby authorized to make such expenditures, within the limits of funds and borrowing authority available to the following funds, and in accord with the law * * * as may be necessary for carrying out the programs set forth in the budget for the current fiscal year for the * * * 'Business loan and investment fund' * * * "
>
> * * * * *
>
> "For additional capital for the 'Business loan and investment fund,' authorized by the Small Business Act, as amended, $327,500,000, to remain available without fiscal year limitation."

The Conference Report on this appropriation, H.R. Rep. No. 93-1370, 93d Cong., 2d Sess., 9 (1974), indicates that a compromise was agreed to with respect to the amount of BLIF funding. The legislative history of the appropriation act does not reveal any concern in the House of Representatives for what was to become the §12 spending mandate of the 1974 Small Business Act amendments; only that $40 million was requested and budgeted by SBA for the §7(a) direct loan program in fiscal year 1975. See: Hearings Before a Subcommittee of the Committee on Appropriations, House of Representatives, Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriations for 1975, Part 4, "Related Agencies," p. 967 (1974); and S. Rep. No. 93-1110, 93d Cong., 2d Sess., 34 (1974).

Furthermore, while the Senate report on the bill reflected that only $40 million of 1975 BLIF funding was budgeted for the §7(a) direct loan program (see Senate Report 93-1110, supra), both the Conference Report and the appropriation act itself were silent with respect to the mandate in Public Law 93-386 that not less than $400 million be applied to the §7(a) direct loan program.

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III. THE RELATIONSHIP BETWEEN THE AMENDMENT AND THE APPROPRIATION

As we stated earlier, we believe that the §12 mandate, unless modified by the appropriations or other laws, is a direction to the SBA to expend $400 million for the 7(a) direct loan program in fiscal year 1975. This money could come from unobligated BLIF funds appropriated in past years, or new appropriations in 1975, or from borrowing authority. On its face, the appropriation act does not repeal or otherwise modify the direction to the SBA contained in the §12 amendment.

However, the timing of the passage of the mandate and the timing of the consideration and passage of the subsequent appropriations act, together with other indications from past practices, as well as the legislative history of the two laws, lead us to question whether such a literal interpretation of the mandate and the appropriations law was intended by Congress.

The timing of the appropriations act was most important. The House bill passed June 18, 1974. The Senate bill passed August 22, 1974. Finally, the Senate and House agreed to the conference report on September 24 and 25, 1974, respectively. The §12 amendment passed on August 23, 1974. The appropriations act was, as customary, enacted and, in large part, predicated upon the budget submission proposed by SBA. This budget request never contemplated that §7(a) direct loans be made at, or even near, the level required by §12. Indeed, the budget request could not have because there was not in existence a §12 mandate when the budget was submitted to the Congress, or when the appropriation bills passed both Houses. Thus, while it is true that the mandate was a matter of law at the time the BLIF appropriation was enacted after conference, there is no indication that this subsequent BLIF appropriation was ever considered by the Congress as having been passed to satisfy the recent amendment to the direct loan program. Yet the legislative history of §12 firmly supports the view that the Congress expected to enact an appropriation act in order to provide the funds to SBA for the full implementation of §12. For example, in the report on the proposed amendment, the House Committee on Banking and Currency stated:

> "In the event the SBA feels it does not have the necessary appropriation authority to make this money available from the revolving fund, your Committee

> expects SBA to immediately seek a supplemental appropriation for the direct loans." H. R. Rep. No. 93-1178, 93d Cong., 2d Sess, 7 (1974).

See also where Mr. Stephens stated:

> "Also, in the bill we are not asking any kind of back-door financing on this. We realize it must be done [making the $400 million available to the BLIF for direct §7(a) loans] by the appropriate process * * *." 120 Cong. Rec. H7531 (daily ed., August 1, 1974).

In the Senate, the hearings on the fiscal year 1975 appropriations bill evidence recognition and concern for the then soon-to-be enacted §12. In testimony before the Senate Committee on Appropriations, Senator Cranston stated:

> "* * * The House, in the SBA appropriations bill [the Senator was referring to the amendments to the Small Business Act and to not an appropriation bill] that will soon return to the Senate, has mandated that the SBA during fiscal year 1975 make available at least $400 million in direct regular business loans. This can only be accomplished if the SBA is given the necessary appropriation.
>
> "That is what I am asking, that the Senate do what the House has done and support a fund increase for direct aid to the small businessman.
>
> "As the climate deteriorates for creation and growth of small business, I appear before you today to request $400 million for direct aid to the small businessman of this country." State, Justice, Commerce, the Judiciary and Related Agencies Appropriations for Fiscal Year 1975, Hearings Before the Committee on Appropriations, United States Senate, Part 2, p. 1252 (1974).

And, in response to Senator Cranston's request during the Senate hearings on the BLIF appropriation for fiscal year 1975 that the

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money [$400 million] be appropriated, the following colloquy took place between Senator Cranston and Chairman Pastore:

> [Sen. Cranston asks that $400 million for direct loans be appropriated]
>
> SENATOR PASTORE: * * * you are asking us to add $360 million more [the budget request was for $40 million]?
>
> SENATOR CRANSTON: That is correct. That is what the House has done in their bill.
>
> SENATOR PASTORE: That is on the authorization, but they have not done it on the appropriation. This [appropriating $40 million for direct loans] is what the House has done on the SBA authorization bill." Senate Hearings Before the Committee on Appropriations, State, Justice, Commerce, the Judiciary and Related Agencies Appropriations, Fiscal Year 1975, 93d Cong., 2d Sess., part 2, p. 1253 (1974).

See also Mr. Rousselot's comments, supra, wherein he stated that passage of the mandatory language for §7(a) direct loans would place the Congress in the position of having to pass an appropriation providing a sum sufficient to SBA so that it could make $400 million in §7(a) direct loans.

In the light of the above, we conclude that while the §12 mandate directs the SBA to use for the §7(a) program whatever BLIF funds it has available, or that can be made available, up to $400 million, on or after the date of its enactment, it nevertheless appears that the 1975 BLIF appropriation was not intended by the Congress to be affected by §12 and that it was intended that an appropriation be enacted before it would be fully implemented.

Finally, the Congress is presently considering a bill that would provide additional funds to the BLIF for the purpose of carrying out the §12 mandate. We believe this legislation (H. R. 4481), if enacted, will resolve the existing funding confusion as regards the §12 mandate. See H. R. Rep. No. 94-52, 94th Cong., 1st Sess. 74 (1975); and S. Rep. No. 94-91, 94th Cong., 1st Sess. 77 (1975). Meanwhile, although the SBA may be viewed as having been in technical violation of the §12 mandate, we believe SBA is carrying out congressional intent in relying upon additional appropriations rather than implementing the mandate with existing resources, possibly at the expense of other budgeted programs approved by the Congress.

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IV. ANALYSIS OF QUESTIONS POSED:

A. The Deferral of $36 Million

On November 26, 1974, President Ford, pursuant to §1013 of the Impoundment Control Act of 1974, transmitted to the Congress and the Comptroller General, inter alia, a special message reporting his impoundment of $36 million of direct loan program funds.

The message indicates that, as of November 26, 1974, there was $235 million in the BLIF available for direct loan programs; $36 million was being deferred; and $199 million would remain available. The President's message did not refer to §12 of the 1974 amendments to the Small Business Act affecting SBA's use of BLIF funds for the direct loan program. The reason given for the deferral was the desire to "restrain 1975 budget outlays"; i.e., fiscal policy.

In connection with your interest in a suit to compel release of impounded funds, the authority of this office to initiate court action seeking release of impounded funds is limited by the Impoundment Control Act to circumstances where an impoundment resolution has been passed or the Congress has failed to enact a rescission bill within 45 days. Accordingly, unless one chamber of the Congress passes an impoundment resolution disapproving of the President's deferral of the $36 million reported in message D75-130, we are unable to take action to require the release of the funds.

B. The Withholding of $96 Million of BLIF Funds Available for Direct Loans.

Your letter of March 26 states that there currently exists $96 million in BLIF funds which are available for use in the §7(a) program, but which has not been made available to SBA.

We have been in contact with OMB and SBA and were informed that, as of April 22, 1975, $66 million was being released and made available for the §7(a) direct loan program. These actions were taken shortly after your March 4 and 5, 1975, oversight hearings on SBA and our inquiry on the status of these accounts.

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Since it is our understanding that, at present, there do not remain any uncommitted balances in the BLIF (except for the $36 million that has been deferred), we conclude that there does not exist a further impoundment of BLIF funds.

C. Cancellation of the Sale of Securities.

Your letter of March 26, 1975, stated that the budget for fiscal year 1974 indicated SBA's plans to sell some of its securities in order to increase BLIF assets. You further say SBA has decided to cancel the sale, and it is your view that the cancellation constitutes a rescission of budget authority cognizable under the Impoundment Control Act.

As noted in our opinion to the Congress of December 4, 1974, a rescission exists when the President intends to withhold existing budget authority permanently. In our view, while SBA has authority to sell securities and to deposit the receipts therefrom in the BLIF (See 15 U.S.C. 634(b)(2) and 15 U.S.C. 633(c)(2)), until the sale is made and the receipts obtained there does not exist "budget authority" as that term is used in the Impoundment Control Act.

Therefore, we do not agree that the cancellation of the securities sale was a rescission of budget authority that should be reported to the Congress pursuant to §1015(a) of the Impoundment Control Act.

D. Adequacy of the Deferral Message of November 26, 1974.

Your correspondence asserted that because Special Message D75-130 did not state the period during which the money will be impounded, and since there is reason to believe the money will never be spent, what has been transmitted is a de facto rescission, (i.e., this Office should convert the deferral to a rescission). Also, it asserted that the message is deficient because of a lack of clarity on the reasons for the deferral. And it asserted that the deferral message did not present all the facts and circumstances surrounding the impoundment.

With regard to the first point, as noted earlier, the §7(a) direct loan program is funded by the BLIF. And, while this revolving fund provides the moneys for other programs, the money appropriated to BLIF is available without fiscal year limitation; i.e., these are

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"no-year" funds. For this Office to determine that a de facto rescission has been presented, we first would have to make certain findings, for example, that the funds will lapse before the deferral ends, or that the remaining period of availability of the funds does not permit their prudent obligation -- too much money remains to be spent in too little time. In the present case we are unable to make such findings. The $36 million deferred involves no-year funds which may be used for the §7(a) direct loan program. 15 U.S.C. 633(c). We are unaware of any evidence supporting the view that the deferred BLIF funds will never be spent. Accordingly, we find no basis to reclassify the deferral to a rescission.

The second and third criticisms of the deferral message raise issues that have been discussed with OMB since the inception of the Impoundment Control Act -- clarity and completeness of impoundment reports. In prior reports to the Congress we have pointed out areas in which we believed the information provided could be improved. Many of our suggestions to OMB have been implemented and we are pleased to note that the more recent messages indicate substantial improvement in the quality of impoundment reporting. While it may be that deferral messages such as D75-130 are weak with respect to furnishing detailed information on the facts and effects of the action taken, we believe that the continued cooperation of OMB with our staff in implementing the Impoundment Control Act will result in providing to the Congress an adequate basis upon which it can decide what course of action ultimately should be taken.

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General
of the United States

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

B-115398

May 9, 1975

The Honorable George H. Mahon
Chairman, Committee on Appropriations
House of Representatives

Dear Mr. Chairman:

We have your letter of April 9, 1975, relating to our special message on March 28, 1975, sent pursuant to section 1015(a) of the Impoundment Control Act of 1974. You asked us to examine the possibility of reconsidering and clarifying certain points made in our message. We are pleased to do so.

Your stated concern centers around our interpretation of some of the provisions of the Continuing Resolution and of the Impoundment Control Act.

As we read it, the 1975 Continuing Resolution establishes an appropriate rate of funding for the departments and agencies until the respective regular annual appropriation bills can be enacted by Congress. It provided temporary budget authority specifying that an activity will be continued at a "rate for operations not in excess of" one of four different constraints, as follows:

1. Where appropriations acts have passed both Houses but in differing amounts "activity shall be continued under the" lower/more restrictive level. Where appropriations has passed one house "activity shall continue at a rate for operations not exceeding" the lower of current rate or the rate passed except current rate for Labor/HEW is rate permitted by the specific provisions set forth in the enacting clause of the 1974 Appropriations Act.
2. Where appropriations have not been passed by either House "a rate for operations not exceeding" the lower of current rate/budget estimate was authorized.
3. In five activities involving special circumstances "a rate for operations not in excess of the budget estimate" was specified.

4. In fourteen activities where there was no budget estimate or the budget request had been deferred for later consideration "a rate for operations not in excess of the current rate" was provided.

The problem as we see it is whether this terminology provides budget authority in specific amounts against which the Impoundment Control Act must be asserted, or whether the wording "not in excess of" was intended to grant the Executive discretion to spend at any operating level it thought appropriate that did not exceed the maximum identified.

We concluded that to be consistent with the broad thrust of the Act and to provide a reference point against which its provisions can be meaningfully applied, the language in the Continuing Resolution must be read as providing both ceilings and floors to the budget authority. To do otherwise would be to enable the Administration to fund programs in a continuing resolution at any level it chooses.

We recognize the possibility that under such an interpretation, funds may be spent at a rate higher than that eventually provided by Congress. To guard against this, officials responsible for administering programs during the interim period covered by the resolution are admonished in the House report on the Continuing Resolution to take only the limited action necessary for the orderly continuation of projects and activities, preserving to the maximum extent possible the flexibility of Congress in arriving at final decisions in the regular annual bills. The Administration is required to adjust its spending to the level finally authorized. Moreover, if the funding established in an appropriation passed by either House is lower than the Continuing Resolution, the Administration, to reduce the possibility of future violations of section 3679 of the Revised Statutes, reduces the rate of obligation to accommodate the lower rate.

During the early part of a fiscal year we do not believe that rescission messages are required under continuing resolutions in circumstances where the President is deferring expenditures while awaiting congressional action on his appropriation requests. At the point, however, where there would be insufficient opportunity remaining to utilize funds provided, a rescission message reflecting that situation should be sent.

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Impoundment messages, whether they are submitted by the President or by the Comptroller General, are only one source of information on the subject that is available to the Congress. In this case your letter indicates that staff inquiries were made in response to the questions raised in our March 28 letter and the result was an increased awareness by HEW officials that the potential lapsing was a problem that warranted extraordinary efforts.

The procedures followed for considering and awarding grants in 1974 have now been altered very substantially to reduce the rigid timespans required in mandated administrative procedures. As a result of these altered procedures, HEW officials insist they will be able to avoid the lapsing problem. We have, therefore, submitted a supplementary report to the Congress advising them of these subsequent events. A copy of the supplementary message is enclosed.

Your letter also called our attention to a controversy over whether or not obligations occurred in the third quarter of 1974 as we reported. Obligaation data used in our message was given to us by the Office of Education but it now appears that allotments to regional offices were referred to as obligations. It is our understanding that obligations did occur in the third quarter but in a smaller amount than reported. We have requested corrected 1974 and 1975 obligation and allotment data from the Office of Education.

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General
of the United States

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

May 30, 1975

B-115398

The Honorable Edward M. Kennedy
The United States Senate

Dear Senator Kennedy:

Your April 23 letter requested that we determine whether the Department of Housing and Urban Development violated the Impoundment Control Act of 1974 due to delays in implementing the Housing for the Elderly or Handicapped Program (section 202 housing). You also asked us to determine whether the Department was authorized to limit loans under the program to those that finance project construction.

The Housing and Urban Development Act of 1974 (P.L. 93-383) authorized $800 million for the section 202 direct loan program. This legislation also required that the aggregate amount loaned under the section 202 program in any fiscal year not exceed a limit specified in appropriation acts. The Supplemental Appropriation Act, 1975 (P.L. 93-554) enacted December 27, 1974, sets this limitation for FY 1975 at $214.5 million. This action provided the program's budget authority as available only in fiscal year 1975. Under the provisions of the Antideficiency Act (31 U.S.C. 665), the budget authority was required to be apportioned by January 26, 1975.

In February HUD requested OMB to apportion all of the $214.5 million. This request was disapproved by OMB, however, because regulations for the new section 202 housing program had not been developed. On May 9, after new regulations were developed, OMB apportioned the $214.5 million in budget authority to HUD, which in turn will make it available for obligation on the basis of the new regulations when they are published.

The decision not to apportion and make this section 202 budget authority available until May 9 constituted an impoundment of budget authority which should have been, but which was not, reported to the Congress pursuant to the Impoundment Control Act. HUD estimates that only $34 million of this authority can be obligated before the end of the fiscal year. The remaining $180.5 million will remain impounded until June 30, 1975, when the authority to use it will expire since the Congress restricted the use of the budget authority to fiscal year 1975. The total authorization for the program, however, remains intact, and an option remaining open to the Congress is to set a new loan limitation in FY 1976 at a high enough rate to absorb the 1975 program delay.

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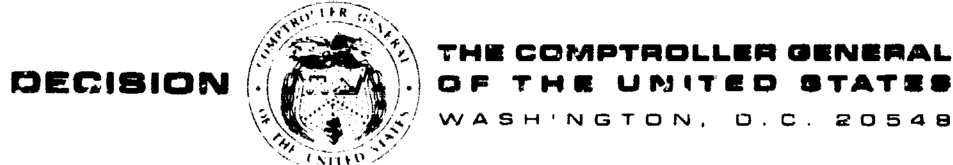
After budget authority has been impounded and the impoundment disapproved by the Congress, the Comptroller General is empowered to bring a civil action in the United States District Court for the District of Columbia to require that the budget authority be made available for obligation should the Administration refuse to do so. In the present instance, however, since the budget authority is only available in FY 1975, the delay in reporting the impoundment will result in the authority to use the $180.5 million expiring before the 45-day period allowed Congress for consideration of the proposal pursuant to the Impoundment Control Act can run.

The Department's plan for implementing the new section 202 housing program contemplates, as stated in your letter, that loans will be limited primarily to those that finance project construction. FHA insured or conventional loans are to be obtained by the sponsor for his permanent financing needs. We agree that the Housing and Urban Development Act of 1974 does not specifically provide for limiting new loans to those that finance project construction. We do not believe, however, that the Act prohibits this approach since the authorizing legislation provides the Secretary with considerable discretion in the area of financing loans.

Sincerely yours,

Elmer B. Staats

Comptroller General
of the United States



FILE: B-115398 DATE: June 11, 1975

MATTER OF: Payment to States of 50 percent of food stamp program administrative costs

DIGEST: Neither "delay" by Department of Agriculture (DA) in promulgating regulations to implement § 2 of Pub. L. No. 93-347, which authorized payment to States of 50 percent of all food stamp program administrative costs, nor DA's failure to eventually provide for such payments prior to October 1, 1974, constitutes "deferral of budget authority" within application of Impoundment Control Act, Pub. L. No. 93-344, title X, since DA's approach to implementation of 50 percent payments does not involve formal reserve or withholding of budget authority, and October 1 implementation date has been ratified by the Congress.

This decision is in response to numerous inquiries which we have received concerning whether the approach employed by the Department of Agriculture (DA) to the implementation of a statute providing for payment to State agencies of 50 percent of their total administrative costs under the food stamp program constitutes a "deferral of budget authority" within the meaning of the Impoundment Control Act of 1974, approved July 12, 1974, Pub. L. No. 93-344, title X, 88 Stat. 332.

Among other things, the Impoundment Control Act requires that the President transmit to the Congress special messages concerning "deferrals of budget authority," and subjects such deferrals to specified congressional review and disapproval procedures. Section 1015(a) of the Act provides in substance that, when the President fails to transmit a special message in circumstances which constitute a *de facto* deferral of budget authority, the Comptroller General shall report such deferral to the Congress, and the Comptroller General's report shall have the same effect as a Presidential special message in terms of triggering congressional review and disapproval procedures. See our letter to the Speaker of the House of Representatives and the President *pro tempore* of the Senate dated December 4, 1974, B-115398, H. Doc. No. 93-404 (1974), for a general discussion of the Impoundment Control Act.

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It is the position of the executive branch, through DA, that the instant matter does not involve a "deferral of budget authority" within the application of the Impoundment Control Act, and the President has not transmitted a special message thereon to the Congress. For the reasons stated hereinafter, we agree with this position. Accordingly, there is no basis for the exercise of our authority under section 1015(a) of the Act.

This matter relates to DA's approach to implementation of section 2 of the Act approved July 12, 1974, Pub. L. No. 93-347, 88 Stat. 341, which further amended sections 15(a) and (b) of the Food Stamp Act, as amended, 7 U.S.C. § 2024, to read as follows:

> "(a) Except as otherwise provided in this section, each State shall be responsible for financing, from funds available to the State or political subdivision thereof, the costs of carrying out the administrative responsibilities assigned to it under the provisions of this Act.
>
> "(b) The Secretary [of Agriculture] is authorized to pay to each State agency an amount equal to 50 per centum of all administrative costs, including but not limited to, the cost of (1) the certification of households; (2) the acceptance, storage, and protection of coupons after their delivery to receiving points within the States; (3) the issuance of such coupons to eligible households; (4) the outreach and fair hearing requirements of section 10 of this Act; and (5) the control and accounting of coupons: Provided, That each State shall, from time to time at the request of the Secretary, report to the Secretary on the effectiveness of its administration of the program and no such payment shall be made to any State unless the Secretary is satisfied pursuant to regulations which he shall issue that an adequate number of qualified personnel are employed by the State in the program to administer the program efficiently and effectively."

Prior to enactment of Pub. L. No. 93-347, DA was authorized to reimburse the States for 62.5 percent of only specified

administrative costs. As noted, Pub. L. No. 93-347 expanded such payments to 50 percent of all administrative costs incurred by the States in carrying out the food stamp program.

The inquiries to our Office were prompted by a notice appearing at 39 Fed. Reg. 32927 (September 12, 1974), wherein DA announced that it intended to publish proposed regulations to implement section 2 of Pub. L. No. 93-347 and that:

> " * * * Because of the period of time involved in finalizing these regulatory changes and reaching all necessary agreements, the effective date for claiming the 50 percent Federal matching of costs authorized by Public Law 93-347 will be the date on which the final regulations are published in the FEDERAL REGISTER."

Several States objected to the DA notice on the basis that the 50 percent payments should have been scheduled to accrue as of July 1, 1974. DA has subsequently modified its initial position by publishing regulations, 39 Fed. Reg. 43692 et seq. (December 17, 1974), which provide, inter alia, that 50 percent payments will accrue as of October 1, 1974.

At the time of the inquiries to our Office, subsequent to DA's September 12 notice but prior to publication of its December 17 regulations, it was suggested, in part, that DA's allegedly excessive delay in implementing Pub. L. No. 93-347 as such constituted a deferral of budget authority for purposes of the Impoundment Control Act. This point might now be considered moot. However, as noted previously, the principal assertion of these inquiries was that Pub. L. No. 93-347 contemplated the accrual of entitlement to 50 percent payments as of July 1, 1974, and, therefore, that DA's failure to authorize such payments as of that date is the factor resulting in a deferral of budget authority.

Section 1011(1) of the Impoundment Control Act defines a "deferral of budget authority" for purposes of the Act as including--

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

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> "(B) any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority, including authority to obligate by contract in advance of appropriations as specifically authorized by law * * *."

It appears that paragraph (A) of the foregoing definition is generally meant to describe formal executive branch actions arising in the ordinary course of implementing budget authority, such as the establishment of reserves through the apportionment process pursuant to subsection (c)(2) of R.S. § 3679 (the so-called "Antideficiency Act"), 31 U.S.C. § 665, as amended by § 1002 of the Impoundment Control Act. Another example of such formal action would be the withholding of budget authority through the process of intra-agency allotments of funds under subsection (g) of the Antideficiency Act. We are satisfied that no such formal deferral action within the meaning of section 1011(1)(A) of the Impoundment Control Act is involved in the instant case. Responding to our specific inquiries in this regard, Assistant Secretary of Agriculture Richard L. Feltner advised us by letter dated November 20, 1974:

> "The Department of Agriculture has not, under any provisions of law, reserved, withheld, or otherwise deferred any existing budget authority in connection with the 50-50 matching payments to be made to the States under the 1974 amendments to the Food Stamp Act. Neither this Department nor the Office of Management and Budget plans to undertake or propose any reservation, withholding or deferment of such payments upon enactment of appropriations for the Department of Agriculture for fiscal year 1975, nor is there any present intention to do so in the future."

Apart from formal spending and obligation limitations, section 1011(1)(B) of the Impoundment Control Act, *supra*, also includes within the definition of deferral of budget authority "any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority * * *." This definition "is intentionally written in broad terms so as to ensure that no executive action of any kind which holds up the expenditure of

funds that the Congress intended to be expended will go unreported." H. Rep. No. 93-658, 42 (1973); cf., S. Rep. No. 93-121 (on S. 373, 93d Cong.), 20-21 (1973). Accordingly, the applicability of the Impoundment Control Act to the instant matter turns upon whether or not the "delay" in funding 50 percent payments under section 2 of Pub. L. No. 93-347 appears to be inconsistent with congressional intent.

The inquiries to our Office construe Pub. L. No. 93-347 as contemplating that State entitlements to 50 percent payments would accrue as of July 1, 1974. We are unable to accept this construction. Initially, it must be noted that to hold that entitlements should accrue as of July 1 would give section 2 of Pub. L. No. 93-347 a retroactive effect since the law was not enacted until July 12, 1974. A statute is ordinarily deemed to take effect upon the date it becomes law and to apply prospectively thereafter. See, e.g., 2 Sutherland Statutory Construction §§ 33.06, 41.04 (1973). Nothing in Pub. L. No. 93-347 provides that section 2 has any effect prior to July 12. The absence of any such provision as to section 2 seems particularly notable in view of the fact that other sections of the statute do apply by their terms on a fiscal year basis. Compare B-181234, June 20, 1974. Therefore, it appears that the earliest possible effective date for accrual of 50 percent payments would be July 12, 1974.

With respect to the possibility of providing for the accrual of 50 percent payments as of July 12, Assistant Secretary Feltner's letter to us, supra, states in part:

> "There is no legal bar to the issuance of regulations which would permit qualifying State agencies to receive 50 percent reimbursement for costs accruing on and after July 12, 1974. However, there are practical administrative considerations which make it inadvisable to adopt such a procedure. In view of the fact that State agencies and the Department of Agriculture have been operating on a quarterly basis with respect to claims for cost sharing under the pre-existing provisions of section 15 of the Food Stamp Act, as amended, and since

quarterly accounting procedures will be continued under the new legislation, the Department expects to announce that payment of the new cost sharing basis will be made to State agencies from and after October 1. 1974, the beginning of the first full quarter after enactment of the legislation.

"This Department does not view its proposal to honor 50-50 matching claims only from and after October 1, 1974, as action subject to the provisions of the Impoundment Control Act of 1974. That Act does not purport to invalidate the exercise of reasonable administrative discretion in the adoption of program provisions and regulations following enactment of new legislation. In this case, no deferral of budget authority is intended, and it is expected that the claims of qualifying State agencies will be honored from and after the beginning of the first full quarter following enactment of the legislation in July 1974. Moreover, it would seem inappropriate to apply the provisions of the Impoundment Control Act of 1974 to the current situation which prevails with respect to this Department's appropriations for fiscal year 1975. No appropriation act has yet been approved for this Department for the current fiscal year. At the present time, expenditures are being made under the authority of a continuing resolution. Until such time as an appropriation act covering the activities of this Department for fiscal year 1975 has been adopted, it seems questionable whether there could be any 'deferral of budget authority' within the meaning of the Impoundment Control Act of 1974."

Whatever the merits of the foregoing contentions might be as a general matter, the action of the Congress in passing final 1975 appropriation legislation for DA, subsequent to the Assistant Secretary's letter to us, has effectively resolved any doubt as to congressional intent concerning accrual of the 50 percent payments here involved.

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The Agriculture-Environmental and Consumer Protection Appropriation Act, 1975, approved December 31, 1974, Pub. L. No. 93-563, 88 Stat. 1822, 1842, makes appropriations for the food stamp program available to implement the 50 percent payments to States. As reported by the Senate Committee on Appropriations and as passed by the Senate, the bill eventually enacted as Pub. L. No. 93-563 would also have required that such 50 percent payments be made effective from July 12, 1974. See S. Rep. No. 93-1296, 74 (1974); 120 Cong. Rec. S19999-20000 (daily ed., Nov. 25, 1974). However, the latter requirement was deleted in conference on the basis of DA's advice that payments would accrue as of October 1, 1974. See H. Rep. No. 93-1561, 5 (1974); 120 Cong. Rec. S21776 (daily ed., Dec. 17, 1974). In view of these circumstances, we must conclude that DA's decision to establish the October 1 date for implementation of 50 percent payments has been specifically ratified by the Congress.

(SIGNED) ELMER B. STAATS

Comptroller General
of the United States

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

B-115398 October 16, 1975

The Honorable Lucien Nedzi
U.S. House of Representatives

Dear Mr. Nedzi:

This letter is in response to your request of September 9, that we provide you with our views concerning whether the non-payment upon presentation of the State of Michigan's claims for welfare, medicaid and social services expenditures by the Department of Health, Education, and Welfare, is a deferral as defined in the Impoundment Control Act of 1974, Title X of Public Law 93-344.

While your letter contains a number of points, the central question relates to whether or not the definition of a deferral, as stated in the Act, was intended to cover delays of a purely administrative nature.

The Impoundment Control Act was the direct result of disagreements between the Executive and the Congress over which branch has ultimate control over Government program and fiscal spending policy. The Act was designed to tighten congressional control over impoundments and establish a detailed procedure under which the Legislative Branch could consider the merits of impoundments proposed by the Executive Branch.

The language of the Act, together with its legislative history, is considerably less than clear concerning the Act's intended design regarding reportable deferrals. The Act cannot be analyzed without producing a series of anomalous results which its legislative history fails to explain away. Nevertheless, there is an unmistakable philosophy underlying the Act that does provide a rational and realistic basis for viewing the Act as a means by which the Congress strengthened its control over Executive impoundments for policy differences without involving the Congress in the myriad day-to-day details of paying the Government's bills.

During the floor debate of the bill, Senators Erwin (the floor manager of the bill) and Humphrey clearly supported the concept that the President's impoundment messages must relate to policy impoundments.

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The delays in payment giving rise to your questions result from actions of Regional Commissioners in deferring payment to States' quarterly claims for Federal financial participation under the public assistance titles of the Social Security Act as well as claims for retroactive adjustments of previously paid claims, pending determination of allowability and accuracy. While the length of time it has taken HEW to resolve the question of allowability has consumed a far longer period than seems reasonable, we feel that HEW's actions are administrative, non-policy related, and therefore are not a deferral within the meaning of the Impoundment Control Act.

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General
of the United States

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

B-115398 October 24, 1975

The Honorable Brock Adams
Chairman, Committee on the Budget
U.S. House of Representatives

Dear Mr. Adams:

In your letter of September 24, you requested our comments as to the necessity for the President to submit supplementary messages in those cases where the information contained in the original special message is subsequently revised. In your letter, you specifically mentioned three proposed deferrals--D76-42, D76-43, and D76-44--which related to programs administered by the Office of Education. The budget authority proposed for deferral, in those cases, was authorized by a continuing resolution at a level which exceeded the Executive Branch's 1976 budget request. The Administration was reluctant to spend the funds at the higher authorized rate and instead proposed a deferral of the funds until a definite level of funding was determined. The enactment of the 1976 Appropriation Bill for the Education Division by the congressional override of the President's veto, set a specific and final level of funding for these three programs.

Section 1013 of the Impoundment Control Act requires that the President's proposed deferrals include, among other things, the period of time during which the budget authority is proposed to be deferred. Proposed deferrals stay in effect until (1) either House of the Congress passes an impoundment resolution disapproving the deferral, (2) the President releases the funds, (3) the end of the fiscal year, or (4) implicitly, the end of the time period set out in the deferral message. The deferrals referred to to in your letter were proposed until such time as the appropriation bill was enacted. Once that action took place, the deferrals were no longer in effect and the full level of the budget authority should have been released.

The President is required under the Act to submit supplementary messages to the Congress when the information in the deferral has changed. He is not, in our opinion,

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required to transmit a supplementary message to the Congress on deferrals that are no longer viable because this information will subsequently be included in the President's monthly status report to the Congress.

It is the Comptroller General's responsibility to assure that funds required to be released under the Act have, in fact, been released. In those cases where the funds have not been released, he is empowered to bring civil suit to accomplish that release. Normally, in the case of deferrals that are based on continuing resolution authorization, our follow-up efforts would not start until at least 30 days subsequent to the enactment of the related appropriations act (in this case, October 10, 1975). Thirty days is the amount of time OMB has to apportion the budget authority to the agency or to propose deferrals or rescissions to the Congress. Follow-up inquiries disclose that OMB has apportioned the budget authority for use by the HEW Office of Education.

Sincerely yours.

(SIGNED) ELMER B. STAATS

Comptroller General
of the United States

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

B-115398 November 20, 1975

The Honorable Brock Adams
Chairman, Committee on the Budget
House of Representatives

Dear Mr. Chairman:

This is in response to your letter of September 11, 1975, requesting our views on how the Impoundment Control Act of 1974 could be modified. As you well know, we are deeply involved with the operation of the statute and, therefore, are pleased to have the opportunity to submit to the Congress our suggestions on amending the Act.

For you convience, a brief narrative of our major suggestions and observations is enclosed (Attachment I) as well as a draft bill reflecting those comments and incorporating certin other technical revisions (Attachment II).

We believe these modifications generally are consistent with the overall intent of the Congress in enacting the statute, as we discussed in our December 4, 1974, opinion to the Congress interpreting the Act. In that opinion, copy attached (Attachment III), we observed that Congress may want to re-examine some of the basic premises of the Act, such as its treatment of deferrals for fiscal policy reasons. The modifications we have attached do not involve this question. Instead, they are limited to clarifying and improving the legislative scheme we believe was adopted by Congress' passing the Impoundment Control Act of 1974.

We appreciate this opportunity to furnish our thoughts on this matter and, of course, would welcome any request to discuss our ideas with you or your staff.

Sincerely yours,

(SIGNED) ELMER B. STAATS
Comptroller General
of the United States

Enclosures

ATTACHMENT I

NARRATIVE OF PROPOSED AMENDMENTS TO THE IMPOUNDMENT CONTROL ACT OF 1974

SECTION 1001

Section 1001 Should be Repealed.

Section 1001 was enacted to make clear that passage of the Impoundment Control Act ("Act") was not intended to affect the constitutional claims of the President or the Congress on impoundment powers; pending lawsuits challenging impoundments; or laws mandating the expenditure of budget authority in response to previous impoundments.

Section 1001 was a transitional provision whose objectives have been realized and, therefore, repeal of the section would not affect operation of the Act. For example, for the most part the lawsuits that were pending at the time of the passage of the Act have now ended; the President is complying with those laws requiring the expenditure of funds; and the constitutional impasse that precipitated enactment of the Act in the first place has abated. Accordingly, there is no reason that section 1001 be retained and it should be repealed.

Furthermore, as shown by the recent impoundment litigation under the Act (Staats v. Lynn), the disclaimers have been the subject of varying interpretations. Even if they still would serve some purpose, that purpose would be made clearer by amendments to the main body of the Act.

SECTION 1002

<u>Amend the Antideficiency Act to Eliminate the Requirement That Impoundments Undertaken Pursuant to its Provisions be Reported Under the Impoundment Control Act.</u>

As was noted during debate of the Act prior to its enactment, the "lion's share" of withholdings of funds are those which are initiated for sound financial reasons primarily because there is a better and more economical way to implement the program for which the money was made available. Our experience under the Act confirms this view of the way in which appropriated funds are handled. As a result, requiring that <u>all</u> withholdings of budget authority, regardless of their reason, be reported under the Act has caused the Executive Branch, the Congress, and the Comptroller General to process, review, and deal with an unnecessarily large number of routine and proper financial transactions. Moreover, we think the legislative history of the Act clearly shows (1), that it was not these types of actions that caused the Act's enactment, but, rather, those impoundments for which no statutory basis existed and for which the President claimed an undefined and disputed inherent basis for doing so, and (2), the Congress did not intend to question the withholdings of budget authority that were authorized by specific law. Thus, the requirement to report routine Antideficiency Act impoundments (and any other deferrals authorized by other statutes) should be eliminated, as well as

the requirement to report administrative and routine withholdings. Although such impoundments should not be reported formally, the Comptroller General would still be free to take those steps necessary to assure that claimed Antideficiency Act withholdings are valid, and, if not, the matter would be brought to the attention of the Congress pursuant to the procedures of the Act that empower the Comptroller General to send a message where the President should have, but did not.

SECTION 1011

1. Amend the definition of "deferral."

Consistent with our view that section 1013 should only come into play when the President proposes to withhold funds without specific statutory authority to do so--as is provided under the Antideficiency Act or other laws relating to a particular program--the definition of "deferral" should be revised to eliminate coverage of all temporary impoundments. Rather, the definition should specify that, for the purposes of the Impoundment Control Act, "deferrals" under the Act, other than administrative and routine withholdings, which are to be reported under section 1013 should only be those temporary impoundments that are without statutory basis . . . fiscal policy deferrals.

2. Amend Section 1011 to define a "recission."

While, for the most part, there has been little dispute over the nature of a "recission," it would, nevertheless, be

helpful to amend the definition section of the Act so as to make clear what exactly is involved. One immediate benefit of defining "recission" is to include in the definition _de facto_ rescissions, which are not now expressly covered by the Act. And, such an amendment would easily tie into the provisions of section 1012 that provide for the procedure by which rescission requests are to be handled.

3. Section 1011 Should be Amended to Define a "Rescission Resolution" That Can Reject a Rescission in Less Than 45 Days.

Presently, all the parties concerned with the operation of the Act (OMB, the Comptroller General, and the Congress) have stated their concern that a weakness exists in the Act since there is no clear way to determine when the Congress has "completed action" on a rescission bill. As a result, the consensus is that 45 days of continuous session must pass before it can be determined that rescission request has been rejected. In light of this problem, the part of section 1011 that defines "rescission bill" should be amended to indicate that there is another means (a "rescission resolution") by which a rescission request can be denied. Substantively, the new procedure could be incorporated into sections 1012 and 1017, as noted in our discussion of those sections.

4. Section 1011 Should be Amended to Allow for Partial Impoundment Resolutions.

As the Act is presently applied, it is the view of all concerned that an impoundment resolution introduced and passed

with respect to a deferral proposed under section 1013 must be on an "all or nothing" basis . . . Congress cannot reject a part of a deferral. This is a clear weakness of the Act inasmuch as Congress should be given flexibility to determine how much of a deferral should be adopted or rejected. This would make the impoundment resolution procedure consistent with the rescission bill procedure.

Of course, a procedure would have to be devi- l to deal with the situation where the two houses act differently on the same deferral. Two possibilities would be to give effect to the wishes of the house that acts first, or give effect to the lesser of the two amounts approved for deferral. We favor the latter.

SECTIONS 1011, 1012 AND 1013

Difficulties Encountered In Applying The Act To Budget Authority Provided by Continuing Resolution.

In regular appropriations action, the Congress mainly provides specific amounts of budget authority for specific programs. Under the Act the President then can propose permanent or temporary withdrawals of budget authority against each specific program. In these cases the issue before the Congress is clear both as to purpose and amount of the proposed action.

In contrast, budget authority provided by continuing resolution is provided mainly based upon the rate of prior program activity or upon a number of general conditions. This

budget authority does not ordinarily extend to specific amounts for specific programs. Because of its temporary nature, this authority is excluded from the time constraints for apportionment of budget authority. Continuing resolution budget authority is generally regarded as providing temporary, stopgap authority.

We have encountered difficulty in applying the Act to continuing resolution budget authority. For example, in order to determine how much is being withheld, the amounts provided under the resolution must be regarded as both maximum and minimum obligation requirements--in precisely the manner that amounts provided by regular appropriations are viewed. Notably, the House and Senate do not agree on this critical matter--the funding levels provided by the resolution. And, the Administration for several reasons, including the fact that the subject is still under study by the Congress, rarely proposes a rescission of continuing resolution budget authority. Deferrals of this authority are frequently proposed but, more often than not, seem based upon a concept of "waiting to see what the Congress finally does." Moreover, whether a rescission or a deferral is proposed, its status is tenuous since it is often effectively cancelled by the regular appropriation action before it can be considered by the Congress.

Because of the difficulties we have encountered and the absence of agreement by the two Houses of the Congress, we think the Congress may wish to consider whether it would be worthwhile

to amend the definition of "budget authority" in section 1011 in such manner as may be necessary to resolve these problems. One approach is to exclude from the Act budget authority provided under continuing resolutions. Suggested language that would effectuate this approach is provided in Attachment II.

SECTION 1012

Section 1012 should be Amended To Indicate that Another Means Exists by Which Rescission Requests may be Rejected.

As noted in our discussion of section 1011, section 1012 of the Act should be amended to allow for the rejection of a rescission request by a means other than waiting for the appropriate 45 day period to run, such as a Rescission Resolution by either house. Accordingly, subsection (b) of section 1012 should be amended to reflect this change to rescission approval procedures and indicate that if this occurs, the impounded funds must immediately be made available for obligation.

SECTION 1013

1. Amend Section 1013 To Exclude the Requirement for Reporting Deferrals Authorized by Statutes, or Deferrals for Administrative or Routine Purposes.

We think the legislative history of the Act strongly suggests that the Congress' interest was to require reports only on those deferrals which represent fiscal or program policy differences between the Executive and the Congress and not those authorized by law. However, the wording of sections 1011

(definitions) and 1013 of the Act covering the reporting of deferrals, including those that are authorized by other statutes (particularly the Antideficiency Act) as well as those which are purely routine or administrative in nature. In actual practice, the OMB has followed a policy of "when in doubt, report." Consequently, of the 161 deferrals reported to June 30, 1975, 74 represent generally a non-controversial class of routine delays that can be expected to be small. None of these 74 deferrals was overturned by an impoundment resolution.

This amendment would be complementary to our suggested amendment to section 1002 eliminating Antideficiency Act impoundments from being reported under section 1013 and the amendment to section 1011(1) defining "deferral."

2. Amend Section 1013 to Require a Statement as to When the Deferral will End.

Experience under the Act shows that potential abuse and lack of complete information exists as to those deferrals that are "open-ended." Many times the logical conclusion of such deferrals is that, at some time, they will mature into rescissions, or are at the outset *de facto* rescissions. To avoid this problem section 1013 should be amended to require a clear statement on how long the deferral will exist. In addition, it should be noted that at the end of the proposed deferral period, the deferred moneys should either be released for obligation or a supplemental defferal message proposing the

withholding of the funds for an additional period of time be submitted. The benefit of this is to give the Congress better information on the precise duration of deferrals.

SECTION 1015

1. Amend Section 1015 to Provide for the "Relation-Back" of a Delayed OMB Report.

Difficulty arises when the Comptroller General reports an unreported rescission or deferral and then, later, the President or OMB reports the matter to the Congress. The problem, with respect to rescissions, is when the 45-day period begins to run under section 1012. Two views exist: (1) when the Comptroller General first reports the matter to the Congress, or (2), when OMB later reports. To solve this problem and bring this scenario into conformity with the provisions of section 1015(a), the section should be amended to make clear that when this situation occurs, the later OMB report relates-back to the date of the Comptroller General's message . . . obviously giving less time to OMB in which to wait for the 45 days to run. The benefit of this is to spur OMB to action when apportioning recently-enacted appropriation acts rather than wait until they decide to report the impoundment under the Act.

2. Amend Section 1015 to State Expressly that when the Comptroller General Reports an Improperly Classified Impoundment has been sent by the President, His Report Converts the Matter to the Proper Category and Nullifies the Original Presidential Message.

At present, when this situation occurs, the result described above has to be reached as a result of using several sections of

the Act together rather than application of just one provision. To obtain the conversion/nullification result, the Comptroller General must first report the improper categorization under section 1015(b), state that the President has failed to send the required message (correctly describing the action taken) under section 1015(a), and nullify the presidential message using section 1013(c). Taken together the Congress then has before it a message from the Comptroller General that is treated like a presidential message (section 1015(b)) and nullification of the presidential message because it was sent pursuant to the wrong section (section 1013(c)).

To avoid this required interplay of sections, the Act should be amended to make clear in a concise statement what happens.

SECTION 1016

1. Amend the Section To Delete the 25 Day Waiting Period.

We can see no purpose served by having this provision in the Act. If it is to allow for the political processes to operate and force the release of funds, or to allow the Congress to pass a law mandating the moneys be released . . . such political means would not be adversely affected by deletion of this waiting period requirement. At present, it is only seen as delaying the expeditious enforcement of the provisions of the Act that require the release of impounded budget authority.

2. Amend the Section To Make Clear that the Act is to be Construed to Avoid the Lapse of Budget Impounded and Reported Pursuant to its Provisions or that are Required To Be Released for which the Comptroller General may Institute Suit.

At present the Act can be thwarted by rescissions (including de facto ones) that are presented to the Congress too late in the fiscal year for the 45-day period to run. For example, this would be true with a rescission sent to the Congress on June 1. (Or Oct. 1, with the new fiscal year schedule.) Likewise, if the money will lapse before the Comptroller General can file suit (the unnecessary 25 day waiting provision) or even after such a suit is brought it is a problem to act to avoid the suit from being mooted. Accordingly, this section would be an appropriate place to amend the Act to indicate that the Impoundment Control Act, per se, is to be construed as requiring all impounded budget authority to be recorded as obligations of the United States Government pursuant to 31 U.S.C. §200 so as to permit the orderly operation of the provisions allowing for rejection of a rescission or permitting the Comptroller General to sue without the problem of either worrying that the funds will lapse before suit can be filed or having to seek a Court Order preventing this from occurring--after suit is filed. Then, if the Congress adopts the rescission or the Comptroller General loses the case . . . the money would lapse.

SECTION 1017

Amend Section 1017 To Allow for Rejection of a Rescission Prior to the Running of 45 Days.

As noted, there is general dissatisfaction on having to wait a full 45 days before it is known whether a rescission is rejected. The Congress should have available an affirmative means to handle rescissions aside from merely waiting for the time to pass a rescission bill to expire. Thus, section 1017 should be amended to allow for a simple resolution of either chamber before the running of the 45 days stating that the chamber does not favorably consider the rescission request. In such a case, the money would have to be released as of the passage of that resolution . . . or, if no resolution passes, upon the expiration of the 45-day period.

PROPOSED NEW SECTION

Amend the Act To Provide Expressly for Deferrals after a Prior Deferral or Rescission was Rejected.

As the Act now operates, arguably once a rescission or defferral is rejected, the money that was the subject of the impoundment must immediately be made available for obligation. This requirement unfortunately, does not take into consideration that, in proceeding to implement the program the President must still use sound financial practices. Because of this problem, we think a new section should be added to the Act

allowing for deferrals of funds after prior deferrals or rescissions of the money are turned down--*if* the new deferral is for a reason in furtherance of good administrative practice; or is based on circumstances or conditions unknown, and which reasonably could not have been known, at the time the prior rescission or deferral was considered.

In no event, however, should the President be allowed to defer for a reason after having been turned down on an impoundment based on the same grounds.

ATTACHMENT II

DRAFT BILL TO AMEND THE IMPOUNDMENT

CONTROL ACT OF 1974

94th Congress
1st Session

H.R.____________

A BILL

To amend the Impoundment Control Act of 1974, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Impoundment Control Act Amendments of 1975."

Sec. 101. Section 1001 of the Impoundment Control Act of 1974 is repealed.

Sec. 102. The last sentence of Section 3679(c)(2) of the Revised Statutes, as amended (31 U.S.C. 665), is amended to read as follows:

> "Reserves established pursuant to this subsection are not to be reported under the Impoundment Control Act of 1974, as amended."

Sec. 103. Section 1011 of the Impoundment Control Act of 1974 is amended to read as follows:

> "Sec. 1011. For purposes of this part--
>
> "(1) 'deferral of budget authority' means every type of Executive action or inaction, other than

administrtive and routine actions, not specifically authorized by law, that results in withholding, delaying, or effectively precluding, the obligation or expenditure of budget authority, including the exercise of authority to obligate in advance of appropriations as specifically authorized by law;

"(2) 'rescission of budget authority' means every type of Executive action or inaction that effectively precludes the obligation or expenditure of budget authority and that, if continued, would cause such budget authority to lapse, including situations where an amount of budget authority cannot be prudently obligated within its remaining period of availability;

"(3) 'Comptroller General' means the Comptroller General of the United States;

"(4) 'rescission bill' means a bill or joint resolution which only rescinds, in whole or in part, budget authority proposed to be rescinded in a special message transmitted by the President under section 1012, and upon which the Congress completes action before the end of the first period of 45 calendar days of continuous session of the Congress after the date on which the President's message is received by the Congress;

"(5) 'rescission resolution' means a simple resolution of either house of Congress that expresses its disapproval of a rescission proposal transmitted under section 1012;

"(6) 'impoundment resolution' means a simple resolution of either house of Congress that expresses its disapproval of all or part of a deferral transmitted to the Congress under section 1013;

"(7) continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 45-day period referred to in

paragraph (3) of this section 1012, and the 25-day period referred to in section 1017(b)(1). If a special message is transmitted under section 1012 during any Congress and the last session of such Congress adjourns sine die befor the expiration of 45 calendar days of continuous session (or a special message is so transmitted after the last session of the Congress adjourns sine die), the message shall be deemed to have been retransmitted on the first day of the succeeding Congress and the 45-day period referred to in paragraph (3) of this section and in section 1012 (with respect to such message) shall commence on the day after such first day.

"(8) 'budget authority' means authority provided by law to enter into obligations that will result in immediate or future outlays involving Government funds, except that such term does not include authority provided under continuing appropriations acts, or authority to insure or guarantee the repayment of indebtedness incurred by another person or government."

Sec. 104. Section 1012(b) of the Impoundment Control Act of 1974 is amended by deleting the period at the end thereof, and adding the following new material:

" * * * or if at any time after such special message has been transmitted, either house of the Congress passes a rescission resolution rejecting such rescission proposal."

Sec. 105. Sections 1013(a)(1) through (4) of the Impoundment Control Act of 1974 are amended to read as follows:

"Sec. 1013. (a) TRANSMITTAL OF SPECIAL MESSAGE.--Whenever the President, the Director of the Office of Management and Budget, the head of any department or agency of the United States, or any officer or employee of the United States proposes the deferral of budget authority provided for specific purpose or project, the President shall transmit to the

House of Representatives and the Senate a special message specifying—

"(1) the amount of the budget authority proposed to be deferred;

"(2) any account, department or establishment of the Government to which such budget authority is available for obligation, and the specific projects or governmental functions involved;

"(3) the specific dates during which the budget authority is proposed to be deferred;

"(4) the reasons for the proposed deferral; * * *."

Sec. 106. Section 1015 of the Impoundment Control Act of 1974 is amended by adding at the end thereof the following new subsections:

"(c) CONVERSION OF IMPOUNDMENT TO PROPER CATEGORY.—

"Whenever pursuant to subsection (b) of this section the Comptroller reports that the President has transmitted a special message incorrectly identifying the type of impoundment proposed to be taken, such Comptroller General's report shall be treated as automatically nullifying the original Presidential special message and converting the impoundment to the proper category. In the case of deferrals converted to rescissions, the 45-day period of continuous session shall commence on the date on which the Comptroller's report is received by the Congress.

"(d) PRE-DATING OF TARDY EXECUTIVE IMPOUNDMENT REPORTS.—

"Whenever, pursuant to subsection (a) of this section, the Comptroler General notifies the Congress of an unreported deferral or rescission of budget authority, and the President later notifies the Congress of such withholdings, the time period for computing the appropriate 45-day period of continuous session shall commence on the date the Comptroller General's report was first received by the Congress."

Sec. 107. Section 1016 of the Impoundment Control Act of 1974 is amended as follows:

(a) by deleting the last sentence thereof;

(b) by redesignating the existing language thereof as subsection (a); and

(c) by adding the following new subsection:

"(b) all budget authority that is the subject of special messages transmitted pursuant to section 1012 or that is the subject of litigation initiated by the Comptroller General pursuant to this section shall be recorded as obligations of the United States for such time as may be necessary to permit the orderly operation of the procedures prescribed by section 1012 for the approval or disapproval of rescissions and for judicial determinations of the merits any litigation instituted pursuant to the Act."

Sec. 108. Section 1017(a) through (d)(3) of the Impoundment Control Act of 1974 is amended to read as follows:

"Sec. 1017. (a) REFERRAL.--Any rescission bill or rescission resolution, introduced with respect to a proposed rescission of budget authority, or impoundment resolution, introduced with respect to a proposed deferral of budget authority, shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be.

"(b) DISCHARGE OF COMMITTE.--

"(1) If the committee to which a rescission bill, rescission resolution, or impoundment resolution has been referred has not reported it at the end of 25 calendar days of continuous session of the Congress after its introduction it is in order to move either to discharge the committee from further consideration of the measure or to discharge the committee from further consideration of any other rescission bill or rescission resolution with respect to the same proposed rescission of budget authority.

or impoundment resolution with respect to the same proposed deferral, as the case may be, which has been referred to the committee.

"(2) A motion to discharge may be made only by an individual favoring the rescission bill or rescission or impoundment resolution, may be made only if supported by one-fifth of the Members of the House involved (a quorum being present), and is highly privileged in the House and privileged in the Senate (except that it may not be made after the committee has reported a rescission bill or rescission or impoundment resolution with respect to the same proposed rescission of budget authority or the same proposed deferral, as the case may be); and debate thereon shall be limited to not more than 1 hour, the time to be divided in the House equally between those favoring and those opposing the rescission bill or rescission or impoundment resolution, and to be divided in the Senate equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(c) FLOOR CONSIDERATION IN THE HOUSE.--

"(1) When the committee of the House of Representatives has reported, or has been discharged from further consideration of, a rescisssion bill or rescission or impoundment resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the rescission bill or rescission or impoundment resolution. The motion shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(2) Debate on a rescission bill or rescission or impoundment resolution shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the bill or resolution. A motion

further to limit debate shall not be debatable. In the case of a rescission or impoundment resolution, no amendment to, or motion to recommit, the resolution shall be in order. It shall not be in order to move to reconsider the vote by which a rescission bill or rescission impoundment resolution is agreed to or disagreed to.

"(3) Motions to postpone, made with respect to the consideration of a rescission bill or rescission or impoundment resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

"(4) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any rescission bill or rescission or impoundment resolution shall be decided without debate.

"(5) Except to the extent specifically pr vided in the preceding provisions of this subsect n, consideratain of any rescission bill or rescission or impoundment resolution and amendments thereto (or any conference report thereon) shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions, amendments, and conference reports in similar circumstances.

"(d) FLOOR CONSIDERATION IN THE SENATE.--

"(1) Debate in the Senate on any rescission bill or rescission or impoundment resolution, and all amendments thereto (in the case of a rescission bill) and debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

"(2) Debate in the Senate on any amendment to a rescission bill shall be limited to 2 hours, to be equally divided between and controlled by, the mover and the manager of the bill. Debate on any amendment to an amendment, to such a bill, and debate on any debatable motion or appeal in connection with such a bill or rescission or impoundment resolution shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill or resolution, except that

in the event the manager of the bill or resolution is in favor of any such amendment, motion, or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. No amendment that is not germane to the provisions of a rescission bill shall be received. Such leaders, or either of them, may, from the time under their control on the passage of a rescission bill or rescission or impoundment resolution, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

"(3) A motion to further limit debate is not debatable. In the case of a rescission bill, a motion to recommit (except a motion to recommit with instructions to report back within a specified number of days, not to exceed 3, not counting any day on which the Senate is not in session) is not in order. Debate on any such motion to recommit shall be limited to one hour, to be equally divided between, and controlled by, the mover of the motion and the manager of the bill. In the case of a rescission or impoundment resolution, no amendment or motion to recommit is in order."

Sec. 109. The Impoundment Control Act of 1974 is amended by adding at the end thereof the following new section:

"Sec. 1018. EXECUTIVE ACTION AFTER REJECTION OF PROPOSED RESCISSION OR DEFERRALS.--

(a) Except as provided in subsection (b), the President, the Director of the Office of Management and Budget, the head of any department or agency of the United States, or any officer or employee of the United States may continue to withhold budget authority that was the subject of a special message under sections 1012 or 1013 and that must be made available for obligation pursuant to subsection (b) of sections 1012 or 1013 only when he determined that to do so is in accordance with authority conferred by the Antideficiency Act, as amended, or other statutory authority. The Congress and the Comptroller General shall be notified of any such continued

withholdings of the budget authority and the reasons therefor.

"(b) No deferral or rescission may be submitted pursuant to sections 1012 and 1013 of this act when the budget authority that is the subject of the deferral or rescission has previously been required to be made available for obligation pursuant to subsections 1012(b) or 1013(b), unless the new deferral or rescission is based on circumstances or conditions unknown at the time the original deferral or rescission was considered, and which reasonably could not have been known if in existence at the time the required deferral or rescission was considered."

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

B-115398 March 5, 1976

The Honorable Ernest F. Hollings
United States Senate

Dear Senator Hollings:

This is in response to your letter of February 12, 1976, in which you raised several questions on the operation of the Impoundment Control Act of 1974, title X of Pub. L. 93-344, July 12, 1974 ("Act"). The qeustions and our answers thereto follow.

> "If Congress acted on a $500 million rescission request by rescinding $1 million, would the President be required to immediately release the remaining $499 million?"

While the language of the Act is not entirely clear on this point, and the legislative history is not helpful, we believe that the thrust and intent of the Act's procedures would require that the remaining $499 million be immediately released after Congress had completed action on a rescission bill rescinding $1 million.

It is clear that a rescission bill may rescind less than the sum proposed for rescission from a particular program account. Thus, section 1011(3) of the Act, defines a "rescission bill" to be

> " * * * a bill or joint resolution which only rescinds, _in whole or in part_ budget authority proposed to be rescinded in a special message transmitted by the President under section 1012, and upon which the Congress completes action before the end of the first period of 45 calendar days of continuous session of the Congress after the date on which the President's message is received by the Congress; * * *." (Emphasis added.)

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Regarding the release of funds, section 1012(b) of the Act states:

> "(b) REQUIREMENT TO MAKE AVAILABLE FOR OBLIGAATION.--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." (Emphasis added.)

These provisions do not explicitly state when the President must release those amounts proposed for rescission that are not the subject of a rescission bill passed in less than the prescribed 45-day period. The silence of the statute on this point may support an argument that the quoted provisions give the President a full 45-day period to attempt to persuade the Congress to rescind the entire amount. Further, section 1011(3) defines a rescission bill as one that only rescinds budget authority. We suspect Congress' intent in using the word "only" was to confine the subject matter of a rescission bill solely to the budget authority that was proposed for rescission. Another import of the word "only," however, is that any bill purporting to accomplish anything beyond granting rescission authority, e.g., one proclaiming that a rescission is not and will not be granted, either a rescission bill, or is a rescission bill "only" insofar as it rescinds budget authority.

In our opinion, these arguments represent a perversely literal reading of statutory language. The acceptance of such arguments would frustrate a reasonably straight-forward procedure for Congress' treatment of proposed rescissions it wishes to expeditiously reject. We believe that the better view of section 1012(b) is that, when the Congress has completed action on a rescission bill that rescinds only part of the budget authority proposed by the President to be rescinded, the part not rescinded should be released immediately, notwithstanding the fact that the 45-day period may not have run fully. This is supported by the fact that in this instance the President has had his rescission proposal considered by committees and reported out to the floors of both houses; both houses passed

identical bills dealing with the rescission request; and Congress thus completed action. Of course, the case for immediate release of the unrescinded part of the budget authority could be made even stronger if the rescission bill contained language expressly rejecting rescission of that part. This full and complete consideration of his rescission proposal is, in our opinion, the most the President has a right to under the Act; at the end of it the Congress has spoken through legislation and there is no longer any valid reason for further withholding of that part of the rescission request that was not rescinded.

> "Would the General Accounting Office sue for the release of the $499 million if the President continued to withhold the funds?"

While we believe the $499 million should be released under the circumstances outlined above, we also recognize that the rationale set forth above to support that conclusion is not beyond question. Whether or not we would bring suit to compel the release of the funds would, of course, depend in part on how compelling a case could be made of the facts and circumstances of a particular case. Even in the strongest of cases, however, there are two complicating factors.

First, as you know, serious constitutional questions were raised by the Justice Department during our recent suit to release the impounded section 235 housing funds. Since that suit was dismissed as moot when the funds were released, those constitutional issues were never resolved. It is a virtual certainty that they will be raised again in any further suit, and although we are confident that we would ultimately prevail on those issues, their further litigation would be a costly and time-consuming process that must be weighed against the benefits of bringing a new impoundment suit.

Second, the short time periods involved pose a definite problem so far as litigation is concerned. As you know, section 1016 of the Act requires that the Comptroller General wait a period of 25 days of continuous session after notification to Congress before he can actually begin a lawsuit. This 25 days of continuous session, together with the time it would take Congress to complete action on the rescission bill, make it unlikely that a lawsuit could be initiated before the 45-day period had run. Assuming that the President releases the

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unrescinded funds on the 46th day, the case would likely be considered moot by the court and dismissed before resolution of the issue could be had. It is true that there are circumstances where a court might consent to the continuation of the case even though the funds are released; namely, when a court determines that the short-term value of the action makes the issue "capable of repetition, yet evading review." Super Tire Eng'g Co. v. McCorkle, 416 U.S. 115, 122 (1974); So. Pac. Terminal Co. v. I.C.C., 219 U.S. 498, 515 (1911); Roe v. Wade, 410 U.S. 113, 125 (1973); Dunn v. Blumstein, 405 U.S. 330, 333 n. 2 (1972). However, clearly the emergence of constitutional issues in the case would militate strongly against a court deciding to hear the case if the funds have been released at the end of the 45-day period.

> "If Congress incorporated language in a rescission bill which stated that all rescission requests not specifically approved are denied, would the President be required to immediately release those funds for which a rescission was denied?"

We believe that the answer to this question is that again the President would be required to immediately release the unrescinded funds, provided they were identified with sufficient particularity in the rescission bill that passes Congress so as to leave no doubt that the Congress has "completed action" on the rescission request. Where Congress has clearly and unequivocally completed action on the request, we see no legal justification for further withholding of the funds.

> "Would the General Accounting Office sue for the release of the funds [in the second example] if the President continued to withhold them?"

Our answer to this is the same as the suit discussion in the first example.

We wish to point out the basic issue raised by your letter--acceleration of the 45-day waiting period for rescission requests--has caused us concern since the enactment of the Impoundment Control Act. Thus, when Rep. Adams, Chairman of the House Committee on the Budget, requested

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our views on how the Act could be modified, we took the opportunity to discuss the early release matter.

In a letter to Chairman Adams of November 20, 1975, copy attached, we recommended that the statute

> " * * * be amended to allow for the rejection of a rescission request by a means other than waiting for the appropriate 45-day period to run, such as a Rescission Resolution by either house."

In our view, incorporation of such a feature into the Impoundment Control Act would operate to require the early release of those sums proposed for rescission but not favorably acted upon by the Congress.

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General
of the United States

Enclosure

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

B-115398 August 12, 1976

The Honorable Richard L. Ottinger
U.S. House of Representatives

Dear Mr. Ottinger:

This is in response to your letter of July 28, 1976, requesting an investigation of proposed rescissions R76-46, R76-47, R76-48, and R76-49 submitted by the President to the Congress on July 28, 1976, pursuant to the provisions of the Impoundment Control Act of 1974. The message proposed the rescission of $24 million for impact aid, $90 million for handicapped education, $3 million for state equalization plans, and $9.35 million for child nutrition programs.

The budget authority proposed for rescission in these programs was appropriated in the Second Supplemental Appropriations Act, 1976 (Pub. L. 94-303, June 1, 1976). Our review of the messages indicates that the funds for the second and third of the four programs described above, if unobligated, will lapse on September 30, 1976. Funds for the first and last programs described remain available until expended.

Subsection 665(d)(1) of title 31 of the U.S. Code provides that appropriations shall be apportioned not more than 30 days after the approval of the Act in which the appropriation is made available. Thus, the latest date to apportion the subject budget authority was July 1, 1976. We have confirmed that reserves were established and the budget authority that is the subject of these messages has been withheld since July 1, 1976.

Based on the present congressional schedule, the 45-day period during which the funds may be withheld while the rescission proposals are pending will expire on September 28, 1976. In this connection, you believe the President's failure to submit a special message with respect to the withholding until July 28 thwarts the intent of the Impoundment Control Act of 1974.

The Act provides that the President shall submit a special message to the Congress whenever budget authority is proposed to be withheld from obligation. Accordingly, the President should have submitted a special message on these withholdings on July 1, 1976--the date on which the impoundments began. The

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failure to do so until July 28 is not consistent with the spirit of the Act. Moreover, the delay may operate to deny to the Congress the expected consequence of its rejecting the proposed rescissions--the full and prudent use of those funds. This situation exists because only two days will remain between the expiration of the 45-day period and the date on which the unobligated funds will lapse (September 29 and 30, 1976).

We share your concern that the Congress be able to indicate its disapproval of a rescission without waiting 45 days of continuing session. We addressed this matter in our letter of March 5, 1976, to Senator Hollings (copy enclosed). In that letter we stated that the Act does not authorize the President to withhold funds where the Congress has completed action on a bill to rescind only part of the budget authority proposed for rescission. In the letter of March 5, we concluded that the better view of section 1012(b) is that when the Congress has completed action on a bill that rescinds only part of the budget authority proposed by the President to be rescinded, the part not rescinded should be released immediately, notwithstanding the fact that the 45-day period may not have ended. The letter also indicated that an even stronger basis for immediate release would exist if the Congress incorporated language in a rescission bill to the effect that all rescission requests not specifically approved are denied.

In addition, because we recognize that the existence of a mechanism by which the 45-day period can be accelerated may be subject to disagreement, we suggested in our letter of November 20, 1975, to the Chairman of the House Committee on the Budget (copy enclosed), that the Act be amended to provide that a rescission request may be denied by a rescission resolution passed by either House of Congress at any time prior to the expiration of the 45-day period. Such an amendment would not be subject to differing constructions on the operation of the Act.

We are presently preparing our report to the Congress on the subject rescissions and would be pleased to provide you with a copy of the report when it is completed.

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General
of the United States

Enclosures

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

September 24, 1976

B-115938

The Honorable Warren G. Magnuson
Chairman, Subcommittee on
Labor-Health, Education, and
Welfare
Committee on Appropriations
United States Senate

Dear Mr. Chairman:

This is in response to your letter to me of September 7, 1976, concerning the President's 18th special message under the Impoundment Control Act, 31 U.S.C. 1401, et. seq. As you noted in your letter, all of the withholdings that were the subject of that special message actually began on July 1, 1976--27 days prior to the date they were reported to the Congress.

In your letter, you first asked why the Congress was not informed of the withholdings on a more timely basis. We are unable to say why the Administration delayed reporting the withholdings, but we hope, in light of our analysis of that delay in our comments on the 18th message (discussed below), and a similar problem in the President's 20th message (a copy of our comments on this message are enclosed), that other delays will be be avoided in the future. In this connection, as you know, the Impoundment Control Act does not provide a mechanism for the Comptroller General to prevent delays in the transmission of Presidential messages under the Act. It does, however, provide in section 1015, 31 U.S.C. 1405, for the Comptroller General to notify the Congress of unreported withholdings. In such a case, the Comptroller General's message is treated as if it were a message transmitted by the President under the Act.

To fulfill our responsibilities to detect unreported withholdings, we monitor the handling of budget authority by the Administration, in addition to receiving information from Members of Congress, committee staff, interest groups, and constituents on possible unreported withholdings. While we believe this has worked reasonably well in the past to enable us to detect unreported withholdings, we cannot monitor all budget authority simultaneously, even with the help of interested third parties. Furthermore, once a suspected withholding

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has been found, we believe it prudent to obtain OMB and agency documentation (apportionment and allotment schedules) evidencing the existence of budgetary reserves, and, when necessary, prepare analyses of relevant statutes to determine whether the failure to make the budget authority available legally constitutes an unreported withholding under the Act. Consequently, unreported withholdings cannot always be reported immediately. Finally, I might say that while normally a slight delay in reporting would be of minor consequence, the short time-span involved in the Transition Quarter has exacerbated the problem. We hope for better results as we enter Fiscal Year 1977.

Your second question concerns the legality of the withholdings during the delay. Clearly, the power of the President to delay transmission of a special message and our inability under the Act to prevent such delay, does not mean the Act grants the President authority to so delay. As we said in our letters to you and to the Congress on August 27, 1976, the Impoundment Control Act requires the President to report to the Congress whenever he withholds budget authority. The President's failure to timely report the withholdings was a violation of the Act, and the unreported withholdings were without legal justification.

Finally, in your letter you ask whether, under the circumstances, July 1, 1976, rather than July 28, 1976, should mark the beginning of the 45-day period prescribed for congressional action. When a rescission proposal is transmitted by the President or the Comptroller General the Congress has a prescribed 45-day period in which to consider the matter. If a bill rescinding the full amount requested for rescission is not passed within this time, the Act requires the budget authority to be made available for obligation. 31 U.S.C. 1402.

We believe the provisions of section 1011 (3) of the Act, 31 U.S.C. 1401 (3), are dispositive on the question of when the 45-day period begins to run. This provision states:

> "(3) 'rescission bill' means a bill or joint resolution which only rescinds, in whole, or in part, budget authority proposed to be rescinded in a special message transmitted by the President under section 1012, and upon which the Congress completes action before the end of the first <u>period of 45 calendar days of continuous session of</u>

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> the Congress after the date on which the President's message is received by the Congress; * * *" (Emphasis added.)

The underscored portion of section 1011(3) clearly indicates that the 45-day period for the consideration of a rescission bill commences after the date on which the impoundment report is received. To construe the Act as permitting the 45-day period to commence earlier is contrary to the clear language.

Further, the legislative history of the Impoundment Control Act suggests that the Congress considered and rejected the notion of having the approval period for impoundments run from the date on which the withholdings began. S. 373 was an impoundment bill that went to conference and apparently was the foundation for significant aspects of the present law. The bill was similar to the Act Congress ultimately passed in that it provided for the President or the Comptroller General to report impoundments to the Congress. Under section 3 of the bill, an impoundment had to cease if, within 60 days of continuous session, it had not been approved by a concurrent resolution. Section 6 of S. 373 stated, in part:

> "That the sixty-day period provided in section 3 of this Act shall be deemed to have commenced at the time at which, in the determination of the Comptroller General, the impoundment action was taken." (Emphasis added.)

The quoted provisions clearly provided for the operation of an impoundment approval mechanism that took into consideration the dates when impoundments started. As you know, this provision did not find its way into the present law. In this light, we must conclude that the Congress did not favorably consider its provisions and thus decided not to include such a mechanism in the Impoundment Control Act.

Sincerely yours,

Comptroller General
of the United States

Enclosure

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

B-115398 September 28, 1976

The Honorable James J. Florio
House of Representatives

Dear Mr. Florio:

In response to your letter of August 12, 1976, and subsequent phone conversations with you and your staff, we have reviewed the Farmers Home Administration's (FmHA) operation of the rural construction and improvement loan programs pursuant to sections 502 and 504 of the Housing Act of 1949, as amended ("Act").

Under section 502, 42 USC 1472, FmHA is authorized to provide direct and insured loans for the purposes of constructing or improving housing and farm buildings. Under section 504, 42 USC 1474, FmHA may make loans, grants, or combined loan-grants not exceeding $5,000 per borrower for the purposes of repair or improvement of unsafe or unsanitary housing or farm buildings. Only persons who cannot qualify for a section 502 loan are eligible for assistance under section 504. 42 USC 1474(a).

In 1965, the Housing and Urban Development Act, Pub. L. 89-117, created two revolving funds--the Rural Housing Insurance Fund (RHIF) as new section 517 of the Act, 42 USC 1487, and the Rural Housing Direct Loan Account, as new section 518 of the Act, 42 USC 1488. These funds were to be used, in part, to carry out, respectively, FmHA's insured and direct rural housing loan programs. The Secretary of Agriculture was given the authority to borrow from the Treasury to operate both revolving funds; however, under section 518(c) of the Act, the level of borrowing authority for the Rural Housing Direct Loan Account was limited to amounts authorized in appropriations acts. Section 518(c) stated

> "When and in such amounts as may be authorized in appropriation Acts, the Secretary may issue notes to the Secretary of the Treasury * * *." (Emphasis added.)

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On the other hand, the borrowing authority for insured loans funded through the RHIF is not so circumscribed--no antecedent congressional action is required in order to borrow from the Treasury, nor is there a limitation on either the amounts that may be borrowed, or the period during which RHIF funds are available for obligation. 42 USC 1487.

Pub. L. 91-152, December 24, 1969, repealed section 518 of the Act--the Rural Housing Direct Loan Account--and transferred the assets and liabilities of and the authorizations applicable to that Account to the RHIF. As added in 1969, section 517(m) of the Act, 42 USC 1487(m), states:

> "The assets and liabilities of, and authorizations applicable to, the Rural Housing Direct Loan Account are hereby transferred to the [Rural Housing Insurance] Fund, and such Account is hereby abolished. Such assets and their proceeds, including loans made out of the Fund pursuant to this section shall be subject to all of the provisions of this section [i.e., section 517 of the Act, governing the RHIF]." (Emphasis added.)

Thus, since 1969, all aspects of the sections 502 and 504 programs have been funded out of the RHIF--a funding mechanism not restricted under the terms of the authorization act by appropriations act limitations on the level of borrowing authority available to implement the programs.

The Housing and Urban Development Act of 1965 also amended subsection (d) of the RHIF authorization. Section 517(d) of the Act, 42 USC 1487(d), states, in part:

> "The Secretary may, in conformity with subsections (a), (b), and (m) of this section [the provision transferring the Direct Loan Account to the RHIF, quoted above], insure the payment of principal and interest on loans * * *." (Emphasis added.)

Therefore, the RHIF is available to insure loans made pursuant to sections 502 and 504. When such activities are undertaken, all of the provisions of section 517 apply. Thus, FmHA has the

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option of making direct loans using RHIF assets and holding the notes evidencing the indebtedness, or making such loans and then selling and insuring the notes.

Between 1965 and FY 1972, the appropriations for FmHA did not contain any specifications of amounts for insured loans out of the RHIF. Such language first appeared in the Department of Agriculture Fiscal Year 1972 appropriations act, Pub. L. 92-73, which provided:

> "For direct loans and related advances pursuant to section 517 (m) of the Housing Act of 1949, as amended, $10,000,000 shall be available from funds in the rural housing insurance fund, and for insured loans as authorized by title V of the Housing Act of 1945 [sic], as amended, $1,605,000,000 * * *." 85 Stat. 192.

However, the Senate Committee report on this act disclaimed any intention to amend the Secretary's authority under section 517 of the Act to utilize the RHIF without any need for prior congressional action. The Committee stated:

> "The Farmers Home Administration has been making insured loans as authorized in basic law for a number of years. For the first time the bill as passed by the House indicates specific amounts for such loans under both the Agricultural Credit Insurance Fund and the Rural Housing Insurance Fund. The underlying statutes for these Insurance Funds by their own provisions authorize loans to be made without action by Congress in the annual appropriation acts. Therefore, the indication of specific amounts in the bill does not constitute a limitation on the amount of loans which may be made and insured by the Administration." S. Rep. 92-253, 92d Cong., 1st Sess. 29-30 (1971) (emphasis added).

See also, S. Rep. 92-983, 92d Cong., 2d Sess. 31 (1972).

We rendered an opinion on the nature of these appropriations in 1974, when FmHA wished to obligate a greater amount for farm operating loans under the Agricultural Credit Insurance Fund (ACIF) than had been provided in the appropriations act for that

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year. The underlying authorization for insured loan expenditures from the ACIF is virtually identical to that for the RHIF. In 53 Comp. Gen. 560 (1974), copy enclosed, we said that the legislative history of appropriations actions as well as the applicable authorizing legislation confirmed the Department of Agriculture's view that the appropriations language, although in usual form, did not act as a limitation on the amounts that the Secretary could spend out of the ACIF for farm operating subsidies. We also said that, absent the legislative history, " * * * the natural and usual construction of such language * * * would be at least to impose a specific * * * limit upon operating loans * * *," and that " * * * [s]ince our conclusion is not entirely free from doubt we suggest that the matter be clarified in the context of future appropriation legislation." 53 Comp. Gen. at 562, 564.

Our 1974 opinion was based, in part, upon the above-quoted statement from the Senate Report. While this language has not been repeated in the Senate agriculture appropriations reports since Fiscal Year 1973, neither the underlying basic law nor the language of succeeding appropriations acts has changed in any way that would affect the conclusion we reached in 53 Comp. Gen. 560. Indeed, our opinion was quoted and discussed in both the Senate and House of Representatives Agriculture Appropriations Hearings for Fiscal Year 1975. <u>See</u>, Agriculture-Environmental and Consumer Protection Appropriations for Fiscal Year 1975, Senate Hearings, Part 1 at 942-951; and House of Representatives Hearings, Part 3 at 597-600. Despite congressional recognition of our decision, including the doubt expressed therein, no clarification of this novel funding scheme has since appeared.

Thus, because the sections 502 and 504 programs are funded out of the RHIF, we cannot say that the Secretary is limited by the appropriations language to a stated funding level for insured loans. Accordingly, the RHIF "appropriations" for sections 502 and 504 insured loans are, in effect, "advisory." Sums in the Fund as well as the Secretary's borrowing authority remain available from year to year until obligations are incurred. As a result, the amounts referred to in your letter, which are apparently unspent "advisory" amounts, remain "available for obligation."

We are informed by FmHA that the section 504 program is operated as an insured rather than a direct loan program, pur-

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appropriations acts for "direct loans * * * pursuant to section 517(m)" of the Act are considered by FmHA as advisory levels for operation of an insured loan program under section 504.

A threshold question in any Impoundment Control Act analysis is whether the funding method for a program involves the use of "budget authority" as defined in the Congressional Budget and Impoundment Control Act of 1974, Pub. L. 93-344. Section 3(a)(2) thereof defines "budget authority" as:

> " * * * authority provided by law to enter into obligations which will result in immediate or future outlays involving Government funds, except that such term does not include authority to insure or guarantee the repayment of indebtedness incurred by another person or government."

While 42 U.S.C. 1487, the authority for the RHIF, does include "authority to insure * * * indebtedness incurred by another person * * *," it also provides authority for loans to be made out of the RHIF to be sold and insured. FmHA informed us that all RHIF insured loans are originated with Government funds, although the notes evidencing the indebtedness of the borrowers may later be sold and insured.

Since neither the RHIF authorizing legislation nor the language of subsequent appropriations acts distinguishes between authority to insure loans and authority to make loans to be sold and insured, and since projected insured loan levels have consistently appeared in the Budget since Fiscal Year 1972, we conclude that the authority to obligate funds in the RHIF for section 502 and 504 loans is "budget authority" subject to the Impoundment Control Act.

Furthermore, although the unique nature of the funding mechanism for the sections 502 and 504 programs leads us to be more circumspect in considering whether an impoundment exists here, it does not insulate the programs from the application of the Impoundment Control Act. Since the spending levels are advisory, we might conclude that there is no appropriation level by which to judge the existence of an impoundment. On the other hand, since budget authority for the program is unlimited, any spending level could be viewed as inadequate in impoundment terms because it would always be less than the available authority. Clearly, this latter view would produce

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absurd results. The former view would in effect insulate these programs from the consequences one would expect under the Impoundment Control Act, and we can find no legislative intention to do this.

Therefore, we have applied the tests we would normally use were these usual appropriations, tempered to some degree by our acceptance of their advisory nature.

It has been our view that a failure to obligate the full amount of an appropriation does not, *per se*, constitute a withholding of budget authority within the meaning of the Impoundment Control Act. There must be sufficient evidence of behavior on the part of responsible Executive agency officials that demonstrates an intention to refrain from obligating available budget authority. In this connection, we are informed that sums obligated for the section 502 program in Fiscal Year 1976 total almost $2.3 billion out of a recommended level for all title V insured loans of about $2.7 billion for the same period. Obligations for the section 504 program amounted to about $6 million of a recommended level of $20 million. FmHA informs us that an historically low loan application level accounts for the relatively small obligation of funds under section 504. Data for the Transition Quarter are not yet available.

Given what we consider to be reasonable levels of operation under the circumstances, and absent evidence of any intention to obligate less than the sums recommended by the Congress, we are unable to say that impoundments of the sections 502 and 504 program funds exist.

We hope the foregoing will be of assistance to you.

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General
of the United States

Enclosure

SUMMARY OF COMPTROLLER GENERAL'S IMPOUNDMENT SUIT

Background of the HUD Suit on the Section 235 Program

On April 15, 1975, the Comptroller General filed in the United States District Court for the District of Columbia a lawsuit concerning the HUD section 235 homeownership assistance program. Named as original defendants in the action were President Ford; James Lynn, the Director of OMB; and Carla Hills, the Secretary of HUD.

The case originated in January 1973, when the Secretary of HUD suspended the section 235 housing program. This program was designed to assist lower income familes to buy homes by subsidizing interest on mortgage payments for single-family units. The suspension was ordered--after reports of widespread abuses and scandal--allegedly to determine whether the program should be continued, terminated, or modified.

On October 4, 1974, President Ford sent to the Congress a package of proposals for deferrals and rescissions for fiscal year 1975. One proposal (D75-48) was to defer approximately $264 million in annual contract authority that had been made available for use in the section 235 housing program, suspended since January 1973. The President proposed to defer the use of the contract authority through June 30, 1975.

The proposed deferral of section 235 contract authority was suspect because the contract authority was due to lapse on August 22, 1975, only 52 days after the earliest date the President would release the contract authority--July 1, 1975. We considered 52 days too short a period within which the contract authority could be prudently obligated, if indeed it could be obligated at all. Discussions with HUD program officials reinforced this conclusion.

Subsequently, on November 6, 1974, we reported to the Congress that the proposed deferral should have been classified as a proposed rescission. Our report nullified the President's message placing before the Congress a proposed rescission.

The stage for the lawsuit thus was set. We had sent a rescission message to the Congress, and the Congress then had 45 days of continuous session in which to pass a rescission bill.

The 45-day period, because of congressional recesses and the end of the 93rd Congress, expired on February 25, 1975. During that period, the Congress did not approve the proposed rescission or any part of it. Notwithstanding congressional rejection of the rescission proposal, the President did not make the budget authority available.

In light of the executive branch refusal to comply with the act's requirements, the Comptroller General filed with the Congress on March 6, 1975, a notice of his intention to initiate a lawsuit to compel release of the section 235 budget authority. Section 1016 of the act requires that this notice be sent at least 25 days of continuous session before a lawsuit can begin.

While awaiting expiration of the 25-day period, the Senate considered and passed Senate Resolution 61, which read:

> "Resolved, That the Senate disapproves the proposed deferral of budget authority to carry out the homeownership assistance program under Section 235 of the National Housing Act (numbered D75-48), set forth in the special message transmitted by the President to the Congress on October 4, 1974, under section 1013 of the Impoundment Control Act of 1974. (121 Cong. Rec. S3839 (daily ed. March 13, 1975).)"

The reasons for Senate Resolution 61, which disapproved the deferral after we had converted it to a rescission, were explained in an accompanying report of the Senate Committee on Appropriations:

> "Because of the unique circumstances surrounding the recent implementation of the Section 235 program, the Committee recommends that S. Res. 61, a resolution disapproving the deferral, be passed in addition to our recommendation set forth below refusing to ratify the proposed rescission of these funds.
>
> "By taking both actions, and thus denying both rescission and deferral, the Congress will be sending an unmistakable message to the Executive that these funds must be made immediately available and that no further legal justification now exists for delay.

> "The Committee has delayed action on this deferral resolution until March 5 so as to permit the 45-day rescission period to expire in accordance with the recommendations of the Committee on the Budget. This preserves the Comptroller General's standing to proceed in court under his rescission reclassification. . . ."

Thus, even if the conversion of the deferral to a rescission were struck down by the courts, the lawsuit was necessary to achieve compliance with the act since the impoundment had been rejected either as a deferral or a rescission proposal.

Issues in the lawsuit

Due again to congressional recesses, the 25-day period of continuous session following notification to the Congress did not expire until April 12, 1975. On April 15, the Comptroller General filed his complaint with the United States District Court for the District of Columbia.

Under District Court rules, the defendants in the suit, represented by Justice Department attorneys, had 60 days within which to file a response to the complaint. That response came on June 16, 1975, in the form of a Motion to Dismiss the lawsuit.

The Motion to Dismiss, however, did not directly address the issues raised in the complaint but, rather, objected on the grounds that the provisions of the act empowering the Comptroller General to bring suit were unconstitutional. The primary grounds for this contention were two-fold.

First, the defendants maintained that the lawsuit was an action to "enforce the law," which is a power that is assigned to the executive branch by the Constitution. The Comptroller General, the defendants asserted, is an officer of the legislative branch and is, therefore, prohibited from carrying out this "executive" function.

Second, the defendants asserted that the action did not present a "case or controversy" as required by the Constitution to empower the courts to decide a suit. The "case or controversy" doctrine, although often difficult to apply, requires that a case before the courts be a "real" controversy, and not one that should be resolved by the parties themselves. The defendants claimed that the suit might just as well have

been titled "The Congress v. The President,"and,as such, would not be a constitutional "case or controversy" since the Constitution provides means other than the courts for resolving disputes between the branches of Government.

The Comptroller General filed his reply to the Motion to Dismiss on July 28, 1975. His brief made several points on the constitutional issues.

First, he argued that he was not enforcing the law by suing under the Impoundment Control Act, but that he was suing to compel the executive branch officials to execute the law by implementing the section 235 program. Thus it could not be said that he was performing an executive function.

Second, he argued that the Comptroller General's responsibilities are not exclusively those of a legislative officer. He is an independent officer of the United States, appointed by the President, who is assigned duties that have been characterized as both legislative and executive. The key to this argument is the premise that even if his duties under the Impoundment Control Act do not and constitutionally cannot involve legislative functions, his performance of these duties as an independent officer does not entail any constitutional impediment.

Third, the Comptroller General argued that even if he were to be characterized as an agent of the Congress for the purpose of bringing the suit, the action still could be maintained, since the case would be similar to other cases in which committees and Members of Congress have been allowed to maintain lawsuits to protect their legitimate legislative interests. He argued that the Congress has a legitimate legislative interest in insuring that its disapproval of deferrals and its decisions not to rescind appropriations are not ignored by executive officers.

The order preventing the lapsing of the budget authority

The response to the Motion to Dismiss was filed on July 28, 1975. However, the time required by the parties to brief the constitutional issues in the case made it clear that the court would not decide the case before the unobligated section 235 budget authority would lapse on August 22, 1975. Thus an interim court order was necessary to prevent the budget authority from lapsing before the the case could be decided.

Accordingly, on August 7, 1975, the Comptroller General asked the court to order the defendants to record the section 235 budget authority as an obligation of the United States. This motion rested on two bases.

The Impoundment Control Act itself empowers the court to enter "any * * * order which may be necessary or appropriate to make such budget authority available for obligation." Clearly, unless the court acted to grant our motion, the budget authority would lapse, thereby making final redress virtually impossible. On the other hand, if the defendants won the suit, the court's order could be vacated and the budget authority allowed to lapse, with no harm to the defendants' cause. Thus the Comptroller General argued that the interim order requested was entirely appropriate and within the intent of the act.

In the alternative, he argued that the court should issue an injunction requiring the budget authority to be recorded as obligated, pending the outcome of the suit. Such an injunction is contemplated by a statutory provision that allows budget authority to be recorded as an obligation of the Government under certain circumstances, including a liability resulting from pending litigation.

On August 20, 1975, the defendants filed a brief in opposition to the motion, arguing that, for technical reasons, the court lacked the authority to issue the requested order. Notwithstanding this and other points discussed below which were raised in that opposition brief, on the same day the court granted our motion and ordered the defendants to record the section 235 budget authority as obligated until further order of the court. This Order was appealed by the defendants on August 29, 1975.

The Impoundment Control Act issues

The issues raised in the defendants' August 20 opposition brief not only elaborated on the constitutional issues raised earlier, but also raised new defenses concerned with the operation of the Impoundment Control Act itself.

The primary new argument raised by the defendants was that the Impoundment Control Act did not apply to impoundments that were initiated before the act was passed. This position would, if sustained, exclude the section 235 budget authority from the

jurisdiction of the act, since this authority was originally impounded in January 1973, 18 months before the act was passed.

In support of their argument, the defendants chiefly relied upon the legislative history of a provision of the act (section 1001(3)) which states that nothing in the act "shall be construed as * * * affecting in any way the claims or defenses of any party to litigation concerning any impoundment." The defendants maintained that the legislative history of this provision showed that the act was not intended to apply to impoundments in effect at the time of its passage.

A second argument advanced by the defendants was based upon language in the act (section 1002(2)) which provides that nothing in the act shall be construed as "ratifying or approving any impoundments heretofore or hereafter executed or approved" by Federal officials, "except insofar as pursuant to statutory authorization then in effect." In fact, the legality of the January 1973 suspension of the section 235 program had been upheld by the U.S. Court of Appeals for the District of Columbia Circuit in July 1974, in an action that did not consider the impact of the Impoundment Control Act, (see Pennsylvania v. Lynn, 501 F.2d 848 (1974)). In the 1974 case, the court held that the Secretary of HUD could suspend the section 235 program pending a review of its effectiveness. The defendants argued that section 1002(2) of the Impoundment Control Act exempted impoundments for which there was statutory authorization, and that the prior court case established that such statutory authority existed for impounding the section 235 budget authority.

The Comptroller General responded to these new issues in a Motion for Summary Judgment, filed on October 6, 1975.

His position on the first argument (that the act did not apply to pre-act impoundments) was two-fold. First, he asserted that any impoundment is of a continuing nature, that the act intended impoundments to be considered as such, and that, therefore, the "pre-act" or "post-act" rationale had no meaning. Second, he argued that, in any event, the legislative history of the act established that the act did not exclude from its purview all pre-act impoundments, but, rather, only those pre-act impoundments that were in litigation at the time the law was passed. The Comptroller General's suit was, therefore, unaffected.

On the second point (that the earlier case had shown that the impoundment was authorized by law and therefore not

subject to the act), the Comptroller General also had two arguments. First, he maintained that the provision in question was intended merely to insure that the enactment of the Impoundment Control Act could not be read to imply that the Congress "ratified or approved" any otherwise unlawful impoundments existing before the passage of the act. More importantly, however, only 1 month after the earlier case involving the section 235 budget authority was decided, the Congress and the President reaffirmed the validity of the section 235 program by extending its life for 1 year and amending it in some respects. The Comptroller General argued that this reauthorization of the section 235 program, in effect, overturned whatever presidential impoundment authority the earlier case had upheld.

The resolution of the case

With the filing of our Motion for Summary Judgment on October 6, the issues in the case were essentially joined, although further supplemental briefing and oral argument before the court were expected. However, the case came to an abrupt end without judicial resolution of the issues when, in a surprise move on October 17, 1975, Carla Hills, Secretary of HUD, announced that the section 235 program would be reactivated in a slightly revised form.

In a news conference explaining the move, she said that the primary reason for the reactivation was that the Ford Administration was now convinced that the program, in modified form, was needed and would now work. She added, in response to a question, that the lawsuit had been a "factor" in deciding to revive the program.

With this action, neither party saw any need for continuing the suit, and on October 29, 1975, the parties jointly stipulated that, based upon Secretary Hills' action, the suit was moot and should be dismissed. The dismissal was approved on November 25, 1975.

Conclusions

Aside from providing us with an opportunity to enforce the act and discuss a number of issues related to the role of GAO, the HUD section 235 lawsuit also established that certain areas of the act merited modification. For example, no purpose was served by our having had to wait 25 days (pursuant to section 1016) before we could file our complaint.

We also believe the act would be more effective if it provided that funds in litigation do not lapse. Such a provision would have made it unnecessary for us to seek an order preventing the lapse of the section 235 budget authority.

The so-called "disclaimer" provisions in section 1001 of the act also clouded the issues in the lawsuit. We believe the disclaimers should be eliminated, or at least clarified.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Paul G. Dembling
General Counsel
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Dembling:

This responds to your request of February 16, 1977, for comments on the GAO draft report concerning implementation of the Impoundment Control Act of 1974.

The staff at OMB has found the draft report to be an interesting summation, from your viewpoint, of the implementation of the Impoundment Control Act. Enclosed with this letter are our thoughts concerning your recommendations on how we might improve our rescission and deferral reports.

We have chosen not to comment at this time on the proposed amendments to the Act that you have developed. If it later appears that the Act will be amended, we intend to make our views known at the time.

Thank you for giving us the opportunity to comment on your draft report. I can appreciate the efforts that have gone into its preparation.

Sincerely yours,

W. Bowman Cutter

W. Bowman Cutter
Executive Associate Director
for Budget

Enclosure

This listing contains OMB comments on each of the GAO recommendations to OMB concerning possible improvements to impoundment reporting.

Recommendation

Take those steps necessary to insure that impoundments are promptly reported to the Congress as soon as budgetary reserves are established.

Comment

The policy of prompt reporting of deferrals or proposed rescissions will be continued. In particular, transmittal of any impoundments that might be of special interest will be expedited. Some small delay sometimes results from the practice of batching the deferral and rescission items together as much as possible, as opposed to transmitting each item separately. Processing each item separately would impose an unnecessarily burdensome paperwork requirement on both the President and the Congress. In the interests of efficiency and paperwork conservation, batching of deferrals and rescission proposals will be continued.

Recommendation

Indicate specifically how long a proposed deferral is to exist.

Comment

Practically speaking, no one knows on what date many of our deferrals of less than a full year will end. In the cases where such information is available, for example, when release is directed by a schedule in law or court order, the information will continue to be included in our reports. The more typical case, however, is that release of funds (which may be done gradually) takes place as needed to finance events that have uncertain timing. OMB and agencies could guess at the latest possible timing for these events in listing a particular release date but that would not be very helpful to the Congress. Alternatively, we could make a guess at some earlier date and add to the administrative burdens of the Congress and ourselves transmitting supplementary reports reestimating the duration of those deferrals where we had made a wrong guess. This does not seem to provide useful additional reporting information.

GAO note: Deleted material was included in draft report but excluded from final report.

[Deleted]

Recommendation

Indicate whether a presently proposed impoundment was instituted previously.

Comment

This will be done in future reports.

Recommendation

Identify, where they exist, impoundments of congressional "add-ons."

Comments

It is important to identify the portion of an impoundment which consists of a congressional "add-on" when that fact influences the decision to propose the impoundment. This information will be provided in those cases. However, when a deferral or rescission proposal has a substantive basis and it coincidentally is a portion of a congressional "add-on," this coincidence is extraneous and will not necessarily be included in the report.

Recommendation

Identify executive branch officials who can be contacted to discuss a particular proposed impoundment.

Comment

The agency staff member who can knowledgeably discuss a particular impoundment and who can also best represent the budget policies from which the proposal stems is the agency budget officer. Since that person's identity is generally known to the concerned congressional committees, it is not needed on the reports.

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