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

November 20, 1981

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The Honorable William V. Roth, Jr.
Chairman, Committee on Governmental
Affairs
United States Senate

Dear Mr. Chairman:

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This responds to the Committee's invitation to GAO to comment on issues raised during the recent hearing held on the Congressional Budget and Impoundment Control Act. Specifically, we were asked to present our views on the Impoundment Control Act and on changes to the Act which would improve its operation. Our comments are made in the context of the current budgetary process, in which budgets and most appropriations are provided on an annual basis. They do not reflect any changes to the Impoundment Control Act that might be desired if the current process is changed to provide for a biennial budget cycle.

GAO has been heavily involved in the operation of the Act as the agency responsible for reviewing and reporting to the Congress on Presidential impoundments. Specifically, GAO reviews Presidential messages supporting proposed impoundments to the Congress. We issue impoundment reports under section 1014 of the Act as to the accuracy and implications of the information contained in the messages. Section 1015 authorizes the Comptroller General to report to the Congress any impoundment which the President has failed to report. Under this and other sections of the Act, he may reclassify impoundments which have been improperly reported. Section 1016 authorizes the Comptroller General to bring suit to compel the release of impounded funds when such release is required by the Act. GAO also responds to numerous formal and informal congressional inquiries concerning the operation of the Act.

Although we have periodically identified problem areas and have proposed appropriate legislative changes, we believe the basic framework of the Act is sound.

GENESIS OF THE IMPOUNDMENT CONTROL ACT

Attempts by the President to impound appropriated funds have been the subject of long-standing debate between the executive and legislative branches. Impoundments consist generally of two types--(1) routine reserves to insure that deficiencies will not occur or to set aside unneeded funds, and (2) withholdings to effectuate executive policy by deferring or canceling implementation of particular programs.

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Congress recognized the first type of impoundment when it amended the Antideficiency Act (31 U.S.C. 665) in 1950:

"to provide [reserves] 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. * * *" Act of September 6, 1950, ch. 896, §1211, 64 Stat. 765.

It is clear that the purpose for such reserves is a limited one. In its report on the 1950 amendments, the House Committee on Appropriations stated that it was--

"* * * perfectly justifiable and proper for all possible economies to be effected and savings be made. But there is not warrant or justification for the thwarting of a major policy of Congress by the impounding of funds." H.R. Rep. No. 1797, 81st Cong., 2d Sess. page 311 (1950)

Defining the scope of authority to impound funds became a source of intense conflict between the executive and legislative branches after President Nixon's reelection in 1972. The President asserted a constitutional right to impound funds. The Director of the Office of Management and Budget testified in 1973 that the President had the power to substitute his judgment for that of Congress on the relative importance of congressionally legislated program objectives. */

Beginning in December of 1972, the executive branch embarked on an unprecedented and massive range of policy impoundments, often in the face of congressional opposition. Housing, agricultural, and disaster relief programs, among others, were terminated. Other programs, such as impact aid, assistance for the elderly and handicapped, and public works, were cut substantially.

These impoundments led to many lawsuits. During 1973 alone, over 60 impoundment cases were filed in Federal district courts.

*/ Joint hearings on S. 373 before the Ad Hoc Subcommittee on Impoundment of Funds of the Senate Committee on Government Operations and the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary, 93d Cong., 1st Sess. 524-28 (1973) (testimony of OMB Director Roy Ash).

The courts, for the most part, held that there was no general discretion vested in the President, by the Constitution or by statute to refuse to implement programs authorized and funded by Congress, and that attempts to avoid implementing Government programs through impoundments were illegal.

Nevertheless, Congress itself lacked a direct mechanism to respond to Presidential impoundments. In order to establish an orderly process for congressional review and disposition of executive impoundments, it passed the Impoundment Control Act, Pub. L. No. 93-344, title X, 88 Stat. 332 (July 12, 1974).

MAJOR PROVISIONS OF THE IMPOUNDMENT CONTROL ACT

Enactment of the Impoundment Control Act constituted an important step in reassertion by the Congress of greater control over the Federal budget. The Act requires that all impoundments be reported to the Congress and gives Congress ultimate control through endorsement or denial of reported proposals. The Act is premised upon the concept that all budget authority must be made available for obligation. Provision is made for consideration by the Congress of Presidential proposals to depart from this requirement.

There are two types of impoundments, rescissions and deferrals. Proposals to rescind budget authority allow the withholding of budget authority for 45 days of continuous congressional session after the day on which the request is first received by the Congress, during which the requisite legislation might be enacted. Deferrals allow the withholding of budget authority until rejected by either House of Congress. However, they may not be used to rescind by withholding for the entire fiscal year budget authority provided for only that fiscal year.

LEGISLATIVE PROPOSAL TO AMEND THE IMPOUNDMENT CONTROL ACT

We do not share the view of those who believe that the legal and political concerns which gave rise to the Impoundment Control Act are no longer valid. The Congress should retain an effective method for dealing with proposed impoundments. We do not think it wise to alter fundamentally the present balance between the executive and legislative branches on this matter.

The bill under consideration, S. 384, would allow a President to rescind budget authority without congressional action. The net effect would be to allow the President alone to override previously enacted legislation and to require that the Congress relegislate existing law for it to prevail. The Impoundment Control Act now requires positive congressional action to support non-compliance with budget authorities the President seeks

to repeal. We are not aware of any necessity for Congress to eliminate the requirement that positive congressional action accompany non-compliance. S. 384 would reverse the framework of the Act. It places the burden on Congress to reject rescission proposals. Also, the bill limits Congress' opportunity to disapprove to the 45-day period and contains no provision for congressional action after that period.

The Congress often does not complete its legislative response to rescission proposals within the statutory 45-day period. If under the provisions of S. 384 the Congress failed to act in 45 days, any later action to negate a rescission proposal would be subject to Presidential veto thereby further eroding congressional control.

ALTERNATIVE TO S. 384

We would suggest consideration of an alternative to S. 384 which retains essentially the balanced relationship between the executive and legislative branches.

Under the alternative, provisions in the Impoundment Control Act concerning rescissions would be repealed, and all withholding of funds would be proposed as deferrals with the President indicating which of the deferred budget authorities he wished to have rescinded. Our alternative would also amend the current law (1) to require for each deferral of fiscal year funds that the President specify a date beyond which it would be impractical to obligate the funds involved and (2) to require that the funds be made available for obligation on the specified date if there has been no final legislative action on a request to have budget authority rescinded.

Our alternative retains two basic elements of the present Act: (1) rescission would result only with the concurrence of both Houses of Congress and (2) withholdings of budget authority may be defeated by either House.

Our approach recognizes that Congress might oppose a proposal to rescind, but support a delay in the use of the funds. Present law does not provide the Congress with this option. Administration of the act would be simplified by eliminating the need to distinguish between deferrals and rescissions, and by eliminating the need for Congress to respond within a fixed time.

NEEDED REFINEMENTS TO PRESENT LAW

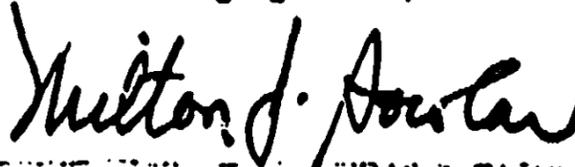
If the basic framework of the Act is to be retained, we suggest that you consider a number of refinements to streamline and clarify its operation.

- To alleviate uncertainties associated with the indefinite term of "45 days of continuous session," amend the period for congressional consideration of rescissions to 60 calendar days.
- Allow for one House rejection of proposals to rescind.
- Allow for rejection of portions of deferrals.
- Eliminate the reporting of routine non-policy deferrals.
- Require stipulation by the President of a date beyond which deferred fiscal year budget authority could not practicably be obligated and further require that the funds involved be made available for obligation in the absence of any prior legislative mandate.
- Provide that any reclassification by the Comptroller General of a reported impoundment serves to nullify the President's proposal, and.
- Provide, where the Comptroller General files a report reclassifying a proposed impoundment, that any time limits imposed by the Act be measured from the date of the President's initial proposal.

The observations and suggestions we have made are based on the historical premises underlying the Act and stem from our operational involvement with its administration. We have not taken into account any agency program inefficiencies related to funding uncertainties occasioned by the time it generally takes to reach positive congressional determinations. We are aware that significant program disruptions are being experienced, and we are evaluating their impact in a review of temporary withholdings which result from rescission proposals submitted under the Impoundment Control Act, for which no rescission is approved by the Congress.

We would be happy to work with the Committee in drafting specific language to effectuate the suggestions we have made.

Sincerely yours,



Milton J. Socolar
Special Assistant to
the Comptroller General