



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

B-221498.32

May 5, 1986

The Honorable Dick Cheney  
House of Representatives

Dear Mr. Cheney:

This responds to your letter of March 31, 1986, co-signed by Senators Malcolm Wallop and Alan K. Simpson, regarding the President's sequestration, under the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), of funds from a permanent appropriations account of the Forest Service. You have asked that we review the analysis of the Office of Management and Budget (OMB) with respect to this account, and advise you of actions which may be taken to avoid disproportionate reductions.

In the present case, the Office of Management and Budget (OMB) has determined that two of three budget account activities in the account in question have been obligated, and has increased the percentage reduction required for the remaining budget account activity. As discussed in more detail below, we agree with OMB's conclusion that the application of Public Law 99-177 may result in disproportionate reductions in accounts in which substantial funds have been obligated. We differ, however, with OMB's opinion that fiscal year 1986 budgetary resources in this account have been obligated to the extent that disproportionate reductions are necessary. OMB's position is based on its view that the sequestrable base for fiscal year 1986 for this account consists of budgetary resources paid out in fiscal year 1986. Our view is that the budgetary resources subject to sequestration in fiscal year 1986 are those that are derived from receipts collected in fiscal year 1986, even though actual payments from such receipts may not be made until after the end of the fiscal year. Fiscal year 1986 receipts have not yet been paid out in full, and may be sequestered at a proportional rate.

#### BACKGROUND

The account at issue here is entitled "Forest Service Permanent Appropriations" (budget appendix account number 12-9921). It is comprised of three budget account activities involving payments to states and localities under permanent indefinite appropriations.

The largest of the three programs involves payments to states of 25 percent of the monies received on National Forest lands, as authorized by 16 U.S.C. § 500. That statutory authority requires payments to be made from the National Forest Fund at the end of each fiscal year from receipts collected

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during that fiscal year. We understand that, in actual practice, payments are usually made on the first day of the fiscal year following the year in which receipts are collected, with adjustment payments made several months later. Thus, payments to the states of National Forest receipts collected during fiscal year 1985 were made on October 1, 1985 (in a total amount of almost \$154 million), with later adjustment payments made on December 2, 1985 (totalling an additional \$59 million).

The second largest program involves payments to counties in which National Grasslands and Land Utilization Projects under Forest Service jurisdiction are located of 25 percent of the net revenues received from those lands. These payments are made under authority of 7 U.S.C. § 1012 which provides for such payments to be made for receipts collected for each calendar year as soon as practicable after the end of that calendar year. We have been informed by Department of Agriculture officials that payments under this program for a calendar year are usually made in March of the subsequent calendar year. We understand that the fiscal year 1986 payments, which cover receipts collected during calendar year 1985, have not yet been made. The amounts collected during calendar year 1985 totalled almost \$16 million.

The third program under this account involves an annual payment made to the State of Minnesota for lands in the Boundary Waters Canoe Area. The amount of the payment is three-fourths of 1 percent of the appraised value of certain National Forest lands in Cook, Lake, and St. Louis counties, as required by 16 U.S.C. § 577(g). The statutory authority requires the payment to be made "at the close of each fiscal year." The fiscal year 1985 payment, amounting to \$537,011 was made on October 1, 1985, with a final adjustment of an additional \$179,004 made on December 2, 1985.

The January 15, 1986, report of the Directors of OMB and the Congressional Budget Office (CBO) identified the Forest Service account in question as having \$227,618,000 in sequestrable budgetary resources for fiscal year 1986. We understand from our discussions with officials from OMB and CBO that this amount was calculated on the basis of estimates of the amount of receipts collected during fiscal year 1985 that would be paid to states and counties in fiscal year 1986 under applicable statutory authority. The report specified a fiscal year 1986 sequester amount of \$9,788,000. Our January 21, 1986, report did not object to this sequester amount for the account.

In applying the required sequester below the account level, OMB and the agencies involved identified receipts paid out in the early part of fiscal year 1986 as obligated fiscal year 1986 budgetary resources for purposes of the Public Law 99-177 sequestration process. According to OMB, this left no unobligated balances available for reduction within those specific activities. Consequently, OMB determined that the fiscal year 1986 sequester for the account should be made against the single account activity for which payments from fiscal year 1985 receipts had not yet been made, in order to ensure that the full amount of the sequester required by Public Law 99-177 would be made in the account. This resulted in a reduction of almost 70 percent of the amount otherwise due the states and counties under the program involved.1/

#### ANALYSIS

As a preliminary matter, we concur with OMB's view that the unobligated portions of an account may be sequestered at a higher percentage rate where large amounts of budgetary resources in the account have been obligated.2/ Consequently,

1/ OMB officials, while acknowledging that this results in an unfair distribution of reductions among individual programs and activities, have suggested that any injury is temporary, as sequestered funds will be automatically restored as of October 1, 1986. This conclusion is based on section 256(a)(2) of the Act, which states that funds sequestered in special or trust funds shall remain in such funds and be available in accordance with and to the extent permitted by law, including the provisions of Public Law 99-177. Under this interpretation of section 256(a)(2), the sequestration process would effectively result in a deferral of a portion of the payments from such funds until after the end of the fiscal year involved.

2/ Although section 256(1) of the Act provides that obligated balances are not subject to reduction, we consider that language to govern the implementation of required reductions, rather than the calculation of the amount required to be reduced within each account. The language of section 256(1) must be read in light of the overall statutory scheme of Public Law 99-177, which takes obligated fiscal year 1986 budgetary resources into account by prorating the amount of required reductions by seven-twelfths. See § 251(a)(3)(A)(ii)(I). Exclusion of obligated balances from the sequestrable base in determining the proper amount of sequester in each account would, in effect, count those obligations twice.

the principal scope of our inquiry in the present case has been to determine which budgetary resources of this account are subject to the fiscal year 1986 sequestration process, and the extent to which those resources have been obligated. As explained below, we disagree with OMB's treatment of payments made in fiscal year 1986 as budgetary resources of that year. In our view, fiscal year 1986 budgetary resources subject to sequester are those derived from receipts collected in fiscal year 1986.

For non-defense accounts, Public Law 99-177 requires the sequestration of "new budget authority, new loan guarantee commitments, new direct loan obligations, obligation limitations, and spending authority." § 251(a)(3)(F)(iv)(I). Regardless of which of these categories of budgetary resources a particular account involves, it is apparent that only fiscal year 1986 resources are included within the sequestrable base of non-defense accounts. In contrast, sequestration of resources in defense accounts specifically covers unobligated balances of budgetary resources provided in prior years. See § 251(d)(1).

Because of the way that Public Law 99-177 treats non-defense accounts, it is important to determine which funds are attributable to fiscal year 1986 (and therefore included in the sequestrable base) and which are attributable to prior fiscal years. This applies both to obligated and unobligated funds.

OMB's practice in special fund accounts such as the one involved in the present case is to recognize the authority to make payments as new budgetary resources of the fiscal year in which payments are actually made, rather than of the fiscal year when funds are collected and made available for payment. Funds are apportioned on this basis as well. Consistent with this approach, OMB and CBO's calculation of the sequestrable base for this account for fiscal year 1986 included the anticipated amount of fiscal year 1985 collections to be paid out during fiscal year 1986, rather than the amount of budgetary resources that may be estimated to arise from receipts collected during fiscal year 1986. This practice is also the basis for OMB's conclusion in the present case that the payment of funds in early fiscal year 1986 resulted in obligated balances of 1986 budgetary resources in the budget account activities involved, thus requiring that other budget account activity within the same account make up the amount of any sequestration thereby foregone.

In our opinion, however, the better view is that the budgetary resources in question should be attributable to the

fiscal year in which receipts are collected, rather than to the fiscal year in which payments are actually made. Permanent indefinite appropriations such as those at issue here are contingent upon factors independent of the actions of agency officials responsible for determining when payments should be made. The resources in question here arise as of the time receipts are collected, regardless of the timing of outlays. In fact, there is considerable discretion on the part of agency officials as to whether to make payments at the end of one fiscal year or at the beginning of the next.

Thus, we do not concur with OMB's treatment of payments to states of monies collected on National Forest lands. In our view, the authority provided by the permanent indefinite appropriation set out in 16 U.S.C. § 500 arises during a fiscal year as receipts are collected, even though actual payments may not be made until the beginning of the following fiscal year. Thus, unlike OMB, we would not consider payments made in October and December 1985 under the program to be obligated balances of fiscal year 1986 budgetary resources. Budgetary resources sequestrable in fiscal year 1986 are those that arise from fiscal year 1986 collections, even though the resulting payments may not be made until October 1986.

Similarly, it is our view that October and December 1985 payments to the State of Minnesota for lands in the Superior National Forest were based on fiscal year 1985 budgetary resources. The fiscal year 1986 authority, subject to a 4.3 percent sequester, will not result in outlays until (or after) the end of the current fiscal year.

Fiscal year 1986 receipts are still being collected in each of the budget account activities within this account, and the payments required to be made from such receipts have yet to be distributed. Using our analysis, sufficient fiscal year 1986 budgetary resources exist in all budget account activities involved to accommodate a 4.3 percent sequester.

#### CONCLUSION

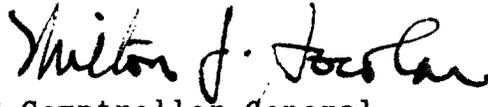
In summary, we do not agree with OMB's view that funds paid from receipts collected in fiscal year 1985 should be considered part of the sequestrable base for fiscal year 1986. In our opinion, payments made from fiscal year 1985 receipts should be considered outlays of fiscal year 1985 authority. The fiscal year 1986 sequestrable base instead consists of budgetary resources derived from receipts collected in fiscal year 1986, regardless of when payments are actually made.

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With regard to your request that we advise you of actions that may be taken to avoid disproportionate reductions in this account, we are informing OMB of our views, and requesting that it reexamine the treatment given to this account. If no further action is taken to release funds sequestered from fiscal year 1985 budgetary resources of the Grasslands special fund, we plan to issue a report to the Congress under section 1015(a) of the Impoundment Control Act of 1974 (2 U.S.C. § 686(a)).

We hope that the foregoing is of assistance to you.

Sincerely yours,

*for*   
Comptroller General  
of the United States