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

IN REPLY REFER TO: B-115398

October 14, 1977

The Honorable John J. LaFalce
House of Representatives

Dear Mr. LaFalce:

This is in further response to your letter of September 30, 1977, in which you asked several questions concerning the Impoundment Control Act of 1974 and the proposed rescissions of budget authority that were transmitted to the Congress in connection with the executive branch's termination of the B-1 Bomber and Minuteman III Intercontinental Ballistic Missile programs. You stated that these questions have arisen in light of the recent action by the House Committee on Appropriations rejecting the rescission requests. Your questions and our answers thereto follow.

> "In your opinion, does the Budget Act [Impoundment Control Act of 1974] permit the Executive to submit a second rescission proposal concerning the same funds? If such a second rescission proposal may be submitted, may the Executive use the pendency of the second rescission proposal to justify continued refusal to resume expenditure of the funds after the 45 day period for the first proposal has expired?"

The answer to the first part of this question is yes. There is nothing either expressly or by implication in the Impoundment Control Act of 1974 (Act), title X of Pub. L. No. 93-344, July 12, 1974, that precludes the President from submitting multiple requests to rescind budget authority. There would, however, be a distinction between the first rescission proposal and any later requests to rescind the same budget authority.

A rescission proposal under section 1012 of the Act is a special kind of legislative request. Not only does such a proposal ask the Congress to take action to rescind a part

or all of a prior appropriation act or other statute providing budget authority, but we have held that the proposal also carries with it the authority to withhold the budget authority in question during the pendency of the rescission request--by law, 45 days of continuous congressional session.

While the Act does not preclude multiple rescission requests, it would be totally inconsistent with the purposes of the statute to construe the Act as allowing the President to submit a second (or more) rescission proposal under the Act and to withhold the budget authority for yet another 45-day period. Taken to the extreme, such an approach would permit the executive branch to withhold indefinitely release of impounded funds that were the subject of previously unsuccessful rescission proposals. Similarly, there would never come into play the requirement of section 1012(b) of the Act for the budget authority to be made available for obligation or the Comptroller General's authority under section 1016 of the Act to initiate civil litigation to compel such releases. Clearly, the Act cannot be interpreted to operate in a way that effectively negates the procedures and safeguards that were established by its enactment.

Thus, in our view, once the 45-day period expires without favorable congressional action having been taken on a rescission proposal submitted under the Act, the impounded budget authority must be made available for obligation. This is not to say, however, that the executive branch is forever barred from renewing a rescission request. It obviously is free to do so, but the second request would only be a normal legislative proposal to rescind funds and is not one governed by the Act. In such a case, the 45-day withholding authority would not apply. In sum, we think the President can submit multiple requests for rescission but that, after a rescission proposal governed by the Impoundment Control Act is not acted upon favorably, the funds must be made available for obligation during the pendency of the later rescission proposals. The answer to the second part of the question, therefore, is no.

> "After the expiration of the 45-day period on a rescission proposal, could the Executive submit a second rescission proposal and, at the same time, submit

> a deferral proposal under Section 1013 of the Budget Act [Impoundment Control Act of 1974], seeking to defer continued expenditure of the funds pending a Congressional decision on the second rescission proposal?"

In our answer to the first question we said the executive branch was free to propose rescissions outside the authority of the Impoundment Control Act after a rescission proposal for the same budget authority was rejected by the Congress pursuant to the Act. In our answer to your second question we shall assume the second rescission proposal is one submitted outside the Act, but the deferral is one submitted pursuant to the Act.

In our recent report to the Congress, "Review of the Impoundment Control Act of 1974 After 2 Years," OGC-77-20, June 3, 1977, we recommended that the Act be amended to expressly--

> "[allow pursuant to the Act] for deferrals of funds after prior deferrals or rescissions of the money are turned down, <u>if</u> 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 the absence of a specific factual setting in which to address the issue raised by this question, and in the absence of the amendatory language we proposed, we can only provide you with our general reaction.

It is possible that, after the pendency of a rejected proposal to rescind budget authority, there could occur unusual events after the time the rescission was first proposed to the Congress; the new situation warranting approval of the rescission. Thus, it might develop that the Congress would favorably and expeditiously take action on a resubmitted rescission proposal for the same funds. In such unusual circumstances, we think it would be prudent for the President to delay implementation of the program while the later rescission request is under consideration. Accordingly, we think

that under unusual circumstances a deferral could be proposed under the Act while the Congress considered a second proposal to rescind budget authority previously rejected for rescission. However, we stress that determinations concerning the appropriateness of proposing deferrals while later rescission requests are pending can only be made on a case-by-case basis and we would hope that the executive branch would work closely with the Congress and this Office to resolve and deal with such situations.

> "Could the Executive submit a deferral proposal seeking to defer continued expenditure of funds for which a rescission proposal had previously been submitted and rejected, with such deferral to apply during the pendency of other Congressional action that would have the effect of deleting the funds in question?"

Again, we can hypothesize circumstances in which the Congress could or would take action to approve a rescission request outside the procedures of the Act--for example, including language in a supplemental appropriation Act rescinding the funds that were rejected for rescission under the Act's procedures. However, whether such circumstances exist or the extent to which they justify proposing a deferral during the pendency of such congressional action is a determination that can only be made on a case-by-case basis.

> "In the event your opinion is that the Executive may not take the actions contemplated in the preceding questions, are you prepared to institute civil proceedings under Section 1016 of the Budget Act immediately upon the expiration of the 45 day period relating to the first proposed rescission if the Executive has not taken steps to resume spending?"

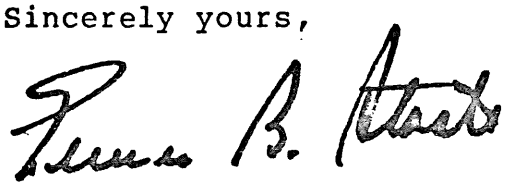
Should the executive branch not comply with what we consider to be its responsibility to make budget authority available for obligation, we would take such actions as are

necessary to compel the release of the illegally impounded funds, including the initiation of civil litigation under the Act.

For the present, we intend to monitor closely future actions by the executive branch in connection with the B-1 Bomber and Minuteman III programs as you have requested. We will report to you, as appropriate, major developments and findings.

We hope the foregoing will be of assistance to you.

Sincerely yours,



Comptroller General
of the United States