



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

3238A
128040

B-216664

September 26, 1985



128040

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

This letter reports a rescission of budget authority, appropriated to the Office of Refugee Resettlement, Department of Health and Human Services, that should have been, but was not, reported to the Congress by the President pursuant to the Impoundment Control Act of 1974.

Section 1015(a) of the Impoundment Control Act (2 U.S.C. § 686(a)) requires the Comptroller General to report to the Congress whenever he finds that any officer or employee of the United States has ordered, permitted, or approved the establishment of a reserve of budget authority, and the President has failed to transmit a special message with respect to such reserve. Because it appears that there are no plans to obligate these funds before they expire, we are reporting the withholding as a rescission proposal.

The rescission in question occurs in the Refugee and Entrant Targeted Assistance Program (the Program), administered by the Office of Refugee Resettlement (ORR). Funding for the Program was the subject of our decision B-219061, June 28, 1985. At that time, ORR had interpreted the Continuing Resolution which funded the Program (Pub L. No. 98-473, 98 Stat. 1837, 1963, Oct. 12, 1984) as providing for a \$50 million funding level in fiscal year (FY) 85. ORR regarded a carryover balance from FY 1984 of \$39.026 million as counting toward the \$50 million with only \$10.974 million in new budget authority available for FY 1985 under the Continuing Resolution. We, on the other hand, concluded that the Congress had intended that the \$50 million provided in the Continuing Resolution be in addition to the carryover from fiscal year 1984 resulting in a total of \$89.026 million available for obligation in FY 1985.

Until our June 28 opinion, the delay in obligating targeted assistance funds for FY 85 was the result of ORR's belief that \$50 million was the correct figure for the 1985 funding level. Moreover, there was at the time of our

GAO/OGC-85-18

033349

decision no reason to believe that the full amount of funding for the Program would not thereafter be made available. Accordingly, we did not report an impoundment at that time.

The Office of Management and Budget (OMB) has now apportioned for the Program in FY 85 a total of \$77.526 million. While there may be some basis under the language of the Continuing Resolution for that figure, our view remains, in light of the legislative history, that the correct amount is \$89.026 million.

Under the language of the Continuing Resolution, the amount intended to be available for the Program for FY 85 is the lesser of either (1) the FY 1984 rate of operations, which was \$77.5 million, or (2) the rate authorized by H.R. 3729 as passed by the House of Representatives, which was \$50 million. The lower of the two is \$50 million, and our June 28 decision held that Congress intended this \$50 million to be available in addition to \$39 million in carryover from FY 1984, resulting in a total availability of \$89 million.

There is an anomaly in this result: in the face of statutory language making available for the Program the lesser of two rates, neither of which apparently exceeds \$77.5 million, we concluded that the Continuing Resolution in effect permits the Program to operate at a funding level of \$89 million.

There may well be merit in the argument that if the \$39 million in carryover is to be added to the \$50 million authorization rate, the \$50 million rate should be adjusted to take this into account before it is compared to the \$77.5 million current rate. With that adjustment, the comparison is between an authorized rate of \$89 million in fiscal year 1985, including the carryover, and a "current rate" in FY 84 of \$77.5 million. The proper Continuing Resolution rate, the lesser of these two, would then be \$77.5 million. This approach at least avoids the anomaly of a funding level, \$89 million, that exceeds both of the reference points designated in the Continuing Resolution.

Nevertheless, we remain persuaded by the legislative history that the Congress intended to make \$50 million available and intended this to be in addition to the \$39 million in carryover funds. As we said in our June 28 decision, the language in the conference report supports this conclusion. The report refers expressly to the \$50 million figure as being

available for targeted assistance in FY 1985 and suggests that the entire \$50 million is intended to be new budget authority for FY 1985.

Accordingly, in fulfillment of our responsibility under the Impoundment Control Act of 1974 we are apprising the Congress of the unreported withholdings of budget authority. Because our opinion remains that \$89.026 million in budget authority is available for the Program for FY 85, whereas only \$77.5 has been apportioned, we consider that the difference, \$11.526 million, is being reserved from obligation without a special message having been transmitted as required by section 1012(a) of the Impoundment Control Act of 1974, 2 U.S.C. § 683(a).

This impoundment report may not ultimately result in release of the funds since they will not be available for obligation after September 30, and this report has the effect, by operation of law, of permitting the withholding to continue for 45 legislative days. For purposes of this report and based on the current congressional schedule, the 45-day period during which the funds may be withheld expires on November 15, 1985.



Comptroller General
of the United States