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Testimony before the House Committee on Budget: Budget Process Task Force; by Paul G. Dembling, General Counsel.

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The Impoundment Control Act of 1974 requires the President to report promptly to the Congress all withholdings of budget authority and to abide by the outcome of the congressional impoundment review process. The act has generally worked well, but possible refinements in the law and its administration were recommended. The Office of Management and Budget should specify the duration of proposed partial-year deferrals, identify impoundments of congressional "add-ons" to Executive branch budget requests, note whether previous impoundments have been proposed for each program, and improve the timeliness of presidential impoundment reports. Legislative recommendations included repeal of the requirement to report routine impoundments and provision for a means to reduce the 45-day period during which funds can be withheld pending rescission requests. The act should be amended to: require a statement of the exact duration of proposed partial-year deferrals, eliminate the 25-day waiting period before the Comptroller General can initiate legal proceedings to compel the release of impounded budget authority, and specify when impoundments may be proposed after prior impoundments for the same program have been rejected by the Congress. A possible legislative approach would permit an expedited congressional review of proposed curtailments under which the review procedure would not be self-executing; the Congress would specify in other statutes those programs to be subject to the procedure. (HTW)

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STATEMENT OF  
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Before the  
BUDGET PROCESS TASK FORCE OF THE  
COMMITTEE ON THE BUDGET  
UNITED STATES HOUSE OF REPRESENTATIVES  
ON  
THE IMPOUNDMENT CONTROL ACT OF 1974

Mr. Chairman and Members of the Task Force:

We appreciate the opportunity to discuss with you our experience under the Impoundment Control Act of 1974.

Today's hearing focuses upon Title X of the budget control legislation that was enacted in July 1974--known as the Impoundment Control Act of 1974. This Act creates the procedural means by which the Congress considers and reviews Executive branch withholdings of budget authority. The statute requires the President to report promptly to the Congress all withholdings of budget authority and to abide by the outcome of the congressional impoundment review process. By and large, the Impoundment Control Act has worked well.

The statute assigns several functions to the Comptroller General and GAO. We evaluate for the Congress impoundments reported by the Executive branch. We also report to the Congress impoundments which the Executive branch has failed to disclose and report. We identify undisclosed impoundments through our audit efforts and information provided to us by persons inside and outside the Government. Under certain circumstances GAO may sue an executive agency to compel the proper release of impounded funds.

Let me briefly summarize the key features of the Impoundment Control Act:

- There are two types of impoundments: rescissions and deferrals.
- Deferrals are temporary withholdings of funds while rescissions are requests to the Congress to cancel budget authority.
- Either House of Congress can reject a deferral by passage of a simple resolution. Passage of such an impoundment resolution requires the Executive to terminate the impoundment and to make the deferred funds available for obligation immediately.
- Requests to rescind the budget authority involve the entire legislative process since a bill or joint resolution passed by both Houses and signed by the President is necessary to accomplish a rescission. Under the Act, if a rescission bill is not passed within 45 days of continuous congressional session after the day on which the request is first received by the Congress, the funds withheld during the pendency of the request must be made available for obligation.

- The Comptroller General is authorized to report to the Congress undisclosed rescissions and deferrals. Impoundments reported by the Comptroller General are treated as though coming from the President.
- Complementary to this reporting process, the Comptroller General also is required to notify the Congress when an impoundment has been improperly classified by the President. Such a report triggers the appropriate congressional review mechanism and nullifies the process initiated by the prior presidential message.
- The Comptroller General is empowered to sue the Executive branch to make funds available for obligation when he finds the Executive branch has not complied with the statute's requirements that the funds be released.

While we believe the basic framework of the Act is sound, we have suggested a number of possible refinements to the law and the way in which it is administered by the Executive branch. In our view, implementation of these recommendations would streamline and clarify the operation of the statute. All of our administrative and legislative recommen-

dations are discussed in detail in our report to the Congress on the first two years of operation of the Impoundment Control Act. A summary of the status of the recommendations for administrative improvements that we made to OMB in our June 1977 report is appended to my statement.

On the administrative side, we recommended that OMB specify the duration of proposed partial-year deferrals; identify all impoundments of congressional "add-ons" to Executive branch budget requests; note whether there have been previous impoundments proposed for each program in which withholdings currently are proposed; and improve the timeliness of presidential impoundment reports.

Foremost among our legislative recommendations is the repeal of the requirement to report routine impoundments in the form of budgetary reserves pursuant to the "Antideficiency Act" or otherwise specifically authorized by law. Our experience suggests that the current requirement to report these impoundments produces little congressional reaction and greatly increases paperwork and administrative burdens on the Executive branch, the Congress and the GAO. Excluding routine impoundments would allow the Congress to focus on the policy issues that precipitated the Act's passage. It should also have the beneficial effect of reducing the expense and time required to process impoundment reports to the Congress.

Our other legislative recommendations include providing a means to reduce the 45-day period during which funds can be withheld pending rescission requests. The current 45-day period of continuous session for consideration of rescissions often extends well beyond the calendar day equivalent; and the actual duration of the rescission period is uncertain at the time a proposal is submitted. We believe that the more certain time period of 60 calendar days would better serve the interests of all parties. We also believe it would be helpful to amend the Act so that the Congress can express its disapproval of proposed rescissions without having to wait for the statutory rescission period to expire. This could be done by providing a mechanism under which either House, by simple resolution, could express its disapproval of a proposed rescission. The waiting period would then stop and the funds being withheld pending rescission would have to be made available for obligation.

We also suggested amending the Act to: require a statement of the exact duration of proposed partial-year deferrals; eliminate the 25-day waiting period before the Comptroller General can initiate legal proceedings to compel the release of impounded budget authority; and specify when impoundments may be proposed after prior impoundments for the same program have been rejected by the Congress.

Finally, since our June 1977 report on the Impoundment Control Act, certain events took place which demonstrate limitations on the applicability of the Impoundment Control Act as a congressional oversight tool. I refer to the President's curtailment of the B-1 bomber and Minuteman III missile programs. In these programs, the Executive branch took steps to cancel certain aspects of B-1 bomber and Minuteman III production (such as termination of production contracts) before notifying the Congress. In the case of the B-1 bomber, stop-work orders were issued on June 30, 1977, yet the Congress was not notified of the already implemented change in program plans until July 19, when the President proposed to rescind funds in excess of those needed to pay off liabilities created in part by the curtailment action. Similarly, contract stop-work and termination orders were sent to the major Minuteman III contractors on July 11, 1977, but it was not until July 26, 1977, that the matter was formally presented to the Congress through a proposed rescission of budget authority.

Several Members of Congress expressed concern that curtailments of major programs were not more promptly brought to the attention of the Congress. The Impoundment Control Act does not apply to program curtailment or termination decisions as such, but only deals with budgetary impacts. That is, so long

as budget authority is to be used, the Impoundment Control Act does not come into play. In light of this, several Members of Congress asked us to consider how the Congress could assure its review of proposed curtailments or terminations by the Executive branch in the future prior to their implementation.

We responded to these concerns in letters to key legislative officials and representatives of the Executive branch. Our letter suggested a possible legislative approach to permitting an expedited congressional review of proposed curtailments. Later, we drafted legislation that provides a review procedure under which Congress could disapprove proposed curtailments within 14 days after they are submitted. (A copy of the draft is also appended to my statement.) Under this approach, the review procedure would not be self-executing; the Congress would specify in other statutes those "programs" to be made subject to the procedure. Our proposal was not designed as a definitive solution to the program curtailment problem; but it may serve as a focus for consideration of the many issues which which arise here.

Our contacts with Members of Congress and their staffs indicate interest in the advantages and disadvantages of the idea as well as the desire to study closely how such a procedure might be implemented.

Mr. Chairman, we would like to submit for the record copies of materials that we believe would be of interest to the Task Force in its deliberations concerning the effectiveness of the Impoundment Control Act of 1974. These materials include selected correspondence relating to the President's curtailment of the B-1 bomber and Minuteman III missile programs, and the draft of a legislative mechanism requiring prior congressional consultation before program curtailments could be implemented.

This concludes my prepared statement, Mr. Chairman.

STATUS OF RECOMMENDATIONS TO OMB TO  
IMPROVE IMPOUNDMENT REPORTING

GAO Recommendation

OMB Response/Status

--Expedite the reporting of  
impoundments.

--Still a problem from time to  
time. See our report on 8th  
special message for fiscal  
year 1978, dated June 6, 1978.

--Specify deferral ending  
dates.

--OMB disagreed with recommen-  
dation. Not done.

--Identify prior impoundment  
proposals in each message.

--OMB agreed. Has been done.

--Identify congressional "add-  
on" budget authority when  
proposed for impoundment.

--OMB agreed when the "add-on"  
influences the decision to  
impound.

--Identify cognizant Executive  
branch official to contact  
on each message.

--OMB disagreed. Not done.

DRAFT BILL

Sec. \_\_\_\_\_. (a) For purposes of this section--

(1) "program" means any project, activity, or weapons system expressly made subject to this section by law, in amounts specified in appropriation acts.

(2) "Comptroller General" means the Comptroller General of the United States;

(3) "curtail" means to discontinue, in whole or in part, the execution of a program, resulting in the application of less budget authority in furtherance of the program than provided by law.

(4) 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 14-day period referred to in subsection (b) (2) of this section. If a special proposal is transmitted under subsection (b) of this section during any Congress and the last session of such Congress adjourns sine die before the expiration of 14 calendar days of continuous session (or a special proposal 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 14-day period referred to in subsection (b)(2) of this section (with respect to such special proposal) shall commence on the day after such first day.

(5) "disapproval resolution" means a concurrent resolution which expresses disapproval of a special proposal transmitted under subsection (b) of this section.

(6) "special proposal" means a proposal sent by the President to the Congress pursuant to subsection (b) of this section notifying the Congress of the Executive branch's determination to curtail a program.

(b) Proposals to curtail programs.

(1) Whenever the Executive branch has determined to curtail any program the President shall transmit to both Houses of Congress a special proposal specifying--

- (A) the program proposed to be curtailed;
- (B) the department or establishment of the Government which is responsible for implementing the program;
- (C) the reasons why the program should be curtailed;
- (D) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effects of the proposal; and
- (E) all facts, circumstances, and considerations relating to or bearing upon the proposal, and to the maximum extent practicable, the estimated effect of the proposal upon the purposes which the program was to accomplish.

(2) No actions shall be taken to curtail any program for a period of 14 days of continuous session after the date on which a special proposal is received by the Congress. If, during this 14-day period, a disapproval resolution is passed, the curtailment shall not be implemented.

(3) Passage of a disapproval resolution shall have the same force and effect as an impoundment resolution passed pursuant to section 1013(b) of the Impoundment Control Act of 1974.

(4) Passage of a disapproval resolution shall terminate the 45-day period referred to in section 1012(b) of the Impoundment Control Act of 1974.

(c) Transmission of messages; publication

(1) Each special proposal transmitted under subsection (b) of this section 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 proposal shall be printed as a document of each House.

(2) A copy of each special proposal transmitted under subsection (b) 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 subsection (b) of this section the Comptroller General shall review each special proposal and inform the House of Representatives and the Senate as promptly as practicable with respect to the facts surrounding the proposal.

(3) If any information contained in a special proposal transmitted under subsection (b) of this section is subsequently revised, the President shall transmit to both Houses of Congress and the Comptroller General a supplementary special proposal stating and explaining such revision. Any such supplementary special proposal shall be delivered and printed as provided in (1) of this subsection. The Comptroller General shall promptly notify the House of Representatives and the Senate of any changes in the information submitted by him under (2) of this subsection which may be necessitated by such revision.

(4) Any special proposal transmitted under subsection (b) of this section and any supplementary special proposals transmitted under (3) of this subsection, shall be printed in the first issue of the Federal Register published after such transmittal.

#### (d) Reports by Comptroller General

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 has determined to curtail a program with respect to which the President is required to transmit a special proposal under subsection (b) and that the President has failed to transmit a special proposal with respect to such determination, the Comptroller

General shall make a report thereon. Such report of the Comptroller General shall have the same effect as if it were a special proposal transmitted by the President under subsection (b) of this section, and, for purposes of this section, such report shall be considered a special proposal transmitted under subsection (b) of this section.

(e) Suits by Comptroller General

If under subsection (b)(2) of this section, a curtailment proposal is disapproved, 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 enforce the requirements of subsection (b)(2) through (4) of this section, as applicable, and the court is hereby expressly empowered to enter in the civil action, against any department, agency, officer, or employee any order which is necessary or appropriate to compel compliance with such requirements.

(f) This section may be cited as the "Program Curtailment Control Act of 1978."

## "PROGRAM CURTAILMENT CONTROL ACT OF 1978"

### EXPLANATORY STATEMENT

The draft legislation would provide a mechanism for prior congressional review and potential disapproval of executive branch decisions to curtail programs. This mechanism would afford Congress a preliminary, expedited review at the decision stage. The purpose of the expedited review is to alleviate potential shortcomings in the operation of the Impoundment Control Act either where a curtailment decision does not involve an impoundment subject to that Act or where unilateral implementation of a curtailment decision would lessen the effectiveness of later congressional review of any impoundment which is involved.

Program coverage. The legislation enacts as permanent law a curtailment review procedure, but it does not identify the programs subject to the procedure. This is left for congressional action in other laws. Thus the only criteria in the definition of "program" (subsection (a)(1)) are that a project, activity or weapons system be expressly made subject to the curtailment procedure by another statute, and that the program amount be specified in an appropriation act.

It would be extremely difficult to define in general terms what types of programs should be subject to the curtailment procedure, or even to define "program" in the abstract. The identification of covered programs is really a matter of congressional preferences and priorities at any given time. The assumption underlying the legislation is that Congress, applying whatever criteria it sees fit, will list in other statutes the specific programs to be covered. This could probably be done most conveniently through the annual budget process. Likewise, requiring that the program amount be specified by law avoids problems in ascertaining the funding level desired by Congress where budget authority for a covered program is provided by means other than a discrete line-item appropriation.

2 Application of curtailment procedure. The review procedure is triggered by an Executive branch decision to "curtail" a program which has been made subject to the bill. The definition of "curtail" (subsection (a)(3)) requires that the Executive branch decision result in a reduction of budget authority applied in furtherance of the program. As noted above, the level of budget authority for this purpose would be the amount so specified in an appropriation act. The reduction relates to the use of funds "in furtherance of the program." Thus, although the full amount of budget authority may be spent in some manner, e.g., to pay contract termination costs or other liabilities incident to the curtailment, such a use of funds still involves a reduction in funding for affirmative program purposes which triggers the review provisions.

Curtailment review procedure. The review procedure would generally be similar to the procedure for reviewing deferrals of budget authority under the Impoundment Control Act, except that congressional disapproval would take the form of a concurrent resolution. The President would report a proposed curtailment decision to Congress, together with appropriate information (subsection (b)), and supplementary reports would be made for any revisions (subsection (c)(3)). The proposal, and any supplementary reports, would be printed in the Federal Register (subsection (c)(4)).

A copy of the proposal and any revision would also be transmitted to the Comptroller General, who would submit comments to the Congress (subsection (c)(2)). The Comptroller General would report to the Congress for review and action proposed curtailment decisions which the Executive Branch fails to report (subsection (d)). The Congress would have 14 days of continuous session in which to disapprove a proposed curtailment (subsections (b)(2), (a)(4)-(5)). After a proposal is disapproved, the Comptroller General could bring judicial enforcement actions if necessary to effect compliance with the disapproval and assure that any impounded funds are made available (subsection (e)).

Relationship to impoundments. The curtailment review procedure would not diminish congressional review opportunities under the Impoundment Control Act; rather, the two

procedures would be complementary. When the curtailment proposal involves a deferral or rescission of budget authority, the requirements of the Impoundment Control Act would also attach. If Congress disapproves the curtailment, this action would, in addition to precluding implementation of the curtailment as such, require that any impounded budget authority be made available (subsection (b)(3) and (4)). On the other hand, even if Congress fails to disapprove the curtailment within 14 days, the Impoundment Control Act review period would continue to run for the remainder of the statutory 45 days. Thus Congress would retain in full its present review authority over any impoundments involved in a curtailment proposal.