UNITED STATES GENERAL ACCOUNTING OFFICE

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Testimony of

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Before the Committee on Rules

U.S. House of Representatives

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Mr. Chairman and Members of the Committee:

It is a pleasure to be here this afternoon to discuss the impact of the Chadha decision on the authorization/appropriation process. I am particularly pleased to have the opportunity to state for the record the General Accounting Office's views on the continued validity of the Impoundment Control Act after Chadha. I have a short prepared statement, and then I will answer any questions.

## Impoundment Control Act

We have said before that the Impoundment Control Act represents an ingenious and significant compromise. It harmonized the different Senate and House views of how Executive impoundments should be handled and put aside the seemingly irresolvable conflict over what constitutional or other authority sanctioned Executive impoundments in the first place. At the same time, the unmistakable philosphy underlying the act provided a means by which the Congress strengthened its control over Executive impoundments.

It is our view that the Supreme Court's decision in Immigration and Naturalization Service v. Chadha does not compel any change to the procedures established by the Impoundment Control Act. Indeed, they should continue to be followed. We take this position, because we think that the act differs significantly from the type of situation involved in Chadha. Moreover, the mechanism created by the act greatly assists in making appropriation implementation decisions. We can think of no substitute which would preserve the same flexibility for both the Executive and Legislative Branches. We feel strongly that the mechanisms of the Impoundment Control Act, including the reporting requirement and the opportunity for congressional response, should not be abandoned or altered unless the courts specifically require this action.

The Impoundment Control Act provides for dealing with two types of impoundments in separate ways. Under the act, the President is required to report all impoundments to the Congress. Funds impounded must be made available for obligation if the Congress registers disapproval.

For budget authority which the President seeks to have rescinded, approval is registered by the enactment in both Houses of a required recission bill, and disapproval is registered by failure of both Houses to pass the required rescission bill within a period of 45 days. The rescission procedures under the act clearly are not affected by Chadha. To effect a rescission under the act requires full legislative action -- passage by both the House and the Senate and approval by the President. The Court in Chadha would certainly uphold this procedure.

In the case of deferrals, congressional approval is registered by inaction and dispproval is registered through enactment in either House of a resolution of disapproval. Deferrals under the act are effected when proposed and the failure to act on a disapproval resolution denotes congressional acquiescence in the specific deferral proposal. On the other hand, enactment of an impoundment resolution expresses both Congress's objection to the deferral itself and skepticism about the statutory or other authority claimed to support it.

In our opinion, the legislative veto proscribed by the Chadha decision is distinguishable from the resolution of disapproval permitted under the Impoundment Control Act in instances in which the President proposes a deferral of budget authority. In Chadha, the Court ruled that executive action taken under substantive authority conferred by legislation can only be overturned by full legislative action; that is, by passage by both Houses of the Congress and approval by the President. Any attempt by the Congress to reserve in one or both Houses or in Committees the authority to overturn any previously delegated executive action without satisfying the requirements for passage of legislation was held invalid under the Constitution.

The question of whether the Executive has been delegated the authority to postpone spending an appropriation is not universally clear. An appropriation for formula grants or which otherwise sets up entitlements to receive funds from the Federal Government may not properly be deferred at all. In such case, a resolution of disapproval is merely a statement to the Executive that one House of the Congress objects to continuation of the unauthorized withholding of budget authority. As this would not constitute a withdrawal of authority previously delegated, it is not covered by the Chadha decision.

At the other extreme are instances in which the Executive proposes to defer spending for reasons directly related to the program in question. Such deferrals are specifically authorized by the Antideficiency Act, 31 U.S.C. § 1512. Any attempt to retract that authority through a resolution of disapproval would fall within the ambit of Chadha and be unallowable. However, in all of our experience since 1974, we are not aware that the Congress has ever passed an impoundment resolution disapproving a deferral specifically authorized by the Antideficiency Act.

Generally, proposed deferrals fall somewhere between these two extremes. They are neither clearly authorized nor clearly unauthorized. Such instances often arise when a proposed deferral would disrupt the anticipated timely and orderly implementation of Government programs for which budget authority is provided by duly enacted law. When this happens Congress has the opportunity under the Impoundment Control Act to review the proposed deferral, its supporting authority and its probable impact. Weighing these considerations, Congress can then decide to acquiesce in the deferral even though it may change the original expectations as to how a program would

be managed. However, under such circumstances, if the Congress objects to a deferral which dislocates program implementation and which lacks clear authority, its objection does not need to rise to the level of legislation to be effective. This, in our view, is the truly inspired accommodation of the Impoundment Control Act. It provides "a workable mechanism for balancing the powers of the executive and legislative branches with regard to subtle and complex issues not readily amenable to more straight forward consideration on a case-by-case basis." B-196854, February 15, 1984.

Because it allows considerable flexibility to both the Legislative and Executive Branches, the act has been effective for 10 years as a peace treaty to resolve interbranch skirmishes over claimed authority to impound, and to eliminate the perception that impoundment power was being abused. As a practical matter, the continued validity of the deferral procedure will be resolved on a deferral-by-deferral basis by the President and the Congress. If they cannot agree, it will have to be resolved by the courts. For the present, the Executive Branch has expressed its intent to continue to transmit the special messages required by the act, and we are unaware of any indication that the validity of the act's procedures will be challenged.

If our views are correct there should be no need to amend the Impoundment Control Act. Neither should it be necessary to incorporate impoundment resolutions into appropriations bills. However, we see nothing objectionable about using a convenient regular or supplemental appropriation bill to accomplish disapproval of a deferral.

## Riders

In our view, the Chadha decision has no effect on the validity of riders on appropriation bills. These riders embody some express limitation or restriction on how the appropriated funds may be expended. For example, "None of the funds appropriated by this act may be used for purpose X". Since these riders are part of the appropriation bill and are enacted into law under the prescribed constitutional procedure, Chadha does not affect their validity.

We forsee the increased use of riders by the Congress after Chadha. The Supreme Court, in striking down the legislative veto, indicated that the Congress would have to find other ways of controlling executive action. The rider,

which specifically limits the manner in which the Executive Branch may use appropriated funds is an effective way to accomplish this purpose.

## Non Statutory Reprogramming

Where there is no statutory procedure enacted to regulate the redirecting of budget authority from one purpose to another within an appropriation account, and the Congress enacts a lump-sum appropriation without limitations, it is implicitly conferring the authority to reprogram. There are a number of informal limitations that specific committees have placed on the authority of certain agencies to reprogram. Some of these have been incorporated into regulations by the agencies themselves. An example would require that the agency "request" and the authorizing committee "approve" any desired reprogramming. Such informal, nonbinding limitations may continue to be observed, even after Chadha. However, an agency is legally entitled to disregard these informal procedures, although it is unlikely that it would choose to do so.

A statutory requirement to accomplish the same purpose, that is, committee approval of or a committee veto over reprogrammings of lump sum appropriations, would not be

permissible under Chadha. Such a statutory requirement would amount to an attempt to reserve to the Congress the authority to overturn an executive action a reprograming decision--pursuant to an implied delegation of authority in the lump sum appropriation, without use of the constitutionally-mandated legislative procedure. Statutory requirements to report to certain committees before proceeding to reprogram or to delay reprogramming action for a specified waiting period of course remain valid.

## Constitutional Amendment

Your Committee has asked our views on a possible constitutional amendment granting to the Congress the legislative veto and, as a trade-off we assume, a line item veto for the President. We do not think such an amendment is desirable.

First, we are not certain that the first part of the amendment is necessary at this time. Given the fact that Congress itself drafts proposed legislation in the first instance, it may devise other effective and constitutional

ways to control Executive action. This would make the flexibility previously accorded by the legislative veto less important.

Second, even if an amendment to secure the legislative veto were desireable, we would object to it being tied to an item veto for the President. In our opinion the line item veto would substantially shift the power of the purse from the Congress to the President. In effect, with such a veto power the President would be making the laws as well as carrying them out. The authority to make appropriations is perhaps the most important power the Congress has under the Constitution, and it should not be permanently sacrificed under any circumstances.

I will be happy now to answer any questions you may have.