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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D C 20548

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July 24, 1984

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The Honorable Jack Brooks
Chairman, Committee on Government
Operations
House of Representatives

Dear Mr. Chairman:

This responds to your request for comments on H.R. 2025, a bill to amend the Congressional Budget and Impoundment Control Act of 1974 to improve the congressional budget process, and for other purposes. The bill requires major changes to the budget process and encompasses a wide variety of key issues, including the concurrent resolution process, the reconciliation process, a comprehensive appropriation bill, an automatic continuing resolution, a federal credit control system, off-budget agencies, a capital investment budget, dedicated revenue incentives, and the impoundment control process.

The proposed changes would improve the effectiveness of the congressional budget process and we support their objectives. Because of the number and diversity of the changes proposed by H.R. 2025, our comments are covered in the enclosure to this letter. Our comments are summarized below.

We endorse the provisions of Title I, with some modification, that provide for formalizing the current budget practices pertaining to concurrent resolutions and the reconciliation process. We have some concerns about the provisions which call for the establishment of a comprehensive appropriation bill and an automatic continuing resolution.

We support the objectives of Title II of the bill to create a formal credit control system. Such a system should improve the understandability and visibility of federal credit activities and permit statutory control over credit activities similar to that afforded to direct spending programs.

We also support the objective of Title III to bring all off-budget transactions into the unified budget. This would increase visibility of the government's spending plan and make the budget more accurately portray the government's activities. Also, it would subject current off-budget activities to the discipline of the budget process and competition with other budget programs.

Title IV of the bill would establish requirements for information the Congress needs to develop a policy approach to capital investments. Although we support that objective, we are concerned about the inclusion of non-tangible items as well as the exclusion of defense-related assets in the definition of capital investment. We are also concerned about the feasibility of developing credible estimates of certain capital investments.

We oppose the provisions of Title V making certain dedicated revenues not subject to the budget enforcement process. We do not believe that such revenues and outlays should be insulated from the rest of the budget process. In addition, the dedicated revenue proposal could introduce an incentive to establish dedicated revenue financing for programs where it may be inappropriate.

Titles VI and VII of the bill would make various substantive and technical amendments to the Impoundment Control Act, including the extension of the provisions of the act to direct loan authority and loan guarantee authority. Briefly, we are of the view that direct loan authority is already subject to the act and loan guarantee programs for specifically named recipients should be removed from the bill. We do not endorse the bill's inflexible prohibition on reimpounding funds, but instead support amending the act to specify the circumstances under which such reimpoundments would be permitted. Finally, we discuss a number of changes and suggestions we believe are necessary to conform definitions throughout the bill and to correct some technical errors.

In the last year, we undertook a general assessment of the government's financial management systems. We have concluded from this work that the processes and systems that support policymaking and management are obsolete and inefficient. The difficulties experienced by the Congress in its budget process are the most visible sign of some basic, underlying problems in the federal budget process and in the entire federal financial management system. These systemic problems include the lack of good financial information and reporting on the costs and performance of government operations, organizations, projects, and programs.

Our current financial management systems are outmoded, and they leave much to be desired when it comes to the integrity, comparability, completeness, and timeliness of information on the operations, financial condition, and performance of the government. The lack of such information limits government decision-making at all levels, including the Congress. In addition, our current financial management system is costly, inefficient, and does not take full advantage of modern computer and telecommunications technology. Since these systems are the primary means of obtaining data for input to the congressional budget process, we do not believe the Congress can have confidence in

the information upon which it is making funding decisions and carrying out program oversight.

We can no longer expect to manage government with systems, procedures, and concepts designed for an era when government was simpler and smaller. We believe it is time to begin building a modern financial management system of the federal government. This system should have the following key elements:

1. Strengthened Accounting, Auditing and Reporting

   Effective financial management must start with complete, reliable, consistent and timely information. Government financial systems must be designed to produce that information. Routine and special reports must be timely, useful, and readily understandable, and the reliability of the information must be assured through effective auditing procedures.

2. Improved Planning and Programming

   Many of the most pressing national issues cannot be adequately considered using a narrow, short-term focus. A modern financial management system should include a structured process for considering those issues, one which focuses attention on major issues, identifies alternative courses of action and analyzes their probable future consequences.

3. Streamlined Budget Process

   The federal budget process must be made more manageable if it is to be effective. Reform is needed in both the Congress and the executive branch. This effort should concentrate on eliminating unnecessary repetition, detail, and obstacles to action. The system and its operating procedures must be designed so that program managers, policy officials and Members of Congress can focus on the difficult budget choices that must be made. Also, a streamlined budget process should deal with a comprehensive, unified budget.

4. Systematic Measurement of Performance

   Effective management of resources requires examining the results of government activities as well as their costs. The financial management system must be designed to provide consistent data about both performance and costs as a basis for assessing the efficiency and efficacy of operations.

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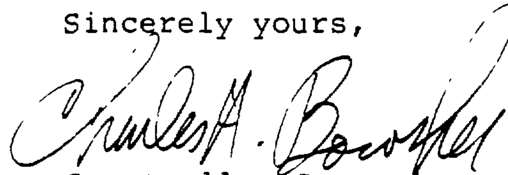
I appreciate the opportunity to comment on this bill. It addresses a number of budget related subjects that this office has been interested in and concerned about for several years. I hope our comments will assist your committee in its consideration of ways to improve the Nation's budget process.

Sincerely yours,



Comptroller General
of the United States

Enclosures

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bc:

Mr. Socolar (OCG)
Mr. Havens (OCG)
Mr. Van Cleve (OGC)
Ms. Melody (OGC)
Mr. Sexton (OP)
Mr. Hagenstad (OCR)
Mr. Goldstein (OQA)
Mr. Thompson (OCE)
Mr. Wolf (AFMD)
Mr. Goldbeck (AFMD)
Mr. Hunter (AFMD)
Mr. Jenney (AFMD)
Mr. O'Neill (AFMD)
Legislative Digest
Index and Files
Index Digest

COMMENTS ON H.R. 2025

H.R. 2025 would amend the Congressional Budget and Impoundment Control Act 1974 to improve the congressional budget process, establish a federal credit control system, include transactions of off-budget agencies in the budget, establish a capital investment budget, provide for dedicated revenue incentives, and extend the provisions of impoundment control to federal credit activities. These changes are proposed to improve the effectiveness of the Congressional budget process. Many of these changes have already been made or tested by the Congress for several years and the bill merely formalizes them.

GAO has addressed a number of the subjects contained in the provisions of H.R. 2025 in prior comments on pending legislation, testimony, and reports. In general, we favor most of the proposed amendments with certain changes noted in the following sections.

CHANGES TO THE CONGRESSIONAL BUDGET PROCESS

Title I of H.R. 2025 would require major changes in the congressional budget process, although some of the provisions are currently used informally. These changes generally have merit. The bill would formalize current practices on multiyear budgeting, delayed enrollment of appropriation bills, single budget resolutions, and expanded allocations of totals to committees.

It would also permit Budget Committee reestimates of figures in the most recently agreed to budget resolution and permit the Budget Committees to offer amendments to bills or resolutions to meet reconciliation targets. Title I would, in addition, mandate a comprehensive appropriation bill if the Congress has not completed appropriations actions by September 20 and an automatic continuing resolution to avoid funding gaps.

We endorse the provisions of Title I with some modifications as discussed in the following sections.

Multiyear budgeting

Title I of the bill formalizes multiyear budgeting by requiring the concurrent resolution amounts to cover three fiscal years instead of one. Congressional Budget Office (CBO) reports, summaries, and projections will also tabulate budget figures for three fiscal years, and reconciliation directions contained in the budget resolution will cover three years. Only budget year numbers are binding since ceilings, section 302(a) allocations of new budget authority and outlays, and deferred enrollment of

bills or resolutions can be enforced only for the first of the 3-year budget figures. We believe that multiyear budgeting offers the potential for better long-term budget analysis, linkage of present with future needs, and improved budgetary control. Multiyear planning would further be improved if the outyear budget numbers were also made binding, but this would require some experimentation and further development, since there are some rather difficult estimating problems which we feel would result in extensive adjustments in subsequent years. There are advantages to an annual budget, if the process is streamlined and supported by modern financial management systems.

Delayed enrollment

Title I provides that bills that cause subdivisions and allocations of discretionary funds to be exceeded or that cause revenue to fall below total appropriation levels set in a concurrent resolution shall not be enrolled until October 1. This is mandatory for all discretionary budget authority, entitlements, direct loans, and guaranteed loans. It allows the Congress to see the cumulative effect of spending bills before completing action on the budget and eliminates the vulnerability of the last bill scheduled for floor action. We believe the process has merit. It is a mechanism that has already proved fairly effective in allowing the Congress to see the results of its actions.

However, it contributes to the number of decisions required at the end of the process, and we are concerned that the October 1 date is too late in the schedule, particularly since Title I, as revised, would mandate a comprehensive appropriation bill if Congress had not completed appropriations action by September 20.

Single budget resolution

The Budget Act requires two concurrent resolutions on the budget--the first on May 15 and the second on September 15. Title I of H.R. 2025 eliminates the second concurrent resolution and makes the first one binding. The present May 15 timetable and the option to revise the budget resolution are retained. The single binding resolution is attractive because it eliminates the repetition of the second resolution and permits additional time for the reconciliation process. This change would formalize the procedures currently practiced by the Congress in the budget process.

Allocation of totals to committees

Title I would expand the joint explanatory statement accompanying a conference report allocating total budget authority and outlays to House and Senate Committees. It would require further allocation to be made between current level (amounts

provided or mandated by existing law) outlays and new budget authority and discretionary action (amounts to be provided or mandated by laws assumed to be enacted) outlays and new budget authority. In addition, committee subdivisions to subcommittees would be required to be allocated on the same basis. The bill would create a point of order to consider any spending or credit bill under a committee's jurisdiction prior to the subdivision to its subcommittees. The bill formalizes procedures already practiced and mandates compliance by the various committees. We believe the new requirement is worthwhile since it provides additional information which would be helpful to the Congress in making budget decisions.

Reestimates in concurrent resolutions

Title I provides that from time to time the House and Senate Committees on the Budget shall confer on reestimates of the most recently agreed to budget resolution. By majority vote of both committees they shall certify any adjusted figures to the Speaker of the House and the President of the Senate and shall publish a report explaining the nature of the reestimates. Such adjustments are not to include changes in budget policies. Currently, the Budget Act permits the revision of a concurrent resolution only if the two Houses adopt a new concurrent resolution before the end of the fiscal year under review. For the past several years revised totals of the previous fiscal year have been included in the first budget resolution for a fiscal year. In our opinion, a good budget system must allow for change. However, the criteria for such change should be defined in the strictest possible terms. We believe that the new procedures simplify the congressional budget process and add flexibility to the decision making process.

Reconciliation process

Title I would change the reconciliation process to permit the Budget Committees to offer amendments to any bill or resolution where a committee failed to meet its reconciliation target. Currently, a committee's recommendations to meet its target are not substantively changed by the Budget Committees.

Title I also provides that reconciliation directions contained in a budget resolution can cover all types of programs, including total budget authority, total spending authority, revenues, debt limits, total credit activity, and total off-budget programs. The Budget Act presently provides reconciliation for new budget authority, new spending authority, new entitlements, budget authority initially provided for from prior years revenues, and debt limits. Sums of money that are mandated to be spent and revenues that are required to be collected according to existing legislation are not included. We believe that to better manage budget dollars it is desirable for the budget process to expand the number of options for realizing

budgetary savings and program changes. We support this provision since it would formally allow the Congress to make changes to the "controllable" as well as the "uncontrollable" portion of the budget which in fiscal year 1982 comprised about 75 percent of federal spending.

The bill also would require that the Congress complete action on any reconciliation bill or reconciliation resolution not later than 60 calendar days after the date of the budget resolution which contains the reconciliation instructions. Currently, the Budget Act requires this to be completed by September 25. We believe that the proposed change would have the advantage of adding more flexibility to the present reconciliation process.

Comprehensive appropriation bill

The bill would require that if the Congress has not completed action on all regular appropriations by September 20 for the fiscal year beginning on October 1, the Committees on Appropriation shall report to their respective Houses a comprehensive appropriations bill for the fiscal year. This comprehensive bill would cover all appropriations bills not already enacted. Final action by the Congress on a comprehensive appropriations bill would be due on or before September 30. We share the concern which underlies the inclusion of such a provision in this bill. However, we are not sure that the provision itself would solve the problem of late appropriations bills. The same factors that delay individual bills may have the same effect on a comprehensive bill. It may be possible to make the provision more effective by adding a prohibition against non-germane riders as a means to provide expedited handling of the bill. On the other hand, even if such changes are made to the provision, its enactment might result in a incentive to further delay action on individual bills to get the advantage of this provision. Congress may wish to consider these points before reaching a judgement on establishing such a procedure.

Automatic continuing resolution

The bill provides that if, by October 1, no sums have been appropriated for a program, project, or activity for which sums were appropriated in the preceding fiscal year, such sums are automatically appropriated for the continuation of the program, project, or activity for the fiscal year. The programs, projects, and activities will be continued at a rate based on the total amount available for obligation in the previous year, except programs mandated by law. This provision would not apply if an appropriation bill is enacted providing such funding or, if the appropriation bill which normally funds such program, project, or activity is enacted without providing such funding. We

have previously reported to the Congress on the negative consequences of ending a fiscal year without new appropriations and the necessity of enacting a continuing resolution to avoid funding gaps. Not only is there a serious disruption of program activities and productivity, but also there is anxiety and confusion about the possible shut down of government operations because funds are not available.

We have recommended that permanent statutory authority be enacted to automatically continue funding during periods of lapsed appropriations to minimize the disruptive effects of lapsed funding. This will allow agencies to incur obligations, but not expend funds, when appropriations expire (except where program authorization has expired or Congress has expressly stated that a program should be suspended during a funding hiatus pending further legislative action). This recommendation was included in our report "Funding Gaps Jeopardize Federal Government Operations," GAO/PAD 81-31, March 3, 1981.

The provision of the bill establishing an automatic continuing resolution is a more far-reaching solution than we have recommended. It would provide for greater stability for Federal managers and recipients of Federal funding. Agencies would be able to plan and manage without any threat of fiscal disruption. The provision, however, could reduce the incentive for prompt enactment of regular appropriations bills by making the consequences of that failure rather mild. Congress should consider these effects before reaching a final judgement.

FEDERAL CREDIT ACTIVITIES

Title II of H.R. 2025 establishes formal procedures for setting targets and ceilings, in the congressional budget process, for loans and loan guarantees under federal credit programs. The purpose is to provide a statutory basis for a federal credit control system that has been practiced by the Congress for several years but is not legally mandated. Title II would permit the exercise of statutory control over credit activities similar to that done for direct spending activities. Also, it would provide the Congress and the executive branch with a systematic mechanism for reviewing the volume of total federal credit activity and a systematic way of considering the resource allocation effects of federal loans and loan guarantees.

The Congressional Budget Act of 1974 requires that the Congress establish fiscal year levels for budget authority, outlays, revenues, deficits, and public debt limits. Title II, as revised, requires the procedures within the congressional budget process to be expanded to the setting of targets and ceilings for the total gross obligations for the principal amount of direct loans and the total gross commitments made for loan guarantees during each fiscal year. The bill requires that these ceilings

and targets be included in congressional budget documents, such as the concurrent resolution; the March 15 views and estimates reports to Budget Committees; the joint explanatory statement accompanying a conference report on a concurrent resolution; the reports showing how the amounts in the concurrent resolution were subdivided by the Appropriations Committees among their subcommittees; and the summary report by the House Committee on Appropriations comparing its action on regular appropriation bills with the levels set forth in the budget resolution.

The bill also establishes scorekeeping procedures for credit programs, including an expanded role for CBO. In addition, any bills that would cause the ceilings set in the concurrent resolution to be exceeded are subject to a point of order. Also subject to a point of order would be the consideration of any bill, resolution, or amendment which provides, extends, or enlarges authority to make loans or guarantee loans unless that bill, resolution, or amendment also provides that the authority will be effective during a fiscal year only in such amounts provided in appropriation acts. The May 15 deadline for reporting authorizing bills would also apply to bills that authorize direct loans or guaranteed loans.

Over the last several years we have closely followed the actions of the Congress and the executive branch to initiate a system to control federal credit programs. Beginning in 1980, the executive branch proposed a system for reviewing and controlling annual credit, both on-budget and off-budget. The system was intended to work through appropriations limitations on annual direct loan obligations and guaranteed loan commitments. The Congress has responded by enacting appropriation limitations for most of the program amounts requested by the Administration. However, many programs are exempted from appropriation control, and there are no formal budget procedures to establish these limits. Current procedures in the Congressional Budget Act of 1974 require that only net direct lending costs be included in budget amounts; all guaranteed loan amounts are excluded.

In another effort to bring credit programs within the discipline of the budget process, the Concurrent Resolution on the budget for fiscal years 1981, 1982, and 1983 contained nonbinding recommendations of targets for annual gross direct loan obligations and loan guarantee commitments. Also in the 1983 resolution was a provision that makes any credit legislation authorizing new direct loan obligations or new guarantee loan commitments subject to a point of order unless the authority is effective only in such amounts as are contained in appropriation acts. The current procedures, however, are not legally mandated, are subject to change or deletion, and the targets are nonbinding.

The subject legislation would amend the Congressional Budget Act of 1974 to create a formal credit control system. We fully support the objectives of the legislation. We believe that such a system would go a long way toward improving the understandability and visibility of federal credit activities as well as showing the relationship between budget allocations for credit activities and the overall fiscal year federal spending plan.

We also have some additional observations about provisions of the bill, as written:

--the bill should be amended to make clear that it applies to total gross loan guarantee commitments, as well as total gross direct loan obligations. Specifically, references in the bill to "total commitments" or "commitments" or "guarantee loans" should be changed to "total gross loan guarantee commitments." Likewise, references in the bill to "direct loans" should be changed to "total gross direct loan obligations".

--the bill amends section 403 of the Congressional Budget Act of 1974 that deals with cost analysis done by the CBO. The CBO is currently required to prepare for each bill or resolution reported by any committee a 5-year estimate of costs and the basis for the estimates. The bill requires that 5-year estimates be extended to direct loans or loan guarantees. It also requires an estimate of costs incurred over the full term of the loan or loan guarantee. Since loans and guarantees usually have maturities that extend many years into the future, they result in considerable subsidy costs to the government over many budget years. We believe it would be useful to committees to have the CBO breakout separately the subsidy costs over the full terms of the loan or guarantees, together with the basis for the estimate.

--the bill requires many changes to the scorekeeping, analysis, and reporting duties and functions of the CBO with respect to federal credit activities. However, amendments to sections 202(a) and 202(f) are not included in the bill. These two sections address CBO's assistance to the Budget Committees and its required annual report to the Budget Committees on budgetary options. We believe that to be consistent these two sections should be changed to require coverage of federal credit activities.

In summary, we believe that the budget process would be enhanced with the addition of a formal credit control system, and we would favor Title II of H.R. 2025 with the changes we suggested.

OFF-BUDGET FEDERAL ENTITIES

Title III of H.R. 2025 provides that for fiscal year 1985 the Congressional Budget Act of 1974 would be amended to require that each off-budget agency's total budget authority and total budget outlays be included in formal congressional budget procedures. The bill requires that ceilings and targets be included in congressional budget documents, such as the budget resolution, CBO scorekeeping reports, and reconciliation directions by the Budget Committees. In addition, any bills that would cause the ceilings set in a concurrent resolution to be exceeded are subject to a point of order. The May 15 deadline for reporting authorizing bills would also apply to bills that authorize new budget authority for off-budget agencies or activities.

Beginning in fiscal year 1986, and thereafter, all off-budget agencies and activities would be placed on-budget and budget authority and outlays would be included in the unified budget. In addition, all receipts and disbursements of the Federal Financing Bank (FFB) would be included in the budget totals of the responsible federal agencies. The Director of the Office of Management and Budget (OMB) would be authorized to issue regulations setting the procedures for executing the recording of FFB transactions and these regulations would have precedence over any prior provision of law or other regulation.

We support the objective of bringing all off-budget transactions into the unified budget. It would increase the visibility of the government's total spending plan and make the budget reflect more accurately the activities of the government. Also, it would improve congressional review, oversight, and decisionmaking if these additional funds were made part of the discipline of the regular budget process and were made to compete for budgeted program levels. While we support the objective of this section, we have some suggested changes. As presently written in H.R. 2025, loan guarantee amounts financed by the FFB shall not exceed amounts of budget authority provided to a federal agency for such purposes. However, the statutory definition of budget authority, as stated in section 3(a)(2) of the Congressional Budget Act of 1974, specifically excludes loan guarantee amounts from budget authority. Another point we question is whether the OMB rules issued to prescribe how agency accounts would be charged with FFB transactions would have legal force to supersede existing law. Below we have supplied alternative language for section 344 (amending 12 U.S.C. 2290) which, in our judgment, would solve both of these problems.

> "(c) All transactions of the Bank shall be reflected in the unified budget of the United States Government. Amounts which are disbursed by the Bank for the purchase of loans guaranteed, loan assets sold, and debt obligations issued,

by a Federal agency shall be treated as borrowing and a means of financing that agency. Such amounts shall be disbursed by the Bank to the Federal agency and redisbursed by the Federal agency as loans to qualified public borrowers. Amounts which are disbursed for loans by a Federal agency and which are financed by the Bank shall be recorded as outlays of that agency and the amounts of such loans shall not exceed the amounts of budget authority provided to the agency for the purpose of making these kinds of loans. The Director of the Office of Management and Budget shall issue regulations to carry out the provisions of this subsection."

CAPITAL INVESTMENT BUDGET

Title IV of H.R. 2025 amends 31 U.S.C. 1105 by adding a new section requiring the President to include with each budget submitted after January 1, 1985, a special analysis to show each function, agency, and program divided into its capital investment and operating components.

We support the objectives of H.R. 2025 to establish the information requirements the Congress needs to develop a policy approach to capital investments. We also supported the same objectives of other bills (H.R. 6591, 97th Congress, and H.R. 1144, H.R. 1244, and S. 1432, 98th Congress). However, we are concerned about the inclusion of non-tangible items and the exclusion of defense-related assets from the definition of capital investment. We also have doubts about the feasibility of developing credible estimates of the "full amounts which would be cost effective capital investments" the bill would require.

Title IV defines capital investment as "civil spending which yields its benefits substantially in future years (rather than in the year in which expended) through the acquisition of physical or financial assets, or through expenditures for less tangible long-term benefits..." Specific categories listed include: construction, rehabilitation, and acquisition of physical assets; education, training, and vocational rehabilitation; research and development; international development; and financial investments that finance the acquisition of physical assets or the long-term improvement of physical assets or human capital, or are expected to result in long-term foreign policy benefits.

We have a number of reservations about this definition. First, we think it is unwise to include spending for non-tangible items within the definition of capital. We do not dispute the value of research and development activity and spending on education and training. For some of these programs it is possible to apply analytical techniques similar to those used to support decisions on physical capital items. To include such programs

within the definition of capital investment, however, risks broadening the concept to the point where it becomes almost meaningless. We believe the most useful definition is one limited to investment in physical assets.

Our second concern is with the exclusion of defense-oriented capital investment such as military bases and other defense facilities. Many of these defense programs clearly have all the characteristics of civil capital investment. We believe it would be appropriate to include them in the coverage of the bill. Consideration should also be given to including other long-lived defense systems such as ships, aircraft, and other types of weapons systems platforms. Consumable weapons, of course, should not be included.

Title IV would also require the President's proposed spending levels to be compared to two benchmarks. One benchmark is the level of capital spending necessary to sustain the current level of infrastructure performance. The other would be the level of capital spending required each year to accomplish the full level of cost-effective investment in our Nation's competitiveness and efficiency sufficient to meet the currently mandated federal standards for the public health, safety, service, and environmental protection.

We believe there are several problems embodied in the requirements of the second benchmark. First, we doubt that present analytical techniques are adequate to develop credible estimates of "the full amounts which would be cost-effective capital investment in the competitiveness and efficiency of the United States economy." We have similar doubts about the feasibility of estimating the amounts "which would be sufficient to ensure the achievement of all enacted or promulgated federal standards for the public health, safety, service, and environmental protection." We are also concerned that the bill does not specify the period of time within which the unmet needs are intended to be satisfied. At the same time, however, we wonder if the resulting estimates (assuming they could be developed) would have any continuing practical value.

DEDICATED REVENUE INCENTIVES

Title V of H.R. 2025 would amend the Congressional Budget Act of 1974 to exclude from budget process enforcement devices any new spending authority or budget authority for programs whose funds are derived from certain dedicated trust fund tax receipts. This provision would apply only if the dedicated revenues and trust fund balances were sufficient to cover the cost of the programs funded from the tax revenues.

The provision would apply not only to the existing programs funded by dedicated excise taxes, but to any new programs the Congress may choose to enact and to dedicate trust fund receipts

from either employment or excise taxes. The use of receipts from business and personal income and gift and estate taxes is excluded by the provision. The provision does not affect entitlement programs, such as social security.

The current primary beneficiaries of the provision would be programs funded from the highway trust fund and the airport and airway trust fund. These trust funds are financed by user fees in the form of receipts from dedicated excise taxes designed to recover the costs of government projects and services.

We are opposed to the provisions of Title V. We do not believe that such revenues and outlays should be insulated from the rest of the budget process. By insulating such programs, a portion of the budget obtains a structural advantage over the rest of it. It would introduce an incentive to set up dedicated revenue financing for programs in instances where it may be inappropriate.

IMPOUNDMENT CONTROL OF LOAN AND LOAN GUARANTEES

Titles VI and VII of H.R. 2025 would make various substantive and technical amendments to the Impoundment Control Act, including specifically extending the Act to direct loan authority and loan guarantee authority.

Discussed below are several legal and procedural issues presented by the bill. First, we present our view that direct loan authority already is subject to the Impoundment Control Act. Second, we discuss application of the Act, as amended by H.R. 2025, to loan guarantee programs enacted for the benefit of a specifically named recipient. We recommend that this special type of loan guarantee program be removed from the bill. Third, we discuss two other substantive changes to the Act, the amendment to section 1001(4) and the prohibition on reimpoundment. The bill would amend section 1001(4) to specify that the Impoundment Control Act does not supersede any provision of law which requires the obligation or outlay of budget authority, including any authorization or appropriation, whether enacted before or after the enactment of the Impoundment Control Act. We suggest that the bill's legislative history should specifically endorse GAO's interpretation of section 1001(4), namely, that the Impoundment Control Act does not supersede the requirements for obligation of budget authority contained in mandatory spending statutes. With regard to the bill's amendment on reimpoundment funds, we do not endorse the bill's absolute prohibition on reimpounding funds. Instead, because we believe that successive impoundments may be appropriate in certain cases, we support amending the Impoundment Control Act to specify the limited circumstances under which successive impoundments would be permitted.

We also discuss other amendments which we believe would clarify and improve the application and implementation of the bill, principally, revising the definition of deferral of direct loan and loan guarantee authority to more closely resemble the current definition of deferral of budget authority and eliminating the bill's requirement of multi-year apportionment of direct loan and loan guarantee authority.

Finally, section 703(b) of H.S. 2025 amends the Impoundment Control Act to allow for a one-house resolution which would require funds proposed for rescission to be made available for obligation before expiration of the statutory withholding period. However, the Supreme Court's decision in Immigration and Naturalization Service v. Chadha (No. 80-1832, June 23, 1983) raises an issue as to the validity of such a legislative veto provision. The Chadha decision also raises an issue as to the continued validity of the existing provision in section 1013(b) of the Impoundment Control Act for a one-house legislative veto of deferrals.

In the Chadha case, the Court held that a one-house legislative veto provision in the Immigration and Naturalization Act was unconstitutional. As we explained in detail in recent testimony before the House Rules Committee (copy enclosed), it is our view that the Chadha decision does not compel any change to the procedures established by the Impoundment Control Act. As a practical matter, the continued validity of the Impoundment Control Act's deferral procedure will be resolved on a deferral-by-deferral basis by the President and the Congress. If they cannot agree, the issue will have to be resolved by the courts. We feel strongly that the mechanisms of the Impoundment Control Act, including the reporting requirements and opportunity for congressional response, should not be abandoned or altered unless the courts specifically require such action. By the same token, while the basic mechanisms should be left in place, we see no reason not to make improvements in the Impoundment Control Act as discussed below.

Applicability of the current Act to direct loan authority

Section 601 of H.R. 2025 would amend the Impoundment Control Act (enacted as Title X of the Congressional Budget and Impoundment Control Act) to specify that direct loan authority is subject to the Act. However, in our view, direct loan authority already is subject to the Act's requirements.

Sections 1012 and 1013 of the Impoundment Control Act currently require the President to report rescission proposals and deferrals of "budget authority." "Budget authority" for purposes of the entire Congressional Budget and Impoundment Control Act (hereinafter referred to as "the Budget Act"), is defined as "authority provided by law to enter into obligations which will result in immediate or future outlays involving Government funds. Loan guarantees are specifically excluded from this definition.

While loan guarantee authority is excluded, the definition of budget authority does encompass direct loan authority. Moreover, in our view, all direct loan authority meeting the definition in the Budget Act constitutes budget authority, including authority to make loans from revolving funds consisting of both direct appropriations and collections by government-owned commercial or industrial activities from non-federal sources, such as loan repayments and user charges. In the President's budget required to be submitted by the Budget Act, Office of Management and Budget's practice has been to exclude revenue from commercial or industrial activities from the budget totals by offsetting that revenue against estimated obligations. As a result, the amounts shown as budget authority in the President's budget reflect only the amount of new budget authority required to meet estimated obligations. GAO has recommended that OMB (1) not offset revenues against obligations and (2) report budget totals on a gross, rather than net, basis.[1]

However, the fact that the revenue does not appear under the "budget authority" heading in the President's budget does not mean that OMB regards such revenue as falling outside the definition of budget authority for purposes of reporting impoundments under the Impoundment Control Act. In fact, deferrals in several revolving funds consisting solely of revenue from the funds' activities were submitted in fiscal year 1983. For example, D83-37, reported by the President on January 5, 1983, was a deferral of funds in the economic development revolving fund, which is made up of interest and principal repayment on loans and proceeds from sale of collateral. By offsetting the anticipated revenue against estimated obligations, OMB apparently recognizes that the revenue is available to meet obligations. GAO's recommendation that OMB change its current practice and report budget totals on a gross basis relates only to the best method for including the revenue in budget totals, an issue which is not covered by the Impoundment Control Act.

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[1]See "Federal Budget Totals Are Understated Because of Current Budget Practices," (PAD-81-22, December 31, 1980).

Application of the Act to loan guarantee programs for specifically named recipients

Applying the Impoundment Control Act to all loan guarantee programs raises legal and administrative issues with respect to those programs established for the benefit of a specified recipient. These issues become more complicated when the program is administered by an entity other than an Executive agency or department.

Legislation establishing special loan guarantee programs for a specified recipient, rather than for a class of recipients, is intended to address a specific situation involving the targeted recipient. Typically, these special programs, (for example, loan guarantees to New York City and the Chrysler Corporation) have been established to avert a potential bankruptcy. The legislation generally contains criteria unique to that recipient's situation and requires the recipient to take actions designed to alleviate the problems which precipitated the loan guarantee program. The administering government entity is required to make various judgments unrelated to whether the applicant satisfies the types of basic eligibility conditions applicable to most loan guarantee programs. In fact, the administering entity may operate as a consultant or adviser to the recipient in reviewing a plan which will satisfy the legislation's eligibility conditions.

H.R. 2025 would expand the scope of the Impoundment Control Act to cover loan guarantee authority. With regard to the types of special loan guarantee programs discussed above, certain elements of those programs would make it inappropriate to apply the Impoundment Control Act. Judgments and determinations by the administering governmental entity necessarily may result in delays in using the loan guarantee authority. However, the administering entity is often given considerable discretion in making its determinations. Given the responsibilities vested in the administering entity under this type of program, it may be extremely difficult to distinguish between those delays that constitute deferrals, and those that are administrative, and non-policy related, which we have concluded are not deferrals within the meaning of the Impoundment Control Act. E.g., B-208103, September 27, 1982.

A potential procedural issue exists with respect to these special loan guarantee programs when they are administered by an independent board not subject to Presidential supervision, and the authority to make loan guarantees lies entirely within the discretion of the board. Under present law, the President is required to submit a rescission message when he determines that budget authority should be rescinded, and a deferral message when he, or any officer or employee of the United States, proposes to defer budget authority. This raises a question concerning the

process under which an impoundment message would be sent to Congress. For example, the board might determine that the loan guarantee authority is not needed and should be rescinded. The President does not play a role in this determination, yet section 1012 of the Impoundment Control Act requires a rescission message when the President determines that funds should be rescinded. It is not clear how a rescission message would be transmitted in light of the requirement in section 1012. If the President is bound by the board's determination, he would have to transmit the rescission message, even though he might not endorse the rescission proposal. If the President is not bound by the board's determination, the board then might be required to transmit the rescission message, notwithstanding the language of section 1012.

These same procedural considerations exist in connection with deferrals under section 1013 of the Act, but with one additional complication. Section 1013, as amended by section 601(e)(1) of the bill, would require the President to submit a deferral message whenever an employee of the United States defers loan guarantee authority. If an independent board's members are considered employees of the United States for purposes of the Act, and the board defers the loan guarantee authority, the President arguably would be required to send a deferral message even though he has no control over the board and might disagree with their actions.

To alleviate these legal and procedural concerns, you may wish to consider eliminating these special types of loan guarantee programs from the bill. This could be accomplished by revising the definition of loan guarantee authority in section 601(c)(3) of the bill to read as follows:

> "(8) 'loan guarantee authority' means the authority to guarantee or insure, in part or in whole, loan principal, interest, or both, which is owed by a qualified applicant, but shall not include authority specifically provided in legislation for the benefit of a specific recipient."

Amendment to the fourth disclaimer and restriction on reimpoundment

The bill incorporates several changes to the Impoundment Control Act that our Office has recommended. Those changes are: providing for disapproval of a rescission proposal; changing the statutory withholding period for rescission proposals to 60 calendar days; and providing that reports by the Comptroller General under section 1015(b) have the effect of nullifying the report submitted by the President. In addition, the amended definition of rescission proposal in the bill is consistent with

our recommendation that "de facto" rescissions be explicitly included in the definition of rescission.

The bill proposes two other major changes in the current Act on which we wish to comment:

Fourth disclaimer

The bill would amend section 1001(4) to read as follows:

> "Nothing contained in this Act, or in any amendments made by this Act, shall be construed as--
>
> * * * *
>
> "(4) superseding any provision of law which requires the obligation of budget authority or the making of outlays thereunder, including any authorization or appropriation, whether enacted before or after the date of enactment of this Act." (Emphasis added.)

The bill also would extend the Comptroller General's authority to bring suit under section 1016 to compel release of direct loan and loan guarantee authority that is required to be committed and budget authority that is required to be made available under section 1001(4).

The effect of the amendments appears to be to confirm GAO's interpretation of section 1001(4), commonly referred to as the "fourth disclaimer," of the Impoundment Control Act. Under our analysis of section 1001(4), the Impoundment Control Act does not supersede the requirements for obligation of mandatory spending statutes.

The bill would also extend the Comptroller General's authority to bring suit to compel release of withheld funds appropriated for programs which fall within the fourth disclaimer. In our view, the current Act authorizes the Comptroller General to sue only to compel release of funds proposed for rescission and withheld after expiration of the 45-day withholding period, or deferred funds which have been disapproved by Congress.

Interpretation of the fourth disclaimer has been the subject of disagreement between GAO and OMB. OMB continues to impound funds provided for programs which we conclude involve mandatory spending statutes under the fourth disclaimer. OMB argues that the fourth disclaimer, if it has any continued vitality, applies only to statutes which specifically prohibit impoundment.

Given the disagreement between our offices, the bill's extension of the Comptroller General's suit authority to fourth disclaimer statutes could generate litigation concerning the meaning of the fourth disclaimer. Litigation always presents the possibility of differing judicial interpretations of a statutory provision. In addition, most withholdings under fourth disclaimer statutes thus far have been the subject of rescission proposals, not deferrals. As with any litigation challenging a rescission proposal, it is likely that the statutory withholding period will expire and the funds will be released by OMB before the substantive issues are resolved. (Alternatively, if the Congress passes a bill rescinding the funds, the issue likewise becomes moot.)

To eliminate any argument over the meaning of the bill's amendment of the fourth disclaimer, the bill's legislative history should specifically endorse GAO's interpretation of the fourth disclaimer. With the bill's amendment of the fourth disclaimer and a clear endorsement of GAO's interpretation in the legislative history, it would seem unlikely that OMB would continue its current practice. Moreover, the Comptroller General's suit authority would better function as a safeguard against violation of the Act and the likelihood of litigation on a large scale would be reduced.

Restriction on reimpoundment

The bill would impose an absolute prohibition on reimpounding funds that previously had been impounded and were required to be made available because of the expiration of the statutory withholding period in the case of a rescission proposal, or the passage of a deferral resolution in the case of a deferral.

In our June 3, 1977, report entitled "Review of the Impoundment Control Act of 1974 After 2 Years," (OGC-77-20), we left open the possibility that under the current Act, subsequent deferrals may be authorized after prior unsuccessful deferrals or rescission proposals, where the later deferrals further good administrative practice and are based on factors unknown at the time of the original proposal. Although the Act has not been amended to specifically permit successive impoundments in those circumstances, as we recommended in our report, we have not interpreted the current Act to automatically preclude subsequent deferrals of funds. In a recent case, for example, we concluded that funds which had been proposed for rescission without success subsequently could be deferred pending the agency's decision regarding the most desirable use of the funds (B-208140, October 29, 1982). In our view, the reason for the deferral was fundamentally different from the reason for the earlier rescission proposal, when the President in effect proposed never to use the funds for any activity funded from the appropriation account.

We believe that changed circumstances may justify subsequent impoundments, without violating the Act's requirement that withheld funds be made available for obligation absent Congressional approval of the withholding. However, H.R. 2025 recognizes no exception to its absolute prohibition on reimpoundment of funds. The effect of the prohibition would be especially severe on funds provided without fiscal year limitation, since an unsuccessful rescission proposal or deferral could prohibit any further withholdings of the funds over the life of the appropriation. For example, an unsuccessful rescission proposal in the first year of availability of a no-year appropriation would preclude deferral of the funds at any future date, even if the deferral were based on establishing a reserve to provide for contingencies or achieve savings as authorized under 31 U.S.C. § 1512.

For these reasons, we do not endorse the bill's inflexible prohibition on reimpounding funds. Instead, we support amending the Act to specify the limited circumstances under which successive impoundments would be permitted.

Other amendments to the Act

Discussed below are a number of changes and suggestions we believe are necessary to conform definitions throughout the bill and to correct some technical errors.

Definitions of deferral of direct loan authority and loan guarantee authority--Section 601(c)(3) of the bill would amend section 1011 of the Impoundment Control Act by adding a paragraph (7) to define a deferral of direct loan authority and a paragraph (9) to define a deferral of loan guarantee authority. Both new paragraphs define the deferral in terms of executive action which would result in making less than the maximum amount of commitments permitted by law. These definitions differ from the definition of deferral of budget authority now contained in section 1011(1) of the Act. Specifically, they introduce a new element in determining the existence of a deferral, the requirement that the withholding or delay result in the total amount of commitments being less than that permitted by law. Consequently, if direct loan or loan guarantee authority were provided for 5 years and no commitments were made during the first year of availability due to executive action, there would be a deferral only if it could be shown that the delay in the first year would result in the total amount of commitments during the 5-year period being less than the amount authorized. Such a showing would suggest a conclusion that the Executive action amounted to a permanent withholding, rather than a deferral, or temporary withholding, of the loan authority.

You may wish to amend the definitions in section 601(c)(3) of the bill to more closely resemble the definition of deferral of budget authority. Such definitions would provide:

"(7) 'deferral of direct loan authority' includes--

"(A) withholding or delaying the making of direct loan commitments to qualified applicants whether by establishing reserves or otherwise; or

"(B) any other type of Executive action or inaction which effectively precludes the making of direct loan commitments to qualified applicants; and";

* * * *

"(9) 'deferral of loan guarantee authority' includes--

"(A) withholding or delaying the making of commitments to guarantee or insure the indebtedness of qualified applicants whether by establishing reserves or otherwise; or

"(B) any other type of Executive action or inaction which effectively precludes the making of commitments to guarantee or insure the indebtedness of qualified applicants; and".

In addition, we recommend that the bill be amended to specifically include direct loan and loan guarantee authority within the Act's provision for rescission proposals. Such an amendment, discussed further below, would ensure that when the President proposed to withhold direct loan or loan guarantee authority from obligation permanently, the withholding would have to be reported as a rescission proposal under the Act.

<u>Multi-year apportionment requirement</u> --Section 602 of H.R. 2025 would amend 31 U.S.C. § 1512 by adding a new subsection (e) dealing with direct loan and loan guarantee authority. The new subsection (e)(1) would require the Director of the Office of Management and Budget to apportion direct loan and loan guarantee authority by January 1 of each year in a manner specifying the amount to be committed during each of the five succeeding years. Subsection (e)(3) would require the President to include a

statement of the sub-section (e)(1) apportionment in the budget he transmits to Congress under 31 U.S.C. § 1105(a).

The concept of multi-year apportionments for loan guarantee authority contained in subsections (e)(1) and (e)(3) would be a departure from the present practice applicable to budget authority, under which apportionments are made for only one fiscal year at a time. The purpose of the new subsections appear to be to require the Executive to provide the Congress with a plan for using direct loan and loan guarantee authority similar to that now required for budget authority in 31 U.S.C. § 1105(a). However, it is questionable whether this objective will be fully accomplished by requiring multi-year apportionments since apportionments are based on whether the spending authority is available and not necessarily on whether it is expected to be used. Further, this objective can be accomplished without introducing the unique requirement of multi-year apportionment.

As an alternative, we suggest that 31 U.S.C. § 1105(a) be amended. That provision requires the President to submit a budget to the Congress during the first 15 days of each regular session and describes the type of information that must be contained in that budget. Section 1105(a) could be amended by adding paragraphs (25) and (26) as follows:

> "(25) estimated commitments of existing direct loan authority, and of proposed direct loan authority, for the fiscal year for which the budget is submitted and the four succeeding fiscal years.
>
> "(26) estimated commitments of existing loan guarantee authority, and of proposed loan guarantee authority, for the fiscal year for which the budget is submitted and the four succeeding fiscal years."

These provisions would require the President to provide Congress with the information contemplated by the bill, specifically, how the Executive plans to use direct loan and loan guarantee authority already provided by the Congress. The Congress also would be informed how the Executive plans to implement loan programs with new direct loan and loan guarantee authority.

One part of section 602 would add a new subsection (e)(2) to 31 U.S.C. § 1512. In apportioning direct loan or loan guarantee authority, subsection (e)(2) would authorize the establishment of reserves in the same manner now authorized for budget authority in 31 U.S.C. § 1512. If the changes to other parts of section 2 suggested above are adopted, the bill no longer would contain a

requirement that direct loan and loan guarantee authority be apportioned. The absence of an apportionment requirement would make subsection (e)(2) unnecessary.

However, should the Congress wish to require OMB to apportion direct loan and loan guarantee authority and to authorize it to establish reserves, this could be accomplished by amending 31 U.S.C. § 1511(a). That section defines the term "appropriations" for purposes of apportionment under 31 U.S.C. § 1512. Amending that definition to include direct loan and loan guarantee authority would mean that such authority would have to be apportioned and could be reserved as provided in 31 U.S.C. § 1512.

Definition of rescission of budget authority --To make the bill's new definition of "rescission of budget authority" more comprehensive, it should refer to executive action, as well as inaction, that delays the availability of funds. The bill thus would define rescission as "[e]very type of Executive action or inaction * * *." (Underlined words added.) Also, to be consistent with the bill's application of the Impoundment Control Act to direct loan and loan guarantee authority, the bill's definition of rescission of budget authority should be amended to include rescissions of direct loan and loan guarantee authority as well. In the alternative, a separate provision defining rescissions of direct loan or loan guarantee authority should be added.

Reference to rescission resolution --To be consistent with the bill's addition of a provision for disapproving rescission proposals by means of a one-house "rescission resolution," new section 1012(c) of the Act (as added by section 601(d)(2) of the bill), regarding the requirement to make loan commitments, should be amended to refer also to loan authority required to be committed as a result of passage of a rescission resolution. This may be accomplished by adding the following sentence to proposed section 1012(c):

> "Such amount of direct loan or loan guarantee authority shall also be committed to the full extent permitted by law if either House of Congress adopts a rescission resolution."

In addition, the reference in proposed section 1012(c) to "the prescribed 45-day period" should be changed to "the prescribed 60-day period."

Reference to deferral resolution --The reference in new section 1013(b) to "an impoundment resolution disapproving such proposed deferral" should be changed to "a deferral resolution," to be consistent with the bill's change in terminology.

Reference to reimpoundment prohibition --The bill provides that budget authority required to be made available may not be reimpounded. To treat all budgetary resources covered by the Impoundment Control Act consistently, that proscription should be extended to direct loan and loan guarantee authority. This can be accomplished by inserting the following sentence at the end of sections 1012(c) and 1013(c):

> "Direct loan authority and loan guarantee authority which is released may not be reimpounded."

Redesignating section 1105(5) as section 1011(12) --The bill (in section 501(c)(3)) redesignates section 1011(5) as 1011(12), and strikes the first sentence, which defines continuity of congressional session for purposes of determining the current 45-day withholding period for rescission proposals. The bill (in section 702(b)(3)) directs that "(5) if" be inserted in paragraph 12 before "a special message;" however, the reference to subsection (5) should be omitted, because the bill redesignates the provision as subsection (12). Also, section 702(b)(3) of the bill says that paragraph (5) is redesignated by "section 501(c)(3)" of the bill. The correct reference is to "section 601(c)(3)."