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**Comptroller General
of the United States**
Washington, D.C. 20548

B-220532

September 19, 1986



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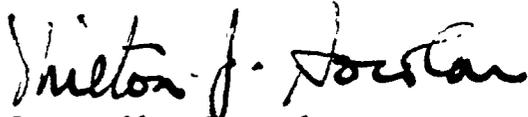
To the President of the Senate and the
Speaker of the House of Representatives

On June 24, 1986, the President's seventh special message for fiscal year 1986 was submitted to the Congress pursuant to the Impoundment Control Act of 1974. The President reported the following four deferrals, affecting budget authority made available to the Departments of Energy (DOE) and Health and Human Services (HHS):

D86-67	DOE, Fossil Energy Research and Development	\$499,812
D86-68	DOE, Energy Conservation	\$287,488
D86-69	DOE, Strategic Petroleum Reserve	\$636,973
D86-70	HHS, Health Care Financing Administration, program management	\$45,000,000

Although these deferrals were reported on June 24, the withholding of the DOE funds was initially approved by the Office of Management and Budget (OMB) in April, according to apportionment schedules dated April 3, 1986. OMB officials told us that the delay in reporting was due to the Administration's decision to re-examine each deferral in light of the decision in New Haven v. United States, No. 86-0455 (D.D.C. May 16, 1986).^{1/}

We have reviewed these four deferrals. We found that D86-70, classified by the President as a deferral, is a rescission. The enclosure provides all information we identified which we believe will be useful to the Congress in its examination of these impoundments.

for 
Comptroller General
of the United States

Enclosure

^{1/} The United States District Court for the District of Columbia held unconstitutional the President's authority under the Impoundment Control Act to defer budget authority. The court's decision was stayed pending appeal; the Department of Justice is appealing.

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COMMENTS ON THE SEVENTH SPECIAL MESSAGEDEPARTMENT OF ENERGY

D86-67 Energy Programs
 Fossil energy research and development
 Amount deferred: \$499,812
 89X0213

The message indicates that this account is the subject of a previous deferral this fiscal year, D86-6. (D86-6 was revised by D86-6A, which increased the amount of the deferral.) The Urgent Supplemental Appropriations Act for fiscal year 1986, Pub. L. No. 99-349, July 2, 1986 (Urgent Supplemental), disapproved all but \$2,607,000 of D86-6 and 6A. On July 22, 1986, OMB made available for obligation the amount disapproved. Consequently, the total amount deferred in this account is \$3,106,812, the \$499,812 reported as D86-67 and the \$2,607,000 remaining from D86-6, 6A.

D86-68 Energy Programs
 Energy conservation
 Amount deferred: \$287,488
 89X0215

The message indicates that this account is the subject of a previous deferral this fiscal year, D86-9A. The Urgent Supplemental disapproved all but \$6,556,000 of D86-9A. On July 22, 1986, OMB made available for obligation the amount disapproved. Consequently, the total deferred in this account is \$6,843,488, the \$287,488 reported as D86-68 and the \$6,556,000 remaining from D86-9A.

D86-69 Energy Programs
 Strategic petroleum reserve
 Amount deferred: \$636,973
 89X0218

This account was the subject of an earlier deferral this fiscal year, D86-37. The Urgent Supplemental disapproved that deferral, and OMB made those funds available for obligation on July 22. The only budget authority now deferred is the \$636,973 reported as D86-69.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

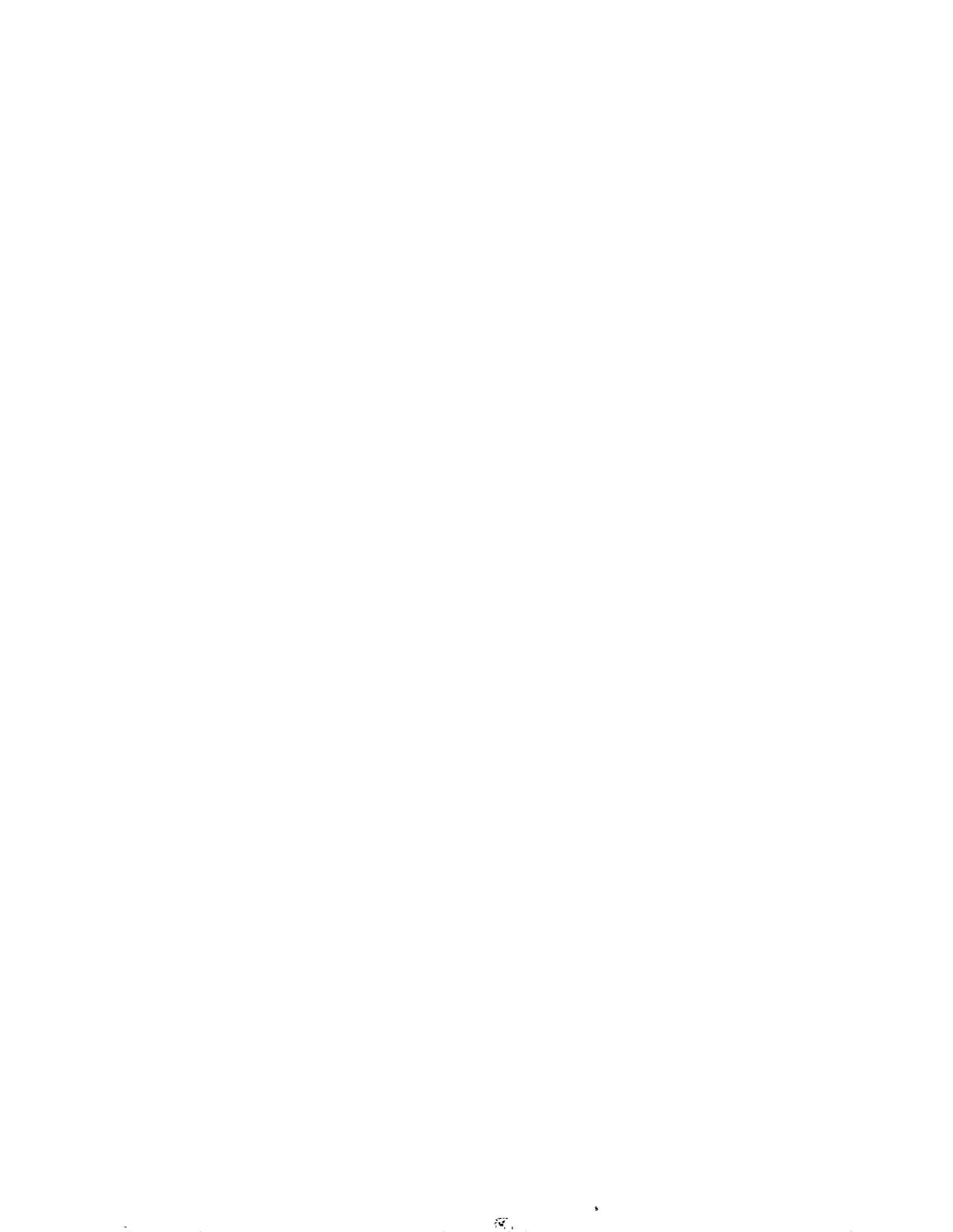
D86-70 Health Care Financing Administration
 Program Management
 Amount deferred: \$45,000,000
 7560511

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) transferred, for fiscal year 1986 only, \$105 million to this account from the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds to be used for Medicare contractor payment reviews. With \$45 million already obligated for this purpose by HHS from its appropriation, enacted in December 1985, a total of \$150 million was available in fiscal year 1986 for these activities.

The message reports a deferral, for the remainder of fiscal year 1986, of \$45 million of the \$105 million provided by COBRA. The message explains that the Health Care Financing Administration (HCFA) cannot effectively utilize the \$45 million this year. According to an OMB official, the \$45 million will revert to the trust funds at the end of the fiscal year, and will be available next fiscal year for obligation for the general purposes of the trust funds.

Section 1015(b) of the Impoundment Control Act, 2 U.S.C. § 686(b), authorizes the Comptroller General to reclassify as rescissions those deferrals which he believes the President has incorrectly classified. Section 1012(a) of the Act, 2 U.S.C. § 683(a), directs the President to propose a rescission whenever he determines that "all or part of any budget authority will not be required to carry out the full objectives or scope of programs for which it is provided," or "whenever all or part of any budget authority provided for only one fiscal year is to be reserved from obligation for such fiscal year." The President, in the message, acknowledges that the \$45 million is not needed this fiscal year. Furthermore, because the \$45 million was transferred to HCFA for fiscal year 1986 only, failure to obligate the funds by the end of the fiscal year will result in their becoming unavailable for the purpose for which they were transferred. Accordingly, we are reclassifying as a rescission proposal the \$45 million reported by the President in this message as deferred.

This report has the effect, by operation of law, of permitting the withholding to continue for 45 legislative days. The fiscal year, however, will end before the 45-day withholding period expires and it



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is questionable whether an additional \$45 million, even if made available, could be obligated before the end of the fiscal year. The Congress, if it concludes that the funds in question should be made available for the program, may therefore wish to consider enacting legislation to extend the availability of the funds.

