UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

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AUG 13 1971

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Dear Mr. Chairman:

During the subcommittee hearing on July 22, 1971, on the President's reorganization program (H.R. 6959, 6960, 6961, and 6962), we were requested to provide the following additional material for the record.

1. Transfers of Unexpended Appropriations to New Departments

Title III of each bill contains a section (§304 of H.R. 6959; §308 of H.R. 6960; §305 of H.R. 6961; and §303 of H.R. 6962) providing for the transfer to the new departments of personnel, assets, liabilities, contracts, property, records, unexpended balances of appropriations, and other funds available in connection with the functions transferred, subject to section 202 of the Budget and Accounting Procedures Act of 1950 (64 Stat. 838, 31 U.S.C. 581c .

Section 202(b) of the act referred to provides general authority to the President, whenever any function or activity is transferred or assigned from one department or establishment to another, to transfer to the latter the available and necessary balance of appropriations "for any purpose for which said funds were originally available." Such transfers may be made to any applicable existing appropriation account, or "to any new appropriation account or accounts, which are hereby authorized to be established * * *." (Underscoring supplied.) The balances are then merged with other funds in the existing or new account to which they are transferred, and thereafter accounted for as one fund.

Under this section, the President is authorized to establish new appropriation accounts and to merge different appropriations into one fund. We notice that "hereby" is omitted from the codification of the section in 31 U.S.C. 581c, thus appearing to require congressional approval before new accounts may be established. The original law, however, which is controlling, expressly authorizes the President to establish new appropriation accounts. Executive Order No. 11230, June 28,

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1965, delegates the President's authority under section 202 to the Director of the Bureau of the Budget (now Office of Management and Budget).

At the hearing, questions were raised concerning whether GAO would be able to trace transferred appropriation balances and whether Congress would be able to control the same to make sure that they are used for the purposes originally intended.

The General Accounting Office has not encountered any significant problems with the merger of appropriations in prior reorganizations. Fund balances for activities or programs which are combined in the reorganization will be merged thus losing their separate identity, and will be used for any or all of the activities or programs so combined. However, we would take the view that any appropriations especially "earmarked" in the appropriation language or other law for a specific purpose would have to be used for that purpose; that any restrictions on appropriations (e.g., "not to exceed $____ for representation expenses abroad") would have to be followed; and that the period of availability of such appropriations may not be extended by such transfers and mergers.

Although the proposed reorganization is broader than prior reorganizations, we see no objection to permitting the Office of Management and Budget to transfer balances of appropriations under the general authority of section 202(b) of the Budget and Accounting Procedures Act of 1950. The General Accounting Office would, of course, provide any assistance necessary to OMB and to the Congress as may be requested in connection with such transfers. If more control is deemed necessary, the Committee might consider requiring prior approval by the Congress or by the appropriations committees for the establishment of new appropriation accounts. We have not drafted any proposed language for this, but we will do so if you request.

2. Authority to Transfer Funds Between Appropriations

Section 424 of each bill authorizes the Secretary to transfer funds from one appropriation to another within the department, provided that no appropriation may be either increased or decreased by more than 5 percent. This authority is available only when authorized in an appropriation act.

At the hearing, the question was raised as to whether a Secretary would be able to transfer funds to an appropriation account for which

no funds were provided by the Congress for that fiscal year. Since section 424 permits transfer only from one appropriation to another within the department and then only when it is authorized in an appropriation act, we do not construe section 424 to permit transferring funds to an appropriation account for which no funds have been appropriated by the applicable appropriation act. We would also point out that any restrictions desired could be placed in the appropriation act itself in order to limit the 5 percent transfer authority. In the event the appropriation act is silent, the Secretary would have no transfer authority.

The Committee may be interested to know that a similar 5 percent transfer authority was deleted from the Budget and Accounting Procedures Act of 1950. Section 201 of the Senate bill (S. 3850, 81st Cong.) proposed such authority for the head of each department and establishment in the executive branch and provided for reports of such transfers with the reasons therefor to be currently submitted to the President and the Congress and to be summarized annually in the budget. There was no requirement for such transfers to be authorized in each appropriation act. This provision did not appear in the House bill, H.R. 9038, 81st. Congress, but it passed the Senate and was included in the first conference report on August 29, 1950 (96 Cong. Rec. 13775-76). Objections were raised in the House to the provision, and the conference report was referred back to the conference committee. The provision was dropped from the second conference report submitted on August 30, 1950, which was called up and agreed to on August 31, 1950 (96 Cong. Rec. 13988).

If the Committee views the 5 percent transfer authority proposal as desirable, it might consider including a requirement that reports of each such transfer between appropriations be made to the Congress or to the appropriations committees of Congress, either before or after the transfers become effective.

3. Limitations on Working Capital Funds and Service Funds

In order to provide more congressional control over the working capital funds provided for in section 420 of each bill and the service funds provided for in section 425, we recommend the following limitations be included in the bills:

(a) An itemized list of the common administrative services covered by section 420. Since all seven departments now have a working capital fund, it should be easy to ascertain the services that are presently funded in this manner. When the occasion requires an addition to the services included, the Secretary could then justify such inclusion

to the Congress and seek legislative approval. Such a process, we feel is superior to giving the Secretary blanket approval to add any services he finds to be desirable.

(b) An express prohibition against including real property in working capital funds. Section 420 should be amended after "other assets" by adding "(not including real property), * * *."

(c) Consideration of a monetary limit on both working capital funds and service funds. So far as we know, the Administration has not indicated what amounts will be involved in such funds. Rather than allow unlimited size, a reasonable limit could be placed upon each fund. Maximum amounts are presently provided for the working capital funds of the Agriculture, Commerce, and Interior Departments.

(d) At the end of each fiscal year, any surplus in either working capital funds or service funds should be returned to the Treasury as miscellaneous receipts, taking into account all assets, liabilities, and prior losses. See 15 U.S.C. 278b (National Bureau of Standards), and 49 U.S.C. 1657(j, (Department of Transportation).

(e) Section 425 should be revised to provide specifically for the method and time of payment. For services to other Federal agencies, the language of 31 U.S.C. 686(a) providing for payment either in advance or as reimbursement as agreed upon by the agencies concerned, should be used. Advance payment of the actual or estimated cost of services should be required from all persons or organizations outside the Federal Government. See section 302 of Public Law 90-577, the Intergovernmental Cooperation Act of 1968.

(f) Service funds should be made a part of the annual budgetary process by requiring that reports on activities and financial statements shall be made each year to the President and to the authorizing and appropriations committees of the Congress.

(g) Provision should be made establishing criteria for waiver of payment for services provided under section 416(a) of each bill. This should not be left to the unfettered discretion of the Secretary. Section 416(a)(2) permits waiver only when otherwise authorized, but 416(a)(1) leaves it discretionary. We suggest a requirement for regulations, either by OMB or by each department. See 31 U.S.C. 483a.

(h) We recommend adding a provision to section 416(b) that "Acts appropriating funds to the Department may include provisions

limiting annual expenditures from such funds." See section 2 of Public Law 91-412, 84 Stat. 864.

4. Comments on "Some Technical Notes on Appropriation Patterns for the Proposed Departmental Reorganization" June 5, 1971, prepared by the Office of Management and Budget

The paragraphs below refer to the corresponding paragraphs and headings in the subject document.

(1) Secretarial Authority

We agree that appropriations should be available to the Secretary for allotment within his department and that appropriations should not be made directly to subordinate officials or organizational units. It is our understanding that this is consistent with the present practice in most cabinet-level departments.

(2) Levels of Responsibility

The OMB paper would limit appropriations to the first tier grouping within each department, i.e., appropriations would be made for each major "Administration" created by the reorganization bills, but not for bureaus or offices within such administrations. Taking the proposed Department of Economic Affairs as an example, there are to be six major Administrations in addition to the offices of the Secretary, Deputy Secretary, two Under-Secretaries, two Assistant Secretaries, and the General Counsel. Under OMB's proposal, the total number of appropriations would be not more than thirteen, with most of the total amount going into the six appropriations for the Administrations. By way of contrast, the Department of Commerce Appropriation Act, 1971 (Pub. L. 91-472, title III) contains 17 seperate appropriations, further broken down into 23 categories.

OMB's proposal would restrict the Congress in designating fixed amounts or limits for specific purposes within any tier grouping and in this sense congressional control would be diluted. Although consolidation of appropriations is an essential element of the basic concept of the reorganization, we believe that the Congress should reserve the right to make such exceptions to the proposed appropriation structure as it considers desirable for particular types of programs or activities which it believes warrant special congressional attention. This matter may be controlled by the Congress in the appropriation process.

(3) Merger of Existing Appropriation Accounts

We agree that maintaining the present level of 750 appropriation accounts would not be desirable if the reorganization becomes effective; however, we are not in a position to say that it should be reduced to fewer than 200. This may also be controlled by the Congress in the appropriation process.

(4) Preservation of Earmarking

There should be no particular problem with "earmarked" funds because the existing statutory provisions will continue to apply and Congress may add additional earmarked funds at any time. As to such funds in the current appropriation acts, we believe that earmarking restrictions would follow the appropriation balances into the merged appropriation accounts.

(5) Combination of Similar Funds

The suggested combination of similar funds would appear to be desirable.

(6) Distinction as to Periods of Availability

OMB indicates that section 426 of the reorganization bills was not intended to be a blanket authorization for "no-year" appropriations nor to repeal limitations imposed by present authorizing legislation. We think the language used in section 426 could be construed to authorize appropriations without fiscal year limitation for carrying out all of the functions of a new department notwithstanding any existing requirements for annual authorizations prior to appropriations, such as now apply to the Coast Guard, the maritime programs of the Department of Commerce, and the Atomic Energy Commission. In order to carry out the expressed intent of OMB, we suggest that section 426 be revised as follows:

"Sec. 426. Appropriations which are otherwise authorized by law to carry out functions now or

hereafter vested in the Secretary are hereby authorized to be included in appropriation Acts with or without fiscal year limitations."

Sincerely yours,

PAUL G. DEMBLING

Paul G. Dembling
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The Honorable Chet Holifield, Chairman
Subcommittee on Legislation and Military
Operations
Committee on Government Operations
House of Representatives