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General Accounting Office
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Office of the General Counsel

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Mr. Nick Glakas
General Counsel
Committee on Appropriations
United States Senate

Dear Nick:

This is in response to your request for information concerning a proposal by the Office of Management and Budget (OMB) to amend 31 U.S.C. § 1515(a), relating to the apportionment of appropriations. The proposal is contained in H. Doc. No. 100-31, 100th Cong., 1st Sess., at 11 (February 9, 1987).

Section 1512(a) of title 31, United States Code (1982), generally requires that appropriations available for a definite period of time be apportioned so as to prevent their obligation or expenditure at a rate that would indicate the need for a deficiency or supplemental appropriation for that period. The current version of 31 U.S.C. § 1515(a) makes an exception to this general requirement based on the need to fund pay raises for prevailing rate employees. Thus, section 1515(a) now provides as follows:

"An appropriation required to be apportioned under section 1512 of this title may be apportioned on a basis that indicates a necessity for a deficiency or supplemental appropriation to the extent necessary to permit payment of pay increases for prevailing rate employees whose pay is fixed and adjusted under subchapter IV of chapter 53 of title 5."

The amendment to 31 U.S.C. § 1515(a) proposed by OMB in H. Doc. No. 100-31 would expand this exception to cover the funding of civilian and military pay increases generally. The OMB proposal would amend section 1515(a) to read:

"An appropriation required to be apportioned under section 1512 of this title may be apportioned on a basis that indicates the need (to the

extent any such increases cannot be absorbed within available appropriations) for a supplemental or deficiency appropriation to the extent necessary to permit payment of such pay increases as may be granted pursuant to law to civilian officers and employees (including prevailing rate employees whose pay is fixed and adjusted under subchapter IV of chapter 53 of title 5) and to military personnel."

The explanation accompanying the proposed amendment states that it would provide permanent government-wide authority to apportion Federal pay raises on a deficiency basis. It also notes that this authority was inadvertently omitted from the fiscal year 1987 continuing resolution.

Fundamentally, the OMB proposal appears to be a routine and technical measure. Language permitting pay raises to be apportioned on a deficiency basis has been included in most continuing resolutions going back at least as far as fiscal year 1974.^{1/} The language used in each of these continuing resolutions is the same in substance as the language now proposed by OMB except, of course, that the OMB proposal picks up the language relating to prevailing rate pay increases already contained in section 1515(a).

There is, however, one aspect of the OMB proposal that may bear scrutiny. Language now contained in 31 U.S.C. § 1515(a), which would be retained by the OMB proposal, permits apportionments on a deficiency basis "to the extent necessary" to fund pay increases. The OMB proposal includes a parenthetical phrase which is not contained in the current 31 U.S.C. § 1515(a) and which seems to impose an additional condition on the use of the deficiency apportionment authority: "to the extent any such increases cannot be absorbed within available appropriations" (emphasis supplied). It is not clear what effect this language would have or is intended to have. The implication of this language is that an apportionment indicating the need for a deficiency or supplemental appropriation is not appropriate if the pay increases can be

^{1/} The JURIS database which I used to search for this language only goes back to the 93d Congress. Therefore, the earliest use of the language I found was Pub. L. No. 93-52, § 107, 87 Stat. 134. Some recent examples of continuing resolutions using this language are: Pub. L. No. 98-473, § 105, 98 Stat. 1964; Pub. L. No. 98-107, § 105, 97 Stat. 741; Pub. L. No. 97-276, § 105, 96 Stat. 1190; and Pub. L. No. 97-51, § 107, 95 Stat. 962.

absorbed within available appropriations. Whether and to what extent pay increases can or cannot be absorbed within available appropriations may call for policy judgments. For example, there may be instances in which it would be literally possible for available appropriations to absorb the pay increases but only at substantial, and perhaps unacceptable, cost to other programs and activities funded by the same appropriation account. Disagreements on this subject may arise among OMB, the agencies concerned and congressional officials.

The "to the extent necessary" language already contained in 31 U.S.C. § 1515(a) as well as the OMB proposal seems less absolute than the additional "cannot" language proposed by OMB and may afford greater flexibility in applying the apportionment authority on a case-by-case basis. On the other hand, the additional language proposed by OMB is contained in all of the continuing resolution provisions that have been enacted going back to 1974. Therefore, it may be that OMB's more restrictive language has not proven to be a problem. In any event, I would suggest that you take a close look at this restrictive language.

I hope that the above background information and comments will be useful to you in your consideration of the OMB proposal.

Sincerely yours,



Henry R. Wray
Associate General Counsel