



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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

Dear Mr. Chairman:

This responds to your February 26, 1986 request for our views on H.R. 4205, 99th Congress, 2d Session. H.R. 4205 would amend the Impoundment Control Act of 1974 (the Act) to apply to deferrals a procedure similar to that now applicable to rescission proposals. Upon enactment of the bill, the President would have to release budget authority withheld pursuant to a deferral unless, within 45 days of continuous congressional session after the date on which the Congress receives the President's proposal, both Houses of the Congress have approved the deferral by passing a bill deferring the budget authority as proposed.

Currently, under the Act, the one-House veto is the method for the Congress to disapprove deferrals. The Supreme Court's decision in Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983), cast doubt on the constitutionality of the Act's one-House veto provision.

The Congress has been reluctant to use the potentially unconstitutional disapproval mechanism and the Executive has been unwilling to concede that, if the disapproval mechanism is struck down, the power to defer under the Act must fall with it. The result has been, in effect, an enhancement of the Executive's power at the expense of the Congress; to disapprove deferrals, the Congress has, since Chadha, enacted a law rather than using the constitutionally-suspect but easier one-House veto.

Attempts by the Congress to deal with this problem have proceeded on several fronts. Some Members have brought suit, and recently secured a decision from the United States District Court for the District of Columbia striking down as unconstitutional the entire deferral procedure under the Act, both the President's authority and the disapproval mechanism. New Haven v. United States, No. 86-0455, slip op. (D.D.C. May 16, 1986). The court's decision, however, was stayed pending appeal. The Department of Justice is appealing.

In the event the court's decision is upheld, we would encourage the Congress to establish legislatively a deferral mechanism to replace the Act's unconstitutional mechanism. As most would agree, temporary withholdings of funds to achieve economies or efficiencies or to assure orderly execution of a program have proven to be a useful tool, ordinarily not controversial.

As you know, a number of legislative solutions have been proposed. H.R. 4205, sponsored by some of the plaintiffs in the pending lawsuit, solves the constitutional problem created by the Chadha case by eliminating the one-House veto of deferrals. In doing so, however, the bill also sacrifices the advantage of the existing deferral procedure, namely, that routine, non-controversial deferrals can be permitted to continue without the necessity for the Congress to take action.

Many deferrals are routine and legitimately fall within the ambit of the Anti-deficiency Act, which permits reserves in order to effect savings or to provide for contingencies. 31 U.S.C. § 1512(c). Under the bill, these reserves, as well as the policy-related deferrals to which many Members object, would have to terminate after 45 days unless both Houses approved them. To act on each of these proposals would be burdensome. Moreover, the risk would exist that, if the Congress failed to act in a timely fashion to approve an Anti-deficiency Act deferral, the funds would have to be obligated in a wasteful or inefficient manner, which would not have occurred if the deferral had been approved.

As we have suggested recently in testimony, we believe that an alternative exists which would overcome the Chadha problem, yet largely preserve the routine treatment of Anti-deficiency Act deferrals. We propose that the President be required to specify in his deferral message a date certain on which he will release the budget authority reported as deferred. The Act should be amended further to state that no budget authority can be withheld for any reason after the date certain, unless the Congress acts to authorize further deferral. If the President were to withhold the budget authority after the date certain, the Comptroller General, under section 1016 of the Act (2 U.S.C. § 687), would be authorized to bring a civil action to compel release of the budget authority.

For each deferral of fiscal year funds, the date certain should be no later than that date on which funds must be made available in order to assure obligation in a prudent and orderly

manner. In the case of multi-year funds, the date certain should be no later than 12 months (or some other reasonable but fixed period) from the date of the message transmitting the deferral to the Congress.

H.R. 4888, which was introduced May 22, 1986, and on which we will shortly be commenting in detail, incorporates a method for dealing with deferrals consistent with our suggestion. In this scheme, no congressional action would be necessary for routine deferrals. Because deferred budget authority must be released at the date certain, without congressional action, the one-House veto is avoided. Because the President specifies the release date, he cannot put the Congress in the position, as he could under H.R. 4205, of either acting on all routine matters within 45 days or being vulnerable to the charge of having caused the wasteful or inefficient use of funds by its inaction. Also, deferrals would be self-limiting, and budget authority could be deferred only one time, thus giving some control over fiscal policy deferrals again without the necessity to act affirmatively. Under our proposal, the Congress would, however, have to enact legislation if it wanted funds released before the date certain specified in the President's message.

Sincerely yours,

for 
Comptroller General
of the United States