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WASHINGTON, D.C. 20548

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B-115398-33

AUG 12 1976

Subject Card

The Honorable Richard L. Ottinger
U.S. House of Representatives

Dear Mr. Ottinger:

This is in response to your letter of July 28, 1976, requesting an investigation of proposed rescissions R76-46, R76-47, R76-48, and R76-49 submitted by the President to the ~~31 USC~~ ⁷¹⁴⁰¹ Congress on July 28, 1976, pursuant to the provisions of the ~~1401~~ ⁷¹⁴⁰¹ Impoundment Control Act of 1974. The message proposed the rescission of \$24 million for impact aid, \$90 million for handicapped education, \$3 million for state equalization plans, and \$9.35 million for child nutrition programs.

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The budget authority proposed for rescission in these programs was appropriated in the Second Supplemental Appropriations Act, 1976 (Pub.L. 94-303, June 1, 1976). Our review of the messages indicates that the funds for the second and third of the four programs described above, if unobligated, will lapse on September 30, 1976. Funds for the first and last programs described remain available until expended.

Subsection 665(d)(1) of title 31 of the U.S. Code provides that appropriations shall be apportioned not more than 30 days after the approval of the Act in which the appropriation is made available. Thus, the latest date to apportion the subject budget authority was July 1, 1976. We have confirmed that reserves were established and the budget authority that is the subject of these messages has been withheld since July 1, 1976.

Based on the present congressional schedule, the 45-day period during which the funds may be withheld while the rescission proposals are pending will expire on September 28, 1976. In this connection, you believe the President's failure to submit a special message with respect to the withholding until July 28 thwarts the intent of the Impoundment Control Act of 1974.

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The Act provides that the President shall submit a special message to the Congress whenever budget authority is proposed to be withheld from obligation. Accordingly, the President should have submitted a special message on these withholdings on July 1, 1976--the date on which the impoundments began. The failure to do so until July 26 is not consistent with the spirit of the Act. Moreover, the delay may operate to deny to the Congress the expected consequence of its rejecting the proposed rescissions--the full and prudent use of those funds. This situation exists because only two days will remain between the expiration of the 45-day period and the date on which the unobligated funds will lapse (September 29 and 30, 1976).

We share your concern that the Congress be able to indicate its disapproval of a rescission without waiting 45 days of continuing session. We addressed this matter in our letter of March 5, 1976, to Senator Hollings (copy enclosed). In that letter we stated that the Act does not authorize the President to withhold funds where the Congress has completed action on a bill to rescind only part of the budget authority proposed for rescission. In the letter of March 5, we concluded that the better view of section 1012(b) is that when the Congress has completed action on a bill that rescinds only part of the budget authority proposed by the President to be rescinded, the part not rescinded should be released immediately, notwithstanding the fact that the 45-day period may not have ended. The letter also indicated that an even stronger basis for immediate release would exist if the Congress incorporated language in a rescission bill to the effect that all rescission requests not specifically approved are denied.

In addition, because we recognize that the existence of a mechanism by which the 45-day period can be accelerated may be subject to disagreement, we suggested in our letter of November 20, 1975, to the Chairman of the House Committee on the Budget (copy enclosed), that the Act be amended to provide that a rescission request may be denied by a rescission resolution passed by either House of Congress at any time prior to the expiration of the 45-day period. Such an amendment would not be subject to differing constructions on the operation of the Act.

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We are presently preparing our report to the Congress on the subject rescissions and would be pleased to provide you with a copy of the report when it is completed.

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General
of the United States

Enclosures