



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON D.C. 20546

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January 3, 1986

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

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Dear Mr. Chairman:

This responds to your May 2, 1985 request for our views on H.R. 2247, 99th Congress, 1st Sess. H.R. 2247 would in essence repeal the deferral provisions of the Impoundment Control Act of 1974 (the Act). These provisions control the authority the President asserts to postpone the use of budget authority. Upon enactment of the bill, the President would either have to use the rescission procedure of the Act or permit the funds to be obligated.

The bill's purpose is to overcome the sponsor's perceived effect of the Supreme Court's decision, Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983), on the Act. The Chadha case struck down as unconstitutional a federal law giving one House of the Congress the power to "veto" an executive action.

The deferral procedure in the Impoundment Control Act permits a one-House veto of a presidential deferral of funds. 2 U.S.C. 684(b). The sponsors of H.R. 2247 believe that this provision of the Act would likely be held unconstitutional and, in order to "restore the constitutional balance of authority between the Congress and the President," propose that the only authorized form of impoundment be a rescission. Cong. Rec. (daily ed. E1783, April 25, 1985).

The President has continued to comply with the procedural requirements of the Impoundment Control Act since Chadha was decided, submitting proposed deferrals to the Congress as before. To date, the Congress has not sought to overturn many deferrals. Whether this is because the deferrals themselves are not objectionable or because of concern over the effect of Chadha, we cannot say. Our position has been that the legislative veto proscribed by Chadha is distinguishable in most cases from the procedure under the Impoundment Control Act, and that unless the courts specifically rule otherwise, the Act's procedures should be presumed constitutional.

In any event, the few disapprovals of deferrals by the Congress since Chadha have been achieved by House and Senate passage of legislation signed by the President. We are aware of no attempts since then to use the one-House veto mechanism.

We recognize the concern over the effect of Chadha. Nonetheless, we believe that the deferral authority or something akin to it should be preserved. These 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.

We believe that, before enacting legislation to deal with the effect of Chadha, the Congress should determine whether in fact Chadha has created a serious problem. Some of the questions which should be addressed are:

- Have some deferrals which, before Chadha, one or both Houses would have voted to overturn, been permitted to continue because of the unavailability of the one-House veto? That is, of those deferrals proposed since Chadha which the Congress has not overturned by enactment of law, is it likely that, but for Chadha, at least one House would have voted to overturn them?
- Is the process of enacting a law to overturn a deferral, with the attendant risk of veto, a significant deterrent to using that technique in lieu of the one-House action?

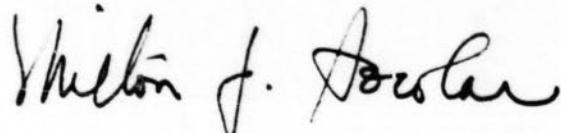
If the Congress finds, in answering these questions, that the present deferral procedure should be amended, we recommend that some form of deferrals nevertheless be preserved. The bill would require that deferrals be treated in the same way as rescissions, calling for approval by both Houses if they are to continue beyond a specified date. A drawback to that approach is that most deferrals are routine and would presumably be approved, but the requirement to act affirmatively increases the burden on an already-busy Congress, and makes it more likely than at present that meritorious deferrals would have to be terminated because of failure of the Congress to take timely action.

Also, the bill would not repeal that portion of the Impoundment Control Act which authorizes the President to create reserves, either for contingencies or to effect savings. Section 1002, Pub. L. No. 93-344, July 12, 1974. Those

reserves are required to be reported "in accordance with" the Impoundment Control Act. Id. Thus the bill would retain the statutory authority to create reserves but in effect would require that the reserved funds be proposed for rescission. Not only does this create an unnecessary burden on Congress; it also appears wholly inappropriate to require legislation, through the rescission process, before the President is permitted to save money or provide for contingencies.

One alternative to the bill would be to limit its application to deferrals for fiscal policy reasons. For other deferrals, such as reserves of fiscal year funds under section 1002 of the Impoundment Control Act, the Congress could require, for each deferral of fiscal year funds, that the President specify a date beyond which it would be impractical to obligate the funds in an orderly fashion, that the deferral not extend beyond that date (it could be for a shorter period), and that, in the absence of congressional action, the funds be made available no later than the specified date. In the case of multi-year funds, the deferral could, as now, extend for the entire fiscal year but no longer, except that the President would have to specify whether a similar deferral was contemplated for the next fiscal year. In this scheme, no congressional action would be necessary but the deferral would be self-limiting, and GAO's authority to bring suit would apply if the funds were not released on the specified date. The Congress would have to enact legislation if it wanted the funds released sooner than specified.

Sincerely yours,



Acting Comptroller General  
of the United States