



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

March 28, 1986

B-222215

The Honorable Thomas R. Carper  
House of Representatives

Dear Mr. Carper:

In your letter of February 19, 1986, you indicated that the Office of Juvenile Justice and Delinquency Prevention (OJJDP), Department of Justice, withheld \$70.2 million from obligation for 2 months before reporting an impoundment to the Congress. You asked why we did not report the withholding pursuant to the Impoundment Control Act at some point during that 2-month period.

As explained below, we did not report a withholding during that 2-month period for two reasons. First, we were initially unable to confirm that an impoundment was taking place. Second, when it became clear that an impoundment had begun on January 7, we had received assurances that the President would report it within a reasonable time. Although an unreported impoundment lasting less than 1 month did take place, the Congress was not in session during about 10 days of that time and could not have acted on the impoundment. Based on the now-reported rescission, the funds must be released on April 16.

As you know, section 1015(a) of the Impoundment Control Act, 2 U.S.C. § 686(a), authorizes the Comptroller General to report to the Congress impoundments which the President fails to report. Because of inquiries from a number of sources, we began inquiring, on December 17, 1985, about an alleged withholding of funds by OJJDP. On December 19, a story appeared in the Washington Post which seemed to confirm the existence of an impoundment.

Officials of the Office of Management and Budget (OMB) denied any withholding by it; and Department of Justice officials told us that OJJDP was moving ahead in good faith to obligate funds. Although OJJDP was slow in approving grant applications, it was obligating some funds. While not all grants had been awarded, we found that the pace was not significantly slower than in prior years. Deferrals are often difficult to distinguish from legitimate programmatic delays,

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particularly in a discretionary grant program in which the agency must make a series of evaluations and judgments before approving grant awards.

On January 10, 1986, while we were still attempting to pin down the nature of the withholding, we were advised by OJJDP that OMB had withdrawn, effective January 7, almost all of OJJDP's apportionment for grant programs. We were also told that a deferral would be reported on or about February 3, 1986, concurrently with submission of the President's budget for fiscal year 1987, and that the justification for the deferral would be that the program should be reviewed in light of the Balanced Budget and Emergency Deficit Control Act of 1985.

We did not, at that time, report a withholding. Although we still could not support factually that a continuous impoundment had begun on December 4, we could have reported on the withholding which began on January 7. However, we have maintained that, for administrative reasons, funds can be withheld for a reasonable time before an impoundment report is transmitted to the Congress. Here, OMB had indicated to us that we could expect a report of the withholding on February 3. The delay stemmed from the practice of reporting impoundments when the President submits his budget, because many of the impoundments are linked to the budget.

At the time we confirmed that a withholding was taking place, the Congress was in recess and was not scheduled to reconvene until January 21. Under the circumstances, a delay in reporting the withholding to the Congress until early February did not seem unreasonable.

On February 5, 1986, the President, in his third special message to the Congress, proposed a rescission of \$140,393,351 of budget authority available for justice assistance, which includes funds for juvenile justice grants. Under section 1012(b) of the Act, 2 U.S.C. § 683(b), the President must release those funds for obligation on April 16, 1986, unless before then both Houses of the Congress pass a bill rescinding the funds.

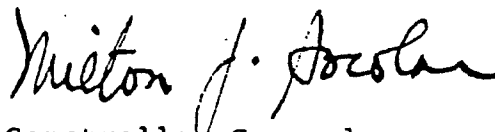
On one point in your letter we disagree. You suggest that the President, having presented his spending priorities in his budget, does not have the authority to impound funds

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included in appropriations bills which were passed by the Congress and which he signed into law. Under the Impoundment Control Act, the President does have such authority. The Act was designed to counterbalance this executive authority to alter statutory spending schemes by permitting the Congress, with relative ease, to disapprove deferrals, and by requiring that rescissions can continue after 45 legislative days only with affirmative congressional approval. 2 U.S.C. §§ 683, 684.

We hope this will be helpful.

Sincerely yours,

A handwritten signature in cursive script that reads "Milton J. Fowler".

Acting Comptroller General  
of the United States