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The President of the Senate and the
Speaker of the House of Representatives

On July 19, 2002, the Office of Management and Budget issued a memorandum, OMB Memorandum M-02-12 of July 19, 2002 ("Reducing Redundant IT Infrastructure Related to Homeland Security"), directing the component agencies of the proposed Department of Homeland Security (DHS)¹ to consolidate redundant information technology (IT) spending. Citing its authority in section 5113 of the Clinger-Cohen Act of 1996, Pub. L. No. 104-106 (January 3, 1996), 40 U.S.C. § 1413, OMB specifically directed the agencies to:

- "Cease temporarily all IT infrastructure system development and planned modernization efforts above \$500,000 pending an expedited review of all proposed DHS component agencies' investments.
- "Identify any current or planned spending on IT infrastructure not included in Attachment A to the memo.
- "Participate in the Homeland Security IT Investment Review Group led by the Office of Homeland Security (OHS) and OMB."

According to the memorandum, at the current time the affected agencies are in various stages of purchasing a number of different systems. The Review Group will look at all systems slated for the fiscal year 2002 and 2003 budget cycles across the component agencies of the proposed DHS, make recommendations for reducing costs, and track resulting savings. After these reviews have been completed, OMB will work with the agencies on further funding of IT development programs. The memorandum states that this action will affect the spending of at least \$360 million in fiscal year 2002 and is projected to affect at least \$780 million in fiscal year 2003.

¹ These component agencies were identified as the Department of Agriculture, the Department of Commerce, the Department of Defense (National Communications System), the Department of Justice, the Department of Transportation, the Department of Treasury, and the Federal Emergency Management Agency.

Subsequently, OMB issued Memorandum M-02-13 ("Review and Consolidation of Business Management Systems for the Proposed Department of Homeland Security") to the heads of the component agencies of the proposed DHS on July 30, 2002. This memorandum provides for a similar withholding of funding for and review of business management systems, such as those for financial management, procurement, and human resources.

In a letter dated August 20, 2002,² OMB responded to our request for information regarding the actions detailed in the July 19 memorandum.³ OMB cited to the memorandum as part of its on-going efforts to achieve "savings, efficiency and productivity" in the government's use of its IT resources. We commend OMB on their efforts to achieve economies through better management of the IT and business management resources involved here. That is, in fact, what we have encouraged OMB to do through a number of our reports and testimonies. At the same time, while the purpose of OMB's actions may be fully appropriate, this does not relieve OMB from their responsibility to report under the Impoundment Control Act.

The purpose of this letter is to report deferrals of budget authority for information technology and business management systems resulting from the above referenced memoranda that, in our view, should have been, but were not, reported to the Congress by the President pursuant to the Impoundment Control Act of 1974 (Act), 2 U.S.C. § 681 et seq. The Act authorizes such deferrals but requires they be reported to Congress. Section 1015(a) of the Act, 2 U.S.C. § 686(a), requires the Comptroller General to report to the Congress whenever he finds that any officer or employee of the United States has ordered, permitted, or approved a reserve or deferral of budget authority, and the President has not transmitted a special impoundment message with respect to such reserve or deferral.

The July 19 and 30 memoranda establish, and OMB's letter to us confirms, that the administration is indeed withholding funds from obligation. A withholding such as this, to achieve savings, is authorized by the Impoundment Control Act, but must be reported nonetheless. The Act defines "deferral of budget authority" to include:

² Letter from Philip J. Perry, General Counsel, OMB, to Susan A. Poling, Managing Associate General Counsel, GAO, August 20, 2002.

³ Although our initial correspondence to OMB was prepared before the July 30 memorandum was available and so did not address it, we believe that similar considerations apply to the funds being withheld under its authority.

“(A) withholding or delaying the obligation or expenditure of budget authority (whether by establishing reserves or otherwise) provided for projects or activities; or

(B) any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority...”

2 U.S.C. § 682(1).

The Act authorizes deferrals under the following circumstances:

- “ (1) to provide for contingencies;
- (2) to achieve savings made possible by or through changes in requirements or greater efficiency of operations; or
- (3) as specifically provide by law.”

2 U.S.C. § 684(b).

OMB issued the July 19, 2002 memorandum directing the component agencies of the proposed DHS to “pause (‘cease temporarily’) in their IT infrastructure development and modernization efforts that exceed \$500,000, so as to enable the Executive Branch to undertake an ‘expedited review’ of homeland security IT investments.” OMB cites to GAO reports and testimonies in which we have emphasized the importance of making wise IT investments to ensure that resources are not “wasted through the acquisition or retention of systems that are redundant, are not interoperable, or are otherwise not well-designed to enable an agency to carry out its mission in a cost-effective manner.” OMB states that the goal of the “pause” in spending and review of the homeland security IT investments is “to identify redundant IT investments which, if avoided, could potentially save the taxpayers \$100-200 million (based on a preliminary analysis) over the next two years.” We believe that a similar savings and efficiency justification applies to the business management funds being withheld for review under the July 30 OMB memorandum. This withholding fits the Act’s definition of “deferral,” but is authorized under 2 U.S.C. § 684(b)(2). While the Act permits withholdings to achieve savings, it nevertheless requires that such deferrals be reported to the Congress.⁴

⁴ Whenever there is a proposed deferral of budget authority, whether or not it would be authorized under 2 U.S.C. § 684(b), the Impoundment Control Act requires the President to transmit to the House of Representatives and the Senate a special message specifying:

“(1) the amount of the budget authority proposed to be deferred;

(...continued)

We do not agree with OMB's position that the withholding of these funds is not an impoundment. In its August 20, 2002 letter to us, OMB stated that "OMB was not directing agencies to impound budgetary authority," but offered little support for that position. OMB did not analyze the withholding ordered by the memoranda in the context of the Impoundment Control Act, as we have; rather, OMB argued only that it was carrying out its responsibilities in section 5113 of the Clinger-Cohen Act of 1996, 40 U.S.C. § 1413, "to issue 'clear and concise direction' to agencies," which includes "guidance for undertaking efficiently and effectively inter-agency and Government-wide investments in information technology to improve the accomplishment of missions that are common to the executive agencies." We agree that in issuing the July 19 and July 30 memoranda, OMB is providing guidance to achieve efficient and effective interagency IT investments. We do not view OMB's responsibilities under the Clinger-Cohen Act and the Impoundment Control Act to be incompatible, however. Indeed, OMB easily can accommodate both laws. The Impoundment Control Act does not affect OMB's decision to withhold IT budget authority to achieve the economies and efficiencies envisioned by the Clinger-Cohen Act, but it does require that the Executive report to the Congress any decision to withhold the budget authority.

In this regard, we view OMB's moratorium on the proposed DHS component agencies' IT and business management resources in the same light as the General Services Administration (GSA)'s order halting program-wide contracting activities that we reported as an authorized, but unreported, deferral on November 5, 1993. B-255338.2, November 5, 1993. On September 9, 1993, then-Commissioner of the Public Buildings Service Kenneth R. Kimbrough instructed all assistant regional administrators to cease all contracting activities on approximately 188 new public

(...continued)

- (2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific projects or governmental functions involved;
- (3) the period of time during which the budget authority is proposed to be deferred;
- (4) the reasons for the proposed deferral, including any legal authority invoked to justify the proposed deferral;
- (5) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed deferral; and
- (6) all facts, circumstances, and consideration relating to or bearing upon the proposed deferral and the decision to effect the proposed deferral..."

2 U.S.C. § 684(a).

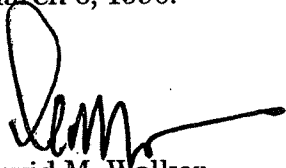
building projects not yet under construction to allow for a review of the projects on the basis of merit and cost. GSA directed the review to take a comprehensive look at all the new building projects to assure that the need and costs were justified. We concluded that while the directive to suspend contract awards clearly reflected a decision to delay the obligation or expenditure of budget authority provided for the projects, the deferral was authorized to achieve savings under 2 U.S.C. § 684(b)(2). Thus, GSA's order relating to the specified projects constituted a reportable, but authorized, deferral under the Impoundment Control Act. See also B-237297.7, June 8, 1990.

As in the GSA impoundment report, the deferral of IT and business management funding here is clearly authorized to "achieve savings made possible by or through changes in requirements or greater efficiency of operations." 2 U.S.C. § 684(b)(2). Nevertheless, the deferral of the funding withheld under the direction of both the July 19 and July 30 OMB memoranda must be reported to Congress immediately as specified in 2 U.S.C. § 684(a), particularly since, to the extent fiscal year 2002 funds are involved, those funds are only available for obligation until September 30, 2002. Because OMB has not reported the deferrals, we are reporting to the Congress, in accordance with section 1015(a) of the Impoundment Control Act, 2 U.S.C. § 686(a), the deferral of budget authority represented by the withholding of IT and business management funding covered by the July 19 and July 30, 2002 OMB memoranda.

OMB did not provide the documentation we requested, such as applicable apportionment schedules for the agencies affected, so we are unable to identify with certainty the specific funds involved, the amount, or their character, e.g., annual or multiple-year. A special message filed in accordance with the Impoundment Control Act would have contained such detailed information. To the extent fiscal year 2002 funds are involved here, such funds are only available until the end of this fiscal year, September 30, 2002. Therefore, the review and decisions regarding these funds at such a late date effectively puts these funds in jeopardy of expiring.⁵ This could

⁵ For deferrals of fiscal year funds, the Impoundment Control Act requires the Executive to release the funds with adequate time remaining in the fiscal year to ensure prudent obligation before the funds expire at the end of the fiscal year. 2 U.S.C. § 684(a).

create a situation in which the time remaining in the fiscal year would be insufficient to prudently obligate the funds, thus leading to a de facto rescission. See B-237927.3, March 6, 1990.

A handwritten signature in black ink, appearing to read 'D. Walker', with a long horizontal stroke extending to the right.

David M. Walker
Comptroller General
of the United States