June 5, 1947.

66949

Honorable Styles Bridges
Chairman, Committee on Appropriations
United States Senate

Dear Mr. Chairman:

On May 14, 1947, in connection with consideration of a supplemental estimate of appropriations for the Post Office Department, the Subcommittee on Deficiencies of your Committee, with yourself as Chairman, discussed at length with representatives of the Post Office Department, the Bureau of the Budget, and the General Accounting Office some of the many problems arising in connection with the administration of the Antideficiency Act. At the conclusion of such discussion, the Subcommittee requested that the two last-named agencies present a report and recommendations in writing with relation to the general problem involved and the facts considered by the Subcommittee.

In response to that request we respectfully submit the attached report and draft of remedial legislation. We will be glad to appear at a later date with members of our staffs to answer questions, furnish further information, or render such other assistance as may be desired.

Sincerely yours,

(Signed) F. J. Lawton

Acting Director of the
Bureau of the Budget

(Signed) Frank L. Yates

Acting Comptroller General
of the United States

Report and Recommendations

by the

Director of the Bureau of the Budget

and the

Comptroller General of the United States

with respect to the

Antideficiency Act and Related Legislation and Procedures

I. Introduction

The following report is directed to the facts developed in the hearings before the Subcommittee on Deficiencies of the Senate Committee on Appropriations, on H. R. 3245 (the Second Deficiency Appropriation Bill for 1947), with respect to a supplemental estimate of appropriations for the Post Office Department.

The pertinent facts leading to the Subcommittee's request to the representatives of the Bureau of the Budget and of the General Accounting Office who were before the Subcommittee are set forth in the report of the hearings and are referred to later in this report. The following is based on the understanding that the Subcommittee desires our recommendations, first, as to what can be done to control the use of appropriations so as to prevent the incurring of obligations at a rate which will lead to deficiency or supplemental appropriations or to curtailment of necessary activities if such appropriations are not made; and second, to fix responsibility on those officers of the Government who incur deficiencies or obligate appropriations without proper authorization or at an excessive rate.

Actual deficiencies are created by the incurring of obligations in excess of the amount available in an appropriation; and need for supplemental or deficiency appropriations commonly arises when obligations are created at a rate which results in exhausting an appropriation either without carrying out the purpose for which it was made, or before the end of the period for which it was intended to serve. Obligations against appropriations result from the making of contracts for supplies and services, the hiring of employees, and other similar actions of administrative officers which impose legal liabilities upon the United States. The authority to incur such obligations necessarily is delegated to many hundreds of administrative officers and employees at widely separated points, and the failure of any one of such officers or employees to exercise his authority in a proper manner may result in an actual deficiency or in a need for a deficiency or supplemental appropriation. It is possible to draft legislation designed to fix responsibility for any such improper exercise of authority. However, it must be recognized at the outset that no law can be devised which will operate as an absolute guarantee that none of the numerous administrative officers and employees who are authorized to incur obligations on behalf of the United States will exceed his authority.

Even if it were possible to control such actions absolutely, there still would be circumstances in which the making of deficiency or supplemental appropriations would be inescapable. In the present session of the Congress, notwithstanding a determined attempt on the part of the Committees on Appropriations in both Houses to reduce the number of

deficiency appropriations, it has been expressly recognized that such appropriations cannot be eliminated entirely. In its report on H. R. 3245 (Second Deficiency Appropriation Bill for 1947), mentioned above, the Committee on Appropriations of the House of Representatives, after discussing the present system of apportioning appropriations and the necessity for observing such apportionments so as to avoid deficiencies, states:

> "In each fiscal year there will be some situations arising where changes in work loads and other matters entirely without the control of the spending agencies will make some deficiency appropriations necessary. . . ."
> (H. Rept. No. 323, 80th Cong., 1st sess., p. 3)

The primary reason why "changes in work loads and other matters entirely without the control of the spending agencies" will make some deficiency appropriations necessary is inherent in the system of making appropriations based on estimates of future needs. Due to the length of time necessarily elapsing between the formulation of the estimates and the actual obligation of the appropriations, the circumstances encountered when the appropriation is obligated frequently are considerably different from those anticipated when the estimates were prepared. For example, the estimates of a regular annual appropriation for a particular agency for the fiscal year commencing July 1, 1948, ordinarily would be prepared in July and August of 1947, submitted to the Bureau of the Budget in September, reviewed and revised in October and November, and transmitted to the Congress by the President in January of 1948. While the hearings before the Committees on Appropriations normally would be held in the spring of 1948, and would offer some opportunity for a reevaluation of the estimates, the appropriation becoming available on July 1, 1948,

would be based mainly on estimates prepared in the summer of 1947. The appropriation would remain available for obligation until June 30, 1949, or nearly two years after the preparation of the estimates on which the appropriation was based.

One important factor outside the control of the spending agencies deserves special mention. During the time between the preparation of the estimates and the obligating of the appropriation many laws are enacted by the Congress which directly affect such obligations. The Budget and Accounting Act expressly provides that the President from time to time may transmit to Congress supplemental or deficiency estimates for such appropriations or expenditures as in his judgment are necessary on account of laws enacted after the transmission of the Budget. Such estimates and the appropriations based thereon should be considered strictly as supplemental rather than as deficiency estimates and appropriations, although there has been no clear distinction in practice between estimates of this character and those required by situations involving deficiencies. Regardless of the terminology, however, there can hardly be any disagreement as to the propriety of estimates of the former character.

It is apparent, therefore, that a proposal directed solely towards eliminating deficiency and supplemental appropriations will not solve the problem. Rather, the solution requires that a method be devised which will permit control of the rate of obligation of appropriations so that deficiency appropriations can be held to a minimum, but will at the same time permit an accelerated rate of spending--even at the risk of creating a need for deficiency appropriations--in cases such as those referred to

in the above-quoted report of the House Committee on Appropriations. In no other way can the Congress be assured that the spending agencies will live completely within their appropriations where that is at all possible, and also that necessary Government functions will be continued in the manner desired by the Congress even when changed conditions make it utterly impossible to carry on such functions within the rate of obligation contemplated by the appropriation. The problem, in short, is one of establishing control of the rate of obligation of appropriations, while maintaining sufficient flexibility to provide for the most efficient and economical use of appropriations, under constantly changing conditions, for the purposes prescribed by the Congress.

In considering the following, it should be borne in mind that charges against appropriations are fixed initially by the creating of obligations, rather than by the actual expenditure of funds. Under the system of disbursing appropriated moneys, actual expenditures are based upon contracts, purchase orders, and appointments or other actions which result in imposing liabilities upon the United States. An expenditure which is not supported by a valid obligation is readily detected in the audit by the General Accounting Office of payments made by disbursing officers. However, an expenditure which is supported by a valid obligation is not questioned in the audit, so long as there are funds available in the appropriation to cover the payment. Hence the control of the rate at which appropriations are used is a matter directly connected with the creating of obligations, rather than with the making of actual expenditures.

II. Existing Controls

The present system of controls includes measures designed to prevent spending in excess of appropriations; to prevent the creating of obligations at a rate which would exhaust appropriations prior to the end of the period for which they were intended to serve, and to conserve appropriations through the imposition of personnel ceilings, the establishment of reserves, and the enactment of rescissions when developments subsequent to the making of appropriations render unnecessary the use of the money appropriated.

The primary control of this nature is the so-called Antideficiency Act (section 3679, Revised Statutes) which is set forth as section 665 of Title 31, United States Code. (Appendix A to this report.) The first sentence of that section is derived from an act of 1870, which constituted the original section 3679, Revised Statutes, and was designed solely to prevent expenditures in excess of amounts appropriated. The remainder of the section was added by amendments in 1905 and 1906. Such amendments prohibited any department or officer of the United States from accepting voluntary service or employing personal services in excess of those authorized by law, except in certain cases of emergency, and required that certain types of appropriations be so apportioned over a fiscal year as to "prevent expenditures in one portion of the year which may necessitate deficiency or additional appropriations to complete the service of the fiscal year for which said appropriations are made". Under the amended section, the authority to make, waive, or modify apportionments was

vested in the head of the department or agency concerned. By Executive Order 6166 of June 10, 1933, this authority was transferred to the Director of the Bureau of the Budget.

The apportionment provisions of the Antideficiency Act were supplemented on August 13, 1940, by Executive Order 8512, which provides for apportionment of each appropriation made to a Government agency, including amounts made available by the Congress for the administrative expenses of Government corporations. (Appendix B.) The apportionment system is implemented by regulations issued by the Secretary of the Treasury and the Director of the Bureau of the Budget, with the concurrence of the Comptroller General, and by regulations of the General Accounting Office designed to secure reports of obligations against appropriations which will show whether such appropriations are being exceeded or obligated at an excessive rate.

As mentioned above, changing conditions inevitably will make necessary certain deficiency or supplemental appropriations. On the other hand, situations frequently will arise where appropriations are in excess of requirements because of circumstances developing subsequent to the formulation of estimates and the enactment of appropriation acts. It is obvious that unless some action is taken to conserve such appropriations, there will be moneys available to the spending agencies for which there is no real need. These moneys frequently will be spent even though the Congress would not have made the appropriation if it had been requested to do so in the light of the circumstances existing when the appropriation was obligated.

The need for some control in such situations was recognized by the Congress in section 303 of the Second Deficiency Appropriation Act, 1944, 58 Stat. 623, and in the Second Deficiency Appropriation Act, 1945, 59 Stat. 416. (Appendix C.) The first of these provided that the President direct the Bureau of the Budget to maintain a continuous study of certain appropriations and contract authorizations for defense purposes, with a view to recommending repeal of such portions thereof as should be deemed no longer required for the purposes for which they were granted. The second provided that, in addition, there should be submitted to the Congress on January 3, 1946, a list showing the balances of each such appropriation and contract authorization, together with recommendations for the repeal of those funds no longer required.

Recent personnel ceiling legislation also has a direct bearing upon the control of appropriations in excess of actual needs. Section 11 of the War Overtime Pay Act of 1943 provided that the Director of the Bureau of the Budget make quarterly determinations of employees required by the executive departments and agencies, and that there be released any personnel in excess of such determinations. This procedure was continued by section 607 of the Federal Employees Pay Act of 1945, as supplemented by section 14 of the Federal Employees Pay Act of 1946. (Appendix D.) Section 607 also contained a provision that the Director of the Bureau of the Budget should maintain a continuous study of all appropriations and contract authorizations in relation to personnel employed and should, under policies prescribed by the President, reserve from expenditure any savings in salaries, wages, or other categories of expense which he

determined to be possible as a result of reduced personnel requirements. It was further provided by the 1945 Act that such reserves might be released by the Director for expenditure only upon a satisfactory showing of necessity.

Summarizing, it will be seen that existing controls designed to relate the use of appropriations to the circumstances actually existing when the appropriations are obligated include the following:

(a) prohibitions against spending in excess of appropriations;

(b) regulation of the rate of obligations against appropriations, through apportionments, with a view to making certain that the appropriations cover the entire period which they were intended to serve;

(c) examination of and recommendations for repeal of appropriations in certain categories when it is demonstrated that any part thereof is not needed;

(d) personnel ceilings; and

(e) reservation of appropriations from expenditure, to the extent that savings are possible through reduced personnel requirements.

III. Difficulties Under Existing Controls

When the Antideficiency Act was brought to its present form in 1905 and 1906, Federal departments and establishments were few; Federal programs were narrowly limited in variety and scope, and the problems of management of Federal expenditures were relatively simple. When we consider the Federal Government of today, with the multiplicity of its agencies, the variety and scope of its functions, and the size and complexities of its budgetary and operational problems, it is not surprising that serious

dissatisfaction has been expressed in the Congress and in the Executive branch with operations under the apportionment system instituted under the 1905 and 1906 amendments.

Certain technical aspects of the Act have created substantial difficulties in operating under its provisions. For example, it is not at all clear what is meant by the provision that "all appropriations made for contingent expenses or other general purposes" shall be apportioned. Nor is it clear what appropriations are intended to be excluded from the apportionment system by the provision which excepts "appropriations made in fulfillment of contract obligations expressly authorized by law, or for objects required or authorized by law without reference to the amounts annually appropriated therefor." Similarly, it is difficult to obtain any general agreement as to what is meant by the provision authorizing the waiver or modification of apportionments "upon the happening of some extraordinary emergency or unusual circumstance". The fact that annual appropriation bills frequently are not enacted until shortly before, or even after, the beginning of a fiscal year makes it impossible to comply in all cases with the requirement that apportionments be made "on or before the beginning of each fiscal year" for which the appropriation is available.

Further, the penalty provisions (summary removal from office and a fine of not less than $100 or imprisonment for not less than one month), while possibly not severe enough to constitute adequate punishment for serious and willful violations of the Act, are entirely too severe when considered in connection with minor or inadvertent violations, with the result that they have rarely, if ever, been enforced.

Aside from the foregoing, the present law is defective in three major respects. First, the only provision designed to prevent the incurring of obligations at an excessive rate is in the form of a requirement that apportionments be adhered to. However, appropriations when apportioned are in most cases broken down into allotments or allowances for use by the many hundreds of purchasing and contracting officers and other employees who actually incur obligations. In many cases these employees are not even aware of the amount of the apportionment. There is no specific statutory prohibition against incurring obligations in excess of such an allotment or allowance, nor is there any such prohibition against granting allotments or allowances in excess of apportionments.

The inadequacy of a system which does not follow the appropriation down into the allotments or allowances is clearly demonstrated in the case involving the supplemental estimate for the Post Office Department which was discussed in the report of the Senate hearings referred to above. The report indicates that the postmaster at Boston had a definite allowance from the Department, but that he exceeded that allowance by $160,898 in the first quarter, $572,042 in the second quarter, and $433,683 in the third quarter, ending March 31, 1947. Although the obligations incurred for the post office at Boston thus exceeded allowances for that office by more than one million dollars, these obligations, standing alone, were not in excess of the amounts apportioned in the appropriation for the periods mentioned.

Furthermore, obligations were incurred in excess of allowances at other post offices. The situations in these offices differed only in degree from the situation in the Boston office. The exceeding of the

allowances in any one of these post offices could have resulted in obligating the appropriation in excess of the apportionment for a particular period. However, when allotments or allowances are exceeded in many places, there is no method prescribed in the present law for determining which of the officers who obligated in excess of his allowance is actually responsible for incurring obligations in excess of the apportionment.

Second, the provision for making apportionments by monthly or other allotments generally has been interpreted as requiring apportionments by time periods, and in practice this has developed into a system of apportioning funds by calendar quarters. Obviously, apportionments by calendar quarters bear no relation to the operating needs of agencies such as the Forest Service, the National Park Service, or the Geological Survey whose operations are governed by field seasons.

The inadequacy of an apportionment made on the basis of time periods, without regard to the manner in which the appropriations are broken down to meet actual operating needs in incurring obligations, is illustrated by the report of the Committee on Appropriations of the House on the Second Deficiency Appropriation Bill for 1947 (H. R. 3245, cited above). With reference to the Maritime Commission revolving fund, the Committee states:

> "The apportionment runs to the whole of the appropriation rather than the separate limitations. The Maritime Commission therefore, in running a deficiency in the limitation was not running a deficiency in the appropriation and there was no way for their obligation reports to the Bureau of the Budget to disclose the true situation with respect to the administrative expense limitation. The Bureau of the Budget should immediately look into this matter with view to securing whatever amendments to the regulations are necessary to require a separate apportionment of funds of this and similar types in order that all funds may

be controlled by the apportionment procedure. If amendments of the law are necessary to accomplish this purpose, the Congress should be so advised."

Third, the present law makes no provision for notifying the Congress when appropriations are being obligated at a rate which may be expected to result in a request for a deficiency or supplemental appropriation. Even where circumstances justify obligation at such a rate, the Congress has expressed dissatisfaction with the result because under that law the first notice of the situation has been in the form of a request for a deficiency or supplemental appropriation. At that stage, the alternatives usually are the making of the appropriation or the drastic curtailment of the activity involved.

In addition to the matters just referred to, the Antideficiency Act, while designed to prevent deficiencies, does not fill the need for machinery to conserve appropriations which are in excess of actual requirements. This inadequacy has led the Congress to adopt such expedients as the provisions of the Second Deficiency Appropriation Act, 1944, and of the Second Deficiency Appropriation Act, 1945, referred to above, and the personnel ceiling legislation.

The need for a continuous study of appropriations in order to determine whether such appropriations are required for the purposes for which they were provided is just as real in the case of appropriations for the ordinary day-to-day operations of the Government as it is in the case of appropriations for "the national defense, war agencies, and the prosecution of the war". While the appropriation acts referred to above provided for a continuous study of appropriations made for those particular purposes with a view towards repealing any parts of such appropriations no

longer needed, there is no express statutory provision for a similar study by the Executive branch of other appropriations, except in the law requiring that personnel ceilings be established by the Director of the Bureau of the Budget. Under that law the Director is required to establish reserves to the extent he determines that savings can be effected as a result of "reduced personnel requirements". The result of this is that when savings accrue early in a fiscal year from causes other than reduced personnel requirements, there is no general statutory authority under which appropriated moneys can be reserved or impounded so that they may be returned to the Treasury. The natural tendency is to obligate such savings toward the end of the fiscal year even though there may be no essential need therefor. Briefly, there is no specific authority such as would be necessary to provide a continuous review of all appropriations, funds, and contract authorizations in order to insure that such funds will not be needlessly obligated in cases where circumstances developing after the formulation of the estimates or after the enactment of the appropriation act have made it clear that such appropriations, funds, or contract authorizations are in excess of actual requirements.

All of the statutory provisions discussed above have been fruitful of savings in expenditures in some degree throughout the Executive branch of the Government. The various special acts requiring constant study of the expenditure status of war appropriations have resulted in Congressional rescission of such appropriations in very large sums. However, all these laws are pointed toward the same general objective, that is, the efficient and economical use of appropriated funds. Administratively they have

caused a multiplicity of directives and have necessitated complex, cumbersome, and overlapping procedures, particularly under the personnel ceiling requirements. They have involved much expense and confusion and thereby have defeated their own purpose to a certain extent.

The President, committees of the Congress, and representatives of the spending agencies have heretofore indicated that the personnel ceiling procedures have outlived their usefulness. In his latest Budget Message to the Congress the President said:

> "The personnel reductions were facilitated by the statutory limitations on personnel and provisions for detailed personnel ceiling determinations enacted by the Seventy-ninth Congress. When we began to convert to a peacetime basis and appropriations greatly exceeded expenditures, this legislation served a useful purpose. By the Legislative Reorganization Act the Congress has in effect decided that the extent of Federal activities, and hence personnel, should be determined by the usual appropriations process. The statutory limitations and personnel ceilings constitute a separate and possibly conflicting method of controlling the number of employees. The appropriations process, to my mind, is far preferable to the personnel ceilings and limitations, since these place undue emphasis upon the number of employees and put a premium on contractual arrangements and other measures to get the necessary work done without exceeding numerical limitations.
>
> "I therefore recommend the repeal of the statutory limitations on personnel and provisions for personnel ceiling determinations."

In its report on the Department of Agriculture Appropriation Bill, fiscal year 1947 (H. Rept. No. 1659, 79th Congress, p. 3), the House Committee on Appropriations stated:

> ". . . The man-year element and the amounts of money appropriated go hand in hand. If one is increased or decreased the increase or decrease of the other automatically follows. From the beginning of the Government the Congress has invariably provided for the public service in terms of money appropriated, and the Committee knows of no reason for deviating from that practice."

Before a Congressional committee in connection with a 1947 appropriation bill, the Director of Budget and Finance of one of the executive departments testified as follows:

> ". . . This matter of reduction of force, according to my observation is more a matter of dollars than any other factor; personnel is based almost solely on the amount of money allowed . . . I have been unable to understand the amount of energy that is being required to be used by the Departments, and the Bureau of the Budget, and the amount of dependence which the Congress apparently has placed on the recently instituted personnel ceiling procedure, because it is so easy to control Government personnel, and every other expenditure factor by the basic decision to grant, withhold or modify the appropriation. That is the basic thing which settles, or ought to settle, the question of how much personnel you are going to need or be allowed to have. To supplement that with an elaborate additional process such as is now in effect for quarterly personnel ceilings seems superfluous."

The above quotations represent a view widely shared both within and outside of Congress that dollar controls on the basis of programs, services, organizations, functions, or activities are more economical, more effectively workable, and more responsive to the will of Congress than personnel ceilings.

IV. Proposed Legislation

It is believed that the Antideficiency Act must be modified in several important respects if it is to serve as a working tool for effective control of the use of appropriations. It is believed, also, that the related legislation enacted in recent years should be integrated with the Antideficiency Act in order to provide a system which will permit the efficient management of appropriations which the Congress has a right to expect.

There is attached a draft of a proposed bill designed to provide such a system. This proposed bill has the following effect upon existing controls summarized in the second section of this report:

(a) continues the prohibition against spending in excess of the appropriation.

(b) extends the regulation of the rate of obligations against appropriations, through an apportionment system, down to allotments or allowances, and fixes responsibility, with penalties for violations.

(c) extends to all appropriations subject to apportionment the procedure for continuous examination and recommendations for repeal of any part not needed.

(d) integrates the control of personnel with the control of appropriations and repeals personnel ceilings and limitations.

(e) extends to all appropriations subject to apportionment the principle of reservation from expenditure to effect savings made possible by certain factors enumerated in the bill.

In considering the proposed bill, it must be recognized that the carrying of the apportionment system down into allotments and allowances will inevitably result in a necessity for tighter accounting controls which will make for certain increases in the labor and cost incident to establishing such controls. However, it is believed that the increased costs and additional work entailed under this system will be largely offset by the savings in time and money which would result from the repeal of the personnel ceiling legislation. In fact, the increased cost under the proposed bill probably could be justified only if the

agencies were freed from the expense and procedural difficulties now occasioned by personnel ceilings.

A section-by-section analysis of the proposed bill follows.

The first section consists of an amendment to the Antideficiency Act which would be a substitute for the entire Act.

Subsection (a) of section 1 would prohibit the making or authorizing of expenditures in excess of the amount available in any appropriation or fund, and also the creating or authorizing of an obligation against any appropriation or fund in excess of the amount available therein. The second clause of this subsection would prohibit involving the Government in any contract or other obligation for the payment of money in advance of appropriations unless such contract or obligation were authorized by law. (It should be noted that certain items are authorized by law to be contracted for in excess of appropriations made therefor. See, for example, 41 U. S. C. 11; 25 U. S. C. 99; 31 U. S. C. 667; 31 U. S. C. 668. The language of this clause follows the present law, and would make no change in these authorizations.) Subsection (a), while designed to prevent deficiencies to the extent that it prohibits the making of expenditures or the creation of obligations in excess of appropriations, is not directed at the rate of spending, and therefore, is not connected with the apportionment system usually associated with the Antideficiency Act.

Subsection (b) proposes substantially a reenactment of existing prohibitions against acceptance of voluntary services or employment of personal services in excess of those authorized by law. It has been held consistently that the term "voluntary service" as used in the present statute is not synonymous with gratuitous services but contemplates services furnished on the initiative of the party rendering them, without request from, or agreement with, the United States. Hence a person may, with the express consent of the United States, agree to furnish services gratuitously without violating the statute.

Paragraph (1) of subsection (c) would provide that all appropriations or funds available for obligation for a definite period of time (barring those which are excepted by later provisions of the amended section) be so apportioned as to prevent obligation thereof in a manner which would indicate a necessity for deficiency or supplemental appropriations for such period. This is designed to insure that appropriations which are available for a fiscal year, or for other time periods (usually related to fiscal years) will not be obligated at a rate which would exhaust the appropriation prior to the end of the period for which the appropriation was made, and thus result in a need for a deficiency or supplemental appropriation or in drastic curtailment of the activity for which the appropriation was made.

Paragraph (1) of this subsection would provide also that all appropriations or funds not limited to a definite period of time, and all authorizations to create obligations by contract in advance of appropriations

(commonly referred to as contract authorizations) be so apportioned as to achieve the most effective and economical use thereof. The first part of this provision relates to the so-called "no-year" appropriations, that is, those which are available indefinitely and without relation to any particular fiscal year. The second part relates to contract authorizations which may or may not be required by law to be executed with reference to any particular fiscal year. The no-year appropriations referred to are now under the apportionment system but the authority for their inclusion in that system stems from Executive Order 8512, dated August 13, 1940, rather than from the present Antideficiency Act, which relates only to fiscal year appropriations. This provision is not aimed directly at preventing deficiencies, but it is believed that no-year appropriations and contract authorizations must be included in the apportionment system and be controlled to the extent necessary to insure efficiency and economy in carrying out the purpose for which such appropriations and authorizations are granted by the Congress. The last sentence of this paragraph would provide that as used thereafter in the amended section, the term "appropriation" means appropriations, funds, and authorizations to create obligations by contract in advance of appropriations.

Paragraph (2) of subsection (c) would authorize the officer making apportionments to establish reserves "to provide for contingencies, or to effect savings whenever savings are made possible by or through changes in quantitative or personnel requirements, greater efficiency of operations, or other developments" subsequent to the date on which the appropriation,

fund, or contract authorization was made available. For the reasons stated in the earlier part of this report, this authority is believed to be essential to sound financial management. It is recognized that this provision presents a policy question for decision by the Congress. It is recognized, also, that the authority which would be granted must be exercised with considerable care in order to avoid usurping the powers of Congress. However, appropriations are not regarded generally as mandates to spend money to the limit of such appropriations without regard to any considerations of efficiency or economy. In this connection, the authority to set up reserves would not be exercised with respect to appropriations exempted from the apportionment procedure by subsection (f).

The granting of this authority, accompanied by the restrictions and safeguards contained in the quoted provisions of the proposed bill, would be in line with the action previously taken by the Congress in enacting the provision in the personnel ceiling law for the establishing of reserves where savings in salaries, wages, or other categories of expense are made possible by reason of reduced personnel requirements. Further, the authority to establish reserves to provide for contingencies appears to be essential if there are to be avoided hereafter the deficiency apportionments which heretofore have been made under the authority contained in the present law to waive or modify initial apportionments "in emergencies or unusual circumstances." Sound management clearly requires that such reserves be maintained, and the apportioning officer should be empowered to enforce the requirement.

The further provisions of paragraph (2) of subsection (c) contemplate that the Congress will be requested to rescind any amount reserved in the apportionment process when it is found that such amount will not be required to carry out the purposes of the appropriation, fund, or contract authorization concerned. The machinery by which such rescissions would be effected is the same as that provided in the Budget and Accounting Act of 1921 for estimates of appropriations--that is, recommendations for rescissions of appropriations in all branches of the Government would be made to the President, but the recommendations for the Legislative branch and the Judiciary would be transmitted by him to the Congress without revision. This provision of the proposed bill would, as indicated above, extend to all appropriations the direction previously given by the Congress for the review of appropriations for defense purposes and the recommending of the repeal of any part of such appropriations no longer required. At the time of receiving and acting upon such recommendations, the Congress would have an opportunity to exercise its judgment as to continuance of the need for the appropriation.

Paragraph (3) of subsection (c) would provide for apportionments by "months, calendar quarters, operating seasons, or other time periods, or by activities, functions, projects, or objects, or by a combination thereof." The present Antideficiency Act provides for apportionments "by monthly or other allotments". By reason of the implication in the quoted words that apportionments are to be based upon time periods, it

has become the almost universal practice to make apportionments by calendar quarters. As indicated previously, the operations of many agencies do not fit into a system of calendar quarters but are best gauged by operating seasons or other time periods. Further, as shown by the above-quoted report of the House Committee on Appropriations on the Second Deficiency Appropriation Bill for 1947, with respect to the Maritime Commission revolving fund, apportionments by time periods without regard to the objects of expenditure covered by the apportionments do not provide an adequate control. Paragraph (3) would provide further that amounts apportioned should remain available for obligation on a cumulative basis in accordance with the terms of the appropriation unless reapportioned.

Paragraph (4) of subsection (c) would provide that apportionments be reviewed at least four times each year, and contemplates that upon such review, such reapportionments will be made or such reserves established, modified, or released as may be necessary to further the effective use of the appropriation, fund, or contract authorization concerned in accordance with the purposes stated in paragraph (1) of this subsection. This provision, coupled with the provision of paragraph (1) for establishing reserves, would make possible a continuous and active study, currently, of the progress and effectiveness of the execution of the programs authorized by the Congress.

Subsection (d) of the proposed amendment designates the officers who shall make apportionments and reapportionments. This subsection is divided into two paragraphs, of which the first relates to appropriations, funds, and contract authorizations available to the Legislative branch, the Judiciary, and the District of Columbia. In this connection, it may be noted that the present antideficiency law covers "all appropriations" (except certain types which are specifically exempted) without distinguishing between appropriations for the Legislative branch, the Judiciary, or the Executive branch, except that contingent appropriations of the Senate and the House of Representatives are specifically exempt from the apportionment provisions. Thus, the appropriations available to the Legislative branch and those available to the Judiciary, except the contingent appropriations mentioned, inadvertently have been made subject to apportionment by the Director of the Bureau of the Budget in Executive Order 6166 of June 10, 1933. To correct this, paragraph (1) of this subsection makes separate provision for apportioning appropriations available to the Legislative branch, the Judiciary, or the District of Columbia, and designates the officer or officers having administrative control of each such appropriation to make the apportionment thereof. A time limit is provided within which the apportionment should be made.

It is desired to emphasize that the provisions with respect to apportionment of the appropriations for the Legislative branch, the Judiciary, and the District of Columbia have been included in the bill solely to provide a framework within which such appropriations may be subjected to apportionment if the Congress so desires, and it is suggested that such provisions should receive further

consideration by the Office of the Legislative Counsel if they are to be included in the bill.

Paragraph (2) of subsection (d) provides that appropriations for the agencies, required to be apportioned under the provisions of subsection (c), shall be apportioned or reapportioned in writing by the Director of the Bureau of the Budget, and that the agencies shall submit information necessary therefor in such form and manner as the Director may prescribe. Definite time limits for submitting such information and for making apportionments are provided, the net result of which is to require that apportionments in all cases be made not later than 20 days before the beginning of the fiscal year for which the appropriation is available or not more than 30 days after the approval of the act by which such appropriation is made available, whichever is later. These provisions are aimed at preventing delays which have occurred in some cases in the past in the submission of proposed apportionments by the agencies, and in the making of apportionments by the Bureau of the Budget. They will cure a defect in the present law which, as mentioned above, does not recognize that appropriations may not be made prior to the beginning of the fiscal year.

Paragraph (2) also defines the term "agency", when used in the amended section, as meaning "any executive department, agency, commission, authority, administration, board or other independent establishment in the Executive branch of the Government, including any corporation wholly or partly owned by the United States which is an instrumentality of the United States."

As shown above, situations inevitably will occur which will necessitate the obligating of various types of appropriations on a basis which would indicate a necessity for a deficiency or supplemental estimate if the programs and purposes specified by the Congress in appropriation acts are to be effectively carried out. It is believed that the somewhat confused situation under the Antideficiency Act stems largely from the fact that the present law does not set up any workable standard for making apportionments on such a basis in proper cases. Subsection (e) of section 1 would correct this situation by providing that no apportionment or reapportionment which, in the judgment of the officer making such apportionment or reapportionment, would indicate a necessity for a deficiency or supplemental estimate, should be made except upon notification to the President and to the Congress, as provided in paragraph (2) of the subsection, and upon a determination by such officer that such action is necessary in the interest of the United States. Definite criteria are established in paragraph (1) of subsection (e) for use by the apportioning officer in determining when an apportionment of this character is necessary, in the interest of the United States.

The factors which the officer making the apportionment would be authorized to consider in determining whether an apportionment should be made which would indicate a necessity for a deficiency or supplemental estimate are set forth in paragraph (1) of subsection (e) as follows:

"(A) the legislative history of the appropriation concerned"

This clause would authorize apportionments on a basis indicating a necessity for a deficiency or supplemental estimate in cases where the committee reports or other pertinent legislative history of the appropriation act indicated a view that the amount appropriated might be insufficient to carry out the contemplated program for an entire fiscal year, and where that view was subsequently proved correct. This is a recognition of the fact that the committees on many occasions have, with a view to economy, recommended the appropriation of amounts less than those requested by the President in the hope that the lesser amounts would be sufficient to carry out the desired programs, but with the expressed reservation that additional sums might prove to be necessary. In some cases it has been possible for the agencies concerned to live within the lesser figure, and in such cases it is probable that economies have resulted from such action by the committees. It seems likely, therefore, that this practice will be followed hereafter in some instances. If so, it is believed that the officer charged with the duty of making the apportionment, as well as the agency concerned, must be authorized to rely upon the indications of the legislative history of the appropriation act that an additional amount will be forthcoming if events establish the necessity therefor, and to apportion the appropriation accordingly. It is believed the Committee is entirely familiar with the situation described, so that the citation of specific examples would only result in unduly lengthening

the report. However, examples of types of statements from the legislative history of appropriations which are contemplated by clause (A) of paragraph (1) are available and will be furnished promptly if the Committee so desires.

> "(B) any laws affecting an appropriation which may have been enacted subsequent to the transmission to the Congress of the estimates for such appropriation"

Many new laws enacted subsequent to the submission to the Congress of estimates of appropriations resulted in increasing the rate of obligations in the current fiscal year. In some cases these laws were approved after the passage of the appropriation act, and in other cases shortly before the appropriation was made. Technically, in the latter type of case there may have been in some instances an opportunity to seek additional appropriations to carry out the functions imposed by the new laws, but as a practical matter the legislative process seldom permits the passage of newly-conceived appropriation legislation in the last few days, or even weeks, of a legislative session.

Examples of laws enacted in the 79th Congress which necessitated substantial increases in the obligational rate of certain appropriations are Public Law 662, approved August 8, 1946, increasing compensation and pension payments to veterans of both World Wars, and Public Law 589, approved August 1, 1946, making certain additional insurance benefits available to veterans. Appropriations to cover the cost of these items under prior law had been made to the Veterans Administration by the Independent Offices Appropriation Act, 1947, which was approved March 28, 1946. Another

example is Public Law 474, approved June 29, 1946, which increased the pay and allowances of military personnel. Although the Military Appropriation Act for 1947 (Public Law 515) was not approved until July 16, 1946, the time intervening between approval of Public Law 474 and enactment of the appropriation act was insufficient to permit provision in the regular annual appropriation bill for the increased costs. It is for this reason that provision is made in clause (B), above, for apportionments on a basis indicating a necessity for a deficiency or supplemental estimate in cases where new laws resulting in increased costs are enacted "subsequent to the transmission to the Congress of the estimates" for an appropriation, rather than subsequent to the enactment of an appropriation act. This procedure is in line with that now established under section 203 of the Budget and Accounting Act (31 U. S. C. 14) which provides that the President may from time to time transmit to Congress supplemental or deficiency estimates "necessary on account of laws enacted after the transmission of the Budget . . ."

> "(C) emergencies involving the safety of human life or the protection of property."

This clause is intended to permit apportionments on a basis indicating a necessity for a deficiency or supplemental estimate when the rate of obligating an appropriation must be increased to provide for emergencies involving the safety of human life or the protection of property.

As indicated previously, it is not clear what is meant in that part of the present law which authorizes waiver or modification of an apportionment "upon the happening of some extraordinary emergency or unusual circumstance which could not be anticipated at the time of making such apportionment." The present law is equally vague in excepting from the apportionment system those appropriations made "for objects required or authorized by law without reference to the amounts annually appropriated therefor." Under present law, the Executive branch heretofore has considered that appropriations for certain activities of the Government must be apportioned on a basis leading to a deficiency or supplemental estimate in some circumstances in order to insure that obligations of the Government will be met in accordance with the apparent intent of the basic legislation and the appropriations made pursuant thereto. Notable among these appropriations are those for grants to States for public assistance programs, for payment of benefits to veterans, and for the cost of certain essential services provided by the Government.

It is believed to be desirable that programs of this type be carried on without delay or curtailment, even in the event changed circumstances indicate that appropriations therefor are inadequate, and that the need for flexibility in the use of these appropriations is recognized in the Legislative as well as within the Executive branch. However, it has been found impracticable to draft language which would cover all of these cases without falling back upon somewhat vague expressions of the kind used in the present law. Accordingly, the bill would authorize the inclusion in appropriation acts of provisions specifically authorizing the apportionment of any particular appropriation on a basis which would indicate a necessity for a deficiency or supplemental estimate when such action was determined

by the apportioning officer to be in the interest of the United States. This will offer the Congress an opportunity to consider, in the case of each individual appropriation, whether such an apportionment should be made, and will obviate the misunderstandings which have occurred in some instances in the past. Aside from those appropriations where apportionments on such a basis might be authorized specifically in the appropriation acts, such apportionments would be permitted only after a determination, upon the basis of such factors as those outlined above under the separate clauses of this subsection, that they are necessary in the interest of the United States.

The provision of paragraph (2) of subsection (e) for an immediate report to the President and to the Congress whenever an appropriation was apportioned on a basis which would indicate a necessity for a deficiency or supplemental appropriation would give the Committees on Appropriations an opportunity to question immediately any apportionment which they believed to be not in accord with the will of the Congress.

Subsection (f) would exempt from the apportionment system certain appropriations and funds, not on a fiscal year basis, such as trust funds and appropriations for payment of claims and judgments, where apportionment would serve no useful purpose. This subsection also continues the specific exemption from apportionment, provided in the present law, for appropriations for contingent expenses of the Senate or of the House of Representatives. However, trust funds and funds of Government corporations would be included in the apportionment system to the extent that use of any part of such funds might be limited by an appropriation act.

The need for carrying the apportionments down through the appropriations into allotments and allowances has been fully discussed in the earlier part of this report. Subsection (g) would provide for regulations for adequate administrative allotments and suballotments and any necessary revisions thereof, within the limits of apportionments and reapportionments, to accomplish that end. In the Executive branch such regulations would be subject to the approval of the Director of the Bureau of the Budget in order to insure a certain amount of uniformity therein, but without depriving any agency of the opportunity to develop such a system of allotments and allowances as might be required to fit its particular needs.

Subsection (h) would prohibit any officer or employee of the United States from authorizing or creating any obligation in excess of an apportionment or reapportionment, or in excess of an allotment or suballotment or any revision thereof. This subsection would also prohibit any such officer or employee from making any allotment in excess of an apportionment or reapportionment and from making any suballotment in excess of an allotment or revision thereof. This is designed to insure that the officers and employees who actually distribute the appropriation into allotments and suballotments will be responsible for keeping them within the apportionments, and that the officers and employees who actually create obligations against appropriations will be responsible for observing the allotments and suballotments provided.

Subsection (i) would provide specific penalties for violation of the amended section, as well as other procedures which it is believed would have a salutary effect in discouraging the creation of deficiencies

or of situations leading to requests for deficiency appropriations. Paragraph (1) of this subsection provides penalties for any officer or employee of the United States who violates subsections (a), (b), or (h). Such penalties comprise appropriate administrative discipline including, when circumstances warrant, suspension from duty without pay or removal from office; and, upon conviction of any such violation, a fine of not more than one thousand dollars or imprisonment for not more than six months, or both. The paragraph defines the term "officer or employee of the United States" as used in this section, as including any officer or employee of an agency.

This paragraph would improve the present law by specifying the acts which are to be considered subject to penalty, and by providing for more practicable penalties, which can be gauged with reference to the seriousness of the offense.

Paragraphs (2) and (3) of subsection (i) would require immediate reports of all pertinent facts together with a statement of the action taken thereon in each case of a violation of subsection (a), (b), or (h). In the case of a violation by an officer or employee of the Legislative branch, the Judiciary, or the District of Columbia, such report would be made to the Congress. In the case of a violation by an officer or employee of an agency the head of the agency concerned would be required to make such report to the President, through the Director of the Bureau of the Budget, and to the Congress.

In addition to the penalty provisions of subsection (i), the General Accounting Office, under its authority and responsibilities pursuant to

sections 312 and 313 of the Budget and Accounting Act, 1921, and section 206 of the Legislative Reorganization Act of 1946, has access to the original accounting records of the agencies, including allotment and suballotment accounts, and it will be incumbent upon that office under the latter act to make reports of expenditure analyses to the Committees on Appropriations, the Committees on Expenditures, and the legislative committees of the two Houses of Congress, in order that the Congress may be able to determine whether public funds have been economically and efficiently administered and expended.

Section 2 of the proposed bill would make the amendment in section 1 effective January 1, 1948, except that initial apportionments under that amendment would be made on or before December 1, 1947, to be effective January 1, 1948, and information of the character prescribed in subsection (d) (2) of such amendment would be required to be furnished with respect to such apportionments on or before November 10, 1947. This provision would make it possible to develop the necessary regulations and procedures before the effective date of the amendment and would assure the benefits of the amendment for the last half of the fiscal year 1948.

Section 3 of the proposed bill would repeal existing legislation providing for personnel ceilings and establishing personnel limitations, as well as an obsolete provision of the Act of August 23, 1912 (37 Stat. 414) dealing with the apportionment and use of "contingent funds", which have been almost entirely superseded as units of appropriation and would be covered by other provisions of the proposed bill.

V. Conclusion

As indicated above, the proposed bill would cause some increase in the accounting costs of the Government, but it is believed that such increase would be largely offset by the savings in administrative costs resulting from repeal of the personnel ceiling legislation and integration of personnel controls with budgetary and appropriation controls. The proposed bill may also be criticized on the ground that it would impede or complicate operations in certain agencies, particularly those with large and widespread field activities. However, some procedures of the sort proposed would appear necessary if the objectives of the Committee are to be met.

A possible alternative would be for the Congress to make appropriations on a semiannual or quarterly basis, thus in effect incorporating the apportionments in the appropriation act. This would place an intolerable burden on the Congress and the Executive branch in attempting to keep within inflexible limitations set months ahead of actual obligations, and would lead to countless requests to the Congress to change the apportionments. It would increase appropriation accounting costs prohibitively throughout the Government and would destroy all initiative in the agencies using appropriated funds.

On the other hand, enactment of the proposed bill would tend strongly to discourage the incurring of deficiencies or the creating of obligations at a rate which would lead to requests for deficiency or supplemental appropriations, but would at the same time provide for giving the Congress timely information in those instances where it appeared absolutely necessary that appropriations be obligated at such a rate. Finally, such enactment would provide improved procedures for effective and economical use of appropriations for the purposes for which they are made by the Congress.

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A BILL

To amend the Antideficiency Act so as to provide more effective control over the use of appropriations and to curtail deficiency appropriations, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the
2 United States of America in Congress assembled, That section 3679 of
3 the Revised Statutes, as amended (31 U. S. C. 665), is hereby further
4 amended to read as follows:
5 "Sec. 3679. (a) No officer or employee of the United States shall
6 make or authorize an expenditure from or create or authorize an obliga-
7 tion under any appropriation or fund in excess of the amount available
8 therein; nor shall any such officer or employee involve the Government
9 in any contract or other obligation, for the payment of money for any
10 purpose, in advance of appropriations made for such purpose unless
11 such contract or obligation is authorized by law.
12 "(b) No officer or employee of the United States shall accept
13 voluntary service for the United States or employ personal service in
14 excess of that authorized by law, except in cases of emergency involv-
15 ing the safety of human life or the protection of property.
16 "(c) (1) Except as otherwise provided in this section, all appro-
17 priations or funds available for obligation for a definite period of
18 time shall be so apportioned as to prevent obligation thereof in a
19 manner which would indicate a necessity for deficiency or supplemental
20 appropriations for such period; and all appropriations or funds not
21 limited to a definite period of time, and all authorizations to create

1 obligations by contract in advance of appropriations, shall be so
2 apportioned as to achieve the most effective and economical use thereof.
3 As used hereafter in this section, the term "appropriation" means appro-
4 priations, funds, and authorizations to create obligations by contract
5 in advance of appropriations.

6 "(2) In apportioning any appropriation, reserves may be established
7 to provide for contingencies, or to effect savings whenever savings are
8 made possible by or through changes in quantitative or personnel require-
9 ments, greater efficiency of operations, or other developments subsequent
10 to the date on which such appropriation was made available. Whenever it
11 is determined by an officer designated in subsection (d) of this section
12 to make apportionments and reapportionments that any amount so reserved
13 will not be required to carry out the purposes of the appropriation con-
14 cerned, he shall recommend the rescission of such amount to the Presi-
15 dent, and the same procedure shall be followed with respect to such
16 recommendation as is provided in the Budget and Accounting Act, 1921,
17 for estimates of appropriations.

18 "(3) Any appropriation subject to apportionment shall be distributed
19 by months, calendar quarters, operating seasons, or other time periods,
20 or by activities, functions, projects, or objects, or by a combination
21 thereof, as may be deemed appropriate by the officers designated in
22 subsection (d) of this section to make apportionments and reapportion-
23 ments. Amounts so apportioned shall remain available for obligation,
24 in accordance with the terms of the appropriation, on a cumulative
25 basis unless reapportioned.

1 "(4) Apportionments shall be reviewed at least four times each
2 year by the officers designated in subsection (d) of this section to
3 make apportionments and reapportionments, and such reapportionments
4 made or such reserves established, modified, or released as may be
5 necessary to further the effective use of the appropriation concerned,
6 in accordance with the purposes stated in paragraph (1) of this sub-
7 section.

8 "(d) (1) Any appropriation available to the Legislative Branch,
9 the Judiciary, or the District of Columbia, which is required to be
10 apportioned under subsection (c) of this section, shall be apportioned
11 or reapportioned in writing by the officer having administrative con-
12 trol of such appropriation. Each such appropriation shall be appor-
13 tioned not later than 30 days before the beginning of the fiscal year
14 for which the appropriation is available, or not more than 30 days
15 after approval of the act by which the appropriation is made available,
16 whichever is later.

17 "(2) Any appropriation available to an agency, which is required
18 to be apportioned under subsection (c) of this section, shall be appor-
19 tioned or reapportioned in writing by the Director of the Bureau of the
20 Budget. The head of each agency to which any such appropriation is
21 available shall submit to the Bureau of the Budget information, in such
22 form and manner as the Director may prescribe, as may be required for
23 the apportionment of such appropriation. Such information shall be
24 submitted not later than 40 days before the beginning of any fiscal
25 year for which the appropriation is available, or not more than 15 days

1 after approval of the act by which such appropriation is made available,
2 whichever is later. The Director of the Bureau of the Budget shall
3 apportion each such appropriation and shall notify the agency concerned
4 of his action not later than 20 days before the beginning of the fiscal
5 year for which the appropriation is available, or not more than 30 days
6 after the approval of the act by which such appropriation is made avail-
7 able, whichever is later. When used in this section, the term "agency"
8 means any executive department, agency, commission, authority, adminis-
9 tration, board or other independent establishment in the executive
10 branch of the Government, including any corporation wholly or partly
11 owned by the United States which is an instrumentality of the United
12 States.

13 "(e) (1) No apportionment or reapportionment which, in the judg-
14 ment of the officer making such apportionment or reapportionment,
15 would indicate a necessity for a deficiency or supplemental estimate
16 shall be made except upon notification to the President and to the
17 Congress as provided in paragraph (2) of this subsection, and upon a
18 determination by such officer that such action is necessary in the
19 interest of the United States. In determining the necessity for an
20 apportionment or a reapportionment which would indicate a necessity
21 for a deficiency or supplemental estimate, consideration shall be
22 given to provisions in appropriation acts specifically authorizing
23 such an apportionment or reapportionment (which provisions are hereby
24 authorized), or to such other factors as--

1 "(A) the legislative history of the appropriation concerned;
2 "(B) any laws affecting an appropriation which may have
3 been enacted subsequent to the transmission to the Congress of
4 the estimates for such appropriation;
5 "(C) emergencies involving the safety of human life or
6 the protection of property.
7 "(2) In each case of an apportionment or a reapportionment which,
8 in the judgment of the officer making such apportionment or reappor-
9 tionment, would indicate a necessity for a deficiency or supplemental
10 estimate, such officer shall immediately submit a detailed report of
11 the facts of the case to the President and to the Congress. In trans-
12 mitting any deficiency or supplemental estimates required on account
13 of any such apportionment or reapportionment, reference shall be made
14 to such report.
15 "(f) The provisions of subsection (c) of this section shall not
16 apply to:
17 "(1) working funds created pursuant to section 601 of the Act of
18 June 30, 1932, as amended (31 U. S. C. 686).
19 "(2) trust funds (except to the extent that an appropriation act
20 limits the amount which may be obligated therefrom).
21 "(3) any appropriation made specifically for—
22 "(A) contingent expenses of the Senate or of the
23 House of Representatives;
24 "(B) interest on, or retirement of, the public debt;
25 "(C) payment of claims, judgments, refunds, and
26 drawbacks; or

1 "(D) payment under private relief acts or other
2 laws requiring payments to designated payees in the
3 total amount of such appropriation.
4 "(4) funds of any corporation wholly or partly owned by the
5 United States which is an instrumentality of the United States, except
6 that when the use of any part of the funds available to such a corpora-
7 tion is limited in any manner by an appropriation act, such part shall
8 be subject to the provisions of said subsection (c).
9 "(g) Any appropriation which is apportioned or reapportioned pur-
10 suant to this section may be divided and subdivided administratively
11 into allotments and suballotments and any necessary revisions thereof,
12 within the limits of such apportionments or reapportionments. The
13 officer having administrative control of any such appropriation avail-
14 able to the Legislative Branch, the Judiciary, or the District of
15 Columbia, and, subject to the approval of the Director of the Bureau
16 of the Budget, the head of each agency shall prescribe regulations to
17 provide for adequate administrative allotments and suballotments and
18 any necessary revisions thereof, within the limits of such apportion-
19 ments or reapportionments.
20 "(h) No officer or employee of the United States shall authorize
21 or create any obligation (A) in excess of an apportionment or reappor-
22 tionment, or (B) in excess of an allotment or suballotment or revision
23 thereof; nor shall any such officer or employee make any allotment in
24 excess of an apportionment or reapportionment, or make any suballotment
25 in excess of an allotment or revision thereof.

1 "(i) (1) In addition to any penalty or liability under other law,
2 any officer or employee of the United States who shall violate sub-
3 section (a), (b), or (h) of this section shall be subjected to appro-
4 priate administrative discipline, including, when circumstances warrant,
5 suspension from duty without pay or removal from office; and in addi-
6 tion, upon conviction of any such violation, shall be fined not more
7 than one thousand dollars or imprisoned for not more than six months,
8 or both. As used in this section, the term "officer or employee of
9 the United States" includes any officer or employee of an agency.
10 "(2) In the case of a violation of subsection (a), (b), or (h)
11 of this section by an officer or employee of the Legislative Branch,
12 the Judiciary, or the District of Columbia, the officer having adminis-
13 trative control of the appropriation concerned shall immediately report
14 to the Congress all pertinent facts together with a statement of the
15 action taken thereon.
16 "(3) In the case of a violation of subsection (a), (b), or (h)
17 of this section by an officer or employee of an agency, the head of
18 the agency concerned shall immediately report to the President, through
19 the Director of the Bureau of the Budget, and to the Congress, all
20 pertinent facts together with a statement of the action taken thereon."
21 Sec. 2. The amendment made by section 1 of this Act shall take
22 effect January 1, 1948, except that initial apportionments under such
23 amendment shall be made on or before December 1, 1947, to be effective
24 January 1, 1948, and information as required in subsection (d) (2) of
25 such amendment shall be furnished with respect to such apportionments
26 on or before November 10, 1947.

1 Sec. 3. Effective July 1, 1947, section 607 of the Federal
2 Employees Pay Act of 1945, 59 Stat. 304, as amended by section 14 of
3 the Federal Employees Pay Act of 1946, 60 Stat. 219 (5 U. S. C. 947),
4 and section 6 of the Act of August 23, 1912, 37 Stat. 414 (31 U. S. C.
5 669), are hereby repealed.

The Antideficiency Act
(Section 3679, Revised Statutes, 31 U.S.C. 665)

No executive department or other Government establishment of the United States shall expend, in any one fiscal year, any sum in excess of appropriations made by Congress for that fiscal year, or involve the Government in any contract or other obligation for the future payment of money in excess of such appropriations unless such contract or obligation is authorized by law. Nor shall any department or any officer of the Government accept voluntary service for the Government or employ personal service in excess of that authorized by law, except in cases of sudden emergency involving the loss of human life or the destruction of property. All appropriations made for contingent expenses or other general purposes, except appropriations made in fulfillment of contract obligations expressly authorized by law, or for objects required or authorized by law without reference to the amounts annually appropriated therefor, shall, on or before the beginning of each fiscal year, be so apportioned by monthly or other allotments as to prevent expenditures in one portion of the year which may necessitate deficiency or additional appropriations to complete the service of the fiscal year for which said appropriations are made; and all such apportionments shall be adhered to and shall not be waived or modified except upon the happening of some extraordinary emergency or unusual circumstance which could not be anticipated at the time of making such apportionment, but this provision shall not apply to the contingent appropriations of the Senate or House of Representatives; and in case said apportionments are waived or modified as herein provided, the same shall be waived or modified in writing by the head of such executive department or other Government establishment having control of the expenditure, and the reasons therefor shall be fully set forth in each particular case and communicated to Congress in connection with estimates for any additional appropriations required on account thereof. Any person violating any provision of this section shall be summarily removed from office and may also be punished by a fine of not less than $100 or by imprisonment for not less than one month.

amended by
81st, P.L. 759
Sec. 1211

APPENDIX A

5-7-53
Ayd

Excerpts from
Executive Order 8512, August 13, 1940

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Regulations Pertaining to Budgetary
Administration and Financial Reporting

By virtue of the authority vested in me by the Budget and Accounting Act, 1921, approved June 10, 1921 (42 Stat. 20), and as President of the United States, I hereby prescribe the following regulations with respect to the compilation and reporting of information on the financial condition and operations of the Government and with respect to the budgetary control of expenditures:

Section 1. The term "agencies" as used in this order shall include executive departments and independent establishments and corporations in which the United States has a proprietary interest, direct or indirect, except Federal savings and loan associations and those corporations in which the proprietary interest of the United States is evidenced only by preferred stock or capital notes acquired through the Reconstruction Finance Corporation or production credit corporations.

* * * * *

Section 5. The head of each agency shall, under such rules and regulations as the Director of the Bureau of the Budget may prescribe, submit to the Bureau of the Budget recommendations for the apportionment of each appropriation made to such agency, and such apportionments, when approved by the Director, shall be binding upon the agency concerned in controlling its budgetary plans and rate of expenditures, subject only to revision of such apportionments by the Director. No agency shall make expenditures or involve the Government in any contract or other obligation for the future payment of money in excess of the amount currently available therefor under the apportionments so approved or revised: Provided, however, that such apportionments may be exceeded when such action is necessary to prevent the loss of life or Government property; and in such cases the head of the agency concerned shall promptly justify such action in writing to the Director of the Bureau of the Budget. The provisions of this section shall be applicable to the amounts made available by the Congress for the administrative expenses of governmental corporations.

* * * * *

APPENDIX B

Second Deficiency Appropriation Act, 1944
(Act of June 28, 1944, 58 Stat. 623)

Sec. 303. The President shall direct the Bureau of the Budget to maintain a continuous study of appropriations and contract authorizations granted for the national defense, war agencies, and the prosecution of the present wars for the purpose of submitting for the consideration of Congress, when the state of the wars make such action possible, a list showing the condition of the balances of each of such appropriations and contract authorizations together with his recommendations for the repeal of such of those funds or portions thereof as are deemed no longer required for the purposes for which they were granted.

Second Deficiency Appropriation Act, 1945
(Act of July 5, 1945, 59 Stat. 416)

* * * Provided further, That as to appropriations and contract authorizations granted for the national defense, war agencies, and the prosecution of the war contained in this Act and other appropriation Acts, in addition to compliance with the provisions of section 303 of the Second Deficiency Appropriation Act, 1944, there shall be submitted to the Congress on January 3, 1946, a list showing the condition of the balances of each of such appropriations and contract authorizations together with recommendations for the repeal of such of those funds or portions thereof as are deemed no longer required for the purposes for which they were granted.

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APPENDIX C

Excerpt from
The Federal Employees Pay Act of 1945, as amended,
5 U.S.C. 947

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§ 947. Personnel ceilings--Termination of unnecessary employment

(a) It is declared to be the sense of the Congress that in the interest of economy and efficiency the heads of departments, and of independent establishments or agencies, in the executive branch, including Government-owned or controlled corporations, shall terminate the employment of such of the employees thereof as are not required for the proper and efficient performance of the functions of their respective departments, establishments, and agencies.

Reports to Director of the Budget; contents; determination of necessary personnel; reports by Director to Congress; contents; definition

(b) The heads of departments, and of independent establishments or agencies, in the executive branch, including Government-owned or controlled corporations, shall present to the Director of the Bureau of the Budget such information as the Director shall from time to time, but at least quarterly, require for the purpose of determining the numbers of full-time civilian employees (including full-time intermittent employees who are paid on a "when actually employed" basis, and full-time employees paid nominal compensation, such as $1 a year or $1 a month) and the man-months of part-time civilian employment (including part-time employment by intermittent employees who are paid on a "when actually employed" basis, and part-time employment by employees paid nominal compensation such as $1 a year or $1 a month) required within the United States for the proper and efficient performance of the authorized functions of their respective departments, establishments, and agencies. The Director shall, within sixty days after July 1, 1945, and from time to time, but at least quarterly, thereafter, determine the numbers of full-time employees and man-months of part-time employment, which in his opinion are required for such purpose, and any personnel or employment in such department, establishment, or agency in excess thereof shall be released or terminated at such times as the Director shall order. Such determinations, and any numbers of employees or man-months of employment paid in violation of the orders of the Director, shall be reported quarterly to the Congress. Each such report shall include a statement showing for each department, independent establishment, and agency the net increase or decrease in such employees and employment as compared with the corresponding data contained in the next preceding report, together with any suggestions the Director may have for legislation which would bring about economy and efficiency in the use of Government personnel. As used in this subsection the term "United States" shall include the Territories and possessions.

Determinations by Director

(c) Determinations by the Director of numbers of employees and man-months of employment required shall be by such appropriation units or organization units as he may deem appropriate.

Duties of Director

(d) The Director shall maintain a continuous study of all appropriations and contract authorizations in relation to personnel employed and shall, under such policies as the President may prescribe, reserve from expenditure any savings in salaries, wages, or other categories of expense which he determines to be possible as a result of reduced personnel requirements. Such reserves may be released by the Director for expenditure only upon a satisfactory showing of necessity.

Exclusion of casual and unpaid employees

(e) Casual employees, as defined by the Civil Service Commission, and employees hired without compensation may be excluded from the determinations and reports required by this section.

Exemption of certain employees until cessation of present war; definition

(f) Until the cessation of hostilities in the present war as proclaimed by the President, the provisions of this section shall not be applicable to individuals employed or paid by or through the War Shipping Administration (A) who were outside the United States, (B) to whom the provisions of section 1291(a) of Appendix to Title 50, are applicable, (C) who are undergoing a course of training under the United States Maritime Service or who have completed such training and are awaiting assignment to ships, or (D) who are on stand-by wages awaiting assignment to ships. As used in this subsection the term "United States" means the several States and the District of Columbia.

Maximum number of employees

(g) (1) In carrying out the provisions of subsection (b) of this section --

(A) with respect to the departments (other than the Department of War and the Department of the Navy), establishments, and agencies (including Government-owned or controlled corporations) in the executive branch, the Director shall so determine the numbers of full-time civilian employees and the man-months of part-time employment on the basis of the relative needs of such departments, establishments, and agencies for personnel, that the aggregate number of such civilian employees (including the full-time equivalent of man-months of part-time employment) shall not exceed (i) five hundred and twenty-eight thousand nine hundred and seventy-five for the quarter beginning October 1, 1946; (ii) five hundred and one thousand seven hundred and seventy-one for the quarter beginning January 1, 1947; (iii) four hundred and seventy-four thousand five hundred and sixty-seven for the quarter beginning April 1, 1947; and (iv) four hundred and forty-seven thousand three hundred and sixty-three after June 30, 1947;

(B) with respect to the Department of War and the Department of the Navy, the Director shall so determine the numbers of civilian employees (including the full-time equivalent of man-months of part-time employment) that at the earliest date practicable, but in no event later than July 1, 1947, the

number shall not exceed one hundred and seventy-six thousand with respect to the Department of War, or one hundred thousand with respect to the Department of the Navy.
The numbers of employees specified in this paragraph shall be regarded as maximum numbers, and nothing herein shall be construed to limit the authority of the Director to establish lower aggregate numbers whenever, in his opinion, the numbers so specified are in excess of those necessary for the proper and efficient exercise of the authorized functions of the departments, establishments, and agencies to which this subsection applies. The procedural provisions of subsection (b) of this section shall be applicable with respect to determinations under this paragraph.

(2) No provision of law enacted authorizing the employment of personnel by, or appropriating funds for the compensation of personnel of, or conferring additional functions upon, any department, establishment, or agency, shall be construed to authorize the employment of, or payment of compensation to, a greater number of employees subject to this subsection than the number so determined by the Director with respect to such department, establishment, or agency unless such provision of law specifically authorizes the employment or payment of salaries of personnel in excess of such number, or exempts such department, establishment, or agency from the provisions of this subsection, and any such employment or payment not so authorized shall be deemed to be a violation of the provisions of section 665 of Title 31.

(3) The provisions of this subsection shall not apply with respect to employees whose basic compensation is fixed and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose. The provisions of subparagraph (A) of paragraph (1) of this section shall not apply with respect to officers and employees in the field service of the Post Office Department or to officers and employees of the Veterans' Administration, but shall apply with respect to officers and employees outside the United States whose compensation is fixed in accordance with sections 661-663, 664-673, and 674 of this title, and who are not excluded from the provisions of this section by the provisions of subsection (f) of this section. The provisions of subparagraph (B) of paragraph (1) of this subsection shall not apply with respect to officers and employees outside the several States and the District of Columbia.

APPENDIX D