



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

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31022

April 12, 1985

B-216664



126738

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

On February 6, 1985, the President's sixth special message for fiscal year 1985 was submitted to the Congress pursuant to the Impoundment Control Act of 1974. The special message proposes sixteen new rescission proposals totalling \$1,047,089,569, nine revised rescission proposals totalling \$386,829,000, twenty-one new deferrals of budget authority totalling \$1,249,016,539, and eight revised deferrals of budget authority totalling \$443,179,221. A copy of the President's listing of the proposed rescissions and deferrals in the sixth special message is enclosed.

We have reviewed the sixth special message. Except as noted below, we have identified no additional information that would be useful to the Congress in its consideration of the President's proposals and we believe that the proposed deferrals are in accordance with existing authority. Our report on those proposals in the message which we believe require comment follows.

RESCISSIONS

DEPARTMENT OF EDUCATION

R85-76 Office of Elementary and Secondary Education
 Special Programs
 Amount proposed for rescission: \$80,000,000
 914/51000 915/61000 9151000
 91X1700 91X1800

The President's statement of "Other budgetary resources" does not include (1) an unobligated balance brought forward on October 1, 1984 of \$30,450 which is reflected in the apportionment schedule for account 914/5100; and (2) \$500,000 in anticipated reimbursements which are reflected in the apportionment schedule for account 91X1700. The schedules reflect total budgetary resources of \$758,639,450 rather than \$758,109,000 as reported by the President.

GAO/OGC-85-7

031833

R85-77 Office of Bilingual Education and
 Minority Languages Affairs
 Bilingual Education
 Amount proposed for rescission: \$30,000,000
 914/51300 915/61300 9151300 9151600

The apportionment schedule for account 914/51300, dated January 30, 1985, shows an additional \$826,522 in recoveries of prior year obligations which Education Department officials advise us were not included in the President's reported figure for "Other budgetary resources." The schedule reflects total budgetary resources of \$173,777,522, rather than \$172,957,000 as reported by the President.

R85-78 Office of Postsecondary Education
 Higher Education
 Amount proposed for rescission: \$59,750,000
 9150201 91X0201 913/50201 914/50201

The apportionment schedules, dated January 30, 1985, show additional budgetary resources of: \$2,400,000 in unobligated balances brought forward in account 91X0201; \$50,000 in anticipated recoveries of prior year obligations also in account 91X0201; and \$720,000 in earned and anticipated reimbursements in account 9150201. These amounts were not included in the President's reported amount of "Other budgetary resources." The schedules show total budgetary resources of \$497,213,125, rather than \$479,083,000 as reported by the President.

RESCISSION PERIOD

Based on the current legislative calendar, the 45-day period of continuous session during which the funds may be withheld pending congressional consideration of a rescission bill will end on April 24, 1985.

DEFERRALS

DEPARTMENT OF ENERGY

D85-27A Energy Programs
 Fossil Energy Research and Development
 Amount deferred: \$48,396,646
 89-0213-0-1-271 (OMB Code)

In Public Law No. 98-473, Congress appropriated \$280,558,000, without fiscal year limitation, for necessary expenses in carrying out fossil energy research and development. Of the amount provided, \$7.5 million was to be available for demonstration of the Kilngas coal gasification process.

The President's message proposes to defer \$48,396,646 in this account which, we have been advised, is intended to include the \$7.5 million originally earmarked for the Kilngas process. The deferral message for this account states that the deferred funds will be used to offset fiscal year (FY) 1986 budget authority requirements. The message does not mention, however, that the Administration also now intends to seek enactment of legislation which would repeal the provision earmarking \$7.5 million of the appropriation for demonstration of the Kilngas coal gasification process, and would make these funds available for general fossil energy research and development activities.

The President's budget submission for FY 1986 does not expressly address the FY 1985 line item for Kilngas. However, legislative language has been proposed in the Department of Energy's (DOE) FY 1986 submission to the Appropriations Committees which would in effect transform the FY 1985 line item appropriation for Kilngas into a part of a lump sum for activities conducted in the subsequent year. The DOE submission states that no further funding is being requested for the Kilngas project beyond FY 1985.

The Administration's intention to seek a repeal of the earmarking of \$7.5 million of the total amount to be deferred in this account makes this, in effect, a deferral (of the \$7.5 million) pending legislative transfer of the funds. We have held that deferral of funds, as opposed to rescission, is generally proper in such circumstances.

We have discussed this matter with staff of the Office of Management and Budget (OMB), who agree that legislation is necessary before the \$7.5 million appropriated for the Kilngas process may be used for other activities within the account. They advised us that a revision to the President's budget submission on this matter is being prepared.

If the Congress takes no action on this deferral and the total amount deferred in this account is in fact offset against the FY 86 budget request, unless language such as that proposed

by DOE is enacted, the \$7.5 million will nevertheless remain available for the Kilngas project. The funds, being available without fiscal year limitation, will not expire at the end of this year.

D85-31A Energy Programs
 Strategic Petroleum Reserve
 Amount deferred: \$270,738,000
 89X0218

D85-42 Energy Programs
 SPR Petroleum Account
 Amount deferred: \$827,028,316
 89X0233

The Administration has submitted deferral messages for both of the above accounts in anticipation of its proposed indefinite moratorium on further development and fill of the Strategic Petroleum Reserve (SPR) at the end of 1985, when approximately 489 million barrels of oil will be in storage. The proposed moratorium is based upon the "substantial build-up of the reserve and the more favorable oil market conditions."

Deferral No. D85-31A affects funds appropriated in prior years for the construction of crude oil storage facilities which the Administration believes will not be needed if the moratorium on the oil fill continues, since the current sites already have sufficient storage capacity. Deferral No. D85-42 affects funds not needed to meet 1985 oil fill requirements (due to lower estimated oil prices) and funds provided for advance orders of crude oil for the SPR in 1986. The deferral messages state that the moratorium will be reassessed as fiscal and oil market conditions warrant.

Because of the indefinite duration of these deferrals and prior efforts by the Administration to reduce the rate of fill of the Reserve, we have considered whether this withholding is properly characterized as a deferral, or should be reclassified as a rescission. After reviewing the circumstances, we believe that the President's classification in this case is not erroneous.

Submission of a rescission proposal would be the appropriate course of action if it appeared that the President sought a permanent withdrawal of the budget authority for the SPR. That

is evidently not the case. The Administration's stated intention is to make these funds available should changed conditions, such as an increase in U.S. oil consumption, justify in the Administration's view an increase in the size of the SPR. The deferral messages state that the moratorium will be reassessed as conditions warrant. All completed storage facilities "will be maintained in a state of standby operational readiness in the event of a possible drawdown" of the reserve. We have found no evidence which would warrant the conclusion that these statements are untrue and that these funds are intended never to be made available.

Even if the duration of the moratorium appears uncertain at this time, the duration of the instant deferrals is limited by section 1013 of the Impoundment Control Act of 1974. "A deferral may not be proposed for any period of time extending beyond the end of the fiscal year in which the special message proposing the deferral is transmitted to the House and the Senate." 2 U.S.C. § 684(a). The two deferrals will not extend beyond September 30, 1985. After such time, however, the President may resubmit deferrals in these accounts for the following fiscal year.

The appropriated funds which are the subject of these two deferrals are to be available until expended. The program's authorizing legislation (Public Law 94-163) is due to expire on June 30, 1985 unless extended. We do not believe, however, that this expiration will necessarily cause these no-year funds to expire. 55 Comp. Gen. 289, 292 (1975). Nevertheless, if these funds remain deferred but the authority to fill the SPR is allowed to expire, there could be some doubt about congressional intent regarding the use of the deferred amounts. The Congress could avoid this potentially difficult legal question by addressing this issue in its consideration of whether to extend the SPR program.

DEPARTMENT OF THE INTERIOR

D85-45 National Park Service
 Construction (Trust Fund)
 Amount deferred: \$38,171,663
 14X8215

Deferral D85-45 affects budget authority available for the construction of a bypass tunnel on U.S. Route 25E through

Cumberland Gap National Historical Park. This deferral is submitted pending Congressional action on the President's proposal to transfer contract authority provided for the project, together with funds appropriated from the Highway Trust Fund (currently available to liquidate obligations for the tunnel project) to other accounts within the Department of Interior to finance pay and firefighting costs. We offer the following comments regarding the President's deferral message.

First, we disagree with the deferral message's characterization of the type of budget authority involved in this deferral. Contract authority is a form of budget authority under which contracts or other obligations may be entered into in advance of an appropriation. Later, a liquidating appropriation must be enacted to permit payment of obligations entered into under contract authority. The tunnel construction project has generally been funded with contract authority, followed by a liquidating appropriation (to be derived from the Highway Trust Fund). The deferral message designates the liquidating appropriations for FY 1984 and 1985 as the budget authority affected by the deferral. However, we believe that the actual budget authority is the contract authority provided in the Federal-Aid Highway Act of 1978 (cited in both liquidating appropriations). We have discussed this matter with OMB staff, who now agree with our view of the nature of the Cumberland Gap project budget authority.

Inasmuch as the contract authority is the applicable budget authority, we also take issue with the reported amount of budget authority which is being impounded. For purposes of our analysis of Deferral D85-45, we regard the unexpired contract authority which was available for the tunnel project, but not obligated, as the subject of this impoundment.

According to a National Park Service briefing paper, dated January 31, 1985, of the \$45.0 million in unexpired contract authority made available for parkways by the Federal-Aid Highway Act of 1978, slightly more than \$7.3 million has been obligated. Of that amount, \$3.5 million is expected to be deobligated if a pilot tunnel contract, entered into in November 1984, but suspended by the Department of the Interior in December 1984, is terminated. Based on these facts, it is our view that \$41.2 million in contract authority is being deferred, assuming the anticipated deobligation of the \$3.5 million is achieved. If the deobligation of that amount is not possible, then \$37.7 million in deobligated contract authority

has been deferred. The President's message, however, reports that only \$38,171,663 is deferred (on the assumption that the \$3.5 million can be recovered through deobligation). This would be \$34,671,000 (if there is no recovery).

The legislative language to accomplish the transfer, as proposed in the President's budget submission, does not clearly convey and may not be legally adequate to achieve the Administration's intention to transfer both the unexpired contract authority and the associated liquidating appropriations. An Office of Management and Budget (OMB) official with whom we raised this issue confirmed this intention and characterized this combination of contract authority and liquidating appropriations as "funded contract authority." We will advise OMB of our view that the proposed language will not suffice to transfer the contract authority.

Finally, this account was the subject of a deferral in the previous year (D84-50). The message does not reveal that the prior deferral (which affected approximately \$10,170,822 of the budget authority now being deferred) was the subject of a joint resolution of Congress disapproving the withholding on July 2, 1984. (Public Law No. 98-322.)

This raises the issue whether the President may properly propose to defer the same budget authority that was the subject of a previous deferral expressly disapproved by Congress. For the reasons discussed below, we do not object to the redeferral of budget authority in this particular case.

Section 1013(b) of the Impoundment Control Act of 1974 (Pub. L. No. 93-344) requires that any amount of budget authority proposed to be deferred be made available for obligation if Congress passes a resolution disapproving the deferral proposal. The Act does not go on to prohibit a subsequent reim-poundment of the same budget authority.

In our June 3, 1977 report ("Review of the Impoundment Control Act of 1974 After 2 Years," OGC-77-20), we left open the possibility that under the Act a subsequent deferral may be authorized after a prior unsuccessful deferral or rescission proposal, where the later deferral is based on factors unknown at the time of the original proposal or furthers good administrative practice. Both reasons are present to some degree in this case.

For the deferral proposal now before us, Congress is presented with a rationale which is at least on its face different from that which met with congressional disapproval in July of 1984. In 1984, the Administration proposed to defer the contract authority pending completion of a study of the project to update cost estimates and analyze cost-effective alternatives to the tunnel. It was this justification which Congress in effect rejected in its disapproval of the deferral by joint resolution.

Thus, the 1984 deferral did not put before the Congress the alternatives which are before it now. In 1984, if the proposal to defer while conducting a study had not been disapproved and a study had been performed, the budget authority appropriated for the Cumberland Gap project would have, without more, remained available for that purpose. The current proposal, if approved, is intended to lead to the end of the project. Whether this distinction alone would be sufficient to justify the reimpoundment we need not decide, because it is in effect coupled with another justification, one that in our judgment is grounded on good administrative practice.

Although the \$38 million in budget authority now proposed for deferral consists of funding from three separate appropriations, the President, in preparing his budget request, reasonably views the construction project as a whole. The pending transfer request of \$38 million, if enacted, would effectively terminate the entire project.

The President's authority to defer at least the \$28.0 million in contract authority which was not the subject of the disapproval resolution in 1984 is unquestioned. In light of the fact that most of the budget authority for this project (at least \$28 million) is properly being withheld from obligation in any event (pending congressional action either to disapprove the deferral or to approve the transfer request), it would be undesirable to obligate or expend \$10 million of the total for the original project before receiving Congress' reaction to the transfer proposal: a requirement to make the \$10 million available for obligation now could result in the expenditure of all or some of those funds on a construction project that will never be completed if the Congress later approves the transfer of the remainder of the budget authority.

We believe that in proposing the transfer of the budget authority to other accounts and the termination of the project, the President has properly taken into account that the effect of not deferring the \$10 million, in the event his transfer request is approved, will be that it is wasted. In light of all of the above circumstances, we conclude that the redeferral of the \$10 million in this case is not objectionable under the Act.

In response to several inquiries concerning this deferral, we have issued an opinion which addresses the above issues in greater detail. See B-217736, April __, 1985.

DEPARTMENT OF JUSTICE

D85-46 General Administration
 Salaries and Expenses
 Amount deferred: \$3,890,000
 1550129

We were advised by agency officials that the correct appropriation symbol for this account is 1550129, rather than 1540129, as reported in the President's message.

This deferral, which is submitted pending Congressional action on a transfer proposal, affects fiscal year funds which will expire on September 30, 1985. In the event that Congress fails to act on the transfer request promptly, the deferral should not extend beyond the point at which the funds can be prudently obligated for their original purpose. At that point, the funds should be released and obligated.

D85-47 Legal Activities
 Support of United States Prisoners
 Amount deferred: \$5,319,000
 1551020

This deferral pending transfer affects fiscal year funds expiring on September 30, 1985. The deferral should not extend beyond the point at which the funds can be prudently obligated for their original purpose.

DEPARTMENT OF TRANSPORTATION

D85-48 Federal Highway Administration
 Limitation on general operating expenses
 Amount deferred: \$2,155,000
 69-20X8102

In the Continuing Appropriations Resolution for FY 1985 (Pub. L. No. 98-473), Congress chose to fund the Federal Highway Administration's (FHWA) General Operating Expenses account by authorizing the transfer of current budget authority (in an amount "not to exceed \$204,891,000") from other FHWA accounts receiving appropriations under that Act, rather than by employing the more conventional method of directly appropriating budget authority. These other FHWA accounts consist of budget authority both in the form of contract authority (for which liquidating appropriations are provided from moneys in the Highway Trust Fund) and regular appropriations from the Highway Trust Fund.

The account affected by Deferral No. D85-48 is designated as "Limitation on General Operating Expenses." An appropriation limitation is ordinarily a statutory restriction in an appropriation act which establishes the maximum or minimum amount which may be obligated or expended for specified purposes from an appropriation or other fund, such as a trust fund. In this instance, the "limitation" is in fact not a restriction on a larger amount nor, as discussed below, does it create new budget authority.

Deferral No. D85-48 is submitted pending Congressional action on the Administration's legislative proposal to reduce the FHWA's Limitation on General Operating Expenses account by \$2,156,000, to the lesser amount of \$202,735,000. A reduction of the "limitation" would in effect be a reduction in the amount of budget authority that is authorized to be transferred from the other FHWA accounts for FHWA's general operating expenses.

The limitation reduction is proposed pursuant to section 2901 of the Deficit Reduction Act of 1984. Section 2901 directs OMB to report to the Congress on savings that can reasonably be expected to be achieved for FY 1985 by management improvements in certain designated areas and, if necessary, to draft legislation to achieve such savings. With the exception of Deferrals D85-48, D85-57 and D85-58, all of the Administration's February 6, 1985, submissions pursuant to section 2901 have been in the form of rescission proposals (for example, the President's Fifth Special Message for fiscal 1985). At first glance, this proposal has the appearance of a permanent withholding of budget authority, yet the Administration has chosen to submit a deferral proposal rather than a rescission proposal.

We raised this issue with OMB staff. The staff advised us that in cases which involve a proposed reduction in a limitation on the authority to transfer funds from other trust fund accounts, OMB believes it is proper to propose such a reduction legislatively and submit a deferral message pending Congress' response to the proposal, rather than submitting a rescission proposal.

OMB apparently takes the position that the budget authority involved herein is not the "Limitation" on the expenses account as such, but rather is the contract authority and appropriated trust funds originally held in the other FHWA accounts, and transferred by virtue of Public Law 98-473 to FHWA's General Operating Expenses account. We agree with OMB in this case for the following reasons.

First, the limitation language in Public Law 98-473 does not create new budget authority, but rather authorizes FHWA to use the budgetary resources in other accounts through the transfer mechanism. In addition, OMB staff pointed out that, if the President had proposed a rescission of budget authority and it was approved by the Congress, the accounts from which the budget authority was transferred would lose the use of the budget authority for its original purposes, as would the General Operating Expenses account. This is based upon the view that the budget authority being impounded consists of the contract authority and the appropriated trust funds, rather than of the "Limitation on General Operating Expenses" provision which authorizes the transfer of these amounts. OMB staff advised that the Administration's intention is to keep the budget authority available for the purposes of the original accounts. To achieve this goal, the President has submitted the limitation reduction to Congress as a legislative proposal which is separate and apart from the deferral message. In light of the above, we do not object to the classification of this withholding as a deferral.

OMB's assertion that the limitation in this case is not budget authority does raise the question of whether D85-48 is properly submitted even as a deferral. It could be argued that this deferral does not actually affect budget authority. However, so long as the transferred budget authority remains in FHWA's General Operating Expenses account, the amount deferred (pending Congressional action on the proposed limitation reduction) will not be obligated or expended for operating

expenses nor for the purposes of the original accounts from which it was transferred. In these circumstances, this budget authority is in fact being withheld temporarily and submission of a deferral message, in our view, is appropriate.

DEPARTMENT OF TRANSPORTATION

D85-54 Maritime Administration
 Operations and training
 Amount deferred: \$8,500,000
 69X1750

In Public Law 98-396 Congress appropriated \$8,500,000 to remain available until expended for acquisition and preconversion costs for a replacement training vessel to be used at the State University of New York Maritime College. The President in this message proposes to defer these funds and use them to offset 1986 appropriation requirements, rather than to replace the current training vessel. Legislation removing the limitation earmarking these funds for the replacement of a training vessel is required before they may be used for some other purpose. We are aware of no proposed legislation which would remove this limitation on these funds.

We have discussed this with OMB staff who agree with our view that legislation would be required. They advised us that the Department of Transportation is attempting to resolve the matter with the Appropriations Committees.

RAILROAD RETIREMENT BOARD

D85-57 Limitation on administration
 Amount deferred: \$3,098,000
 6058237

In Public Law 98-619, Congress chose to fund the Railroad Retirement Board's (RRB) administrative expenses account by directing the transfer of trust funds (in the amount of \$55,422,000) contained in the railroad retirement accounts, rather than by the more conventional method of direct appropriation. The cost of administration is shared among the railroad pension, railroad social security equivalent benefit, and railroad unemployment insurance accounts.

The account affected by D85-57 is entitled "Limitation on Administration." An appropriation limitation is a statutory restriction in an appropriation act which establishes the amount which may be obligated and expended for specified purposes from an appropriation or other funds, such as trust funds.

This deferral (D85-57) is submitted in conjunction with a legislative proposal reducing the fiscal 1985 "Limitation on Administration" account by \$3,098,000 to the lesser amount of \$52,324,000. The reduction reflects amounts not needed during 1985 due to revised methods for estimating personnel compensation and benefits, adopted after fund lapses in 1984-1985 and other economies by the Board in a contribution to deficit reduction. A reduction in the Limitation account would, in effect, be a reduction in the amount of trust funds that RRB is authorized to transfer from the other railroad retirement accounts for its administrative expenses.

As was discussed in connection with D85-48 above (see also D85-58 below) OMB has decided to present the reduction in this account as a legislative proposal, submitted concurrently with a deferral proposal, rather than as a rescission. This decision is based on the view that the budget authority being deferred is the trust funds transferred from the railroad retirement accounts rather than the Limitation on Administration account itself. In order to preserve the funds' availability for the purposes of the other railroad retirement accounts, OMB has submitted a legislative proposal which only has the effect of reducing the funds' availability for administrative expenses (rather than a rescission proposal which would remove the funds from the original accounts as well). The deferral affects the budget authority that was transferred from the other accounts to the Limitation on Administration account.

As discussed above under Deferral D85-48, we do not object to this characterization and we find the submission of a deferral message appropriate. However, this account expires at the close of fiscal year 1985. Additionally, the language in Public Law 98-473 establishing this account is definite in amount, rather than merely stating a ceiling (by the use of words such as "not to exceed"). Therefore, if Congress does not respond to the President's limitation reduction proposal before the last point at which the transferred funds can be prudently obligated for administrative expenses, the funds must be released and obligated in accordance with the terms of the language establishing the account.

D85-58 Limitation on Railroad Unemployment
 Insurance Administration fund
 Amount deferred: \$502,000
 60-20X8042(02)

In Public Law No. 98-619, Congress funded the Railroad Retirement Board's account for administration of the Railroad Unemployment Insurance Act by directing the transfer of trust funds credited to the railroad unemployment insurance administration fund in an amount not less than \$16,678,000, rather than by the more conventional method of direct appropriation.

The account affected by D85-58 is entitled "Limitation on Railroad Unemployment Insurance Administration Fund." An appropriation limitation is a statutory restriction in an appropriation act which establishes the amount which may be obligated and expended for specified purposes from an appropriation or other funds, such as trust funds. The President has submitted Deferral No. D85-58 in conjunction with a legislative proposal reducing the above "limitation" account to \$16,176,000. The proposed reduction reflects reduced obligations due to more accurate expenditure estimates. The difference, \$502,000, is proposed for deferral pending congressional action on the reduction proposal.

As discussed in connection with D85-48 and D85-57 above, OMB has decided to present the reduction in this limitation account as a legislative proposal, rather than as a rescission, based upon the view that the budget authority being deferred is the trust funds transferred from the railroad unemployment insurance administration fund rather than the limitation account itself. In order to preserve the budget authority's availability for the purposes of the fund, OMB has submitted a legislative proposal which only has the effect of reducing the funds' availability for administrative expenses (rather than a rescission proposal which would remove the funds from the original account as well).

B-216664

In light of the above, we do not object to OMB's characterization of this action as a deferral. The deferral affects the budget authority that was transferred from the trust fund.

Harry R. Van Cleave
for Comptroller General
of the United States

Enclosure

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| | Limitation on railroad unemployment | |
| D85-58 | insurance administration fund..... | 502 |
| | <hr/> | |
| | Subtotal, deferrals..... | 2,913,481 |
| | TOTAL, rescissions and deferrals..... | 4,369,221 |