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

July 24, 1985

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

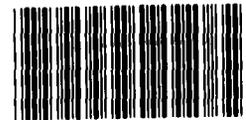
On March 22, 1985, the President's eighth special message for fiscal year 1985 was submitted to the Congress pursuant to the Impoundment Control Act of 1974. The special message proposes five new deferrals of budget authority for 1985 totaling \$121,544,000 and three revised deferrals now totalling \$162,677,884. Our report on the eighth message and a modification to our comments on the sixth and the seventh messages follow.

DEPARTMENT OF ENERGY

- D85-29B Energy Programs
Naval Petroleum and Oil Shale Reserves
Amount Deferred: \$155,667,981
89X0219
- D85-30A Energy Programs
Energy Conservation
Amount Deferred: \$5,771,940
89X0215
- D85-32B Energy Programs
Alternative Fuels Production
Amount Deferred: \$1,237,963
89X5180
- D35-65 Energy Programs
Uranium Supply and Enrichment Activities
Amount Deferred: \$90,000,000
89X0226

DEPARTMENT OF HEALTH & HUMAN SERVICES

- D85-66 Health Care Financing Administration
Program Management
Amount Deferred: \$4,271,000
7550511



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The President's statement of "other budgetary resources" does not include reimbursements in the amount of \$2,029,100 and additional trust fund transfers of \$170,000 which are reflected in the apportionment schedule dated February 15, 1985. The schedule also indicates that \$21,432,000 was designated as "not available pursuant to Public Laws 98-619 and 98-473." Accordingly, the "Total budgetary resources" figure reflected in the schedule is \$1,208,693,100 rather than \$1,227,926,000 as reported by the President. See the addendum below for additional comments on this deferral.

D85-67 Social Security Administration
 Limitation on Administrative Expenses
 Amount Deferred: \$9,176,000
 7558704

See the addendum below for our comments on this deferral.

DEPARTMENT OF THE INTERIOR

D85-68 National Park Service
 Land Acquisition and State Assistance
 Amount Deferred: \$3,356,000
 14X5035

DEPARTMENT OF TRANSPORTATION

D85-69 Office of the Secretary
 Payments to Air Carriers
 Amount Deferred: \$14,741,000
 69X0150

Addendum

In the President's sixth, seventh and eighth messages for fiscal year 1985, he has announced his deferral of budget authority derived by appropriations from various trust fund accounts. The Congress, in appropriations for 1985, authorized funds from these accounts to be expended for distinct purposes (such as administrative expenses, program management and operating expenses). But for the appropriation actions, the trust funds would not have been available for these purposes.

Each deferral was submitted pending congressional action on the Administration's legislative proposal to reduce (by the amount of the deferral) the extent to which those trust funds

could be used for the purposes designated by Congress. These proposals, if enacted, would be tantamount to partial repeals of the original legislative authorities to use the trust funds for the specified purposes. The deferrals involved are as follows: D85-48, D85-57, D85-58 in the sixth message; D85-61, D85-34A, D85-62, D85-63, and D85-64 in the seventh message; and D85-66 and D85-67 in the eighth message.

Although the deferrals, when considered along with the legislative repeal proposals, strongly resembled rescissions, we chose not to object to the Administration's characterization of these withholdings as deferrals for a variety of reasons. First, Office of Management and Budget (OMB) staff stated that it was the Administration's objective not to eliminate for all purposes the availability of the funds in question, but to return these funds, through the legislative process, to the trust fund accounts from which they were derived, thus making them available for the general purposes of those accounts. The Administration decided that under these circumstances, it would accomplish its objective by submitting deferrals and legislative repeal proposals separately, rather than submitting rescission proposals. Thus characterized, we viewed these deferrals as analogous to deferrals pending congressional action on a legislative transfer proposal, which we have held are proper.

In six of the ten deferrals of this type (D85-57, D85-61, D85-34A, D85-63, D85-66, and D85-67), the period of availability of the trust funds for the purpose designated by Congress in the appropriation provision will expire on September 30, 1985. We raised this point with OMB staff and expressed concern about the duration of the deferrals. OMB staff initially agreed with our view that, in the absence of congressional action on the legislative repeal proposals, the deferred funds should be released in sufficient time to permit their prudent obligation for the original purposes designated by Congress in the appropriation act.

However, OMB staff recently advised us that their agreement to release the funds in sufficient time to permit their obligation for the statutory purpose (in the absence of congressional action on the repeal proposals) was erroneous. The staff now argues that it is the congressionally-designated purpose which expires on September 30, 1985 (in six of the ten accounts), rather than the trust funds themselves,

and that there is no legal requirement to release the funds in sufficient time for them to be obligated for that purpose.

It is OMB's position now that, at least in the absence of further congressional action, release of these funds would be required only if it appeared that the funds, if not obligated, would no longer be available for any purpose whatsoever. OMB's view is that such total unavailability will not occur since, once these monies have reverted to the trust fund from which derived (upon expiration of the period of the appropriation account's availability), they would then become available for the general purposes of the trust fund. Of course, should the Congress expressly disapprove these deferrals (either by impoundment resolution or enactment into positive law of language disapproving the deferrals and requiring the release of the funds for obligation), presumably OMB would concede that release would be required by law.

OMB's new position means that some or all of this budget authority may be withheld beyond the last point at which the funds could be prudently obligated for the congressionally-designated purpose, or beyond the point at which it appears that the Congress has conclusively rejected the legislative repeal proposals. Since this point has not yet been reached, it is premature to speculate on what the legal status of these withholdings would be.

We are monitoring closely the progress of H.R. 2577 (the Supplemental Appropriations Bill for fiscal year 1985) which has been the vehicle for consideration of the Administration's trust fund repeal proposals and which is now in conference. Both the House and Senate Appropriations Committees have expressly rejected nine of the ten repeal proposals submitted. See H.Rep. No. 142, 99th Cong., 1st Sess. 117, May 22, 1985 and S.Rep. No. 82, 99th Cong., 1st Sess. 174, June 13, 1985. One proposal was adopted in part. In fact, the Senate amended the bill to include language which disapproves the nine deferrals accompanying these proposals "to remove any possibility that these funds might remain impounded contrary to congressional intent." S. Rep. at 174.

If the Congress intends that the funds not be withheld from obligation beyond the point at which they can be prudently obligated in this fiscal year, this result would most probably be achieved by enacting express statutory language disapproving the deferrals, like that in the Senate version of

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the pending supplemental appropriation. The Congress' intent that the funds be released would then be clearly demonstrable, thus avoiding a dispute over the meaning of the Congress' action on this issue.

We have reviewed the eighth special message. Except as noted above, we identified no additional information that would be useful to the Congress, and we believe that the proposed deferrals are in accordance with existing statutes.

for *Milton J. Auster*
Comptroller General
of the United States