

132452



Comptroller General
of the United States

Washington, D.C. 20548

B-224882

February 18, 1987



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

On December 16, 1986, the President's second special message for fiscal year 1987 was submitted to the Congress pursuant to the Impoundment Control Act of 1974 (the Act). Enclosure I provides all information we identified which we believe will be useful to the Congress in its examination of the message. Enclosure II is a copy of the President's listing of all impoundments reported in the second message.

As you are aware, the United States Court of Appeals for the District of Columbia Circuit held the portion of the Act dealing with so-called policy deferrals (section 1013, 2 U.S.C. 684) to be unconstitutional after this message was submitted. A stay pending appeal, imposed by the lower court which had reached the same result, was not continued by the appellate court.^{1/} We do not yet know whether the Department of Justice will appeal to the Supreme Court.

The Court of Appeals upheld the validity of the so-called programmatic deferral authority stemming from the Anti-Deficiency Act (as amended by the Act). As a result, deferrals by the President under the Anti-Deficiency Act (to achieve savings through changes in requirements or greater efficiency; to provide for contingencies; or as specifically provided by law) remain authorized. 31 U.S.C. 1512(c).

All of the impoundments in this message rely on the Anti-Deficiency Act. (Deferral No. 87-26 cites, in addition to the Anti-Deficiency Act, the Continuing Appropriation Act for fiscal year 1987 (Pub. L. No. 99-500), which requires the withholding of the \$60 million deferred, and schedules the release of these funds throughout the course of the fiscal

^{1/} New Haven v. United States, No. 86-5319 (D.C. Cir. 1987), aff'g 634 F. Supp. 1449 (D.D.C. 1986).

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year upon the making and reporting of required presidential determinations.)

The impoundments in this message are correctly characterized as authorized by the Anti-Deficiency Act, which is unaffected by the court's decision regarding the unconstitutionality of the Act's policy deferral provision, section 1013. Our review disclosed no other reasons to question the legality of these deferrals. We therefore find them to be in accordance with existing law.



Acting Comptroller General
of the United States

Enclosures

COMMENTS ON THE SECOND SPECIAL MESSAGEFUNDS APPROPRIATED TO THE PRESIDENT

D87-22 International Security Assistance
 Foreign military sales credit
 Amount deferred: \$4,040,441,000
 1171082

The latest apportionment schedule for this account, dated November 21, 1986, shows that \$600 million of the deferred amount has been released for obligation; \$3,440,441,000 remains deferred.

D87-1A International Security Assistance
 Economic support fund
 Amount deferred: \$2,446,470,091
 115/71037 11X1037 117/81037
 1171037 116/71037

The Office of Management and Budget's (OMB) cumulative report of impoundments, dated January 9, 1987, shows that \$607,072,000 of the amount deferred has been released for obligation; \$1,839,398,091 remains deferred.

D87-23 International Security Assistance
 Military assistance
 Amount deferred: \$847,000,000
 1171080

The latest apportionment schedule for this account, dated November 21, 1986, shows that \$5 million of the deferred amount has been released for obligation; \$842 million remains deferred.

D87-24 International Security Assistance
 International military education and
 training
 Amount deferred: \$2,000,000
 1171081

According to OMB, these funds were withheld pending assignment of the responsibility for training in anti-narcotics operations to either the Department of Defense or the State Department. The message anticipated apportionment of the funds by December 5, 1986. An OMB official told us that the funds will be apportioned soon.

D87-25 Agency for International Development
 International Disaster Assistance,
 Executive
 Amount deferred: \$57,000,000
 11X1035

The latest apportionment schedule for this account, dated December 14, 1986, shows that \$38,836,892 of the deferred amount has been released for obligation; \$18,163,108 remains deferred.

The apportionment schedule also shows that the unobligated balance brought forward on October 1, 1986 was \$15,363,108, rather than the \$6,400,000 previously estimated; consequently, total budgetary resources are \$85,363,108, not \$76,400,000 as stated in the message.

DEPARTMENT OF DEFENSE - MILITARY

D87-6A Military Construction
 Amount deferred: \$1,318,502,000
 217/12050 177/11205 577/13300
 977/10500 974/80500 217/12085 577/13830
 217/12086 177/11235 577/13730 97X0804

OMB's cumulative report, dated January 9, 1987, shows that \$12,514,000 of the amount deferred has been released for obligation; \$1,305,988,000 remains deferred.

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ENCLOSURE I

D87-7A

Family Housing, Defense

Amount deferred: \$266,965,000

177/10703 217/10702 577/10704

575/90704

OMB's cumulative report, dated January 9, 1987, shows that \$65,143,000 of the amount deferred has been released for obligation; \$201,822,000 remains deferred.

CONTENTS OF SPECIAL MESSAGE
as reported by the President
(in thousands of dollars)

| <u>RESCISSION NO.</u> | <u>ITEM</u> | <u>BUDGET AUTHORITY</u> |
|-------------------------------------------------|----------------------------------------------------------------------------------------------------|-----------------------------|
| Funds Appropriated to the President: | | |
| International Security Assistance: | | |
| D87-22 | Foreign military sales credit..... | \$ 4,040,441 |
| D87-1A | Economic support fund..... | 2,446,470 |
| D87-23 | Military assistance..... | 847,000 |
| D87-24 | International military education and training..... | 2,000 |
| Agency for International Development: | | |
| D87-25 | International disaster assistance..... | 57,000 |
| Special Assistance for Central America | | |
| D87-26 | Assistance for the Nicaraguan Democratic Resistance..... | 60,000 |
| D87-27 | Promotion of stability and security in Central America..... | 1,000 |
| Department of Defense - Military: | | |
| Military Construction: | | |
| D87-6A | Military construction, Defense..... | 1,318,502 |
| Family Housing: | | |
| D87-7A | Family housing, Defense..... | 266,965 |
| Department of Health and Human Services: | | |
| D87-28 | Health Resources and Services Administration: Indian catastrophic health emergency Fund..... | 10,000 |
| Department of Transportation: | | |
| Federal Aviation Administration: | | |
| D87-16A | Facilities and equipment (Airport and airway trust fund)..... | 1,099,433 |