NOMINATION OF PAUL H. O'NEILL

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENT OPERATIONS UNITED STATES SENATE

NINETY-THIRD CONGRESS

SECOND SESSION

ON

NOMINATION OF PAUL H. O'NEILL TO BE DEPUTY DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET

NOVEMBER 20, 1974

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NOMINATION OF PAUL H. O'NEILL

WEDNESDAY, NOVEMBER 20, 1974

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The committee met, purusant to notice, at 10:11 a.m., in room 3302, Dirksen Senate Office Building, Senator Edmund S. Muskie presiding.

Present: Senators Muskie, Chiles, and Brock.

Also present: Committee on Government Operations: Robert Bland Smith, Jr., chief counsel and staff director; Elizabeth A. Preast, chief clerk; Eli E. Nobleman, counsel; W. P. Goodwin, Jr., counsel; W. Thomas Foxwell, staff editor. Subcommittee on Budgeting, Management, and Expenditures: Vic Reinemer, staff director; E. Winslow Turner, chief counsel; Alan Chvotkin, professional staff member; Lyle Ryter, minority counsel. Subcommittee on Intergovernmental Relations: Alvin From, staff director; Lucinda T. Dennis, chief clerk; Dorothy J. Kornegay, secretary. Subcommittee on Reorganization, Research, and International Organizations: Richard Wegman, staff director.

Senator MUSKIE. The committee will be in order. This morning we will take up the nomination of Paul H. O'Neill to be Deputy Director of the Office of Management and Budget.

I think it would be appropriate to make note of the fact that this is the first hearing on the confirmation of either a Director or Deputy Director of OMB, so you are a guinea pig, Mr. O'Neill, this morning.

Mr. O'NEILL. Yes, sir.

Senator MUSKIE. Secondly, I would hope that this confirmation hearing, as well as the new congressional budget process, will lead to better cooperation between the Congress and the President and that we may begin that dialog on a constructive note this morning.

It is my hope that other members of the committee may be present before the hearing is concluded, but I understand they are all tied up. Senator Percy especially wanted me to express his regrets to you, Mr. O'Neill, that he cannot be here, but I gather he is making an important speech at the United Nations this morning.

With that, I would put in the record, without objection, a résumé of your background so that we may have it.

[Biographical data follows:]

BIOGRAPHICAL SKETCH OF PAUL H. O'NEILL

Name: Paul H. O'Neill.
Date and place of birth: December 4, 1935, St. Louis, Mo.
Marital status: Married, three daughters, one son.
Present position: Associate Director, Human and Community Affairs, U.S. Office of Management and Budget.

EDUCATION

1957–60 B.A.—Economics—Fresno State College, Fresno, Calif.
1960–61 Graduate Study—Economics, Claremont Graduate School, Claremont, Calif.
1962–65 Graduate Study—Economics, George Washington University, Washington, D.C.
1965–66 MPA. Indiana University, Bloomington, Ind.

EXPERIENCE

1955–57 Morrison-Knudsen Inc. (General Contractor) Anchorage, Alaska. Site Engineer; general engineering supervision and assistance to Site Superintendents, progress evaluation; coordination of structural, electrical and mechanical aspects of building construction and equipment installation.
1961–66 U.S. Veterans Administration, Washington, D.C. Systems analyst and supervisory systems analyst. Development of computer-based systems for use in Veterans Administration hospital, compensation and pension programs.
1967–69 U.S. Bureau of the Budget, Washington, D.C. Budget Examiner, Health Unit. Developed program/budget and policy analysis in the Federal Government's health program activities.
1969–70 U.S. Bureau of the Budget (Office of Management and Budget), Washington, D.C. Associate Division Director for Program Coordination. Led task force groups in the development of welfare reform and national health insurance proposals.
1970–71 U.S. Office of Management and Budget, Washington, D.C.; Chief, Human Resources Programs Division. (55 employees) Directed and reviewed program/budget legislative and policy analysis covering the Federal Government's activities encompassed by: Department of Health, Education and Welfare, Labor, Veterans Administration, Housing and Urban Development, Office of Economic Opportunity, Railroad Retirement, Selective Service, National Foundation for Arts and Humanities, food assistance programs of the Department of Agriculture; and related smaller agencies.
1971–73 U.S. Office of Management and Budget, Washington, D.C. Assistant Director, Human Resources and General Government programs. (80 employees) Principal policy officer for the work of the Office covering the Federal Government's activities encompassed by: HEW, Labor, Veterans Administration, HUD, OEO, Railroad Retirement, Selective Service, food assistance programs of the Department of Agriculture, National Foundation for the Arts and Humanities; Treasury, Justice, GSA, Postal Service, District of Columbia, Civil Service Commission; and related smaller agencies.
1973 U.S. Office of Management and Budget, Washington, D.C. Associate Director, Human and Community Affairs. (85 employees) Principal policy officer for the management and budget work of the Office covering the Federal Government's activities encompassed by: HEW, Labor, Veterans Administration, HUD, OEO, Railroad Retirement, National Foundation for the Arts and Humanities, Action, food assistance programs of the Department of Agriculture, highway programs of the Department of Transportation, District of Columbia, and related smaller agencies.

AWARDS

1965 Career Education Award, National Institute of Public Affairs.
1971 Meritorious Award, William A. Jump Foundation—Office of Management and Budget.

Senator MUSKIE. I also make note of the fact that you have filed a confidiential statement of employment and financial interests.

I detect nothing out of order in it, but I might put this one question.

Is there anything in this area which would pose any conceivable conflict in connection with your new duties as Deputy Director of the Office of Management and Budget?

STATEMENT OF PAUL H. O'NEILL, NOMINEE TO BE DEPUTY DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET

Mr. O'NEILL. No, sir. There is not, and I would be more than pleased to have my financial statement made part of the record as well, even though it is indicated on the front that it is a confidential statement.

Senator MUSKIE. All right. Without objection that will be done at your request.

[The document referred to follows:]

OMB FORM 64
JULY 70

OFFICE OF MANAGEMENT AND BUDGET

CONFIDENTIAL STATEMENT OF EMPLOYMENT AND FINANCIAL INTERESTS

1 NAME (last, first, initial)	2 TITLE OF POSITION
O'Neill, Paul H.	Associate Director

3 DATE OF APPOINTMENT IN PRESENT POSITION	4 AGENCY AND MAJOR ORGANIZATIONAL SEGMENT
September 1971	OFFICE OF MANAGEMENT AND BUDGET

PART I EMPLOYMENT AND FINANCIAL INTERESTS List the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational, or other institutions: (a) with which you are connected as an employee, officer, owner, director, member, trustee, partner, adviser, or consultant; or (b) in which you have any continuing financial interests, through a pension or retirement plan, shared income, or other arrangement as a result of any current or prior employment or business or professional association; or (c) in which you have any financial interest through the ownership of stock, stock options, bonds, securities, or other arrangements including trusts. ("Shares" in savings and loan associations which are in the nature of savings deposits need not be reported.) If none, write NONE.

NAME AND KIND OF ORGANIZATION (USE PART I DESIGNATIONS WHERE APPLICABLE)	ADDRESS	POSITION IN ORGANIZATION (USE PART I (a) DESIGNATIONS, IF APPLICABLE)	NATURE OF FINANCIAL INTEREST, e.g., STOCK, PRIOR BUSINESS INCOME (USE PART I (b) & (c) DESIGNATIONS, IF APPLICABLE)
None			

PART II CREDITORS List the names of your creditors other than those to whom you may be indebted by reason of a mortgage on property which you occupy as a personal residence or to whom you may be indebted for current and ordinary household and living expenses such as household furnishings, automobile, education, vacation, and similar expenses. If none, write NONE.

NAME AND ADDRESS OF CREDITOR	CHARACTER OF INDEBTEDNESS, e.g., PERSONAL LOAN, NOTE, SECURITY
None	

PART III INTERESTS IN REAL PROPERTY List your interest in real property or rights in lands, other than property which you occupy as a personal residence. If none, write NONE.

NATURE OF INTEREST, e.g., OWNERSHIP, MORTGAGE, LIEN, INVESTMENT TRUST	TYPE OF PROPERTY, e.g., RESIDENCE, HOTEL, APARTMENT, FARM, UNDEVELOPED LAND	ADDRESS (IF RURAL, GIVE RFD, OR COUNTY AND STATE)
None		

PART IV INFORMATION REQUESTED OF OTHER PERSONS If any information is to be supplied by other persons, e.g., trustee, attorney, accountant, relative, please indicate the name and address of such persons, the date upon which you requested that the information be supplied, and the nature of subject matter involved. If none, write NONE.

NAME AND ADDRESS	DATE OF REQUEST	NATURE OF SUBJECT MATTER
None		

I certify that the statements I have made are true, complete, and correct to the best of my knowledge and belief.

November 18, 1974
DATE

Paul H. O'Neill
SIGNATURE

SEE REVERSE

Senator MUSKIE. I think it is appropriate that I just invite you to make such opening comments as you might like to make on your assumption of these duties.

May I say at the beginning that it is clear from your resumé, but also what I know of your background aside from that resumé, that your qalifications in terms of background and ability and experience would appear to me to be beyond question. I think the questioning will go to other areas than the questions on your qualifications. But with that I invite you to make any opening statement you would like to make.

Mr. O'NEILL. Thank you very much, Mr. Chairman. You are more than generous in your remarks about my background.

I feel very strongly, just as you indicated, that we must have a better cooperative relationship between the executive branch and the Congress and especially between the Office of Management and Budget and the new Budget Committees and offices that are going to be formed under the Congressional Budget Reform Act. I, too, look forward to this confirmation hearing as being the first building block in establishing that cooperative relationship, because it is essential to move forward on key questions of national resource allocations. It is my own feeling that the questions we face today must be faced together and with as little partisanship as possible because they are not partisan questions. They are very deep and difficult economic questions that face us, tied in with food problems and energy problems, and I believe that we must face them together and in a nonpartisan way. And with that I would be very happy to answer any questions you may have for me, Senator.

Senator MUSKIE. I think we all share that general sentiment and I think the potential for disagreement or difference between us lies not so much in the area of potential partisanship—although that always lurks in the background, I suppose—but in our understanding of the respective roles of the Congress and the Executive and the Office of Management and Budget particularly.

We have had some brief discussion of these matters and I would like to explore them. I will use about 10 minutes to start and then yield to Senator Chiles so he may get in a question or two. But there are a number of matters I would like to spread out on the record and I think it is appropriate that we do so due to the fact that this is the first hearing of its kind.

Frankly, there is a tendency, which is disturbing to me, that suggests an effort, whether conscious and deliberate or otherwise, to arrogate more inappropriate authority to the Office of Management and Budget, both legislative and executive authority, for example, with respect to title X of the impoundment provisions of the budget reform legislation.

Now, it was our hope with that legislation that we would move out of the area of confrontation that has developed between the Executive and the Congress on this subject of impoundments. On the basis of the reports that have been filed by the administration under title X, it is clear to me that the administration has taken an interpretation of title X which enlarges Presidential authority over impoundments beyond anything that had been conceived by the Congress or the courts prior to enactment of the budget reform legislation.

Now, that to me is an ironic twist of congressional and legislative intent. The whole purpose was to limit the use of impoundment authority as a way of establishing the administration's position on fiscal policy. But the messages which have been submitted assert the administration position on fiscal policy in a way that bypasses the normal legislative process. I mean, if it is the desire of the President to change existing laws or programs and funding of those laws and programs, then it seems to me the legislative process is available to it and should have been used. But instead, with the impoundment messages that have been already submitted, and I gather we can expect one or two more, we will see an accumulation of Presidential actions taken under title X that exceed any total of impoundments previously asserted by any previous President.

And so, rather than resort to this method of asserting administration policy positions, title X has had the reverse effect and that concerns me deeply.

It may be that as a Congress, we slipped and didn't clearly state what we wanted that legislation to do. I think we stated it clearly enough.

With that preliminary comment, and I don't expect you to be in a position to change the White House position at this point—or are you? [Laughter.]

Mr. O'NEILL. Let me first say, Senator, that it is my judgment that the Congress acted with great wisdom in passing the Congressional Budget Act. Until that was done, there was not a clearly established procedure for the President to propose to the Congress delay in the spending or rescission of funds that had been appropriated. The Anti-deficiency Act provisions that existed before this new law were unclear and as a result, the number of reserves and other proposed actions that came to the Congress in January 1973 led us into a whirlwind of court activity that, from a public policy point of view, was very undesirable, except to the extent it helped precipitate the new congressional Budget Reform Act. In that way, I think it was very good because now, although there are certainly some differences of interpretation about the limitations on the use of the deferral power as opposed to the rescission power under the reform act, we are on the right track. I think the differences can be worked out although in time it may be necessary to have a revision of the law or for a court to help us decide the correct interpretation of deferral provision. But I am very much convinced we are on the right track.

We have established the basis for an orderly procedure for the Executive to make proposals to the Congress and for the Congress to respond to those proposals. I think that can help get us out of the confrontation that has existed for the last few years and has been counterproductive for the public.

Senator MUSKIE. I think that is right, depending upon how the administration interprets its authority.

Now, there are two provisions. One, rescissions, and the other, deferrals. Rescissions require action on the part of the Congress that is comparable to the action that Congress would take to enact legislation in the first place.

Mr. O'NEILL. Yes.

Senator MUSKIE. Positive action by both Houses.

Mr. O'NEILL. Yes, sir.

Senator MUSKIE. It was the clear intent of the Congress that fiscal policy positions asserted by the administration should run that kind of a gamut. But instead the administration has sought to use the deferral procedure which puts the monkey on Congress' back. Deferrals permit a reduction in spending without that kind of action on the part of the Congress. In other words, the reductions go forward unless one House or the other, by positive action, disapproves.

Well, that is a much easier course for the administration to run in seeking to assert its policy decisions than the rescission course. I can understand why it is tempting to do so. But in my judgment the legislation clearly and specifically refers to rescission authority as being the authority that is to be used to assert fiscal policy positions by the administration. But instead the administration has taken the other course.

As I said earlier, I don't expect that you can change that, but I think that it is important to make the record. We may disagree among ourselves on this committee on the point. But I have no doubt about it and I just wanted to express that very clearly. And I think if this administration and subsequent administrations pursue this interpretation of the deferral authority what you have is precipitation of another confrontation of the kind that led to the enactment of the budget reform legislation in the first instance. I just don't see how you can avoid it.

Well, having made that point let me get down to some specifics and my first 10 minutes is almost up.

One disagreement that has arisen principally is between GAO and the Attorney General's department on title X and has to do with the question of whether or not title X applies to impoundments that were undertaken prior to the effective date of the act, which is July 12 of this year.

Now, as of yesterday when you and I discussed it, we had not received the Attorney General's opinion which had been referred to a number of times by the administration. I understand that GAO has now received it. I am not entirely clear when. But in any case, the Attorney General's opinion was that title X did not apply to impoundments taken prior to July 12. GAO's position is to the contrary. That difference of opinion creates problems with respect to the messages that have been sent up under title X, specifically with respect to the water pollution impoundments and the highway impoundments.

Now, I am not satisfied that the messages are clear whether or not it was intended through these messages to reimpound in those two areas, thus triggering the title X process for the purposes of those impoundments, or whether instead those impoundments were referred to in those messages purely for informational purposes. Are you in a position to clarify that?

Mr. O'NEILL. First, Mr. Chairman, I brought with me this morning a copy of the Attorney General's opinion on this question.

Senator MUSKIE. Could I have that for the record?

Mr. O'NEILL. Yes, sir. I would be happy to provide it for you and make it a matter of record.

Senator MUSKIE. Yes I would, and without objection it will be inserted at this point.

[The document referred to follows:]

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., October 10, 1974.

The PRESIDENT,
The White House.

DEAR MR. PRESIDENT: This is in response to your request for a written expression of the views I have previously conveyed concerning the applicability of the Impoundment Control Act of 1974 to budget authority enacted, and impoundments effected, prior to July 12, 1974, the date the Act was signed by the President. The immediate question is whether the Act's requirements of submission by the President of special messages to Congress are applicable to pre-Act impoundments and to post-Act impoundments of pre-Act budget authority. In my view, those requirements are applicable to the latter but not to the former.

The first step in analysis is to determine the effective date of the Act's provisions. Of course, most legislation is effective upon its signing, and that is the ordinary presumption, absent indication of a contrary legislative intent. The Impoundment Control Act is one part, Title X, of the Congressional Budget and Impoundment Control Act of 1974, Public Law 93–344. The remaining titles, I–IX, comprise the Congressional Budget Act. Although the Impoundment Control Act does not contain an effective-date provision, the Congressional Budget Act does (sec. 905). This provides that the new Congressional budget procedures are to take effect on a staggered basis; the first fiscal year to which they are all to be applicable is the year beginning October 1, 1976. It might be argued, because of the clear relationship between the new Congressional budget procedures and the new impoundment controls, that the latter are not to take effect until October 1, 1976. However, neither the legislative history nor the logic of the matter justifies this result. When the House of Representatives was considering its version of the bill, an amendment to postpone the effectiveness of the impoundment-control provisions so as to "synchronize" them with the Congressional-budget provisions was expressly rejected. See 119 Cong. Rec. H 10707–8 (daily ed., Dec. 5, 1973). It cannot be assumed that the conference report, without any mention of the matter, intended to reverse this determination. Moreover, despite the functional connection between the new impoundment controls and Congress' new budget procedures, it is entirely feasible to implement the impoundment-control provisions independently. Accordingly, it must be assumed, in accordance with the normal rule, that the Impoundment Control Act was effective upon its signing.

The next issue, then, is how the terms of the Act apply to previously enacted budget authority. I find nothing whatever to indicate that this was intended to occupy a special status. The basic provisions of the Act and its definitions are broad in nature, and they make no distinction between pre-Act and and post-Act budge authority. See sec. 1012 (recission of budget authority) and sec. 1013 (deferral of budget authority). See also the definitions in sec. 3(a)(1)–(2) and sec. 1011(1). It is conceivable that pre-Act budget authority is distinctive for purposes relating to some constitutional aspects of the legislation (a point about which you have not inquired, and on which I express no opinion). But insofar as the terms of the legislation are concerned, there is no basis for treating it differently. It is my opinion that all impoundments made after July 12, 1974, regardless of whether they relate to budget authority enacted before or after that date, are subject to the terms of the new legislation, including the provision for transmittal of special mesages to the Congress.

There remains for consideration the issue of the Impoundment Control Act's applicability to impoundments made before its effective date. In my view, these are not covered. The provision of the legislation are obviously prospective, intended to apply only to events occurring after its effective date. But this does not conclude the matter, since impoundment may ge regarded either as a decision made at a fixed point in time or (less commonly, perhaps, but none the less accurately) as a continuing refusal to dispense funds. If the Act regards it in the former fashion, pre-Act impoundments cannot be covered; if in the latter, they can be, since the withholding of funds is still continuing.

Some of the critical language of the legislation (e.g., the word "determines" in sec. 1012(a)) is simply not consistent with the "continuing act" view, but some of it (notably, the phrase "is to be reserved" in sec. 1012(a)) is. On balance—assuming, as seems necessary, that all pre-Act impoundments are meant to be treated alike—it seems easier to square the "continuing act" language with an interpretation that renders the legislation inapplicable to pre-Act impoundments, than the "single act" language with an interpretation that renders it

applicable. That is to say, it is possible to read language which considers impoundment a "continuing act" as applying only to continuing acts that commence after enactment, whereas it is difficult to conceive of any reasonable theory which would apply a phrase like "whenever the President determines" (sec. 1012(a)) to determinations made before the Act was passed.

It must be acknowledged, however, that the language of the operative sections is ambiguous, and in my opinion the decisive factor is the guidance that can be derived from the first section of the Act, sec. 1001. This bears the title "Disclaimer," and like most such provisions it is intended not to have any independent operative effect but to clarify what the other provisions of the act are meant to achieve. Section 1001(3) provides that "[n]othing contained in this Act, or in any amendments made by this Act, shall be construed as—(3) affecting in any way the claims or defenses of any party to litigation concerning any impoundment." As far as I am aware, all litigation which exists or is likely to arise with respect to pre-Act impoundments seeks merely to terminate the continued withholding of funds; and the Government's defense is simply that the continued withholding is lawful. Thus, a lawful past impoundment of the type described in sec. 1012(a) now in litigation can, at the very least, not be considered subject to the Congressional approval requirement of the Act, or else—with no further action on the part of either the President or the Congress, and by virtue of the Act alone—the outcome of the litigation would be reversed and the Government's defense eliminated. It is impossible to give any meaningful content to the portion of section 1001(3) preserving existing defenses unless a past impoundment already in litigation at the date of the Act was not intended to be the subject to the Congressional approval provisions.

Having reached this conclusion with respect to sec. 1001(3), I then direct attention to sec. 1001(2), which provides that "[n]othing contained in this Act, or in any amendments made by this Act, shall be construed as—(2) ratifying or approving any impoundment *heretofore or hereafter* executed or approved by the President or any other federal officer or employee, *except insofar as pursuant to statutory authorization then in effect*" (emphasis added). Even without the benefit of subsection (3), it seems to me that this provision is most reasonably interpreted as expressing the assumption that valid prior impoundments will not be subject to the Congressional approval requirements of the Act; but with the existence of subsection (3) this interpretation seems almost inevitable. Otherwise there would be created a situation in which, by virtue of subsection (3), impoundments already challenged in court would be insulated from the Congressional approval process, whereas impoundments which have provoked no legal protest would not—an absurd result.

Standing by themselves, subsections 1001(2) and (3) only require the conclusion that past impoundments are exempt from the Congressional approval process, and not that they escape the reporting requirements of sections 1012 and 1013. As noted above, however, section 1001 is not meant to have any independent effect, but only to explain and clarify the other provisions of this legislation. I cannot see how any interpretation of those other provisions could exempt prior impoundments from the Congressional approval requirements without also removing them from the reporting provisions of the Act. In short, it seems to me that section 1001 requires the conclusion that all the provisions of the Act—the reporting requirements as well as the Congressional approval provisions—are meant to reach only impoundments which are made (or if the "continuing act" view is applicable, withholdings which commence) after its effective date.

I must acknowledge that this last conclusion has the untidy effect of leaving an almost imperceptible gap in the impoundment reporting provisions formerly contained in section 203 of the Budget and Accounting Procedures Act of 1950 and replaced by the reporting provisions of the present legislation (see sec. 1003). The past impoundments would no longer have to be reported under the repealed statute and would not fall within the new legislation. Because it seems to me this gap was inadvertent I think it would be advisable, in the interest of keeping Congress fully informed, to report continuing past impoundments in the future even though such reporting is not required.

Respectfully,

WM. B. SAXBE,
Attorney General.

Mr. O'NEILL. I understand that the Comptroller General, Mr. Staats, issued his opinion on this subject to Congress before he had

the advantage of looking at the Attorney General's opinion and we have not heard from him since the Attorney General's opinion was made available to him. So we still have a little uncertainty as to how he is going to come out on it.

The bulk of issues in this category, are going to be mooted in time because the Attorney General has indicated that as actions are taken in the apportionment process by the Office of Management and Budget in days following July 12, 1974, that is a reapportionment or a rereserve or deferral of spending authority, then those actions make those funds subject to the provisions of the act without reference to July 12. Overtime, and it is already beginning to happen, as I understand it, 10 or 12 reapportionments have taken away the July 12 question already, we are going to be getting over that problem.

Now, to go to the broader question of water pollution, I have talked with counsel after we spoke about it and it is an enormously complicated situation because the case right now on the original question of allocation of $18 billion worth of water grant authorities is before the Supreme Court. So in effect the decision hasn't been joined whether or not those funds should, could, or would be subject to the provisions of title X of the Budget Reform Act. His advice to me was to indicate to you that from the executive office point of view, the issue hasn't been joined, that the primary focus right now is on the Supreme Court, waiting for them to make a decision whether or not the head of the Environmental Protection Agency has the authority under the President's direction to make it less than the $18 billion allocation under the original act.

Senator MUSKIE. Well, let me ask you three specific questions, if I may just take a little bit more time to make that part of the record clear.

One, is it still the Attorney General's opinion that title X does not apply to pre-July 12 impoundments?

Mr. O'NEILL. Yes, sir; it is. He has not changed his view.

Senator MUSKIE. Then do I take it that it was not the administration's intent, nor the President's intent, in sending up the message including the water pollution impoundments to trigger title X with respect to those?

Mr. O'NEILL. No, sir. It was an intent to have a full faith reporting so that Congress would know, even though we considered these at that point not subject to title X, that there were other funds as a result of the Attorney General's July 12 demarcation point, still in reserve.

Senator MUSKIE. Let me put the question still another way. The administration reported the water pollution impoundments under the deferral authority, and that action seems to be inconsistent with the opinion you just stated that the report was not intended to trigger title X. I can't understand why the administration used a mechanism provided in title X and not previously available to report this impoundment.

Mr. O'NEILL. I don't have a copy of it with me but as I recall, there was great care taken to put an asterisk on those items that fell on the other side of the Attorney General's view on the question of July 12. The reason for that I think is consistent with what the President had been saying—he has said it to me many times, that he wants to work in a cooperative way with the Congress and where there is any doubt,

he wants the Congress to know what we are doing. Even though the Attorney General indicated to him he didn't think these funds were subject to title X he wanted to have a full faith reporting so that the Congress wouldn't feel we were misleading them by providing less than what the Congress might consider to be a full report.

Senator MUSKIE. Well, if I am correct in my view that there is ambiguity in the messages on this point I think the next quetion is in order.

If neither House of the Congress takes action to disapprove the deferral under title X, would that failure be interpreted on the part of the administration as expressing congressional approval of the deferral of that $9 billion?

Mr. O'NEILL. No, sir; I don't think so. As it has been presented, it isn't proposed as a deferral because of the Attorney General's position. We are looking at the Supreme Court hopefully to settle this issue once and for all so we can get on with our business.

Senator MUSKIE. It was not the intent of the administration to moot the case before the Supreme Court?

Mr. O'NEILL. Absolutely not.

Senator MUSKIE. On this question of the pre-July 12 impoundments, I would like to include in the record the first impoundment message dated September 20, 1974, and make these one or two observations about it.[1]

First of all, it was in that first message that the following statement appeared:

> The Attorney General is of the opinion that the Congressional Budget and Impoundment Control Act of 1974 applies only to such determinations made since July 12, 1974, the effective date of the Act.

Now, the date of that message was September 20, but the date of the opinion is October 10. I take it that the opinion referred to in the message was an oral one. Is that a correct assumption?

Mr. O'NEILL. I though there was a written opinion before that message, Senator, but I see the copy I have, in fact, is dated October 10. I am not prepared to tell you when the opinion was made, I never directly talked to the Deputy Attorney General on the question but I know our counsel did and there was an opinion but I am not sure whether it was in writing or not before that first message came.

Senator MUSKIE. Can you make that determination to clarify the record?

Mr. O'NEILL. Sure.

Senator MUSKIE. Two of these messages—the second was October 4—two of these messages were sent out prior to the time the written opinion was prepared.

Mr. O'NEILL. I will clarify that for you.

[The following was subsequently supplied for the record by Mr. O'Neill:]

RESPONSE RELATING TO DATE OF ATTORNEY GENERAL'S OPINION ON IMPOUNDMENTS PRIOR TO JULY 12, 1974

The October 10 written opinion of the Attorney General is a formal reiteration of an earlier ruling conveyed to the President orally prior to his September 20 message.

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[1] See page 69.

Senator MUSKIE. I don't know if that creates any legal problems.

May I say in addition for the record that GAO has now seen this opinion and they reject it.

Mr. O'NEILL. Is that so?

Senator MUSKIE. Rejects it as invalid. So there we are. I also make note of the fact that in the summary of proposed rescissions and deferrals, contained in that first message, there are listed rescissions and there are listed deferrals. That terminology did not exist prior to July 12. Yet the water pollution impoundments, for exampe, are listed in the message as deferrals. Now, that is one of the ambiguities that prompted me to raise this question this morning and I think, the questions I put to you now clarify that point from the administration's point of view. Now just how the courts will react to this ambiguity gets a little difficult to anticipate, especially in the light of the disagreement between the Attorney General and the GAO on the question.

If the courts were to accept GAO's interpretation, I would suppose that, notwithstanding the intent of the administration, their first message might be held to trigger title X. That would pose problems for the Congress and the administration. And I guess we will have to face that point when we get to it.

Mr. O'NEILL. Yes, sir.

Senator MUSKIE. Let me ask you this one further question now that has occurred to me on this whole business of impoundments, especially on rescissions and deferrals. We are approaching the end of the authorization period for water pollution funds.

Mr. O'NEILL. Yes, sir.

Senator MUSKIE. And until the court speaks, we have $9 billion or half of the $18 billion originally authorized. We have $9 billion floating out here somewhere. There is no policy at the moment, or is there, as to how those funds might be allocated and committed to this program. I mean, does OMB or the administration have a position on that?

Mr. O'NEILL. Well, Senator, I think it is the President's view that that $9 billion should be allocated for the purposes provided by the act but that we should use it over a period of perhaps 2 or 3 years. That is one of the reasons that he feels it is better for that money to be available but not all allocated in one short fiscal period rather than having it rescinded. He does believe it is important that we proceed with the provisions—with the purpose of the act and he doesn't think it makes very much sense for the Executive to say to the Congress, please take this money away, because he thinks it should be made available in an orderly way and used for water pollution purposes.

Senator MUSKIE. Now, who does he believe should make the decision as to how and when that $9 billion should be spent?

Mr. O'NEILL. Well, I think he believes that the Supreme Court should clear that question up. At the moment the position that the Executive has taken is that the authority exists for the Executive to make the decision to allocate less than the full amount provided.

Senator MUSKIE. Well, you see, now, this is the area in which the Executive authority is being asserted in an expansive way. The Congress approved a program of $18 billion to be spent in reality over a period of, what was it, 3 years.

Mr. O'NEILL. Three years.

Senator MUSKIE. President Nixon impounded half of it, I guess in two bites, a total of $9 billion. That 3-year period is nearing its end. And now the President apparently is asserting the authority to spend that $9 billion beyond the 3-year authorization period in accordance with whatever scheme he thinks best.

Now, that in my judgment is an assertion of legislative authority far exceeding the intent of Congress. I mean, whatever the Supreme Court decides, there is no way of going back to the beginning of that 3-year period and spending it in accordance with the congressional——

Mr. O'NEILL. No, sir.

Senator MUSKIE. So in my judgment the question now is in the hands of Congress, not the courts, and we have begun the process of expressing our view. But you see the whole thrust of the executive position on this subject is that the President knows best, that he is the man who should make the decisions, and that the congressional role at most is a role of disapproving what the President does under the deferral authority. I just find that completely unacceptable. I think the Congress does.

Mr. O'NEILL. I think, first, Senator, it is really unfortunate that it has taken us this long to get the problem adjudicated through the court process.

Senator MUSKIE. No, no. If I may interrupt, what the President has done under title X is to prolong the process by asserting a role with respect to this money that will not quiet the issue if the—once the Supreme Court acts and if the Supreme Court hands down a decision. Suppose the Supreme Court supports the congressional position that there was no authority to impound in the first instance. The question still remains what happens to the $9 billion. As I understand what you said this morning, taken in conjunction with the impoundment messages, the President asserts the authority to continue to impound the funds. I just find that incredible.

Mr. O'NEILL. I think we are a victim of what has happened, of our history in this case. It is my own feeling that the Congressional Budget Reform Act is going to get us into a position where we don't have these kinds of confrontation issues. It is going to clarify this kind of issue hopefully so we don't have to have a lot of litigation and waiting for 3 years while we go through an uncertain process and, as you indicate, not knowing what the Court may finally say, we should have done in the first instance.

Senator MUSKIE. But what troubles me, you see, is that by using the deferral authority the President simply prolongs the issue because the deferral authority is just as effective and perhaps more effective and takes away the congressional prerogative as thoroughly as the actions taken by President Nixon prior to the enactment of the Budget and Impoundment Control Act because you assert the right to defer this expenditure subject only to the disapproval of a single act of Congress. You are not soliciting the normal legislative procedures of the Congress to act, in each house, by majority vote approving. You are asserting the right for the President to put his own stamp on it and then with the congressional role limited to a role of far less dignity and effectiveness than the legislative process. So the Supreme Court decision, whatever it is, isn't going to quiet that issue.

Mr. O'NEILL. I must say I guess I hadn't thought about it from that point of view. It seemed to me as I have looked at the law the deferral process really is less of a test from a congressional point of view than the rescission process and I haven't looked at it as a negative but as a positive. In other words, the President saying to the Congress "in my judgment we should slow down the obligation of these funds," with Congress having the ability to take a positive action—only one House, not both Houses—as part of the legislative business, to say no, we believe these funds should be made available. So as a positive act let's go ahead with this rather than on a negative act.

Senator MUSKIE. It was the view of the Congress in enacting the Budget Act that anything that is of the nature of a policymaking decision requiring action by the Congress should be handled in accordance with normal legislative procedures and that any desires to cut spending in a policy way ought to go through a similar procedure. That is why the rescission procedure is included in the act.

Now, we understood that there still might be some relatively minor deferments of expenditure of the cat and dog variety that you ought not try to handle in any such cumbersome way. That is why we provided the deferral. But now the President has chosen to use the deferral authority as the major instrument for cutting expenditures in accordance with his position on fiscal policy.

Now, that is just twisting the thing entirely around. And if you are going to use deferrals for that purpose, I see no reason to have the rescission authority included. You can do everything with the deferral authority. I don't know of any reason why you should go to the rescission authority. So you negate that part of the Impoundment Control Act.

Well, I go through this explanation simply to lay it out on the record. I hope it is useful in that connection. I don't want to belabor these points. You are not in a position to change the administration view but you might influence it if you find me at all persuasive. This is the point of view I am going to pursue until we finally get it resolved. I am sorry at this point in our relationships under the Budget Act that this knotty problem should have arisen.

Now, if the Supreme Court should support the congressional view that the impoundments of the water pollution funds were invalid, I take it, then, that the congressional scheme should then be followed to the extent that there is a congressional scheme. Would you agree with that?

Mr. O'NEILL. Yes, sir, I think so.

Senator MUSKIE. Unfortunately, we can't recreate the 3-year period. Now, in that event, what do you view as the proper resolution of how that $9 billion is to be spent? Does it all become immediately available for allocation under the terms of the act or, two, must Congress take further legislative action to resolve the question, or, three, is it the President's prerogative to resolve that question?

Mr. O'NEILL. I am really not sure. It depends very much on the specifics of the Supreme Court decision, it seems to me, in the first instance. I know the President said that he believes we should be doing work in the water pollution control area. He believes the $9 billion should be made available over a period of time.

I think you do raise a substantial question of what do we do when the basis of statutory authority expires at the appointed terminal date and I frankly am just not quite sure how we can work together to deal with that problem.

Senator MUSKIE. Well, I would appreciate it if you would, after consulting with the appropriate people in the administration, provide an answer for the record for those three questions.

Mr. O'NEILL. All right.

Senator MUSKIE. And I would add a fourth question. Is it the view of the administration that the $9 billion is then subject to the provisions of the deferral in the first impoundment message?

Mr. O'NEILL. All right. I would be happy to do that.

Senator MUSKIE. Now, let's take the other possible Supreme Court decision. Suppose the Supreme Court holds that there was authority to impound, so that the impoundment over the 3-year period was valid.

Mr. O'NEILL. I think that is a substantial question in either event, it seems to me, as you posed the question this morning.

Senator MUSKIE. Let me pursue it.

Mr. O'NEILL. All right.

Senator MUSKIE. You and the GAO take a different view of pre-July 12 impoundments.

Mr. O'NEILL. Yes, sir.

Senator MUSKIE. My impression is that the GAO position is supportive of Congress to the extent there is an expression of congressional opinion on it.

Mr. O'NEILL. Yes.

Senator MUSKIE. If that is the case and if the Congress should treat President Ford's first impoundment resolution as including, as including the water pollution impoundments and one House should act to disapprove that deferral, what would be the position of the administration?

Mr. O'NEILL. Well, I think it would be very clear. If it were the case that the administration were in effect saying that the $9 billion were subject to title X, and if we had suggested it be deferred and one House of Congress in effect was to override that with a majority vote, that would obligate the money.

Senator MUSKIE. Your position up to now is that that first message did not trigger title X.

Mr. O'NEILL. Yes, sir, that is correct.

Senator MUSKIE. If the Congress should take a different view of that, act as though it had triggered it and act to disapprove, would the President then feel bound by that congressional action and release the funds without qualification?

Mr. O'NEILL. I think I will have to give you a solidly based legal answer for the record on that because it seems to me it is a terribly important question and I do not want to misstate our position.

Senator MUSKIE. Well, I would appreciate that and I certainly won't press you to try to frame your own opinion because what I am looking for is a definitive administration position on those questions.

Mr. O'NEILL. Good. All right.

Senator MUSKIE. We may know how to handle these impoundment questions once we straighten out our jurisdictional situation up here.

Mr. O'NEILL. All right, sir.

Senator MUSKIE. So I am trying to make a preliminary examination.

[The following was subsequently supplied for the record by Mr. O'Neill:]

QUESTION RELATING TO $9 BILLION WATER POLLUTION ALLOTMENT

Question. What happens if the Supreme Court decides the Water Pollution Control Act Amendments impoundment case adversely to the Government? Does the $9 billion now impounded become available for allocation, or is further legislation required, or does the President decide the availability? Will the impoundment be subject to the Title X process notwithstanding the Supreme Court's decision and the Attorney General's opinion on pre-July 12 actions?

Response. We do not anticipate the Supreme Court's decision before February 1, 1975. As the President indicated in his first special message, the Administration plans to make a further allotment (for FY 1976) to the States from the $9 billion prior to that date. That allotment action will subject the unallotted balance to the provisions of Title X. If the Court's decision requires additional allotments after February 1, the Administration will make such allotments. The Congress may, of course, pass new substantive legislation at any time and it may proceed under Title X at any time after the fiscal year 1976 allotment is made to the States. The Administration, however, urges the Congress not to act while this matter is pending in the courts.

Senator MUSKIE. Now, there were other questions under title X that were raised in an exchange of correspondence between GAO and the Director of OMB.

Mr. O'NEILL. Yes.

Senator MUSKIE. They had to do with the insufficiency of messages, in a technical sense.

Mr. O'NEILL. Yes, sir.

Senator MUSKIE. I must say that I think the Director has treated those requirements too casually and that he still does in his response. His response contains the language and the rhetoric of cooperation but in a sense he tells us if we are not satisfied with the rationale or the support for the rescission or deferrals contained in the messages that we can go scramble among the agencies and find them for ourselves. His comment on this is contained in the third from the last paragraph of his letter of November 13 and without objection I will include that letter in the record so we may have that reference.

Mr. O'NEILL. All right.

[The letter referred to follows:]

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., November 13, 1974.

Hon. ELMER B. STAATS,
Comptroller General of the United States, General Accounting Office, Washington, D.C.

DEAR ELMER: Thank you for your letter of October 15, 1974, and the accompanying copy of your letter to the Congress on the first special message transmitted to the Congress under the provisions of the Congressional Budget and Impoundment Control Act (P.L. 93-344).

I am glad that you and we agree on so many of the points in your letter. I believe that we are in essential agreement on the points that are critical to the successful carrying out of Title X. Among these I include your observation that "the messages themselves should meet reasonable standards of completeness but . . . are only one of the data sources available to the Congress when it is considering the proposed actions." There is a clear parallel between the presentation of the budget to the Congress and the presentation of special messages. In both cases, it is appropriate for the President to give the Congress basic, but brief, information and for agencies to supply more detailed information at the request of the Congressional committees charged with reviewing particular items.

Unquestionably, Congressional hearings on some of the proposals may be appropriate. On the other hand, the Congress will be familiar enough with many proposed rescissions and deferrals to act on them without such hearings. Indeed, in many programs, withholdings are a familiar and accepted funding practice.

Your letters states that the special messages are deficient in three respects. We agree in part, and where we do, corrective measures are being taken. For example, by late November, the special message report formats will be altered to respond more uniformly to your requests for data on the availability of funds and the fiscal effects of the reported withholding. Furthermore, we expect that the general quality of the reports will improve as we and the agencies gain experience in writing the reports and develop a better understanding of what is needed by the Congress. The inquiries made by your staff and your letters of comment are helpful in this regard. However, we believe that some of the deficiencies cited are not deficiencies in reporting, but merely reflections of the realities of the budgetary process.

The first insufficiency cited in your letter is that the proposed deferrals, generally, "provided either no information on related fiscal impacts or only a brief one or two sentence statement without providing supporting data that there is no impact." You state further that, as a minimum, data on the estimated dollar amount of Federal obligations and outlays, by quarter for fiscal years 1975 and 1976, displayed with and without the effects of the proposed deferral, will be necessary. Some of the information you seek was provided in the first special messages. Nearly all of the "estimated effects" sections contain a narrative description of outlay savings which describe the difference between the estimated spending that would occur if the budget authority is made available for obligation and the spending expected to result if the deferral (or proposed rescission) is upheld (or approved) by the Congress. We realize, however, that information in narrative form might not be as clear and explicit as it could be in tabular form. One of the adjustments we will make to the format of the reports is to add a tabular format for displaying the effect on 1975 and 1976 outlays with and without the reported withholding. In addition, outlays estimated for the account in the previous annual budget will be shown.

This new tabular material will be on an annual rather than a quarterly basis. Quarterly estimates would be so highly conjectural that their use in Congressional review of the report actions would be inadvisable and even misleading. The "state of the art" in estimating outlays on a quarterly basis simply does not allow for reasonable certitude. We do not control or monitor all obligations and outlays on a quarterly basis. In fact, nearly all apportionments of no-year and multi-year appropriations are made on an annual and not a quarterly basis in recognition of the fact that quarterly apportionments in many programs place too fine a level of control. This is particularly true of construction programs and other programs with nonrecurring types of activity.

Your letter goes part of the way in recognizing the problem with quarterly estimates when you state that they "will require some assumptions as to when the funds will be released but we believe these assumptions can be made with a fair degree of accuracy." We cannot fully agree with either the premise or the conclusion. First, the period of deferral is not only assumption that must be made in order to make quarterly estimates. One must assume a rate of obligation and expenditure, by quarter, assuming the funds were to be made immediately available; a rate of obligation and expenditure, by quarter, until the deferred funds are released; and the same information from the time of release of the deferred funds. Each of these assumptions is subject to the vagaries of an uncertain world and, consequently, to being substantially off the mark. The traditional framework of estimates by fiscal year recognizes that these vagaries make quarterly estimates more misleading than informative. Second, it is frequently impossible to predict with a high degree of confidence when funds being deferred will be released. Release is dependent upon diverse factors including economic, fiscal, and programmatic conditions. An initial decision to defer funding is rarely made with a firm timetable for the release of the funds in hand. Many of the decisions to defer funds are made, in fact, because of the uncertainty that the funds can be efficiently used in the near term. When funds are deferred for fiscal policy purposes, their release is dependent upon changes in the financial position of the Federal Government and the economy which may develop over a longer period as well as circumstances that may arise in the affected program.

You also suggested that the deferred and rescission reports identify the period of availability of withheld funds other than by providing the appropriation

symbol. We agree that this information is critical to determining whether the withheld funds have been appropriately classified under Section 1012 or Section 1013 of the Act. We will see that the period of availability is noted in future reports.

For both conceptual and practical reasons, the second deficiency you cite, the lack of sufficient data on the effect of the withholdings on achievement of program objectives, is not always easy to correct. First, the objectives of some programs are not stated clearly in the authorizing statutes. In other cases, program objectives are not measurable in any precise way. Further, in the case of many deferrals we are seeking to measure very small differences—in dollars, time, or both. And, in every case, the constraints of time and resources are real. Having said this, I can assure you that we will do what we can within the constraints of time and resources to see that reporting in this area is improved. The GAO, in its comments to the Congress on the special message, may also be able to add pertinent information from its various studies and investigations. At times, the Congress may have to obtain additional information from the agencies.

You have also cited the need, in those cases where the action proposed is justified on the grounds that the affected activities are being carried out through other programs, to indicate whether the funds being used in the other programs could be used for other purposes. We will include such information in future reports.

It is clear from the above discussion that OMB, the General Accounting Office, and the Congress still have a great deal to do in defining, interpreting, and working out the operations of Title X. Indeed, the first cycle of Title X operations is not yet complete. While the first message has been transmitted and commented on by you, the Congress has yet to act upon the items it contains. We expect, as you probably do, that many of the unresolved Title X issues will be clarified as the Congress begins its actions. Several cycles of message-comments-Congressional action-response will probably occur before the Title X operations can be considered routine. Successful implementation of Title X requires the kind of commitment to working it out that has been displayed by all three parties to date. I would be remiss if I did not take this opportunity to thank you and your staff for initiating much of this cooperative spirit.

Sincerely,

ROY L. ASH, *Director.*

Senator MUSKIE. I read.

For both conceptual and practical reasons, the second deficiency you cite, the lack of sufficient data on the effect of the withholdings on achievement of program objectives, is not always easy to correct. First, the objectives of some programs are not stated clearly in the authorizing statutes. In other cases, program objectives are not measurable in any precise way. Further, in the case of many deferrals, we are seeking to measures very small differences in dollars, time, or both. And in every case the constraints of time and resources are real.

Having said this, I can assure you that we will do what we can within the constraints of time and resources to see that reporting in this area is improved.

The GAO, in its comments to the Congress in the special message, may also be able to add pertinent information from its various studies and investigations. At times, the Congress may have to obtain additional information from the agencies.

Now, I just don't perceive the deficiencies in the messages that have been sent up as coming within the difficulties that the Director edited in his letter. I mean, the water pollution program, for example. I see no reason why, with a program of that magnitude, the administration couldn't lay out its intentions. How long are these funds to be deferred? At what rate is the administration proposing to recommend expending them? What is the program pace going to be? You can spell that all out in this message. There is no difficulty in doing that. And yet the administration failed to do so.

To the extent that the deferral authority is properly used, by its terms it is to be used only with respect to programs within the fiscal year. It seems to me that it ought to be possible in virtually every case, and especially in the case of a program of that magnitude, to

spell out how long the deferral is to continue, what its impact on the program will be, and what are the plans for expending those funds thereafter.

Of course, in the case of the water pollution funds you are talking about multiyear spending which, by definition, is an abuse of the deferral authority.

Mr. O'NEILL. I agree with the Senator. I think we can do better than we are and in the period when we provide the support of deferral decision or recommendation made by the President from time to time, I frankly think, as we discussed before, that it is going to be difficult in some of these areas to be as precise as one would like to be in stating what the effects are going to be of not spending a block of money at any particular time.

As a matter of fact, just in the past 30 days, I have had occasion to talk to one of the leading people in the environmental business in Portland on an occasion I went to Portland. I asked him to tell me as best he could what difference would it make to our objective of cleaning up water pollution whether or not we spend $5 billion or $4 billion or $3 billion and he said, "I care about this very deeply but I can't tell you because I don't really know."

I think we are going to find ourselves in that position in some of these cases—where the President is recommending deferrals and rescissions and where we have a laudable objective, but we don't really know what we are doing.

Senator MUSKIE. That gets back to the whole question of whether the deferral authority is properly used when you get that kind of question involved. That is the policy decision shared by the Congress and President in accordance with the normal legislative process. What President Nixon undertook to do by use of impoundments was to enforce the position that the Congress rejected when they overrode his veto message. He made all these arguments in his veto messages. The Congress overturned that. I think he got a total of 35 votes in both Houses to sustain his position. And yet having pursued the legislative process to that end, which is recognized in the Constitution as a legitimate end to a disagreement, then he used the impoundment process to try to insist upon his view what the policy ought to be. That is the difficulty. And it is because of that, and for other reasons, that we provided the rescission authority so that the question could be clearcut and you wouldn't have to try to anticipate such perhaps, unidentifiable, consequences as your suggest in your response.

So I guess what I am doing by putting this question is again to focus your attention and the administration's attention, on that basic question. I think if you resolve that basic question effectively—especially if it were resolved in conformance with what I view to be the congressional view—then I think the questions raised by the GAO letter will not be as difficult to resolve. I don't think we will be that interested.

On the question of cooperation between OMB and the Budget Committees and CBO, I think what remains now is simply to implement the intent to cooperate that has been expressed all around——

Mr. O'NEILL. Yes.

Senator MUSKIE [continuing]. Which I think has been expressed in all good faith on all sides. I don't think that the CBO operation should

be or is likely to be a carbon copy of the OMB budget process. I think it will be an attempt rather to supplement in ways that will be useful to the Congress the work that is done by OMB. To some extent there may be a duplication with respect to inquiries as to options, et cetera, but, by and large, I think the efforts ought to be to provide supplementary insights and perspectives that will be useful to us.

I would like to ask you this question. It has to do with the prospect of limiting outlays for fiscal 1975 to $300 billion. I go into this question because, frankly, I think that there has been a lot of playing around with that $300 billion figure in ways that do not serve the public interest or the public perception of the kind of thing we are trying to do by exercising budgetary restraints in this fiscal year.

In the first place, we don't really know what our starting point is. We know that, when the budget was submitted in January, the outlay estimate was $305.4 billion. I expect that number is no longer relevant for a number of reasons, and I wonder if you have any substitute number to suggest as a starting point.

Mr. O'NEILL. Well, Senator, at the moment the number is very much afloat. I understand that, on Monday afternoon, the Congress sent to the President the Veterans' Education bill. That bill, by itself, is about $800 million over the original budget request of the President. I understand later on today there is going to be a discussion in the Senate of the supplemental bill. As I understand it, that bill is $400 million over the original request and rising. Along with a lot of other things are now under discussion by the Congress, that will influence the starting point that the President has to work from.

Senator MUSKIE. What I mean by starting point is the base against which we can measure the effect of congressional action on appropriations, on new spending authority, et cetera. In other words, taking the base as it was in January and all the factors that were then law, what would the number be for interest, or for welfare?

Mr. O'NEILL. The interest numbers are up. The unemployment numbers are up. Social Security has not been affected yet because the next cost of living point doesn't take place until July 1, 1975. But certainly the unemployment insurance estimates are up. I don't have the number in my head but——

Senator MUSKIE. Welfare?

Mr. O'NEILL. Welfare, not very much. It is a phenomenal kind of thing but over the last 10 or 15 years we have not been able to draw a tight correlation between changes in the level of economic activity and participation in AFDC or medicaid or the food stamp program, in part because we had a fairly large eligibility for those programs and people began to take advantage of those eligibilities, no matter what the economic circumstances were. So it is not possible yet to say in the current economic downturn that we have got more dollars going into the welfare system. It doesn't appear to be so.

Senator MUSKIE. Now, you say social security you don't think has changed. Is that true of medicare?

Mr. O'NEILL. No; there have been increases in the estimates for medicare because the rate of inflation in the medical sector has been significantly higher than we expected it would be when the President sent his budget to the Congress last January. As a matter of fact, it has been running about double the rate that we anticipated last Janu-

ary. And as I recall, the appropriate number is—$300 or $400 or $500 million above current estimate, but we are still working with the actuary.

Senator MUSKIE. The Budget Committee is going to hold some hearings this month on the President's state of the economy and we will get into the budget question. Could you provide us the new base, that is, the numbers today that would correspond to the numbers last January. Then in addition to that, provide an analysis of the impact of all actions taken by the Congress either with respect to appropriations or new spending authority or whatever so that we can get a current reading from your point of view on that target of $300 billion. Too many people think that involves only $5.4 billion. I don't thing that is true. I don't think you know either. So I would like to get that new basis for analyzing what we are doing and the effects of what we are doing in Congress.

Mr. O'NEILL. If I may, Senator, I would suggest two documents that I think will satisfy the need expressed. One, the Joint Committee on Reduction of Federal Expenditures puts out a regular report that shows ups and downs and current status vis-a-vis the President's original budget request and that comes out on a regular basis.

Now, when the President returns from the Far East next week he is going to be sending to the Congress a message doing exactly what you have asked, indicating where we think the current spending levels are and indicating to the Congress what he thinks we need to do to hitch up our belts a little bit and stop spending as many dollars as we otherwise would.

Senator MUSKIE. The other thing I would like to get is this. We are almost halfway through this fiscal year.

Mr. O'NEILL. Yes, sir.

Senator MUSKIE. And the budget experts tell me that in order to save a dollar of outlays at this point we are going to have to cut maybe $3 or $4 of budget authority. If you did it earlier in the budget year you might achieve a dollar savings by cutting 2 or 2½ from the budget. So I would like to have a solid estimate of how much we would have to cut in budget authority to achieve a $5 billion cut or whatever to get down to the $300 billion figure. In other words, I want to know what that current total figure is to start with, what we would have to cut at this point in order to save enough to get down to the $300 billion outlay figure in this fiscal year 1975. I think it is about time the Congress and public understood the magnitude of the gap between the two. I hear more figures floating around that are meaningless than I can shake a stick at. Just for my own purposes I would like to get some solid footing on that point.

Mr. O'NEILL. I think the President will be back on Monday night. Very early after he returns I think I am going to be able to provide that full information to you in the form of his message to the Congress, because he is just laying out every detail that you suggest.

Senator MUSKIE. I think that covers the major questions I had in mind, Mr. O'Neill. I would repeat what I said at the outset. Insofar as your qualifications for this job are concerned, I have no doubt whatsoever. As a matter of fact, I think you offer impressive credentials.

Mr. O'NEILL. Thank you, sir.

Senator MUSKIE. The real test as far as I am concerned will be the evolution of the new relationship—I hope it is a new one—between OMB and the new budget processes in the Congress.

There is one other area I haven't touched. I will ask just one question which may or may not trigger a further dialog.

I said at the outset that it seemed to me there was a tendency to concentrate both executive and legislative power in OMB. What I meant by that with respect to the latter was the interpretation of the title X authority which has the effect of vesting in OMB more legislative power than Presidents have asserted in the past.

With respect to the first part of that question, concentration of executive power in OMB, of course, expanded the authority of the agency beyond simply budget making. You now have a management function. What concerns me is the suspicion that OMB gets into the operating agencies to the extent of actually exercising a veto power, if not more, over regulations that they are required to issue on the substantive policymaking legislation. I am particularly sensitive to that in the environmental field, in the environmental laws, and it seems to me that OMB's fine hand shows up over and over again in the regulation writing process. I would like to get your reaction to that.

Mr. O'NEILL. In the regulatory area indeed there are some cases where we get involved and once again as a convener agency as we discussed I guess when you were away, in trying to make sure there is a full consideration from the point of view of all agencies involved of the impact of regulations. I know we have indeed had some problems in the environmental area relative to regulations. I guess the most recent example that comes to mind is the whole question of what to do about vinylchloride in the relationship between the National Institute of Occupational Safety and Health in HEW, the Office of Occupational Safety and Health in the Department of Labor and the Environmental Protection Agency. I am not sure the specifics of that case fit what I am going to suggest as a general proposition but there are some that do, and that is that, too often, not just in the regulatory process but the budget and legislative processes, as hard as we try, we don't take account of the ramifications of an action taken by one agency for the responsibilities of another agency I think there has been a recent case between OSHA in the Department of Labor and EPA where there was great unhappiness between the two agencies because the effect of OSHA's action was to force EPA to take an action it didn't think was reasonable or desirable. And so indeed we have tried to build a bridge between the departments and agencies to see that they get a full opportunity to comment, providing their thoughts on regulations that were going to affect their own operations and responsibilities. So we try to play that convener role and I think it is desirable that we not have a heavy hand in tha process but that somebody does indeed need to play the convener role.

Senator MUSKIE. What I would like to do at some point, when we can find the time, is to go over this question before the Subcommittee on Environmental Pollution. I think it would be most helpful, not just in connection with that committee but legislative committees generally if we can spread out on the record exactly this process and how your role in it works because there are a lot of suspicions contributing to the

feeling that special interests use this kind of indirect influence on the regulations to dilute the impact of legislation and legislative policy. Such suspicions may or may not be justified. I think I would have to examine it before I formed any judgments on it but I think the public interest will be served by full and open discussion of how it works and what happens.

Mr. O'NEILL. Yes, sir.

Senator MUSKIE. Rather than try to take the time this morning, I would like to invite your cooperation with the staff of that subcommittee to laying down the basis for a hearing that would be useful all around.

Mr. O'NEILL. Good. I would be pleased to do that.

Senator MUSKIE. I yield to Senator Chiles.

Senator CHILES. Mr. O'Neill, the Office of Management and Budget has served as the focal point for the President in submitting his budget to the Congress, having all of the agencies then come through the Office of Management and Budget. I take no issue with that. I think that is an entirely proper way for the President to submit his budget.

A problem that we have in the Congress, though—and I really would like to find out your thinking about this—is that more and more power has been vested in or has been taken by the Office of Management and Budget which, in effect is speaking for the agencies and their presentation of the budget. Congress has more and more difficulty being able to pierce the Office of Management and Budget and the veil that they place around it and get back to the agencies themselves.

In some of our previous hearings and in some of our previous discussions with the Head of the Office of Management and Budget we were, in effect, told that that is the whole process, the way it should be.

My feeling is that Congress created those agencies by statute as OMB is a creature now by law. If we seek the information from them, if it is their starting figures, if it is their wish list, as it is—as some OMB people say it is—whatever we seek from them, we should be entitled to. We need that at times to determine whether we think they are carrying out their statutory role that we created them for and the way we want to judge them.

What is your personal opinion as to what the powers of Congress are, what the rights of Congress are, and what Congress is going to be able to do in seeking such information. Then I want to go a little further into the policy question.

Mr. O'NEILL. I think the Congress is entitled to the information that it wants from the departments and agencies. There is a question and a difficult shadow area with regard to executive communications between the department and agency heads and the President in the formulation of the budget and I don't know how we can get over that shadow problem. But, as a general proposition, I think the Congress should be able to ask of the agencies information about what their wish list is or whatever you call it. As a matter of fact, I am not cognizant of indications that anything in the agencies can't be gotten out of them. As a matter of fact, to the contrary, I am just amazed that there doesn't seem to be anything that one can say to anybody without it being public property in about 10 minutes. And I don't object.

Senator CHILES. That is true. That is very true and we get the information but many times we have to get it via the back door rather than via the hearing where it should come out——

Mr. O'NEILL. True.

Senator CHILES [continuing]. If OMB says that is right, that they are asking for too much and we cut them back, so we get it clearly out. What happens is they in effect tell us they cut us too much here, we need these funds, we can't carry out our role but I can't come up there and tell you that. I have to tell you—you know, they tell us via the back door and that is not healthy.

Mr. O'NEILL. I agree with you, Senator. I think the process that has existed up until this point has created exactly the kind of situation of which you are speaking. As an observer of how this process works, it seems to me that until the Congressional Budget Reform Act was enacted, there was little chance that we were going to be able to overcome that kind of a problem and I classify it as a problem for this reason. The agency heads, program people, have necessarily, a very strong feeling about and attachment to what they are doing but they don't have a very broad perspective looking at the question of priorities between similar programs in their own departments and across the rest of Government. It has been unfortunate that in the past these wish list papers have been requested by the Congress, provided to the Congress by the agencies and then, because of the committee structure in the Congress, they have been used as a basis for providing additional funds. Perhaps it was right in the perspective of that individual committee, but it took absolutely no account of the question of relative priorities between all of the things the Congress has to consider. I think with the procedures and organizations that are established by the new Budget Reform Act, the Congress is going to be taking a look at the questions of relative priorities and I think the OMB, the congressional budget committees and you gentlemen are going to be in the same boat. We are all going to be pulling on the same oar and it is going to be a very different process than we had before. You are going to be saying to some of those people on their wish list, hey, what you are proposing doesn't take into account this very important relationship over here or that fact over there.

Senator CHILES. Absolutely. It seems for the process to work properly we need to get the President's idea of what the overall priority should be.

Mr. O'NEILL. Right.

Senator CHILES. And then we need to be able to form our independent idea. If we only get his and via only backdoor approaches from other people, then I don't think it works right. If we can start off at the same place that OMB starts off, then we get a chance to really test proposals. That is the check and balance system.

Mr. O'NEILL. I think as a general principle that is right and I understand. I just say from my knowledge of how the process works it is hard to know what the starting point is vis-a-vis the agency. A program official goes through a budget process with his next higher superior and so forth up the line and, in a department like HEW, there might be 8 or 10 stages of review and a discussion of relative priorities.

When the Secretary gets done, the allocations that have been proposed to him and ones that he has decided he is going to suggest to the President may be very different and you may have some question about what the right point of establishing a basis in asking the department or agency for information you would like to have so you can have the different perspective you are suggesting.

I would suggest another thing to you, too, that I think is important as you move into operation on the Budget Reform Act. That is, it is really not sufficient just to hear from us or hear from the departments and agencies and the program people. You also need to hear from people in universities and private enterprise and from the State and local government officials because they have views that are important and useful and oftentimes different from those we get from the agencies. In the last couple of years we have undertaken quite an extensive process to try to make sure we get those additional views and insights.

Senator CHILES. The other thing I would like your personal opinion on is the provisions wherein many times we have some bill that we are working on, oftentimes in this committee, calling for some requirements or change for the executive agencies. When we get their comments, their comments are all orchestrated from OMB.

Mr. O'NEILL. Yes.

Senator CHILES. And again we get the backdoor approach, "This isn't what we really would say but we had to sign off on this or we have had to clear this."

So, really, we might as well hear one witness rather than hear eight because each agency then gives us the same kind of comment that became the orchestrated position of OMB.

Again, I think we should hear from OMB. We should hear what—if it is the President or the Office of Management and Budget, what they have to say. But if we are passing something that is going to affect all the agencies we really need to hear from them, too. They again are creatures of the Congress and I would like to get your opinion on that.

Mr. O'NEILL. Well, this again is a difficult area. If you go back to pre-1921, the executive branch—really it wasn't an executive branch, it was a loose collection of departments and agencies. The budget process consisted of one Treasury official taking all of the submissions proposed by the departments and agency heads and then kind of throwing them at the Congress without an assessment of relative priorities by the executive branch. I think the legislative process operated much the same way.

For some time OMB has tried to play a convener role in the legislative process and the comment process on legislation to make sure, first, that every department and agency that had a legitimate interest in a legislative question before the Congress that was going to be testified on by one of our component parts had an opportunity to indicate its views on that legislation and to have them considered by the President in his role as Executive. So the job that we perform under legislative process is really that of a convener. Our hope is that we can work out a position with the agencies that the President feels is consistent with the policy direction he would like to go, but takes into account all of the different views that are necessarily involved.

Just, for example, in the health insurance legislation, there were 26 different agencies that had a legitimate interest and viewpoint in some component part of that legislation. In the process of developing that legislation we tried to use our good offices to be a convener so everybody could have an input into that process.

Senator CHILES. But as a result of that, if we only hear one voice rather than those 26 different problems and how they seem to affect them, that isn't helping us in shaping that legislation.

Mr. O'NEILL. Well, I think that is right, Senator, but I don't think that in our legislative review process we are damping down the views of individual agencies. We have a process that allows an agency head or department official to submit legislation or testimony to the Congress indicating that what he has to say is his view and it is not in accord with the program of the President. In other words, he is expressing his private and personal view but it doesn't happen to be that of the President. I think that is a very important distinction and it seems to me Congress would be interested in knowing when a Secretary was here telling you something that he may feel very deeply in his heart but hasn't anything to do with the President's position. And I tell you there is a very sticky area in all of this. I know we have had some tough experiences over the last few years where the process you described has led to confrontation, because an agency head has come up, he has worked with the Congress and he says this is my view on this, and it didn't have anything to do with the President's program and, when the legislation came to the President, the President vetoed it and everyone was amazed.

I think we have got to do better than that. We just must do better than that.

Senator CHILES. Well, we passed out of this committee and out of the Congress an Office of Federal Procurement Policy.

Mr. O'NEILL. Yes, sir.

Senator CHILES. That was a recommendation that came from the Procurement Commission after much study. To start with, OMB was opposed to it being a statutory office. We then called up the executive branch witnesses, et al., and it was a well orchestrated symphony, because it all was cleared through OMB until finally there was one break in the orchestration and—But that was after much trouble. First the witness appeared one day and then didn't testify and left and then came back and finally agreed that he thought Federal legislation was necessary. Now we passed the bill. I don't think we got the benefit of the different agencies' views in that. We finally started getting some of the input after the Senate passed the first bill and after the executive branch caved in, saw that we were going to pass the legislation, but I think we could have shaped a better bill, done it sooner, if we were getting the legitimate fears and problems in the act as we were originally setting it forth rather than getting the orchestration.

Mr. O'NEILL. I believe that it is important that a Presidential position be articulated on important questions of legislation. I do not think that OMB or any other executive office agency should muzzle the views of a Federal official. But I do think it is very important that a Federal official differentiate as he deals with you and other members of the Congress when he is speaking from his own point of view and when

he is representing either his office or his department or the President. Too often in the past that distinction hasn't been made and it has led to some very hard feelings that needn't have existed if that clarification had been made.

If I may pick up this one question of the Procurement Office, I was not directly involved, but, just as a matter of management, it seems to me terribly important that the number of operational assignments that are put into the Office of Management and Budget be limited to the irreducible minimum because to the extent we become an operational agency, we will be less able to do the kind of analytical work that the President, any President, needs to have.

I have seen over the last 13 years, too many cases where an agency has picked up an operating program responsibility, just a small program, maybe $10 or $15 million, and it drives out everything else. I don't think that is the case with the Procurement Office. I think we can run a first-class operation but I do think it is awfully important that we not take on a great number of operational assignments.

Senator CHILES. Well, our "druthers" were that it not be in the Office of Management and Budget.

Mr. O'NEILL. I understand that.

Senator CHILES. And we only consented to place it there when it became very clear that the only way it had any opportunity of getting any clout was to be placed there. It was a question of political reality that I faced up to. I wanted it to be a separate office in the Executive Office of the President but finally realized that it just wasn't going to have any clout if it was done that way.

I yield.

Senator MUSKIE. At 11 o'clock we have a vote and all of us will have to leave for that purpose. I discussed this with Senator Brock. There are some questions that Senator Metcalf would like to put.

Mr. O'NEILL. All right.

Senator MUSKIE. And I thought we would ask Mr. Winslow Turner, who is General Counsel of Senator Metcalf's Subcommittee on Management and Expenditures, to put those to you while we are absent. We see no problem with that.

Mr. O'NEILL. Fine.

Senator MUSKIE. It is an area we want to cover anyway. We might save some time.

Mr. O'NEILL. Very good.

Senator MUSKIE. Might I ask a question that has become a stock question over the last couple of years for obvious reasons. I have been asked by the leadership to put it to you.

Do you agree without reservation to respond to any reasonable summons to appear and testify before duly constituted committees of the Congress if you are confirmed?

Mr. O'NEILL. Yes, sir.

Senator MUSKIE. I would be amazed if that question got a different response. [Laughter.]

But I guess we had better make the record.

Senator Chiles?

Senator CHILES. In our discussion yesterday I was telling you of my strong feeling that while the Executive presents the budget to the Congress, that again is done by virtue of the Budget Act of 1921. The Con-

gress should have the right to determine how that budget information comes to us and in what form and what requirements we have. Having introduced S. 1414 which I gave you a copy of yesterday, and again trying to put part of that in the Budget Act, and running into a buzzsaw again from OMB, I would like very much to have your thinking and your opinion in regard to Congress now moving forward and requiring better budget information or any type of information as to how they want the budget presented, your opinion of what you think Congress prerogatives are there.

Mr. O'NEILL. Well, Senator, as I read the new act, it seems to me that it makes fairly clear that there is in effect a consortium of the General Accounting Office and Secretary of the Treasury and Director of OMB that have placed upon them a requirement to work out the data information needed, the form in which it is submitted to the Congress, and it seems to me that that clarified the situation as it existed in the past. It does seem to me as I indicated to you yesterday that the way information is presented is a very important consideration because very often it can mask a problem or it can highlight important content. So I agree with you that the presentation, the form this data is submitted in, is terribly important.

I have strong reservations about writing in the law ironclad immutable, unchangeable data requirements because I think we do need to work cooperatively between the new committees and GAO and ourselves and Treasury and we need to have some flexibility. I have been around long enough to have seen too many cases where the executive branch continued to do things even though the need had evaporated and the individuals who were especially interested are no longer there.

I know a couple of years ago the Office of Economic Opportunity, for example, was submitting a report listing individually the name of every employee working for any OEO-sponsored activity any place in the country. It was costing $100,000 a year, and the individual who put the requirements on the agency had probably left, but we were going right ahead with that.

I think it is easy to get into that kind of a situation with data requirements. However, I do think we should work cooperatively with you and try to design forms and formats and timing dates on the submission of data so we can still understand what we are doing with the public money as you make public policy in the legislative process.

Senator CHILES. Mr. Chairman, I would like to submit in the record at this time from the Congressional Record, October 9, 1974, at pages S. 18633 through S. 18643, a colloquy participated in by Mr. McClellan, the chairman of the Appropriations Committee, and myself having to do with requirements that we were seeking from HEW for the way they would present their budget in the following year. This colloquy was dealing with additional committee report language for the fiscal year 1975 HEW Appropriation.

[The colloquy referred to follows:]

[From the Congressional Record, Oct. 9, 1974]

FURTHER CONTINUING APPROPRIATIONS—CONFERENCE REPORT

The PRESIDENT pro tempore. Under the previous order, the Senator from Arkansas (Mr. McClellan) is recognized to call up the conference report on House Joint Resolution 1131.

Mr. McCLELLAN. Mr. President, I submit a report of the committee of conference on House Joint Resolution 1131, and ask for its immediate consideration.

The PRESIDENT pro tempore. The report will be stated by title.

The legislative clerk read as follows:

"The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the joint resolution (H.J. Res. 1131), making further continuing appropriations for the fiscal year 1975, and for other purposes, having met after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees."

The PRESIDENT pro tempore. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the report.

(The conference report is printed in the House proceedings of the CONGRESSIONAL RECORD at pages H9887–H9888.)

The PRESIDENT pro tempore. The Senator from Arkansas.

Mr. McCLELLAN. Mr. President, the Congress passed in late June of this year a continuing resolution to enable the Government to operate agencies and departments for which appropriations had not been made for the current fiscal year. As Members of the Senate know, that continuing resolution expired over a week ago on Monday, September 30. Much of the Government has been running without any availability of funds for expenditure on a legal basis since that time.

Among these departments and agencies are the Department of Agriculture and related agencies; the Departments of Labor-Health, Education, and Welfare and related agencies thereto; and Foreign Assistance programs. These agencies of the Government, such as those I have named, are without legal authority to incur obligations; for example, even to pay the salaries of their employees.

This has been and is the situation today, with respect to those that I have enumerated.

Mr. President, I believe that everyone is familar with the issues that confronted us on this continuing resolution, and I see no need to elaborate or discuss this conference report at great length.

I stated on the floor of the Senate when this continuing resolution was originally before us for consideration, and when the Senate proceeded to adopt a number of legislative provisions and write new legislation on this continuing resolution which I protested, that I would do my best in conference to have the Senate amendments agreed to. That I did. As chairman of the committee, I continued to insist on the Senate amendments until other conferees who were proponents of those amendments agreed to compromise in order to get a conference agreement on the continuing resolution. I stated this position at the beginning of the conference, and I held to it throughout the conference. I make reference to this because of statements I made on the floor when some of these controversial amendments were being debated in the Senate.

Mr. President, I will briefly mention one of the issues which was in conference, but is not in the conference report. That issue is the matter of assistance to Turkey. Although there was agreement in conference, it is outside of the conference report and will be dealt with separately—apart from the conference report.

Let us review this issue: The House-passed joint resolution contained the following provision, known as the Rosenthal amendment:

"Sec. 3. None of the funds herein made available shall be obligated or expended for military assistance, or for sales of defense articles and services (whether for cash or by credit, guaranty, or any other means) to the Government of Turkey until the President certifies to the Congress that substantial progress toward agreement has been made regarding military forces in Cyprus."

The Senate amended the House language—the Eagleton amendment—by striking out part of the House language, and inserting new language to make the provision read:

"Sec. 3. None of the funds herein made available shall be obligated or expended for military assistance, or for sales of defense articles and services (whether for cash or by credit, guaranty, or any other means) or for the transportation of any military equipment or supplies to any country which uses such defense articles or services in violation of the Foreign Assistance Act of 1961 or the Foreign Military Sales Act, or any agreement entered into under such Acts."

In conference, the conferees came up with a compromise between the House and Senate language supported by the White House and the Secretary of State.

That compromise language combined features of both the House and Senate language and read as follows:

"Sec. 3. None of the funds herein made available shall be obligated or expended for military assistance, or for sales of defense articles and services (whether for cash or by credit, guaranty, or any other means) or for the transportation of any military equipment or supplies to the Government of Turkey unless and until the President determines and certifies to the Congress that the Government of Turkey is in compliance with the Foreign Assistance Act of 1961, the Foreign Military Sales Act, or any agreement entered into under such Acts by making good faith efforts to reach a negotiated settlement with respect to Cyprus."

The conferees reported this compromise language in disagreement, and Monday evening, in the House of Representatives, this compromise language was rejected by a vote of 69 yeas to 291 nays.

A subsequent motion for the House to recede from its disagreement to the Senate amendment and concur therein with an amendment was passed by voice vote.

The new House amendment would amend the provision to read as follows:

"Sec. 3. None of the funds herein made available shall be obligated or expended for military assistance, or for sales of defense articles and services (whether for cash or by credit, guaranty, or any other means) or for the transportation of any military equipment or supplies to Turkey until and unless the President certifies to the Congress that the Government of Turkey is in compliance with the Foreign Assistance Act of 1961, the Foreign Military Sales Act, or any agreement entered into under such Acts, and that substantial progress toward agreement has been made regarding military force in Cyprus."

That is what the House overwhelmingly passed on Monday night and will be a matter for consideration before the Senate after the disposition of the conference report.

Mr. President, the conference report has been printed in the Record and the printed report itself has been available to Senators.

Mr. President, I move the adoption of the conference report.

The PRESIDING OFFICER (Mr. Hathaway). The question is on agreeing to the conference report.

Mr. CHILES. Mr. President, I wish some clarification regarding the intent of the Committee on Appropriations in requiring additional budget information on next year's Department of Health, Education, and Welfare budget.

As passed by the Senate, the committee report No. 93–1146, states on page 9:

"Because of the continuing difficulty in identifying and eliminating uncoordinated HEW programs, the Committee directs the Department to supplement its fiscal year 1976 budget request. The Committee believes a more simplified framework of budget information is both essential and long-overdue. The Committee will work with HEW to set forth specific steps toward meeting this objective."

I regret that I was unable to attend the committee meeting when that language was approved because of a domestic summit conference, but specific requirements were approved by the committee at that time, on September 11. It was my understanding that the distinguished chairman, Mr. McClellan, offered specific language.

I ask the distinguished Senator from Arkansas whether my understanding is correct.

Mr. MCCLELLAN. Yes, the Senator from Florida is correct in his understanding.

It was only through an unfortunate oversight that the report language agreed to by the committee was not actually printed in the committee report. I recall the incident very well. We did not learn that it was not in the report during the further processing of the bill. I do not know why it was overlooked.

The Senator and I have discussed opportunities for improving budget information over many months now, and I was pleased to concur with his suggestion that a simplified format for the HEW budget and breakdown of HEW program steps would be most helpful, as did the distinguished subcommittee chairman, Mr. Magnuson, and other members present at the September 11 committee meeting.

So that there will be no further misunderstanding of the committee's intent, I ask unanimous consent that the letter of the Senator from Florida to me and the intended committee report language be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., September 10, 1974.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Committee on Appropriations,
Washington, D.C.

DEAR MR. CHAIRMAN: I regret I will be unable to attend the meeting of the Appropriations Committee to consider the fiscal year 1975 Labor-HEW appropriation bill scheduled for September 11 due to a commitment to attend a White House session on the economy.

I did want to inform you, however, that I intended to offer additional committee report language to accompany H.R. 15580 and may do so on the floor if it is not proposed in committee.

The purpose of the additional report language is to require that the Department of Health, Education, and Welfare submit, along with next year's budget, some simplified information to help us in our deliberations to identify and eliminate program duplication. Simply, the added information would:

Collect into common groups all the agency's programs and activities designed to achieve similar end-purposes, or functions; and

Identify to what stage each activity had progressed, from definition of goals through operation and monitoring.

I feel this can be a positive step toward having the committee more easily come to grips with the complicated maze of agencies and programs in HEW, an approach we discussed when I testified before you at hearings on the FY 1975 budget earlier in the year. There is no reason, for example, why we should not be able to see—collected for us in one place—the 18 separate programs Mr. Ash told us last year were all being run for the common end-purpose of preventing school drop-outs. There is no reason why HEW should not identify for us overlapping programs all designed for the same function, an overlap that numbered 54 according to Secretary Richardson in 1971.

And I believe, there is no reason why the Department of Health, Education, and Welfare cannot comply with a request for a straight forward budget tabulation to identify what they're trying to accomplish, what programs are underway departmentwide, and at what stage they are.

The report language, attached with some descriptive material, derives from the requirements of S. 1414 which passed the Government Operations Committee on a unanimous vote and whose provisions were partially incorporated in the Budget Control Act of 1974. Cosponsors included Senators Muskie, Javits, Nunn, Johnston, Hatfield, Moss, Brock, Mondale, Tunney, Church, Packwood, and Humphrey.

I would be glad to discuss this proposal with you, if you so desire, and will be sure my own staff provides any necessary followup if it is accepted.

With best personal regards,

Sincerely,

LAWTON CHILES.

ADDITIONAL COMMITTEE REPORT LANGUAGE; FISCAL YEAR 1975 HEW APPROPRIATION

Committee Print, page 10, under the heading "Program Duplication and Overlap" Add the following paragraphs after the second paragraph which reads: "The Committee notes that little progress has been made to eliminate duplicative activities."

Continue:

Because of this continuing difficulty in identifying and eliminating uncoordinated programs, the Committee directs that the Department of Health, Education, and Welfare provide, as a supplement to its fiscal year 1976 budget request, infomation to define for the entire departmental budget

(1) The end-purposes, or functions, for which funds are being expended:

(2) For each such function, a complete list of all program activities being directed at that end-purpose, and which organization is sponsoring such activity:

(3) For each program activity, a description of its status in terms of its stage of evolution whether it be at the stage of

(a) defining needs and goals;

(b) exploring alternative program approaches;

(c) selecting a preferred program approach; or

(d) implementation and monitoring.

The Committee believes this simplified framework of information has now become indispensable in order for it to perform its role in assessing and adjusting the Department's budget. This information, in conformance with the provisions of Section 601(i) of Publi Law 93-344, the Congressional Budget and Impoundment Control Act of 1974 (88 Stat. 324), shall be in accordance with the legislative intent set down in Senate report 93-675.

Mr. CHILES. Mr. President, I thank the distinguished Senator for his clarification.

I take this opportunity to commend the Senator from Arkansas again for his leadership as chairman of the Committee on Appropriations during a difficult year for the Nation in its budget deliberations. His decisions as chairman have been most difficult to make, much more than any of us can truly appreciate.

I also commend the chairman for his desire to see that we have budget information come to us from the executive branch that we can fully understand, so that we can make intelligent decisions on them.

Mr. MCCLELLAN. I thank the distinguished Senator from Florida.

We do have a difficult job, but it could be much more difficult, except that I received splendid cooperation from members of my committee who are sympathetic and understanding and often try to lighten my burden. I am grateful for that.

Mr. President, I move the adoption of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

Mr. GRIFFIN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. GRIFFIN. As I understand it, after the conference report is agreed to—if that is the will of the Senate—we will then turn to the amendment adopted by the House. Is that correct? There will be debate on that, if a motion is made.

Mr. MCCLELLAN. I may say to the distinguished Senator that upon the adoption of the conference report, I intend to move the adoption of the House amendment. I do this not because I am overenthusiastic for the amendment on its merits, but we do have a difficult situation.

As the Senator will recall, when this measure was before the Senate, I undertook to keep it a clean continuing resolution. This is an outgrowth of the Eagleton amendment.

The controversy has grown out of the Eagleton amendment which was adopted. I thought the Eagleton amendment was quite appropriate, in view of the fact that it was an amendment to a provision in the bill that passed the House. I think it was quite an appropriate amendment.

We did have some extraneous amendments adopted on the floor of the Senate, as the Senator will recall, and we were able to eliminate those in conference. Now the conference report has been adopted without those, and we have the bill with the resolution, with every provision agreed to except this one, which is in disagreement between the two Houses. I understand that there is a possibility of a Presidential veto if it is enacted in this form, but we have here a continuing resolution.

As I have pointed out, Mr. President, there are a number of agencies—HEW, Agriculture, foreign aid—that have no appropriation. They have no money now. They cannot legally pay the salaries of the people who are working for them, and it is imperative that we move to a disposition and to enactment of the continuing resolution.

As to which is better, this provision or the provision that would be acceptable to the President, or which is a better and wiser course for us to pursue, I am not trying to settle at the moment. In order to expedite it without taking a firm and final position upon the issue that is here before us in this amendment we have to move to get the continuing resolution enacted.

For that reason, Mr. President, I move adoption.

Mr. GRIFFIN. The chairman has clarified the situation. I wanted it to be understood that a vote for the conference report at this point does not signify or indicate approval of the House amendment, that we shall actually be adopting the conference report in the form that the conferees agreed upon it at this point, but it will be subject later to a motion to agree to a House amendment, which can then be debated on its merits.

Mr. MCCLELLAN. What we shall be doing in adopting the conference report will be adopting everything that has been agreed upon and not adopting this one amendment, which has not been agreed upon, but which will be immediately presented for consideration following adoption of this amendment.

Mr. GRIFFIN. I might say that if we could hold the conference agreement to the provisions that were agreed upon by the conferees, there is not any question that the continuing resolution would be signed by the President, and we could have it, if we did not go any farther than that.

I shall vote for the conference report in the hope that we can hold it to that.

The PRESIDING OFFICER. The question is on the adoption of the conference report.

The conference report was agreed to.

The PRESIDING OFFICER. The clerk will state the amendment in disagreement.

The legislative clerk read as follows:

"*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 3 to the aforesaid bill, and concur therein with an amendment as follows:

"In lieu of the inserted by the said amendment, insert:

'or for the transportation of any military equipment or supplies to Turkey until and unless the President certifies to the Congress that the Government of Turkey is in compliance with the Foreign Assistance Act of 1961, the Foreign Military Sales Act, and any agreement entered into under such Acts and that substantial progress toward agreement has been made regarding military forces in Cyprus.'"

Mr. MCCLELLAN. Mr. President, for reasons I have already stated, in order to expedite this matter and get it to an issue before use so that we can vote and bring it to a conclusion, I now move that the Senate concur in the amendment of the House to the amendment of the Senate No. 3.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Arkansas.

Mr. MANSFIELD. I would like to make a unanimous-consent request, in view of what I understand will be the time used, that it be in order, at an appropriate time, to ask for the yeas and nays on the motion to concur at the hour of 11:30.

The PRESIDING OFFICER. Is there objection?

Mr. MCCLELLAN. Mr. President, reserving the right to object, will the Senator include in that request that in the meantime the time on the discussion of the motion be equally divided between the distinguished Senator from Missouri and myself? I do not know how that time will be used, or who might want to talk, but I thought that request should be made.

Mr. MANSFIELD. I make the request.

The PRESIDING OFFICER. That the vote on the motion to concur in the House amendment to the Senate amendment occur at 11:30?

Mr. MANSFIELD. Yes.

Mr. GRIFFIN. That the vote on the Eagleton amendment occur at 11:30.

Mr. MANSFIELD. And that the time between now and then be equally divided.

Mr. MCCLELLAN. And I suggest that we have a quorum call immediately before the vote.

Mr. MANSFIELD. I ask unanimous consent that that be part of the order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. EAGLETON. Mr. President, I should like to speak to the motion of the distinguished chairman of the Committee on Appropriations.

Mr. President, the primary concern of Congress in the Cyprus matter should be that our policy is consonant with American law. The House of Representatives voted yesterday to assure that the laws governing our military assistance will be applied to the Government of Turkey. That resounding vote 291–69, was not a vote against the nation of Turkey, it was a vote for the rule of law.

I am supporting the prohibition voted yesterday by the House because it strongly reaffirms the validity of the Foreign Assistance Act of 1961 and the Foreign Military Sales Act. I have expressed concern both on the floor of the Senate and in conference that provisions originally proposed by the House and by the Senate Appropriations Committee would override currenf law by tying continued military aid to a Presidential determination of "substantial progress" or "good faith efforts."

These clauses may or may not be legitimate policy objectives but they must be proposed by Congress as additional qualifications for continuing our aid to the Government of Turkey. They should not be considered the means by which the Government of Turkey can comply with our bilateral arms agreement with that country.

According to the House-passed language—which is the result of an agreement between Congressmen Rosenthal, Brademas, Sarbanes and myself—Turkey can

now meet the conditions of American aid by withdrawing its forces from the island of Cyprus. The House has reaffirmed the statutory requirement by stating that the President must certify to Congress that the Government of Turkey is in compliance with the Foreign Assistance Act of 1961, the Foreign Military Sales Act, and any agreement entered into under such acts * * * In addition to this requirement, he must certify that "substantial progress toward agreement has been made regarding military forces in Cyprus."

Mr. President, it is obvious that the Government of Turkey cannot be in compliance with our bilateral agreement and American law until it agrees to remove its forces from the island of Cyprus. Therefore, the language passed by the House simply adds a condition to the law which would be met in the course of bringing the Government of Turkey in compliance with our military assistance laws.

Mr. President, I have with me today a letter from the Comptroller General of the United States, Mr. Elmer B. Staats, which is highly critical of the administration for its failure to implement the appropriate provisions of the statutes governing military assistance. While the GAO states that it is not in a position to assess "the nature and purposes of Turkey's intervention on Cyprus," Mr. Staats makes the following statement:

"Turkey's unilateral military intervention on Cyprus certainly appears to run counter to the general tenor of the provisions of the Foreign Assistance Act and the terms of the 1947 agreement . . . and on the basis of our entirely unofficial understanding of developments on Cyprus it would seem that such intervention has gone beyond the bounds of possible defensive or peace-restoration efforts. Moreover, as has been noted previously, President Johnson failed to perceive any justification for a unilateral intervention in Cyprus contemplated by Turkey in 1964. While the present situation may differ in some respects from that presented in 1964 it is notable that the United States has joined in unanimous adoption of two resolutions by the United Nations Security Council . . . concerning the present Cyprus crisis which appear to oppose Turkey's action."

The GAO observes that if the determinations and decisions mandated by Section 505(d) of the Foreign Assistance Act and Section 3(c) of the Foreign Military Sales Act "are not made promptly and timely—the punitive aspects of the respective provisions are rendered virtually meaningless contrary to the intent of Congress." In expressing this concern, the GAO then goes directly to the failure of the State Department to properly administer our military assistance programs:

"There is, of course, a general mandate upon cognizant officials to administer the military assistance and foreign military sales programs in a manner consistent with and in furtherance of all relevent statutory provisions, including those provisions dealing with prohibitions and sanctions. Beyond this we believe that Section 505(d) of the Foreign Assistance Act and Section 3(c) of the Foreign Military Sales Act—in view of their expressed terms (particularly the references to "immediate" ineligibility) purposes, and legislative history—place a specific duty upon cognizant officials to expeditiously consider and make appropriate determinations concerning the applicability of such provisions in circumstances which clearly suggest potential violations."

I now make another quotation from this very intriguing document from the Comptroller General dated October 7, 1974. At an appropriate time, at the end of my remarks, I shall ask unanimous consent to put the full document from the Comptroller General in the Record, but not at this time.

The GAO goes on to point out an additional point of law:

"We note that an agreement between the United States and Turkey which became effective June 16, 1960 provides that military assistance furnished by the United States to Turkey could not be deployed to Cyprus without the formal consent of the United States Government, and even then only as to such items and quantities thereof specifically agreed upon prior to deployment."

Mr. President, this is a very important point that the Comptroller General makes, because, as Senators will recall, initially it was the 1947 bilateral agreement between the United States and Turkey which prohibited Turkey from using American weaponry to perpetrate acts of aggression on neutral countries, in this instance Cyprus. That was the agreement we had between the United States of America and the Government of Turkey in 1947, and that agreement was buttressed, 13 years later, as recently as 1960, by yet another agreement, and this one was even more specific than the 1947 agreement, because this 1960 agreement,

signed by our Government, our President, and our Secretary of State at that time—it happened to be President Eisenhower, in the last year of his term of office—with their government. That agreement specifically referred to Cyprus, and specifically said that Turkey would not deploy to Cyprus any of our American military equipment unless they got—and hear this again, Mr. President—"the formal consent of the United States Government."

No such consent has been sought by Turkey, and I hope to God no such consent has ever been given, either covertly or overtly, to Turkey. At least it has not been brought to my attention if it has.

So we have this situation, Mr. President. We have a 1947 general agreement with Turkey that says they cannot use arms to invade neutral or sovereign nations. We have a 1960 agreement with Turkey specifically dealing with Cyprus saying that it is a no-no to use American arms to go to Cyprus without our approval.

We have two statutes that have been on the books for almose two decades, the Foreign Assistance Act and the Foreign Military Sales Act, that say, "You cannot use American equipment to invade neutral countries."

So the law and the agreement pursuant to the law are clear.

Then, coupled with that, which I will get to later in my speech, was the 1964 situation when Under Secretary of State George Ball told Turkey when it threatened to invade Cyprus back then 10 years ago. "Turkey, if you invade Cyprus with your equipment, aid will be terminated under our agreement and under the law."

I know in the law, Mr. President, that good and reasonable lawyers can oftentimes disagree on what a statute says or what a contract means. But when you have this much law, both statutory and in terms of bilateral agreement, there is no one who can say there is any shadow of a doubt as to whether Turkey can or cannot use American military equipment to invade Cyprus. They cannot. They should not have used it.

They have been warned previously in 1964 not to do so. They had signed an agreeemnt both of a general nature in 1947 and of a specific nature in 1960 that they would not, and yet they did. And we are supposed to stand back after they do that, with all of this history of both law and bilaterial agreements, and smile benignly at Turkey and say, "Turkey, well, we wish you had not done that. You should not have used our equipment, but we are going to ignore our laws and ignore our agreement and, indeed, we are going to continue to send you more aid because we think you are a pretty nice fellow."

If that is our foreign policy, Mr. President, if our foreign policy is predicated on the theory that the law is to be ignored, that the law is useless, that the law is a wasted effort in legislative futility, then we had better make a very piercing and thorough reexamination of our foreign policy posture because in my opinion, any sound and rational foreign policy has to be predicated on one thing above all, that the law is above all of us; that we are all subservient to it, and we are all obliged to obey it, and if we go into some kind of twilight foreign policy era when the law becomes just something of convenience to use when you see fit to use it, and becomes something to ignore when you see fit to ignore it, then I think we will be pinning our foreign policy on a very weak reed.

Now, Mr. President, as I have said on numerous occasions, the Secretary of State has been made aware of his obligations in this matter. State Department lawyers unlike the General Accounting Office, have immediate access to the information they require to determine whether Turkey has substantially violated the terms of our military assistance programs. The Secretary has had access to the documentation of the 1964 Johnson letter—that is the Johnson letter to Turkey as delivered and explained by Undersecretary of State Ball—documentation which shows that our Government was aware of the requirement to stop further military aid to Turkey if that nation used our arms to intervene in Cyprus. The Secretary of State has also been made aware of the sense of Congress concerning the implementation of its laws. It would, therefore, be impossible for him to confuse the intent of Congress in this particular situation.

In light of this recent performance I would like to remind my colleagues of a comment Dr. Kissinger made during his confirmation hearings as Secretary of State. Responding to an inquiry by Senator Church over whether Americans are illegally advising Cambodian forces, Secretary Kissinger said the following:

"If what I have said to this committee is to have any meaning then it would be totally inappropriate for me as Secretary or as adviser to the President to behave like a sharp lawyer and to try to split hairs and find some legal justifica-

tion for something clearly against the intent of the law. So I think the better answer to you, Senator, is to say that when the law is clearly understood—and it will be my job to make sure that I clearly understand the intent of Congress—we may disagree with it, but once the intent is clear we will implement not only the letter, but the spirit. If such an event occurred as you describe, I will do my best to have it stopped."

Now, this is the testimony of Dr. Kissinger when he was being confirmed as Secretary of State. I think it was a very honorable statement he made then, a very wise one, a very prescient one and, in that statement, he says when the law is clear he will obey it, he will enforce it. When the law is clear he will implement it whether he agrees or not with the policy implications inherent in that statute, and that is what he testified to back at the time of his confirmation hearings as Secretary of State.

I just wish the Secretary would reread his own testimony. He need not read my speech, he need not answer my letters—some of which are there and unanswered on this Cyprus situation. All he has to do is reread what he said himself as to what the law means.

Let me repeat:

"So I think the better answer to you, Senator, is to say that when the law is clearly understood—and it will be my job to make sure that I clearly understand the intent of Congress—we may disagree with it, but once the intent is clear, we will implement not only the letter, but the spirit. If such event occurred as you describe, I will do my best to have it stopped."

These are not the words of Eagleton; these are not the words of any U.S. Senator; these are the words of the Secretary of State of the United States, Dr. Henry Kissinger.

Mr. President, in the case of Cyprus, Secretary Kissinger has clearly violated his promise, in my opinion, to the Foreign Relations Committee. He is acting contrary to the law because he believes that it is not in the national interest to follow the law. I disagree with that most strenuously.

Mr. President, the policy considerations given by the Secretary of State in attempting to justify an override of American law is subject to considerable debate among members of the foreign affairs community. Former Under Secretary of State George Ball, for example, is highly critical of U.S. Cyprus policy and has urged that Congress reaffirm its statutes governing military assistance.

In testimony before the House Foreign Affairs Committee, Mr. Ball addressed the Cyprus matter in considerable detail and discussed the role he played in 1964 in stopping Turkey from intervening militarily on Cyprus.

I would like to read what Mr. Ball said about the situation which exists today—this is testimony just a few weeks ago before the House Foreign Affairs Committee:

"Mr. BALL. Today the Turks occupy 40 per cent of the Island and not only that but the best 40 per cent because it is the northern coast which is the great source of revenue because it is the tourist coast. It is the coast that is the part of the Island that is obviously the richest in that sense.

"Now, how we persuade the Turks to leave or even to reduce that 40 per cent to any kind of dimension that is commensurate with the proportion of the population . . . I think remains to be seen. I am not sure we can.

"Actually the problem that we face right now is a very acute one. We have put almost insupportable pressures on the government in Athens and the government in Athens is an excellent government. Mr. Karamanlis in my opinion is the finest Prime Minister in Greece since he was Prime Minister before. I think what has occurred in the intervening period is not from the point of view of the Greek people or of the Western world very useful . . .

"We ought to give this Democratic Government in Greece a real chance. We are destroying it. We are destroying it as long as we put them in the situation where 40 per cent of Cyprus has been taken over by the Turks and all that we can say is that we would be glad to mediate . . ."

Again continuing to quote from Mr. Ball:

"Let me say that if this situation persists, particularly with Mr. Andreas Papandreou running in Greece, and his relations are very much on the left side to the point where I suspect that he would not be deeply disturbed if a substantial Soviet influence were to develop in Greece. I think we are in a position where we may very well have so weakened the democratic political fabric in Greece that we could permit a substantial Soviet influence in Greece which could be quite disastrous."

Going ahead with George Ball:

"Think what would happen if Greece were to be led toward some kind of new arrangement in which we would have a very substantial Soviet influence. In the first place, think of the consequences insofar as Yugoslavia is concerned. Yugoslavia is a country with an aging dictator whose life span is not going to go on forever, a country that could very easily be subject to strong centrifugal forces if he were to pass from the scene.

"We would have isolated the Turks because we would have interposed between Turkey and the West a country that had begun to develop strong leftist ties. We would have put the position of Israel in much greater jeopardy than it is today because we would have injected a new element in that part of the Eastern Mediterranean which could be a very disturbing element indeed.

"Mr. FINDLEY. What leverage do we have a this juncture we can use? Military assistance?

"Mr. BALL. That is primarily the leverage we have, the leverage of military assistance, if we can get an understanding amongst all of the NATO partners that we are following and the course we would expect them to follow.

"This can be reasonably effective, in my judgment. Military assistance is a continuing thing or it is nothing. We can give a country a substantial amount of equipment but if you don't continue to give them the spare parts and supplies it becomes quite useless. This is the effective hold that is implied in this."

Mr. President, Mr. Ball is a student of this situation and his advice should not be lightly dismissed. It will be argued, of course, that Dr. Kissinger is also an expert on foreign policy and that he holds an opposite view with regard to Cyprus. I do not challenge Dr. Kissinger's expertise, but I believe it is important when we have such strong differences of opinion that we follow the law and implement its provisions in an even-handed manner.

Finally, Mr. President, there are reports that Turkish troops on Cyprus are running out of ammunition. At the present time we have $6 million worth of ammunition in the pipeline ready to go to Turkey. The amendment we discuss today, therefore, is not simply an ethereal proposal to slap Turkey on the hand for its past actions. If we agree to send ammunition to rearm the Turkish Army, then we will participate directly in the continued occupation of the island of Cyprus.

I do not believe that the American people desire to see its Government tilt in the direction of aggression by our failure to adopt this measure. I urge my colleagues to reaffirm the law and to reaffirm the notion that American weaponry will not be used against the friends of the United States.

At this point, Mr. President, I ask unanimous consent that the 21-page letter dated October 7, 1974, from the Comptroller General of the United States, Mr. Elmer Staats, be printed in full in the Record.

There being no objection, the letter was ordered to be printed in the Record, as follows:

COMPTROLLER GENERAL OF THE UNITED STATES.
Washington, D.C., October 7, 1974.

Hon. THOMAS F. EAGLETON,
U.S. Senate.

DEAR SENATOR EAGLETON: Reference is made to your letters of September 11 and 18, 1974, requesting our opinion on whether the use by Turkey of American-supplied defense articles and defense services for the purpose of intervening militarily in Cyprus would be in "substantial violation" of applicable statutory provisions and agreements so as to render Turkey "immediately ineligible" for further assistance under section 505(d) of the Foreign Assistance Act of 1961, as amended, and section 3(c) of the Foreign Military Sales Act.

Both of the above-cited statutory provisions contain similar prohibitions and involve similar considerations. We will first address your question in the context of the military assistance program.

Part II of The Foreign Assistance Act of 1961, approved September 4, 1961, Public Law 87–195, 75 Stat. 434, as amended, 22 U.S.C. §§ 2301, *et seq.*, currently governs the furnishing of defense articles and defense services on a grant basis. Subsection 505(d) thereof, as amended: 22 U.S.C. § 2314(d) (1970), provides:

"Any country which hereafter uses defense articles or defense services furnished such country under this Act, the Mutual Security Act of 1954, as amended, or any predecessor foreign assistance Act, in *substantial* violation of the provisions of this chapter [22 U.S.C. 2311 *et seq.*] or any agreements entered

into pursuant to any of such Acts shall be *immediately ineligible* for further assistance." (Emphasis added.)

Military assistance has been furnished to Turkey pursuant to an "Agreement on Aid to Turkey" which was signed and entered into force at Ankara on July 12, 1947, T.I.A.S. 1629, 61 Stat. 2953. The initial recitations of agreement are as follows:

"The Government of Turkey having requested the Government of the United States for assistance which will enable Turkey to strengthen the security forces which Turkey requires for the protection of her freedom and independence and at the same time to continue to maintain the stability of her economy; and

"The Congress of the United States, in the Act approved May 22, 1947, having authorized the President of the United States to furnish such assistance to Turkey, on terms consonant with the sovereign independence and security of the two countries; and

"The Government of the United States and the Government of Turkey believing that the furnishing of such assistance will help to achieve the basic objectives of the Charter of the United Nations and by inaugurating an auspicious chapter in their relations will further strengthen the ties of friendship between the American and Turkish peoples;

"The undersigned, being duly authorized by their respective governments for that purpose, have agreed as follows: * * *."

Article I of the Agreement provides:

"The Government of the United States will furnish the Government of Turkey such assistance as the President of the United States may authorize to be provided in accordance with the Act of Congress approved May 22, 1947, and any acts amendatory or supplementary thereto. The Government of Turkey will make effective use of any such assistance in accordance with the provisions of this agreement."

The second paragraph of Article II of the Agreement provides:

"*The Government of Turkey will make use of the assistance furnished for the purposes for which it has been accorded.* In order to permit the [United States] Chief of Mission to fulfill freely his functions in the exercise of his responsibilities, it will furnish him as well as his representatives every facility and every assistance which he may request in the way of reports, information and observation concerning the utilization and progress of assistance furnished." (Emphasis added.)

Article IV of the Agreement provides:

"Determined and equally interested to assure the security of any article, service, or information received by the Government of Turkey pursuant to this agreement, the Governments of the United States and Turkey will respectively take after consultation, such measures as the other government may judge necessary for this purpose. *The Government of Turkey will not* transfer, *without the consent of the Government of the United States*, title to or possession of any such article or information nor *permit*, without such consent, *the use of any such article* or the use or disclosure of any such information by or to anyone not an officer, employee, or agent of the Government of Turkey or *for any purpose other than that for which the article or information is furnished.*" (Emphasis added.)

The act of May 22, 1947, ch. 81, 61 Stat. 103, pursuant to which the foregoing "Agreement on Aid to Turkey" was consummated, is a "predecessor foreign assistance act" for purposes of section 505(d) of The Foreign Assistance Act of 1961, quoted hereinabove. Accordingly, subsection 505(d) applies fully to military assistance furnished to Turkey.

Subsection 505(a) of The Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2314(a) (1970), provides in part:

"In addition to such other provisions as the President may require, no defense articles shall be furnished to any country on a grant basis unless it shall have agreed that—

"(1) it will not without the consent of the President—

* * * * * * *

"(C) use or permit the use of such articles for purposes other than those for which furnished * * *"

Article IV of the "Agreement on Aid to Turkey," *supra*, in conformity with the foregoing provision, explicitly includes the required restriction on the use of defense articles furnished.

The exclusive purposes for which The Foreign Assistance Act of 1961, *supra*, authorizes the furnishing of military assistance are set forth in section 502 thereof, as amended, 22 U.S.C. 2302, which provides in part:

"Defense articles and defense services to any country shall be furnished *solely* for internal security, for legitimate self-defense, to permit the recipient country to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations, or otherwise to permit the recipient country to participate in collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security, or for the purpose of assisting foreign military forces in less developed friendly countries * * * to construct public works and to engage in other activities helpful to the economic and social development of such friendly countries. * * * " (Emphasis added.)

We note that an agreement between the United States and Turkey, which became effective June 16, 1960, provided that military assistance furnished by the United States to Turkey could not be deployed to Cyprus without the formal consent of the United States Government, and even then only as to such items and quantities thereof specifically agreed upon prior to deployment. That agreement, effected by an exchange of notes reprinted in Hearings on United States Security Agreements and Commitments Abroad, Greece and Turkey, Before the Subcommittee on United States Security Agreements and Commitments Abroad of the Senate Committee on Foreign Relations, 91st Cong., 2d Sess., pt. 7, at 1780 (1970), states:

"ANKARA, *June 16, 1960.*

"His Excellence FLETCHER WARREN,
Ambassador of the United States of America, Ankara.

"EXCELLENCY: I have the honor to acknowledge receipt of your Note of May 16, 1960 which reads as follows:

" 'EXCELLENCY: I have the honor to draw the attention of the Government of Turkey to the provisions of Article 4 of the Agreement on Aid to Turkey of July 1947, and with regard to the desire of the Turkish Government to use certain Military Assistance Program materiel for its planned military force in Cyprus to request that Turkey ask formal consent of the United States Government for such use for a purpose other than those for which the materiel was furnished.

" 'It must be clearly understood that United States consent for the use of this equipment in Cyprus, which will be granted immediately upon receipt of Turkey's request, should not provide a basis for requests for additional Military Assistance Program materiel. The equipment sent to Cyprus, which was provided by the U.S. as grant aid under the Military Assistance Program cannot be dropped from accountability and will be considered as assets available to requirements for the Military Assistance Program for Turkey. The materiel to be deployed initially to Cyprus has been agreed upon by the Turkish General Staff and JUSMAT and is listed in the attached schedule and any Military Assistance Program materiel Turkey may subsequently wish to deploy to Cyprus will have to be the subject of a separate request.

" 'I have the honor to propose that, if this Note is acceptable to Your Excellency's Government, this Note and Your Excellency's Note in reply, asking for formal United States consent and agreeing to the list submitted, shall constitute an agreement between our two Governments which shall enter into force on the date of Your Excellency's reply.

" 'Accept, Excellency, the renewed assurances of my highest consideration.'

"In reply, I have the honor to inform you that my Government is in agreement with the foregoing.

"I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

"SELIM SARPER."

The schedule of materiel initially authorized to be deployed to Cyprus appears at pages 1776–1780 of the foregoing hearings.

In a 1964 crisis in Cyprus, Turkey contemplated intervening militarily. In a letter, dated June 5, 1964, President Lyndon Johnson wrote to the Turkish Prime Minister expressing grave concern over such action, and refusing to permit use of any United States supplied military equipment for such purpose. President Johnson's letter, reprinted in Hearings on United States Security Agreements and Commitments Abroad, Greece and Turkey, *supra*, at 1848–1850, states in part:

"* * * I am gravely concerned by the information which I have had through Ambassador Hare from you and your Foreign Minister that the Turkish Government is contemplating a decision to intervene by military force to occupy a portion of Cyprus, I wish to emphasize, in the fullest friendship and frankness, that I do not consider that such a course of action by Turkey, fraught with such far-reaching consequences, is consistent with the commitment of your Government to consult fully in advance with us, Ambassador Hare has indicated that you have postponed your decision for a few hours in order to obtain my views. I put to you personally whether you really believe that it is appropriate for your Government, in effect, to present a unilateral decision of such consequence to an ally who has demonstrated such staunch support over the years as has the United States for Turkey. I must, therefore, first urge you to accept the responsibility for complete consultation with the United States before any such action is taken.

"It is my impression that you believe that such intervention by Turkey is permissible under the provisions of the Treaty of Guarantee of 1960. I must call your attention, however, to our understanding that the proposed intervention by Turkey would be for the purpose of effecting a form or partition of the Island, a solution which is specifically excluded by the Treaty of Guarantee. Further, that Treaty requires consultation among the Guarantor Powers. It is the view of the United States that the possibilities of such consultation have by no means been exhausted in this situation and that, therefore, the reservation of the right to take unilateral action is not yet applicable.

* * * * * * *

"I wish also, Mr. Prime Minister, to call your attention to the bilateral agreement between the United States and Turkey in the field of military assistance. Under Article IV of the Agreement with Turkey of July 1947, your Government is required to obtain United States consent in the use of military assistance for purposes other than those for which such assistance was furnished. Your Government has on several occasions acknowledged to the United States that you fully understand this condition. I must tell you in all candor that the United States cannot agree to the use of any United States supplied military equipment for a Turkish intervention in Cyprus, under present circumstances.

* * * * * * *

"Finally, Mr. Prime Minister I must tell you that you have posed the gravest issues of war and peace. These are issues which go far beyond the bilateral relations between Turkey and the United States. They not only will certainly involve war between Turkey and Greece but could involve wider hostilities because of the unpredictable consequences which a unilateral intervention in Cyprus could produce. You have your responsibilities as Chief of the Government of Turkey; I also have mine as President of the United States. I must, therefore, inform you in the deepest friendship that unless I can have your assurance that you will not take such action without further and fullest consultation I cannot accept your injunction to Ambassador Hare of secrecy and must immediately ask for emergency meetings of the NATO Council and of the United Nations Security Council."

Turkey did not militarily intervene in Cyprus in 1964.

Your question concerning the use of military assistance by Turkey in connection with military intervention on Cyprus relates, of course, to the current situation, wherein it is our understanding that Turkey has used substantial quantities of United States supplied military assistance in the course of its military intervention dating from July 20, 1974. We believe that this situation gives rise to two principal issues with reference to possible violations subject to section 505(d) of the Foreign Assistance Act as follows: (1) whether the nature and purposes of Turkey's intervention on Cyprus are fundamentally inconsistent with the permissible uses of military assistance; and (2) whether the diversion of military assistance to support Turkey's intervention, absent the prior specific approval of the United States is, in and of itself, unauthorized.

With reference to the first issue, section 502 of the Foreign Assistance Act, quoted previously herein, authorizes the furnishing of military assistance solely for the following purposes: for internal security; for legitimate self-defense; to permit participation in regional or collective arrangements consistent with the United Nations Charter; to permit participation in collective peacekeeping or peace-restoration measures requested by the United Nations; or to assist mili-

tary forces of less developed friendly countries in promoting the social and economic development of such countries. Other provisions of the Foreign Assistance Act are consistent with, and tend to reenforce, the basic emphasis of section 502 upon defensive, peacekeeping and restoration, and peaceful purposes. Thus section 501 of the Act, as amended, 22 U.S.C. § 2301 (1970), which sets forth congressional declarations of policy concerning military assistance, states in part:

"The Congress of the United States reaffirms the policy of the United States to achieve international peace and security through the United Nations so that armed force shall not be used except for individual or collective self-defense. The Congress finds that the efforts of the United States and other friendly countries to promote peace and security continue to require measures of support based upon the principle of effective self-help and mutual aid. It is the purpose of this subchapter to authorize measures in the common defense against internal and external aggression, including the furnishing of military assistance, upon request, to friendly countries and international organizations. * * *

* * * * * * *

"In enacting this legislation, it is therefore the intention of the Congress to promote the peace of the world and the foreign policy, security, and general welfare of the United States by fostering an improved climate of political independence and individual liberty, *improving the ability of friendly countries and international organizations to deter or, if necessary, defeat Communist or Communist-support aggression, facilitating arrangements for individual and collective security, assisting friendly countries to maintain internal security,* and creating an environment of security and stability in the developing friendly countries essential to their more rapid social, economic, and political progress. The Congress urges that all other countries able to contribute join in a common undertaking to meet the goals stated in this part.

* * * * * * *

"Finally, the Congress reaffirms its full support of the progress of the members of the North Atlantic Treaty Organization toward increased cooperation in political, military, and economic affairs. * * *" (Emphasis added.)

Consistent with this declaration of policy, section 511 of the Act, as amended, 22 U.S.C. § 2321d (Supp. II, 1972), provides:

"Decisions to furnish military assistance made under this part shall take into account whether such assistance will—

"(1) *contribute to an arms race;*

"(2) *increase the possibility of outbreak or escalation of conflict;* or

"(3) prejudice the development of bilateral or multilateral arms control arrangements." (Emphasis added.)

While not specifically subject to the operation of section 505(d), section 620(i) of the Foreign Assistance Act, as amended, 22 U.S.C. § 2370(i) (1970), seems to reenforce the foregoing observations concerning the nature and limits of military assistance purposes, and also seems particularly relevant in the instant context. This section provides:

"*No assistance shall be provided under this Act or any other Act, and no sales shall be made under the Agricultural Trade Development and Assistance Act of 1954, to any country which the President determines is engaging in or preparing for aggressive military efforts,* or which hereafter is officially represented at any international conference when that representation includes the planning of activities involving insurrectioon or subversion, *which military efforts,* insurrection, or subversion, are directed against—

"(1) the United States,

"(2) *any country receiving assistance under this Act or any other Act, or*

"(3) any country to which sales are made under the Agricultural Trade Development and Assistance Act of 1954, *until the President determines that such Military efforts or preparations have ceased,* or such representation has ceased, *and he reports to the Congress* that he has received assurances satisfactory to him that such military efforts or preparations will not be renewed, or that such representation will not be renewed or repeated. *This restriction may not be waived pursuant to any authority contained in this Act.*" (Emphasis added.)

Finally, section 505(b) of the Act, as amended, 22 U.S.C. § 2314(b) (Supp. II, 1972), provides:

"No defense articles shall be furnished on a grant basis to any country at a cost in excess of $3,000,000 in any fiscal year unless the President determines—

"(1) *that such country conforms to the purposes and principles of the Charter of the United Nations;*

"(2) that such defense articles will be utilized by such country for the maintenance of its own *defensive strength*, or the *defensive strength* of the free world;

"(3) that such country is taking all reasonable measures; consistent with its political and economic stability, which may be needed to develop its defense capacities; *and*

"(4) that the increased ability of such country to defend itself is important to the security of the United States." (Emphasis added.)

The 1947 agreement between the United States and Turkey, discussed previously, appears equally clear concerning the purposes for which military assistance is furnished to Turkey. The agreement recites, *inter alia*, that such assistance "will enable Turkey to strengthen the security forces which Turkey requires for the protection of her freedom and independence and at the same time to continue to maintain the stability of her economy * * *"; and that "the furnishing of such assistance will help to achieve the basic objectives of the Charter of the United Nations * * *." Article I of the agreement in effect incorporates applicable statutory provisions concerning the purposes of military assistance. In Article II, Turkey agrees to make use of assistance for the purposes for which it has been accorded.

Turkey's unilateral military intervention on Cyprus certainly appears to run counter to the general tenor of the provisions of the Foreign Assistance Act and the terms of the 1947 agreement discussed above; and, on the basis of our entirely unofficial understanding of developments on Cyprus, it would seem that such intervention has gone beyond the bounds of possible defensive or peace-restoration efforts. Moreover, as has been noted previously, President Johnson failed to perceive any justification for a unilateral intervention in Cyprus contemplated by Turkey in 1964. While the present situation may differ in some respects from that presented in 1964, it is notable that the United States has joined in unanimous adoption of two resolutions by the United Nations Security Council—Resolutions Nos. 353 (July 20, 1974) and 360 (August 16, 1974)—concerning the present Cyprus crisis which appear to oppose Turkey's actions, among other matters. Resolution No. 353 provides in part:

"*The Security Council,*

"Having considered the report of the Secretary-General at its 1779th meeting about the recent developments in Cyprus,

* * * * * * *

"*Gravely concemed* about the situation which led to a serious threat to international peace and security, and which created a most explosive situation in the whole Eastern Mediterranean area,

* * * * * * *

"*Conscious* of its primary responsibility for the maintenance of international peace and security in accordance with Article 24 of the Charter of the United Nations,

"1. *Calls upon* all States to respect the sovereignty, independence and territorial integrity of Cyprus;

* * * * * * *

"3. *Demands* an immediate end to foreign military intervention in the Republic of Cyprus that is in contravention of operative paragraph 1;

"4. *Requests* the withdrawal without delay from the Republic of Cyprus of foreign military personnel present otherwise than under the authority of international agreements including those whose withdrawal was requested by the President of the Republic of Cyprus, Archbishop Makarios, in his letter of 2 July 1974; * * *."

Resolution No. 360 provides in part:

"*The Security Council,*

* * * * * * *

"*Gravely concerned* at the deterioration of the situation in Cyprus, resulting from the further military operations, which constituted a most serious threat to peace and security in the Eastern Mediterranean area,

"1. *Records* its formal disapproval of the unilateral military actions undertaken against the Republic of Cyprus; * * *."

Nevertheless, the precise delimitation of the nature and purposes of Turkey's present intervention involves, in our view, complex questions dependent for their resolution upon analysis of factual information not available to us and the exercise of an expertise beyond our purview. We recognize, for example, that under the 1960 Treaty of Guarantee concerning Cyprus, Turkey, Greece, and the United Kingdom guaranteed the independence, territorial integrity and security of the Republic of Cyprus, and each of these parties expressly reserved the right, "in so far as common or concerted action may not prove possible," to take unilateral action "with the sole aim of re-establishing the state of affairs created by the present Treaty." (Articles II and IV.) The relevance of this treaty to Turkey's present actions is one such question. Another is whether Turkey's actions, even if initially justified, have since changed character and, if so, at what point.

In view of the foregoing considerations, our Office is not in a position to formally determine the nature of Turkey's intervention on Cyprus with reference to the criteria applicable under the Foreign Assistance Act and the 1947 agreement concerning the furnishing of military assistance. Therefore, while the Turkish intervention obviously raises serious questions under the Act and the agreement, we cannot conclude definitively that such use of assistance *in consideration of the nature of Turkey's military actions* constitutes a substantial violation under section 505(d) of the Act.

As indicated previously, however, we believe that the present situation raises a second issue in terms of violations subject to section 505(d), *i.e.*, whether the use of United States furnished military assistance by Turkey in connection with its intervention on Cyprus would be impermissible, apart from the precise nature of the intervention, on the basis of failure to obtain the prior formal consent of the United States for such use.

II

Section 505(a)(1)(C) of the Foreign Assistance Act and article IV of the 1947 Agreement on Aid to Turkey, quoted previously herein, both expressly provide that military assistance may not be used for a purpose other than those for which it is furnished without the consent of the United States. For the reasons stated hereinabove, we cannot conclude that the use of military assistance by Turkey in support of its intervention on Cyprus would be flatly prohibited by the Foreign Assistance Act or the 1947 agreement. Nevertheless, we believe it is clear that such a use of assistance is not specifically provided for or contemplated by either the Act or the agreement, and, accordingly, that it constitutes a diversion of assistance from the purposes for which provided. This being the case, such a diversion could, under the terms of section 505(a)(1)(C) and article IV of the agreement, be accomplished only upon the consent of the United States.

Any doubt as to this conclusion in the present context is, in our judgment, dispelled by consideration of the 1960 agreement in an exchange of notes between the United States and Turkey concerning the use of defense articles on Cyprus. In this exchange of notes, discussed previously, Turkey requested formal consent to the use of United States furnished defense articles on Cyprus, presumably in connection with the routine deployment of forces on the island consistent with the 1960 Treaty of Guarantee. The Turkish request was submitted at the insistence of the United States. Thus the United States Ambassador to Turkey stated in his note:

"I have the honor to draw the attention of the Government of Turkey to the provisions of Article 4 of the Agreement on Aid to Turkey of July 1947, and with regard to the desire of the Turkish Government to use certain Military Assistance Program material for its planned military force in Cyprus to request that *Turkey ask formal consent of the United States Government for such use for a purpose other than those for which the material was furnished.*" (Emphasis added.)

Consent was granted, limited to specified types and quantities of defense articles. However, the Ambassador's note added:

"* * * The materiel to be deployed initially to Cyprus has been agreed upon * * * and is listed in the attached schedule and *any Military Assistance Program materiel Turkey may subsequently wish to deploy to Cyprus will have to be the subject of a separate request.*" (Emphasis added.)

For the reasons stated above, we conclude that the diversion of military assistance for use in Cyprus beyond that specifically provided for in the 1960 agreement would, absent formal consent thereto by the United States, violate the 1960 agreement, article IV of the 1947 agreement, and section 505(a)(1)(C) of the Foreign

Assistance Act as a matter of law. We assume that no such consent has been given with respect to Turkey's present intervention.

The foregoing violations would clearly fall within the scope of subsection 505(d) of the Act. Since this subsection renders a country immediately ineligible for further military assistance on the basis of "substantial" violations, it remains to consider whether these violations would be "substantial." The legislative history does shed some light on which violations were intended to be characterized as "substantial." Section 505(d) derives originally from the House version of legislation enacted as the Foreign Assistance Act of 1962. See H.R. 11921, 87th Cong., 2d Sess. 2201 (1962). The House bill contained in substance the language ultimately enacted, but did not include the word "substantial." The House Committee on Foreign Affairs in its report on the bill, H. Rept. No. 1788, 87th Cong., 2d Sess. 27 (1962), observed in part with reference to this provision:

"The present act requires that military assistance furnished either through grants or sales shall be solely for the purposes of internal security, legitimate self-defense or the participation in collective arrangements or measures consistent with the United Nations Charter or as requested by the United Nations for maintaining or restoring international peace and security. It also provides for certain conditions of eligibility which include the reaching of agreements as to the use, observation, protection, and disposition of the assistance furnished.

"This amendment will provide the positive penalty not now contained in the law for the future violation of the requirements of this chapter or agreements under which the equipment or services are furnished.

"The committee believes that such a penalty is necessary and will serve notice on recipient countries who may view these conditions or agreements as having little or no effect. *It is not intended that every small disagreement between the United States and recipient countries on the possible deployment of units or uses of equipment would serve to make such country ineligible for further assistance. However, where a country actually undertakes an act of aggression or refuses to allow continuous observation of the equipment, diverts substantial quantities of the items furnished, or otherwise violates the terms of its agreements, further assistance under this chapter would be prohibited by this amendment.*

"The President's special waiver authority contained in section 614(a) of this act may be used to waive the requirements of this subsection." (Emphasis added.)

The word "substantial" was added in conference. With respect to this provision the conference report stated, H. Rept. No. 2008, 87th Cong., 2d Sess. 18 (1962):

"Section 201(a) of the House amendment provided that any country which hereinafter used defense articles or defense services furnished such country under this act, the Mutual Security Act of 1954, as amended, or any predecessor foreign assistance act, where such use was in violation of the provisions of the military assistance chapter or any agreements entered into puruant to any of such acts, should be immediately ineligible for further assistance.

"The Senate bill contained no comparable provision.

"The committee of conference accepted the House provision with an amendment which provided that in order for the section to become operative there must be a 'substantial' violation of the provisions of the military assistance chapter or applicable agreements. *The purpose of this amendment is to make clear that minor instances of diversion or improper uses would not work to make countries intelligible for further military assistance.*" (Emphasis added.)

In light of the foregoing, we interpret the conference addition of the word "substantial" as a clarification of the language of the bill designed to formalize intent of the provision as expressed in the House report. Consequently, while "minor" violations do not require ineligibility the examples of violations set forth in the House report—such as an actual act of aggression or diversion of "substantial" quantities of defense items from authorized purposes—apparently represent violations intended by the Congress to render the provision operative and cause immediate ineligibility for further military assistance.

Any diversion of substantial quantities of military assistance items furnished by the United States from authorized purposes would thus constitute a "substantial" violation of section 505(d) under the intent expressed in the House report. Moreover, even through any substantial diversion thus seems sufficient in and of itself to trigger section 505(d), the purposes and use to which the diverted military assistance is applied would certainly also be relevant to the gravity of the violation. If such purposes and use in contravention of the explicitly stated

policies and purposes of the Foreign Assistance Act of 1961, the violation would undoubtedly be "substantial." It is our impression that Turkey has diverted substantial quantities of military assistance items furnished by the United State, although we have no official information as to the types and quantities of defense articles which are involved. In addition, as noted hereinabove, the particular purposes for which the items were diverted and the uses to which they were applied may well be in contravention of the policies and purposes of the Foreign Asistance Act of 1961.

III

The Foreign Military Sales Act, approved October 22, 1968, Pub. L. 90–629, 82 Stat. 1321, as amended, 22 U.S.C. §§ 2751 *et seq.*, governs the furnishing of defense articles and defense services on a sales basis. It repealed and superseded those provisions of the Foreign Assistance Act of 1961 dealing with military sales. Section 3(c) of the Act, as amended, 22 U.S.C.A. § 2753(c) (Pocket pt. 1974), referred to in your letter, provides:

"(c) Except as otherwise provided in subsection (d), any foreign country which hereafter uses defense articles or defense services furnished such country under this Act, in *substantial* violation of any provision of this Act or any agreement entered into under this Act, shall be *immediately* ineligible for further cash sales, credits, or guarantees." (Emphasis added.)

Subsection 3(d) relates to the treatment of "sophisticated weapons."

The conclusions expressed in parts I and II hereof concerning section 505(d) of the Foreign Assistance Act apply generally to section 3(c) of the Foreign Military Sales Act and its related provisions. Subsection 3(a) of the latter act, as amended, 22 U.S.C.A. § 2753(a) (Pocket pt. 1974), provides in part:

"No defense article or defense service shall be sold by the United States Government under this Act to any country or international organization unless—

* * * * * * *

"(2) *the country* or international organization *shall have agreed* not to transfer title to, or possession of, any defense article so furnished to it to anyone not an officer, employee, or agent of that country or international organization and *not to use or permit the use of such article for purposes other than those for which furnished unless the consent of the President has first been obtained*; * * *." (Emphasis added.)

Article IV of the 1947 Agreement on Aid to Turkey, discussed previously and also applicable to military sales to Turkey, includes this restriction on the use of defense articles furnished. For the reasons given in Part II hereof, it appears that the use of substantial quantities of defense articles furnished under the Foreign Military Sales Act and Article IV to support military intervention on Cyprus would constitute substantial violations for purposes of section 3(c). Other provisions of the Foreign Military Sales Act—comparable to provisions of the Foreign Assistance Act discussed in part I—are also relevant in this regard. See 22 U.S.C.A. § 2751 (Pocket pt. 1974) and 22 U.S.C. § 2754 (1970).

IV

We recognize that the determination of whether a "substantial violation" of the statutory provisions and agreements discussed previously has occurred, so as to actually render Turkey "immediately ineligible" for further assistance under section 505(d) of the Foreign Assistance Act and section 3(c) of the Foreign Military Sales Act, is, at least in the first instance, entrusted to the officials charged with the administration of these provisions. The pertinent delegations of authority are set forth in Exec. Order No. 10973, as amended, 3 C.F.R. 90 (1974), 22 U.S.C. § 2381, note (Supp. II, 1972), and Exec. Order No. 11501, as amended, 3 C.F.R. 267 (1974), 22 U.S.C. § 2751, note (1970 and Supp. II, 1972).[1]

If these determinations or decisions are not made promptly and timely, however, the punitive aspects of the respective provisions are rendered virtually meaningless, contrary to the intent of Congress. With respect to subsection 505(d) of the Foreign Assistance Act, House Report No. 1788, 87th Cong., 2d Sess. 27 (1962), stated:

[1] It should be noted that subsection 620(i) of the Foreign Assistance Act, as amended, 22 U.S.C. §2370(i) (1970), quoted previously herein, sets forth separate prohibitions and sanctions which operate on the basis of Presidential determinations. This subsection applies to all forms of foreign assistance.

"The amendment will provide the positive penalty not now contained in the law for the future violation of the requirements of this chapter or agreements under which the equipment or services are furnished.

"The committee believes that such a penalty is necessary and will serve notice on recipient countries who may view these conditions or agreements as having little or no effect. * * *"

Adequate provision has been made in the law to facilitate the availability of necessary pertinent information to the responsible official(s). Subsection 505(a) of the Act, as amended, 22 U.S.C. § 2314(a) (1970), provides in part:

"In addition to such other provisions as the President may require no defense articles shall be furnished to any country on a grant basis unless it shall have agreed that—

* * * * * * *

"(3) it will, as the President may require, permit continuous observation and review by, and furnish necessary information to, representatives of the United States Government with regard to the use of such articles; * * *."

Articles II and III of the "Agreement on Aid to Turkey," *supra*, make specific provision to fulfill this requirement. Also, subsection 623(a) of the Foreign Assistance Act of 1961, *supra*, 22 U.S.C. § 2383(a) (1970), provides in part:

"In the case of assistance under part II of this Act, the Secretary of Defense shall have primary responsibility for—

* * * * * * *

"(3) the supervision of end-item use by the recipient countries * * *."

In addition, subsection 624(d) of the Act, as amended, 22 U.S.C. § 2384(d) (1970), provides in part:

"(2) The Inspector General, Foreign Assistance, shall report directly to the Secretary of State and shall have the following duties and responsibilities:

* * * * * * *

"(B) For the purpose of ascertaining the extent to which programs being carried out under part II of this Act and the Agricultural Trade Development and Assistance Act of 1954, as amended, are in consonance with the foreign policy of the United States, are aiding in the attainment of the objectives of this Act, and are being carried out consistently with the responsibilities with respect thereto of the respective United States chiefs of missions and of the Secretary of State, as well as the efficiency and the economy with which such responsibilities are discharged, he shall arrange for, direct or conduct such reviews, inspections and audits of programs under part II of this Act and the Agricultural Trade Development and Assistance Act of 1954, as amended, as he considers necessary.

"(3) *The Inspector General, Foreign Assistance, shall maintain continuous observation and review of programs with respect to which he has responsibilities under paragraph (2) of this subscetion for the purpose of*—

"(A) determining the extent to which such programs are in compliance with applicable laws and regulations;

"(B) making recommendations for the correction of deficiencies in, or for improving the organization, plans or procedures of, such programs; and

"(C) evaluating the effectiveness of such programs in attaining United States foreign policy objectives and reporting to the Secretary of State with respect thereto.

"(4) In order to eliminate duplication and to assure full utilization of existing data, the Inspector General, Foreign Assistance, shall, in carrying out his duties under this Act, give due regard to the audit, investigative and inspection activities of the various agencies, including those of the General Accounting Office and of the military Inspectors General.

"(5) For the purpose of aiding in carrying out his duties under this Act, the Inspector General, Foreign Assistance, shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material of the agencies of the United States Government administering parts I or II of this Act, and of the Latin American Development Act, as amended, the Peace Corps or the Agricultural Trade Development and Assistance Act of 1954, as amended, and section 290f of this title. All agencies of the United States Government shall cooperate with the Inspector General, Foreign Assistance, and shall furnish

assistance upon request to the Inspector General, Foreign Assistance, in aid of his responsibilities.

* * * * * * *

"(8) Whenever the Inspector General, Foreign Assistance, deems it appropriate in carrying out his duties under this Act, he may from time to time notify the head of any agency primarily responsible for administering any program with respect to which the Inspector General, Foreign Assistance, has responsibilities under paragraph (2) of this subsection that all internal audit, end-use inspection, and management inspection reports submitted to the head of such agency or mission in the field in connection with such program from any geographic areas designated by the Inspector General, Foreign Assistance, shall be submitted simultaneously to the Inspector General, Foreign Assistance. The head of each such agency shall cooperate with the Inspector General, Foreign Assistance, in carrying out the provisions of this paragraph." (Emphasis added.)

There is, of course, a general mandate upon cognizant officials to administer the military assistance and foreign military sales programs in a manner consistent with and in furtherance of all relevant statutory provisions, including those provisions dealing with prohibitions and sanctions. Beyond this, we believe that section 505(d) of the Foreign Assistance Act and section 3(c) of the Foreign Military Sales Act—in view of their express terms (particularly the references to "immediate" ineligibility), purposes, and legislative history—place a specific duty upon cognizant officials to expeditiously consider, and make appropriate determinations concerning, the applicability of such provisions in circumstances which clearly suggest potential substantial violations.

As indicated previously, we do not have a sufficient basis, at the present time, to formally characterize Turkeys' military intervention on Cyprus: nor do we know precisely what United States defense articles have been used in connection with it. We believe there can be no duobt, however, that the present situation with respect to Cyprus is sufficiently serious to require that the determinations described above be expeditiously made.

We note that section 614(a) of the Foreign Assistance Act, as amended, 22 U.S.C. § 2364(a) (1970), provides:

"The President may authorize in each fiscal year the use of funds made available for use under this Act and the furnishing of assistance under section 520 in a total amount not to exceed $250,000,000 and the use of not to exceed $100,000,000 of foreign currencies accruing under this Act or any other law, without regard to the requirements of this Act, any law relating to receipts and credits accruing to the United States, any Act appropriating funds for use under this Act, or the Mutual Defense Assistance Control Act of 1951, in furtherance of any of the purposes of such Acts, when the President determines that such authorization is important to the security of the United States. Not more than $50,000,000 of the funds available under this subsection may be allocated to any one country in any fiscal year. The limitations contained in the preceding sentence shall not apply to any country which is a victim of active Communist or Communist-supported aggression."

We have not specifically considered whether the waiver authority of section 614 (a) would be appropriate in this case. We would point out, however, that any such waiver would be subject to the publication and congressional notification requirements set forth in section 654 of the Act, as amended, 22 U.S.C. § 2414 (Supp. II, 1972).

Finally, the views expressed herein are, of course, subject to any subsequent actions which the Congress may take relative to this situation.

Sincerely yours,

ELMER B. STATTS,
Comptroller General
of the United States.

Mr. EAGLETON. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. MCCLELLAN. Mr. President, I yield myself such time as I may use.

Mr. President, I will expect to be rather brief, but I want to make a statement for the record since I moved for the adoption of this amendment and I have already made some brief statements with respect to my reason therefor.

I would like to further state for the record that in considering this amendment we are dealing with a very sensitive issue, one that can have some far-reaching and maybe some most adverse consequences, Mr. President.

I do not know what the import of this amendment will be if it is adopted on the Greek-Turkey situation, what the reaction of these countries, Greece and Turkey, will be, what will be the reaction of other countries, and whether its adoption will hinder or prevent good faith and meaningful negotiations for settlement of the Cyprus problem.

Although there are sharply conflicting opinions and differing viewpoints with respect to this, I do not think anyone really knows at this time, what the reaction of these countries and others will be.

The President of the United States and the Secretary of State, Mr. Kissinger, our chief negotiator, strongly oppose this provision and insist that its enactment will at least hinder progress toward peace in the Cyprus conflict, that it will weaken our position and influence as a mediator trying to restore peace and to bring about a settlement of the differences.

Mr. President, if we could know that is true, then we would certainly be voting in the best interest of our country to reject the amendment. In other words, if the President's position is valid, then we may be doing serious harm by taking this action.

The distinguished Senator from Missouri (Mr. Eagleton), and others, are just as sure, they are just as convinced and are just as adamant in their position, that the enactment of this position is necessary to preserve integrity in the enforcement of statutes that have been enacted relating to foreign policy and particularly with reference to military assistance and restrictive uses that have been placed thereon.

So, Mr. President, this is not an easy problem to resolve.

I respect the sincerity and good faith of all, of each of the sponsors of and the opponents of this amendment.

I note we have on our desk here this morning a statement by the President dated yesterday, October 8, that he will veto this bill if this amendment is in it.

Now, Mr. President, that is a responsibility that the President has to take. He has that power, he has that authority. If his conclusions are that this measure will do more harm than it will good, if it would seriously handicap or interfere with successful negotiations to resolve the Cyprus problem, I think it would be his duty to veto it.

If it is enacted, and I am sure the amendment will pass here this morning, and if the President does veto it, although I have moved the adoption of this amendment and although I shall vote for it this morning, in doing so I am not making any committal to vote to override a veto if the President should veto this continuing resolution.

I make that reservation, Mr. President, because, as I have tried to indicate, this is a very, very serious matter. I shall reserve the right to consider further all information and viewpoints that are pertinent to the consideration of a veto, if a veto occurs. I thought I ought to make that statement, Mr. President.

I do not think any one here would really want to do anything that would hinder progress toward peace in any area of the world. In the President's message it is contended that it could even have an overflow impact on problems in the Mideast. In other words, Mr. President, here is one of the dangers. If the President and the Secretary of State cannot go to foreign conferences, to international meetings, or to peace conference negotiations, with the confidence, the good will and the support of Congress, then they are handicapped; they are disarmed; they are practically immobilized before they start on their mission.

Wherever the right or wrong is in this particular issue before us today, this country needs, Mr. President, for the President, the Congress, and the American people to unite so we can present a position, so we can present a united consensus, a united support of any efforts that we are making, or may make hereafter, to try to bring about peace; to try to settle these international differences that are the cause of war and that continue to pose a threat of war.

Whether we will be able to get together on this particular issue, I do not know. I would hope we could. But, Mr. President, the divisiveness in America, the condition that prevails today where there cannot be, or is not in being, a strength that comes from unity in dealing with foreign countries, is a situation that is doing much harm to this country. This is not placing blame. We are

doing harm to ourselves, more so than we are to some particular political party or some particular individual. America does not profit at all by this situation. We need to take politics out of these international matters and unite on what is good for our country. We need to unite on a proper position for our country, and then use all of our strength and our influence so, that we might move toward peace rather than continue to fan the flames of dissent and discord within our own country.

Mr. President, I do not know whether anyone else wishes to speak. If so, I would be glad to yield.

I yield to the distinguished Senator from Michigan such time as he would wish.

Mr. GRIFFIN. Mr. President, the issue before the Senate now is one that already has been debated fully and at length. The reasoning—the arguments—which were applicable to the so-called Eagleton amendment, when this continuing resolution was earlier before the Senate, apply now with equal force and logic. Indeed, the language before us now is even more troublesome.

Mr. President, the distinguished chairman of the Appropriations Committee, Mr. McClellan, was right in his assessment when he said that no one can be absolutely sure what the effect will be if Congress adopts this amendment. He is probably correct in predicting that the amendment will be passed by a large majority.

However, it seems to me that when we face a situation in which we are sure that certain proposed action will be helpful—and when we have been warned by your President and Secretary of State that indeed that action will seriously damage the chances for peace—it is a time, I suggest, to exercise some caution and restraint. We have been advised that adoption of the pending amendment will not help to bring peace to Cyprus; instead that it will severely damage and possibly destroy the opportunity that now exists to achieve a just settlement of that very difficult, complex problem.

I am keenly aware of the strong political presures that have been brought to bear upon Members of this body by many well-intentioned, well-meaning Greek-American friends and supporters in this country who believe sincerely that this amendment will serve the cause of Greece and Greek Cypriots. However, I am impressed and very concerned by the argument of our Secretary of State that this amendment will work against—not for—the very cause which our Greek-American friends espouse

Surely, neither the Greek Government nor our Greek-American friends would want to put the U.S. Government in a position where we no longer have any meaningful influence with Turkey in negotiations to settle the Cyprus problem.

Just as it is essential for the United States to have influence in the Middle East with both the Arabs and the Israelis, it is important with respect to Cyprus that the United States have influence with both the Turks and the Greeks.

A statement made yesterday by the President of the United States has already been referred to by the distinguished chairman of the Committee on Appropriations. I believe it should be read into the record at this point.

STATEMENT BY THE PRESIDENT

"Yesterday the House of Representatives, once again acting againts the almost unanimous advice of its leadership, amended the continuing resolution granting funds for our foreign aid programs. The amendment requires an immediate cessation of all U.S. military assistance to Turkey, and is, in my view a misguided and extremely harmful measure.

"Instead of encouraging the parties involved in the Cyprus dispute to return to the negotiating table, this amendment, if passed by the Senate, will mean the indefinite postponement of meaningful negotiations. Instead of strengthening America's ability to persuade the parties to resolve the dispute, it will lessen our influence on all the parties concerned. And it will imperil our relationships with our Turkish friends and weaken us in the crucial Eastern Mediterranean.

"But most tragic of all, a cut-off of arms to Turkey will not help Greece or the Greek Cypriot people who have suffered so much over the course of the last several months. We recognize that we are far from a settlement consistent with Greece's honor and dignity. We are prepared to exert our efforts in that direction. But reckless acts that prevent progress toward a Cyprus settlement harm Greeks, for it is the Greek government and the Greek Cypriots who have the most to

gain from a compromise settlement. And it is they who have the most to lose from continued deadlock.

"Thus I call upon the Senate to accept the original conference report language on Turkish arms aid and to return the bill to the House of Representatives once again. And I ask the House of Representatives to reconsider its hasty act and, working with the Senate, pass a bill that will best serve the interests of peace."

Those in this body who are determined to take on their shoulders the responsibility for defying that solemn advice by the President of the United States are free, of course, to do so. However, I believe the better course—the better part of wisdom—would be to exercise a degree of caution and restraint in a situation such as this. I believe it makes sense to give the President and his Secretary of State at least a benefit of the doubt.

After all, Secretary Kissinger has a pretty good track record. He has done an outstanding job of getting contending parties together and helping to reach settlements under difficult circumstances. It does not make sense now for the Senate to slap him in the face and to wreck the chance for success as he strives to achieve a just settlement of the Cyprus problem.

Mr President, I urge my colleagues to register their votes against the pending motion.

Mr. President, I ask that an Association Press story by Fred Hoffman be printed at this point in the Record.

There being no objection, the AP story was ordered to be printed in the Record, as follows:

TURKISH AID

(By Fred S. Hoffman)

Washington.—U.S. officials warn of possible grave consequencies for the United States and the North Atlantic Alliance if the Senate votes to cut off military aid to Turkey.

President Ford stopped short of threatening a veto as he attacked the cutoff move, already approved by the House, as "a misguided and extremely harmful measure." The Senate takes up the issue today.

But some administration officials indicated they believed Ford might use the veto, even though such action would mean rejection of a resolution continuing other foreign aid programs.

The Turkey aid halt was attached to that resolution as an amendment that would require Ford to certify "substantial progress" toward negotiating a Cyprus settlement before aid could be resumed.

Assessing the implications for the United States and NATO if Congress should force a break in military aid to Turkey, officials listed these possible results:

Turkey might pull its armed forces out of NATO, as Greece did in anger over what it considered a U.S. tilt toward Turkey during the summer crisis over Cyprus.

The entire eastern flank of NATO would then be in danger of crumbling.

Turkey might deny the United States and NATO use of important bases on its soil. One of these is the Incirlik Airbase where the United States normally stations some F–4 Phantom jets and which could be vital for air support of the U.S. Sixth Fleet in a crisis.

(Unmentioned by these officials were secret installations in Turkey from which the United States operates sensitive electronic intelligence-gathering devices beamed into the Soviet Union.)

U.S. military transports that fly through Turkish airspace en route to destinations in the Middle East and elsewhere might have to be rerouted.

The Turks might decide to shuck all restraints on the growing of opium-producing poppies, which the United States has been trying to persuade the Ankara Government to curb in order to inhibit the drug traffic.

Efforts to work out a peaceful diplomatic settlement of the Greek-Turkish dispute over Cyprus would be disrupted, raising the danger of a new flare-up of fighting

Officials said a cutoff would force the Turks to turn elsewhere for the military equipment they have received from the United States for decades.

Mr. GRIFFIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. GRIFFIN. The time to be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCLELLAN. Mr. President, I do not know whether anyone else wishes to speak.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUCKLEY. Mr. President, I am pleased to join the Senator from Missouri, Mr. Eagleton, and others in support of the restrictions on aid to Turkey contained in the new language in H.J. Res. 1131.

It seems to me it strikes the necessary balance between an unmistakable declaration of our determination that new American arms shall not be used to prolong the occupation of Cyprus by Turkey, and the kind of flexibility that will enhance the ability of our negotiators to secure what we all desire; namely the withdrawal of Turkish troops and the restoration of full Cypriot sovereignty over all the island.

I thought the restrictions most recently adopted by this body would have been counterproductive, because in terms of human relations it would on the one hand have us give up in advance an important element of our leverage over Turkey, while on the other it would have made it politically more difficult for the Turkish Government to do what we and the Greek Government most want; and that is for serious, good faith negotiations to be initiated at the earliest possible time.

I believe the new House language makes it possible to provide the strongest possible leverage for all our negotiators; leverage that is desired by all parties concerned, without so inflaming the emotions of proud Turkish citizens so as to make a settlement of this dispute impossible. I strongly urge the adoption of the House language.

Mr. MONDALE. Mr. President, we have seen in recent weeks an unprecedented administration effort to block the normal legislative process regarding foreign aid. We all know that this continuing resolution which is before us now is not due to any lack of expeditious attention by the Senate Foreign Relations Committee or, indeed, by the Senate Chamber of the normal foreign and authorization bill. Rather, it is the product of a sometimes confused administration strategy to avoid the very sensible, practical, and much-needed restrictions that have been written into the Senate version of the foreign aid bill.

Last week, I proposed taking the Israeli portion of the foreign aid bill authorization and putting it on this continuing resolution. I explained at the time that this was not a question of vitiating the foreign aid bill iself, nor was it an effort to be one sided. I wanted to accomplish three things:

First and foremost. To get much needed aid to Israel, which suffered a loss of a year's gross national product during the October war a year ago.

Second. I wanted to leave some incentive for the administration to continue to support the foreign aid bill itself. It was clear to me that if I would take the Egyptian and other Arab parts of the foreign aid bill, and put them on the continuing resolution, I would end any incentive on the part of the administration to go forward with that bill.

Third. I wanted to insulate Iraeli aid from the politics being played by this administration on the foreign aid bill. There is no question in my mind but that the administration hoped that by leaving Israeli aid in the foreign aid bill, it would be able to pry out of the bill those restrictions that it does not like in the name of getting on with the job of providing aid to Israel. I do not believe Israeli aid should be held hostage to unfettered aid to Saigon and Seoul.

Since that time, the administration, at the highest levels, has been trying to distort what is really happening in regard to the aid bill. If, indeed, the administration was concerned about making sure that both Israel and the Arab States were treated evenly, before Secretary Kissinger's trip to the Middle East, I, and the others who supported my amendment last week, were perfectly willing to accept the addition of the Arab part of the package. Now, we are confronted with a cruel choice—do we, once again, put in the Israeli part of the appropriation which is so desperately needed by the Government of Israel, leaving to later the longer termed programs aimed at helping the Arab States? The administration claims that this would be one-sided. Do we put in the whole Middle East package, and end forever any chance of pursuing the normal and correct course of legislation in passing the aid bill? Or do we refrain in the hope that,

despite administration opposition, we can report and vote on an aid bill before the end of the year?

After consulting with others, and with great reluctance, I have decided on the latter course: to work as best I can, with other Senators in this Chamber, to get the foreign bill aid bill passed this year. May I only say, in this connection, that our objective will be a vote on the aid bill. And if it is defeated, then the administration will have no grounds for seeking a further continuing resolution. And, if it is adopted, and vetoed by the President, then, at least, the true position of the administration will have been made abundantly clear—that they would rather sacrifice aid to the Middle East, to both Israeli and Arab, rather than yield to the controls written into the aid bill because the American people have had enough of underwritting to dictators in Asia and Latin America.

Thank you, Mr. President.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. MCCLELLAN. I yield to the Senator.

Senator CHILES. This is a requirement now that the Appropriations Committee is specifically making to HEW, trying to get from them, to determine what are their programs and functions and how do they see those as being accomplished. You now realize we have—I have heard the figure anywhere from 16 to 19 programs of different agencies dealing with dropouts. We have to define those now as sort of a line item somewhere, identified in some kind of different language in the HEW budget because there is no way that they define a common goal. This is the way we are trying to accomplish that.

I would like to get your opinion in regard to this requirement that Congress is now—the Appropriations Committee is now going to put on.

Mr. O'NEILL. First, I think it is going to be difficult for them to give you what you will feel is a satisfactory product in some of these areas, in part because of the way the system works and the way the law works. In many cases, we have laws with fuzzy objectives. The only thing we know for sure is that we are supposed to send grants to people who apply under certain terms and conditions. There are many cases where no one has determined what the size of the problem is. Even more important than that, there are a phenomenal number of areas where the Federal Government is providing budget funds and our primary accomplishment is to displace funds that had been provided in the past by State and local governments. Therefore, I suggest in regard to the data requirements that you placed on the department, that it is not sufficient to know what the Federal Government is spending if our purpose is to deal with some specific functional problem.

For example, if we appropriate, say, $400 million or $500 million for the health manpower program as we do now, and the net effect of that is not to add any dollars to those that are being spent nationwide on helping people get health delivery service training, then all we have done is transfer the financial responsibility for providing that education from individuals or from nonprofit institutions or from State and local governments to the Federal taxpayer. That may be a legitimate purpose but I don't think very often as we look together at Federal programs and new legislation we ask the right questions. I think that is what you are trying to get at with the requirement you are suggesting be placed on HEW.

I suggest you ask them for that additional information but be prepared to be dissatisfied. As I have said in many cases the law is very

unclear, and the only thing we know for certain is that we are supposed to spend some money.

Senator MUSKIE. Mr. Turner will put the questions that I referred to earlier.

Mr. O'NEILL. Very good. Thank you, Senator, very much.

Mr. TURNER. According to the Senate Watergate Committee report, personnel at the White House under the Office of Management and Budget carried out a political responsiveness program whose specific objective was to make grants, loans, contracts and administrative decisions specifically for the purpose of obtaining support for the President's re-election.

Now, according to the report and its appendices such a program was coordinated by a Mr. William Gifford, a high official of the Office of Management and Budget, who communicated to the departments the political priorities and the "must" operating decisions using OMB personnel to "followthrough" on their implementation at the departmental level and in the field.

Now, this program to politicize the departments and OMB has received substantial publicity, and Senator Metcalf feels that it would seem appropriate, as part of these confirmation hearings, to know of your specific participation in that program, or any knowledge that you had that it was going on. More important, he feels that it would seem essential that we receive absolute assurances from you, Mr. O'Neill, that such an operation no longer exists and that steps have or will be taken by the administration and yourself to insure that it will not occur again.

More specifically, I may ask you, sir, question No. 1. Did Mr. Gifford or any other person either in the White House or in the Office of Management and Budget discuss with you any policy or program to make specific grants, loans, contracts, or administrative decisions for the purpose of obtaining support for the re-election of the President?

Mr. O'NEILL. No.

Mr. TURNER. Question No. 2. Did you, as an Assistant Director of the Office of Management and Budget and "principal policy officer" at OMB with respect to HEW, Labor, Veterans, HUD, OEO, agencies all involved in the responsiveness program, know that such a program was in existence?

Mr. O'NEILL. I did not.

Mr. TURNER. Put another way, how could you not have known of its existence, since you presumably had a close professional relationship with Mr. Gifford, White House personnel on the Domestic Council, and the OMB Director? How could you not have known such a program was being carried out?

Mr. O'NEILL. Well, I think it is important, Mr. Turner, to recognize first of all that the responsiveness program that has been the subject of a lot of publicity with Mr. Malek being indicated as the individual who had written some memorandums on this subject was something Mr. Malek was involved in, if he was involved in it—I am not sure that has been charged or proven—at a time when he was on the White House staff. I would like to say for the record that I never met Mr. Malek until December of 1972 after the election was over, in spite of the fact that he was in the White House, I guess, for a short

period of time before he went to the committee to Re-Elect. I had no contact, knowledge or information about anything he was doing.

Mr. TURNER. I just want to make sure that you have the opportunity to tell the Senate on the record your connections and participation, if any, with respect to this program.

Mr. O'NEILL. Absolutely none.

Mr. TURNER. Well, according to the Watergate Committee Report, here we have a political program conceived and approved by Mr. Haldeman at the White House, coordinated by a top official of the Office of Management and Budget, Mr. Gifford, and utilizing OMB personnel as followthrough at departmental and regional levels, and you knew nothing about it.

Mr. O'NEILL. I wonder, Mr. Turner, if Mr. Gifford has indicated that the statements you make are true. I am not sure that he has.

Mr. TURNER. Mr. Gifford——

Mr. RYTER. If counsel will let me interrupt here, I think what we are talking about here is the discussion of the possibility of implementing such a program. I don't know—do you have in the record the actual minutes of the implementation of the program, what we have—a discussion of the possibilities of implementing such a program?

Mr. TURNER. Books Numbered 18 and 19 of the Senate Watergate Committee's hearings and the committee's final report [1] show quite clearly that the program was not only suggested but was in fact implemented. But the point is that you, Mr. O'Neill deny having anything to do with that and that is all I am really interrogating you for, sir. But I will say this. Why shouldn't you have known? Did you not have sufficient managerial mechanisms as an Assistant Director of the Office of Management and Budget to be alerted to such activities which were apparently going on above and beneath you? Was there no way in which you could know that this was a policy that was being pursued?

Mr. O'NEILL. First, I would like to say I resent the implication that it was going on beneath me and then I would like to say, without any temper, that OMB is not, and in my judgment, should not be an audit agency. Our primary role is to help the President, whomever he may be, understand what the options are as he looks at policy questions, to understand what the implications are going to be if we begin spending money in one area as opposed to another or stop spending in one area as opposed to another, to advise him what in our best judgment we think are the institutional effects of the Federal Government launching into some new area or withdrawing from some area, and it seems to me that is our principal, primary, necessary responsibility and I do not think we should have, as suggested by your question, an audit responsibility dealing with political questions at all. To the maximum extent possible—I think that ought to be 99.9 percent possible—OMB should be a non-political agency.

Mr. TURNER. Well, I quite agree with you and I am glad to have that for the record but I do wish to say that the particular actions that were referred to in the final report of the Senate Watergate

[1] Final Report of the Select Committee on Presidential Campaign Activities, U.S. Senate. Report No. 93–981, June 1974. Chapter 3, pp. 361–444. References to the appropriate testimony and documents in the Select Committee's hearing records are included in the Final Report.

Committee did relate to grants, loans, contracts, administrative decision-making at the departmental level, and I believe there is a management function in the Office of Management and Budget.

Mr. O'NEILL. Yes.

Mr. TURNER. And I merely make the comment that that management function in the Office of Management and Budget may very well not have been strong enough to be able to become so alerted to the politicization of the department. I am sure you would be the first to agree that any politicization of a department or agency would not be correct and good government management.

Mr. O'NEILL. Absolutely.

Mr. TURNER. May I ask you question No. 4 because I don't want to get into the facts and details since you deny that you have had any knowledge of it.

Mr. O'NEILL. All right.

Mr. RYTER. With regard to the facts and details, Mr. Turner, isn't it a fact that counsel has asked the Senate Watergate Committee to run a check on Mr. O'Neill and whether or not he is mentioned at any point in the record of the Watergate investigation? And is it not a fact that that has been done and there is no mention of the gentleman before us in the discussions or in the Watergate record or transcript?

Mr. TURNER. I don't know what chief counsel of the committee has asked for. I have gone through many documents here which have been presented to me which are of public record. Although I have not seen Mr. O'Neill's name mentioned, I have had explained to me quite thoroughly by these documents the program that I am mentioning——

Mr. RYTER. Are you suggesting no such request has been made? In other words, the Watergate transcript is on tape, is on computer printout and a check was asked to be run even suggesting——

Mr. TURNER. Did you ask for a check?

Mr. RYTER. I have not asked for a check. Have you asked for a check? Is that a matter of record?

Mr. TURNER. Mr. W. P. Goodwin, Jr., counsel to the full committee, is here. Maybe he could explain whether such a check was made.

Mr. GOODWIN. The committee made such a request of the Rules Committee, which has custody of the Watergate Committee's files, and we will insert in the record the results of that request.

Mr. TURNER. Thank you, sir.

[The information referred to follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
October 18, 1974.

Hon. HOWARD W. CANNON,
Chairman, Committee on Rules and Administration, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Shortly after the election recess the Committee on Government Operations will conduct hearings on the nomination of Paul H. O'Neill to be Deputy Director of the Office of Management and Budget.

It would be most helpful to the Committee in preparing for this hearing to have any and all information about Mr. O'Neill contained in the files of the Select Committee on Presidential Campaign Activities, which are now in the custody of your Committee. Therefore, I hereby request that the Committee be granted access to such information.

With all kind wishes, I am

Sincerely yours,

SAM J. ERVIN, Jr.
Chairman.

[That part of the report furnished the Committee not pertaining to Mr. O'Neill has been deleted.]

CHRONOLOGICAL REPORT PAGE 1

DATE OF EVENT: JANUARY 10, 1972 720110
MONDAY, JANUARY 10, 1972 EHRLICHMAN MET WITH HALDEMAN AT 8:00 A.M.; WENT TO THE ROOSEVELT ROOM AT 8:15 A.M.; MET WITH NIXON AT 11:30 A.M.; WENT TO CAR AT WEST BASEMENT AT 12:15 P.M.; WENT TO INTERNATIONAL CLUB, WILLIAMSBURG ROOM TO LUNCH WITH ADVISORY COMMISSION ON INFORMATION AT 12:30 P.M.; MET WITH COLE, PRICE, HAEBNER AT 2:30 P.M.; WHITAKER, WALDMANN, HARPER, STEIN, O'NEILL, RICE, KELLER AT 3:30 P.M.; HALDEMAN AT 6:00 P.M.
SOURCE: EHRLICHMAN, JOHN UNKNOWN WASHINGTON, DC
SOURCE-REF: EHRLICHMAN 1972 APPOINTMENT LOGS P. 2
RECORD CONTROL NO: 73-17892

DATE OF EVENT: JANUARY 15, 1972 720115
SATURDAY, JANUARY 15, 1972 EHRLICHMAN MET WITH SHULTZ, O'NEILL, WHITAKER AND COLE AT 12:00 NOON
SOURCE: EHRLICHMAN, JOHN UNKNOWN WASHINGTON, DC
SOURCE-REF: EHRLICHMAN 1972 APPOINTMENT LOGS P. 3
RECORD CONTROL NO: 73-17887

DATE OF EVENT: JANUARY 21, 1972 720121
FRIDAY, JANUARY 21, 1972 EHRLICHMAN WENT TO ROOSEVELT ROOM AT 8:15 A.M.; MET WITH COLSON AT 9:45 A.M.; BONAFEDE AT 11:00 A.M.; O'NEILL, KOROLOGOS, MORGAN, COLE, MOREY, COOK AND JOHNSON AT 11:30 A.M.; BEKINS AT 12:30 P.M.; TO MESS FOR LUNCH WITH HARPER AT 1:00 P.M. TO CABINET ROOM FOR MEETING WITH MAGRUDER ET AL AT 3:00 P.M.; LINDSAY AT 4:00 P.M.
SOURCE: EHRLICHMAN, JOHN UNKNOWN WASHINGTON, DC
SOURCE-REF: EHRLICHMAN 1972 APPOINTMENT LOGS P. 4
RECORD CONTROL NO: 73-17883

DATE OF EVENT: JANUARY 24, 1972 720124
MONDAY, JANUARY 24, 1972 EHRLICHMAN MET WITH HALDEMAN AT 8:00 A.M.; WENT TO ROOSEVELT ROOM AT 8:15 A.M.; WENT TO ROOSEVELT ROOM FOR MEETING WITH RIZZO, DAVID, FERGUSON, MOAK, WEINBERG, ZECCA, VAN DUSEN, HAMBERGER, ROBB,

PATTERSON, O'NEILL, WARE AND MORGAN AT 11:30 A.M.; MET WITH NIXON AT 2:00 P.M.; HALDEMAN AT 3:20 P.M.; MCLANE AT 3:45 P.M.; TO ROOSEVELT ROOM FOR SWEARING-IN OF SANCHEZ AT 4:50 P.M.
SOURCE: EHRLICHMAN, JOHN UNKNOWN WASHINGTON, DC
SOURCE-REF: EHRLICHMAN 1972 APPOINTMENT LOGS P. 5
RECORD CONTROL NO: 73-17881

DATE OF EVENT: JANUARY 27, 1972 720127
THURSDAY, JANUARY 27, 1972 EHRLICHMAN WENT TO HALDEMAN'S OFFICE AT 8:00 A.M.; ROOSEVELT ROOM AT 8:15 A.M.; MET DEAN AT 10:50 A.M.; TO STANS RESIGNATION ANNOUNCEMENT AT 11:00 A.M.; SEMPLE AT 11:30 A.M.; LUNCH WITH STAFF AT 12:30 P.M.; TO ROMNEY'S OFFICE TO MEET WITH HYDE, MAXWELL, O'NEILL, MEAD, GARTLAND AND THOMPSON AT 2:00 P.M.; TO BIRTHDAY PARTY FOR COLE
SOURCE: EHRLICHMAN, JOHN UNKNOWN WASHINGTON, DC
SOURCE-REF: EHRLICHMAN 1972 APPOINTMENT LOGS P. 6
RECORD CONTROL NO: 73-17878

DATE OF EVENT: JANUARY 31, 1972 720131
MONDAY, JANUARY 31, 1972 EHRLICHMAN WENT TO HALDEMAN'S OFFICE AT 8:00 A.M.; ROOSEVELT ROOM AT 8:15 A.M.; MET WITH JORDAN, BROWN AT 10:00 A.M.; TO AGNEW'S OFFICE TO MEET WITH DEAN, YOUNG, LATIMER AT 11:00 A.M.; TO ROOSEVELT ROOM-HRI-TO MEET WITH RICHARDSON, VENEMAN, HODGSON, SILBERMAN, MACGREGOR, KORDLOGOS, O'NEILL, COOK, COLE, TIMMONS AND KURZMAN AT NOON; NIXON AT 1:40 P.M.; PATTERSON AT 2:30 P.M.; ENGMAN AT 3:45 P.M.; NIXON AT 4:00 P.M.; WHITAKER, WALKER, SECAL, RICE, ALM, TRAIN, RUCKELSHOUS, FAIRBANKS, MCADAMS, BARRETT AT 5:15 P.M.; DINNER/MEETING WITH HALDEMAN AT 6:30 P.M.
SOURCE: EHRLICHMAN, JOHN UNKNOWN WASHINGTON, DC
SOURCE-REF: EHRLICHMAN 1972 APPOINTMENT LOGS P.
RECORD CONTROL NO: 73-17876

DATE OF EVENT: FEBRUARY 16, 1972 720216
FEBRUARY 16, 1972, EHRLICHMAN DEPARTED FROM LA GUARDIA AT 11:30 AM; ARRIVED AT ANDREWS THEN CAR TO WHITE HOUSE AT 12:15 PM; STAFF LUNCH AT 1:50 PM; MET WITH CALIFANO AND AUSTEN AT 2:45 PM; MCCRACKEN AT 3:00 PM; TO HALDEMAN'S OFFICE TO MEET WITH MALEK, MITCHELL, SHULTZ, COLE AT 4:50 PM; NIXON AND KLEINDIENST AT 4:30 PM; NIXON AND SHULTZ AT 5:00 PM; TO CABINET ROOM FOR MEETING ON BUSING WITH MITCHELL, RICHARDSON, MORGAN, JACKSON, BROWN, HOUSTON, SIMMONS, BROWN, SHULTZ, O'NEILL, DAM, GARMENT, PRICE, MEAD AND CLAUSON
SOURCE: EHRLICHMAN, JOHN UNKNOWN UNKNOWN
SOURCE-REF: EHRLICHMAN 1972 APPOINTMENT LOGS P. 10
RECORD CONTROL NO: 73-19271

DATE OF EVENT: FEBRUARY 18, 1972 720218
FEBRUARY 18, 1972, EHRLICHMAN WENT TO ROOSEVELT ROOM AT 8:15 AM; MET WITH PETERSON AT 9:00 AM; SHULTZ, MORGAN, O'NEILL, GARMENT, PRICE AND DAM ON BUSING AT 10:00 AM; DAVIS AT 11:45 AM; KILPATRICK AT 2:30 PM; TO CAR AT WEST

CHRONOLOGICAL REPORT

DATE OF EVENT: FEBRUARY 18, 1972 720218 (CONT.)
BASEMENT AT 3:40 PM; TO VOLPES APARTMENT AT 3:45 PM
SOURCE: EHRLICHMAN, JOHN UNKNOWN UNKNOWN
SOURCE-REF: EHRLICHMAN 1972 APPOINTMENT LOGS P. 11
RECORD CONTROL NO: 73-19269

DATE OF EVENT: FEBRUARY 23, 1972 720223
FEBRUARY 23, 1972, EHRLICHMAN WENT TO ROOSEVELT ROOM AT 8:15 AM; MET WITH HELMS AT 10:00 AM; TO ROOSEVELT ROOM FOR WELFARE REFORM MEETING WITH RICHARDSON, VENEMAN, COLE, HODGSON, SILBERMAN, MACGREGOR, KOROLOGOS, O'NEILL, TIMMONS, KURZMAN AND MOSKOW AT 11:00 AM; HODGSON AT NOON; LUNCH WITH HAMLIN, HAMLIN AND EHRLICHMAN AT 12:30 PM; TO MITCHELL'S OFFICE TO MEET WITH DOLE, RHODES, HARLOW, HERMAN, MAGRUDER, TIMMONS, COLE AND HARPER AT 2:00 PM; MET WITH NIXON AT 3:50 PM; GARMENT AND MORGAN AT 5:00 PM; TO SWISS EMBASSEY FAREWELL TO LUCET AND JUCET AT 8:00 PM
SOURCE: EHRLICHMAN, JOHN UNKNOWN UNKNOWN
SOURCE-REF: EHRLICHMAN 1972 APPOINTMENT LOGS P. 12
RECORD CONTROL NO: 73-19265

DATE OF EVENT: FEBRUARY 28, 1972 720228
FEBRUARY 28, 1972, EHRLICHMAN WENT TO CABINET ROOM TO MEET WITH RICHARDSON, HASTINGS, MOORE, MITCHELL, KLEINDIENST, DUNBOUGH, ERICKSON, SHULTZ, O'NEIL, DAM, MORGAN, MEAD, CLAUSON, GARMENT, PRICE, LEZAR, DENT, TIMMONS, COOK AT 1:30 PM; TO ROOSEVELT ROOM TO MEET RICHARDSON, COLE, HODGSON, SILBERMAN, MACGREGOR, KOROLOGOS, O'NEILL, COOK, TIMMONS, KURZMAN, FALK AND MOSKOW AT 3:30 PM; TO SHULTZ' OFFICE TO MEET WITH MITCHELL AND MORGAN AT 6:00 PM
SOURCE: EHRLICHMAN, JOHN UNKNOWN UNKNOWN
SOURCE-REF: EHRLICHMAN 1972 APPOINTMENT LOGS P. 13
RECORD CONTROL NO: 73-19263

DATE OF EVENT: MARCH 7, 1972 720307
MARCH 17, 1972 EHRLICHMAN MET GOP LEADERSHIP AT 8:00 AM; MET NIXON AT 11:30 AM;LUNCH IN MESS WITH SHULTZ, FLANIGAN, PETERSON, ROCHE AND GERSTENBERG AT 12:45 PM;RHODES, HARPER AND MICHEL AT 3:00 PM;O'NEILL, KELLER AND HULLIN AT 4:45 PM;COLSON AND MACGREGOR AT 6:00 PM
SOURCE: EHRLICHMAN, JOHN UNKNOWN UNKNOWN
SOURCE-REF: EHRLICHMAN 1972 APPOINTMENT LOGS P. 14
RECORD CONTROL NO: 73-21916

DATE OF EVENT: MARCH 10, 1972 720310
FRIDAY, MARCH 10, 1972 EHRLICHMAN WENT TO HALDEMAN'S OFFICE AT 8:00 AM;TO ROOSEVELT ROOM AT 8:15 AM;MET WITH DEAN, FIELDING, TIMMONS, COLSON, JOHNSON AND MOORE AT 9:00 AM;NIXON AND CONNALLY AT 10:00 AM; NIXON, CONNALLY, RICHARDSON, SHULTZ AND FLEMMING AT 10:30 AM;NIXON AND CABINET COMMITTEE ON BUSING AT 11:00 AM;TO ROOSEVELT ROOM TO MEET WITH RICHARD- SON, VENEMAN, SILBERMAN, FALK, MACGREGOR, KOROLOGOS, O'NEILL, TIMMONS, SHULTZ AND MOSKOW AT 12:30 PM; NIXON AT 3:20 PM;COLSON, KLEINDIENST, MARDIAN, MOORE AND JOHNSON AT 4:30 PM;DEPARTED ANDREWS FOR GREENBRIARS, WEST VIRGINIA AT 7:00 PM

SOURCE: EHRLICHMAN, JOHN UNKNOWN UNKNOWN
SOURCE-REF: EHRLICHMAN 1972 APPOINTMENT LOGS P. 15
RECORD CONTROL NO: 73-20605

DATE OF EVENT: MARCH 13, 1972 720313

MARCH 13, 1972 EHRLICHMAN MET HALDEMAN AT 8:00; TO ROOSEVELT ROOM AT 8:15;MET DEAN, FIELDING, TIMMONS, COLSON, JOHNSON AND MOORE AT 9:00; MET MORGAN AT 10:15;MET MORGAN AND PRICE AT 10:30; MET SHULTZ AT 11:45;MET KLEIN AT 12:15; HAD LUNCH WITH SECRETARY RICHARDSON AT 1:00;MET ED NIXON AT 2:30;MET MORGAN AT 3:30;MET MORGAN, CLAWSON, HASTINGS, MCAULIFFE, O'NEILL AT 4:00;MET BROWN, JACKSON, SIMMONS AND GARMENT AT 5:00 PM

SOURCE: EHRLICHMAN, JOHN UNKNOWN UNKNOWN
SOURCE-REF: EHRLICHMAN 1972 APPOINTMENT LOGS P. 15
RECORD CONTROL NO: 73-21642

DATE OF EVENT: MARCH 14, 1972 720314

MARCH 14, 1972 EHRLICHMAN MET HALDEMAN AT 8:00; TO ROOSEVELT ROOM AT 8:15;MET JOHNSON, COLSON, MOORE, MARDIAN, DEAN, FIELDING, TIMMONS, ROSE AT 9:00;MET NIXON AND MORGAN AT 10:45; MET TOTH (LA TIMES) AT 12:30; MET GOOCH AT 1:00;MET SELLAR AT 2:00;MET KROGH 3:00;MET MACGREGOR, COLSON, DAM, O'NEILL, MORGAN, AND BALL ON BUSING AT 5:00

SOURCE: EHRLICHMAN, JOHN UNKNOWN UNKNOWN
SOURCE-REF: EHRLICHMAN 1972 APPOINTMENT LOGS P. 16
RECORD CONTROL NO: 73-21643

DATE OF EVENT: APRIL 10, 1972 720410

APRIL 10, 1972 EHRLICHMAN WENT TO HALDEMAN'S OFFICE AT 8:00; TO ROOSEVELT ROOM AT 8:15;MET WITH JORDAN AT 9:00, MET WITH RICHARDSON, MARLAND, LYNN, O'NEILL, ENGMAN, AND SAUNDERS AT 10:30;MET IN ROOSEVELT ROOM WITH HALDEMAN AT 12:00;HAD LUNCH WITH KLEINDIENST AT 1:00;MET WITH SECRETARY VOLPE, SHULTZ, KROGH, JACK YOUNG, WEINBERGER AT 2:00;MET WITH HALDEMAN AT 3:40; MET IN ROOSEVELT ROOM WITH HILLS AAS (FRIEDERSDORF, KINGSLEY) AT 4:00; MET IN EAST ROOM-RECEPTION FOR BUSINESSMAN AT 5:00, MET WITH CHEEK, PRESIDENT OF HOWARD UNIVERSITY, AT 6:30

SOURCE: EHRLICHMAN, JOHN UNKNOWN UNKNOWN
SOURCE-REF: EHRLICHMAN 1972 APPOINTMENT LOGS P. 20
RECORD CONTROL NO: 73-21661

DATE OF EVENT: APRIL 14, 1972 720414

APRIL 14, 1972 EHRLICHMAN WENT TO ROOSEVELT ROOM AT 8:15;MET WITH LAMB (CINCINNATI) AT 9:45;MET WITH DONALD (IRS MAN) 11:00; MET WITH MICHEL AT 11:30;MET FOR LUNCH WITH JUDGES WALTER MCGOVERN, MORELL SHARP, GEORGE BOLDT, AND O'NEILL AT 12:30;DEPARTED DULLES AIRPORT 6:15; ARRIVED DENVER 8:00

SOURCE: EHRLICHMAN, JOHN UNKNOWN UNKNOWN
SOURCE-REF: EHRLICHMAN 1972 APPOINTMENT LOGS P. 22
RECORD CONTROL NO: 73-21665

DATE OF EVENT: MAY 4, 1972 720504

MAY 4, 1972 EHRLICHMAN WENT TO HALDEMAN'S OFFICE 8:00; MET WITH MITCHELL AT 9:15; JOINED BY HALDEMAN 9:45; WENT TO

DATE OF EVENT: JUNE 20, 1972 720620
JUNE 20, 1972 EHRLICHMAN WENT TO HALDEMAN'S OFFICE 8:00; TO ROOSEVELT ROOM AT 8:15;MET WITH HALDEMAN AND MITCHELL AT 9:00; JOINED BY DEAN AT 9:45;JOINED BY KLEINDIENST AT 9:55;MET WITH NIXON AT 10:30; MET WITH LANE (PER JOHN CONNALLY)AT 12:00;LUNCH WITH WILKINS AT 1:00; MET WITH GRIFFIN, KORCLOGOS, AND MORGAN AT 2:35;MET WITH BENNETT AND KORCLOGOS AT 3:00;SOCIAL SECURITY-MACGREGOR, COOK, KORCLOGOS, COLE, EVANS, WEINBERGER AND O'NEILL AT 4:00;MET WITH GANNON AT 6:00
SOURCE: EHRLICHMAN, JOHN UNKNOWN UNKNOWN
SOURCE-REF: EHRLICHMAN 1972 APPOINTMENT LOGS P. 34
RECORD CONTROL NO: 73-21735

DATE OF EVENT: DECEMBER 4, 1972 721204
DECEMBER 4, 1972 EHRLICHMAN MET KLEINDIENST 10:45; MET CHAPIN AT 12:15;MET IN SHULTZ'S OFFICE WITH TOWNSEND AT 2:30;MET WALKER AT 4:00;TO ROOSEVELT ROOM-BUDGET MEETING WITH WEINBERGER, COLE, SHULTZ, STEIN, COHN, O'NEILL, MORRILL AND CARLUCCI, ASH, OUT OF TOWN AT 4:30
SOURCE: EHRLICHMAN, JOHN UNKNOWN UNKNOWN
SOURCE-REF: EHRLICHMAN 1972 APPOINTMENT LOGS P. 66
RECORD CONTROL NO: 73-20159

DATE OF EVENT: DECEMBER 5, 1972 721205
DECEMBER 5, 1972 EHRLICHMAN MET FLANIGAN AT 9:00;MET NIXON AND SHULTZ AT 10:00;LUNCH WITH BURGER-AT SUPREME COURT FROM 12:00-1:00; MET AGNEW AT 1:30;BUDGET MEETING-ROOSEVELT ROOM WITH WEINBERGER, COLE, SHULTZ, STEIN, COHN, O'NEILL, MORRILL AND CARLUCCI AT 2:30;MET DECKER AT 5:15; DEPARTED FOR CAMP DAVID FROM ANACOSTIA AT 6:30

Mr. TURNER. Question No. 4. What also concerns Senator Metcalf is the degree to which OMB's advice to the Chief Executive has been increasingly influenced by White House personnel during the past few years. Would you agree that the role of OMB, and I believe you already stated this, should be objective and professional in advising the President and objective and equitable in establishing any guidelines for the agency?

Mr. O'NEILL. Certainly.

Mr. TURNER. If so, what steps do you intend to take or suggest to assure that the Office of Management and Budget during the Ford administration will operate in a role of objectivity and professionalism with respect to its advisory and managerial responsibilities.

Mr. O'NEILL. I will be as vigilant as I can 24 hours a day in seeing that there is no encroachment on our central role as I have expressed it and as you have. But I do have one suggestion that I would like to put on the record. It seems to me there really is a significant misunderstanding of the role of OMB as I have known it and as I think it should be. It is represented by a flood of letters that come to the agency from members, from people around the country, asking for some special dispensation on this grant or that project. In the past I think we have been fairly religious in trying to send those to the departments and agencies and let the departments and agencies who, after all, have the legal responsibility to deal with those questions to answer those letters. It would be very nice if they didn't come to the OMB in the first instance and there was a greater appreciation of the idea that OMB is not a grant-making agency and in my judgment shouldn't have anything to do with any grant or any project that is made by any agency of this government.

Mr. TURNER. Well, now, I am reminded of the fact that during the time I was general counsel with the Subcommittee on Intergovernmental Relations we passed the Intergovernmental Cooperation Act of 1968 and title IV of that act eventually required certain coordination at in a sense the OMB level as to projects, programs, loans and grants and how they fitted into the planning of the local and State areas.

Mr. O'NEILL. Yes.

Mr. TURNER. So the OMB in order to get into that, developed a procedure identified as "A–95" and set up a whole group of personnel to monitor the program. So in fact OMB does have an informational if not a quasi-operational responsibility with respect to Federal loans, grants, contracts and other——

Mr. O'NEILL. I agree with you but it is a management role. It is not a role of final decision making dispensation of the taxpayers' dollars nor do I think we should have that kind of responsibility.

Mr. TURNER. Now, my second line of questioning, and then I want to turn to Mr. Richard Wegman, who is the counsel for Senator Ribicoff, and who has a question for you, but I do want to explore this with you because it is of very essential concern to Senator Metcalf.

Title VIII of the Congressional Budget and Impoundment Control Act of 1974 requires the Director of OMB, among others, to cooperate with the Comptroller General in the development by GAO of an up to date inventory, and these are quotes: "Up to date inventory and directory of sources and information systems containing fiscal, budgetary

and program-related data and information and a brief description of their content."

Have any such inventories or directories of sources been prepared by any of the executive agencies and departments in connection with this project?

Mr. O'NEILL. I can't give you a direct response.

Mr. TURNER. I understand that and I want to say that if you do not know, would you supply the correct answer to that for the record. I will go down these rather rapidly. If you do not know the answers, that will be for the record. Has OMB made any effort to determine what inventories or directories are presently available in the Department? Have you started to go into the departments and see what they——

[The following was subsequently supplied for the record by Mr. O'Neill:]

RESPONSE RELATING TO TITLE VIII OF THE BUDGET REFORM ACT

The Office of Management and Budget has been and will continue to cooperate with the Comptroller General in meeting his requirements under Section 203 (b)(1) of the Act for developing and maintaining a directory of sources of information.

The CG's September 20, 1974 Report to the Congress, prepared in accordance with the requirements of Section 202(e) of the Act, indicates that excellent progress is being made in developing a pilot directory. All Federal agencies, including OMB, have provided information to assist GAO in preparing this directory and they expect it to be available in the latter part of 1974.

We also believe that we have been responsive to the provisions of Section 203 (a)(1) of the Act and similar provisions in the 1970 Act which require OMB to provide information on the nature and location of information upon request by the Congress and other offices in the legislative branch. For example:

The Senate Committee on Foreign Relations and the House Committee on Foreign Affairs expressed an interest in available reports on foreign currency. A list of available reports, the agency responsible for the reports, frequency of publication and an abstract of their content was prepared and transmitted to both committees.

A request from the House Committee on Agriculture expressed a need for periodic reports on foreign currencies related to P.L. 480. A summary of available reports, their content and frequency of publication was prepared and transmitted to Chairman Poage.

In response to a request from the Joint Economic Committee, a special computer program was developed by OMB for producing detailed information on subsidy programs for all Federal agencies.

In addition, OMB has given the GAO computer tapes for the 1975 budget and the Catalog of Federal Domestic Assistance as well as systems and documentation for the above tapes and the budget preparation system, the budget status systems, legislative tracking system, and OMB's computer tape library system.

Mr. O'NEILL. It is my understanding, Mr. Turner, that OMB and the Treasury together have over the past year mounted a very serious effort in this whole area to be more responsive, recognizing that in the past the performance has been less than what was desired under the Legislative Reorganization Act of 1970, and I think I am prepared to commit to you that we will continue to give this serious attention and within the limitation of our budget resources we are going to work with the GAO and Treasury and the other named parties to make this thing work.

Mr. TURNER. Well, now, we want to know your plan. I mean this is what Senator Metcalf would want to know, to get from you for the

record your explanation as to securing such inventories and information sources from the agencies and making them available to GAO right now. You have to move. This Congressional Budget Control Act is now in operation. Next year is going to be the first big year for budget control. Information is the name of the game in budget control and we want the OMB to move on it. Do you have plans, and if you do have such plans, will you submit them for the record?

Mr. O'NEILL. I will.

[The following was subsequently supplied for the record by Mr. O'Neill:]

RESPONSE RELATING TO TITLE VIII OF THE BUDGET REFORM ACT

We do not have any specific plans for development of inventories of data sources but will continue to cooperate with the GAO in this regard and respond to any inquiries which we receive.

A broader plan for addressing the information needs of the Congress prepared in accordance with the provisions of the 1970 Act was submitted to the Congress in March 1974. We currently are working closely with the GAO to reappraise this plan in light of the broader requirements of the 1974 Act. Copies of the revised plan will be made available to the Congress when it is completed.

Mr. TURNER. Now, as you are aware, and this has been a series of negotiations for several years, in the view of Congress, OMB was less than enthusiastic in its approach toward standardization of terminology and classifications for fiscal, budgetary and program-related information. Accordingly, in title VIII we reassigned lead responsibility for this work to the Comptroller General because the work was just not getting done and it was necessary for congressional budget considerations. OMB is now directed to cooperate with GAO on this and as Deputy Director, you will be directly responsible for this standardization effort.

Are you prepared now to assure us that if confirmed, you will cooperate fully with the Comptroller General and will do everything in your power to see that congressional interests are accommodated with respect to this informational problem?

Mr. O'NEILL. Yes.

Mr. TURNER. Now, will you assign the necessary cooperative staff within OMB toward this effort?

Mr. O'NEILL. Within the limitations of the budget resources provided by the Congress.

Mr. TURNER. Now, this is another question and it is the final question on this particular subject that you can submit for the record. I know you may not have the answer. But it is my understanding that the Office of Management and Budget has changed the functional classifications or categories for the fiscal year 1976 budget submission. Is that not correct?

Mr. O'NEILL. About 8 months ago OMB went to work on alternative classification schemes and submitted those to the General Accounting Office and as well to all the departments and agencies and I believe the General Accounting Office has agreed with us on changes for the preparation of the fiscal 1976 budget, yes. I would be happy to provide that for the record for you if you would like it.

Mr. TURNER. Well, I think we would like to know the plans that OMB has for insuring that future changes in these classifications are fully in accord with the procedures contained in title VIII of

the Congressional Budget Control because if you keep changing classifications and the information in the boxes, members of Congress, are going to have a hard time understanding this information so that they can make up their minds.

Mr. O'NEILL. I agree. I am really quite surprised by the inference of your question that the GAO didn't check with members of this committee before they agreed with the new scheme.

Mr. TURNER. Well, in any event we have got to bring the GAO and OMB together on this informational capability.

Mr. O'NEILL. I agree.

Mr. TURNER. And it has got to be correct and you as new Deputy Director will take the lead in seeing that we get this proper effort put into proper context.

Mr. O'NEILL. I will.

Mr. TURNER. Thank you.

Senator MUSKIE. Mr. Wegman, you had one question for Senator Ribicoff.

Mr. WEGMAN. Thank you, Mr. Chairman.

Mr. O'Neill, this summer, in its consideration of the Energy Research and Development Administration legislation, the Senate added provisions to assist public intervenors in AEC agency nuclear licensing cases. The provisions would have required preparation of reports on request, and would have provided for reimbursement of some or all of the costs of participation. The House opposed these provisions, as did the OMB, and they were deleted in conference.

Tomorrow this committee begins hearings on President Ford's proposal for a commission to study regulatory reform. Intervenor assistance is one of the key issues which will be under consideration in connection with this legislation.

What is your view on this? Do you see justification for intervenor assistance in certain types of cases, and, if so, when?

Mr. O'NEILL. Mr. Wegman, I haven't thought about it for a long time and I really would not like to take a position without having a chance to review the competing arguments on this question. I would be happy to do that for you.

Mr. WEGMAN. I think that would be very helpful. I think that is one of the issues the committee wants to consider and we appreciate you haven't had a chance to think on that issue, but if you could give us assistance we would very much appreciate it.

Mr. O'NEILL. All right. Very good.

Mr. WEGMAN. Thank you, Mr. Chairman.

[The following was subsequently supplied for the record by Mr. O'Neill:]

RESPONSE REGARDING INTERVENOR ASSISTANCE

The Administration supports increased public participation in regulatory proceedings. We have commented previously on specific proposals to provide direct assistance. While we support appropriate measures to protect consumer interests, we have concerns regarding the degree of Federal involvement and the extent to which such action would interfere or conflict with the efficient conduct of Government business.

This is an issue which the National Commission on Regulatory Reform could review if Congress acts favorably on the proposed joint Commission. I am confident the President would weigh carefully any recommendations of the Commission in this area.

Mr. TURNER. Mr. Chairman, I would request your permission to have placed in the record, two other areas of questions and answers, one on advisory committees and one on housing, the FHA program.

Senator MUSKIE. All right. That will be fine.

Mr. O'NEILL. That is fine. Thank you.

Mr. RYTER. Mr. Chairman, I am sure had Senator Brock returned he would have wanted to associate himself with your remarks about the special qualifications of this gentleman. As far as excellence in government he represents the highest level we have seen of recent date. Senator Brock is very pleased to have this opportunity to forward Mr. O'Neill's nomination for early action by the full committee and the Senate.

Senator MUSKIE. Thank you very much. I would guess that would be the reaction of the committee but I won't try to anticipate.

Thank you very much, Mr. O'Neill. You have been very patient, very cooperative, and I hope it is a harbinger of a healthy relationship.

Mr. O'NEILL. Thank you very much.

[Whereupon, at 12:05 p.m., the committee was adjourned.]

APPENDIX 1

QUESTIONS SUBSEQUENTLY SUBMITTED BY SENATOR METCALF TO MR. O'NEILL AND HIS RESPONSES

QUESTIONS RELATING TO ADVISORY COMMITTEES

Question. Currently, the "committee management secretariat" has a staff of two professionals, one junior professional staff assigned full-time to the function, nevertheless, it is not adequate to do any more than be available on a case-by-case basis. Will additional staff and resources be provided for administration of the Federal Advisory Committee Act?

Response. OMB's Committee Management Secretariat staff was increased during 1974 to three full-time professionals, an Administrative Fellow, detailed into January 1975 and a full-time secretary. Additional staff time has been used on an ad hoc basis.

We will continue to review the needs in this area in the light of available resources. I will personally be involved in this review.

Question. Your predecessor testified before this committee in February concerning the role and function of the Office of Management and Budget regarding advisory committees. Mr. Malek testified that OMB was committed to following the letter and spirit of the Federal Advisory Committee Act, including balanced membership and openness. What actions do you plan to take to insure that advisory committees in the Federal Government meet the requirements of the Federal Advisory Committee Act, and specifically the fair balance and openness provisions?

Response. I certainly agree that OMB should take all reasonable steps necessary to assure that agencies having jurisdiction over advisory committees meet the requirements of the Federal Advisory Committee Act.

OMB's approach has been to focus responsibility for making specific judgments respecting the activities of individual advisory committees on the agency head directly concerned. The agency head is most familiar with the problem area, the functions, and the requirements of the committees in his agency. OMB has operated on the premise that its proper role is to issue general instructions and to assure through its reviews and oversight on an exception basis that the agencies are paying heed to these instructions.

OMB has taken significant steps in recent months to emphasize the importance of both the balance and openness provisions:

March 27, 1974 and July 19, 1974 revisions of OMB Circular A–63, Advisory Committee management, have specified that CMS review agencies plans to attain balanced membership and return for reconsideration if the plan is not reasonable.

April 10, 1974 and July 19, 1974 memoranda from the Deputy Director to agency heads stressed the importance of both the balance and openness provisions.

CMS has conducted weekly seminars over a period of two months for Committee Management Officers or their representatives from some 55 agencies.

CMS, by monitoring the Federal Register and contacting agencies when violations occur, has substantially reduced the frequency of advance notice violations.

When confirmed, I will continue these policies and actions and seek to strengthen them to assure more openness and better balance.

Question. Section 6(C) of the Federal Advisory Committee Act provides for annual reports by the President on the activities, status and changes in the composition of advisory committees in existence during the preceding calendar year. This law provides, and I quote:

"the report shall contain the name of every advisory committee, the date of an authority for its creation, its termination date or the date it is to make a report, its functions, a reference to the reports it has submitted, a statement of whether it is an ad hoc or continuing body, the dates of its meetings, the names and occupations of its current members, and the total estimated annual cost to the United States to fund, service, supply and maintain such committee. Such report shall include a list of those advisory committees abolished by the President, and in the case of advisory committees established by statute, a list of those advisory committees which the President recommends be abolished together with his reasons therefor."

The only exceptions to that requirement provided by law are reports which, in the judgment of the President, should be withheld for reasons of national security. In those instances, the law states, the President, "shall include in such report a statement that such information is excluded."

Are you familiar with the extent to which this law has not been fulfilled in the first two reports by the President submitted under the Act?

There are 13 reporting requirements in Section 6(C) quoted above. Only one—*only one*—is met in the President's annual report. That is a listing of all advisory committees.

The information which the law said should be included in the report is instead put in a box and sent up to the committee. When the first report came up this committee printed and indexed it, so the material would be available. There have been hundreds of requests for and purchases of these reports, which are essential for executive and legislative review of the act. Under the act, OMB is responsible for this report, although it has farmed the job out to GSA, which has not submitted the required report.

Can you assure this committee that the President's Third annual report, which is due at the end of March, will be in compliance with the Federal Advisory Committee Act?

Response. All of the information required to be reported annually to the Congress by section 6(c) of the Act has been reported in each of the first two reporting years, and will, of course, be submitted for this, the third year. This report is quite large and the printing of it for sale to the public resulted in a series of documents weighing over 20 pounds and costing over 60 dollars. We believe that a *summary* report printed and available to the public at low cost which would allow access to more detailed material upon request is the preferred procedure. This is especially true at a time when the budgetary constraints upon the Executive Branch and the public are severe. We are, however, anxious to make our summary report more meaningful and useful and the Committee Management Secretariat staff will continue to work with the Committee toward that end.

QUESTIONS RELATING TO HOUSING AND LOWER-TO-MIDDLE INCOME HOUSING

Question. Could you detail for us what your role was in the decision, announced in January 1973, to suspend practically all of Housing and Urban Development's housing and community development programs—as well as the housing and water and sewer programs of the Farmers Home Administration?

Response. At the time the suspension was under consideration, I was an Assistant Director of OMB, and HUD's (but not the Farmers Home Administration's) housing and community development programs were among my responsibilities. My role in this process involved presenting to the President and his advisers:

the available evidence on what these programs were accomplishing, as well as on what they were costing the Government.

a range of alternatives with respect to these programs.

an analysis of the pros and cons, as OMB and HUD saw them, for each of the alternatives.

OMB's recommendation based on this analysis.

Although the Farmers Home Administration programs were not among my responsibilities, I was asked to contribute to the analysis of those programs in FHA which paralleled programs in HUD.

The actual decision to suspend these programs was made by the President himself.

Question. Did you agree with the stated purposes for the suspension of the HUD housing subsidy programs as set forth in the letter of January 1973 from Kenneth Cole, of the Domestic Council, to Senator Sparkman?

Response. Yes I did. At the time, there was a substantial body of evidence to indicate that these programs were not performing in an acceptable fashion, and that new approaches were needed.

As we viewed it, continuing the subsidy programs while new approaches were being developed would have tied up billions of dollars which would then be unavailable for more promising solutions to the housing problems of lower income families. In fact, use of the authority already on hand at the time the programs were suspended would have committed the tax payers to outlays of over $17 billion.

Question. To what extent did the OMB gather information and data about the operation of the HUD housing programs before the decision was made to suspend those programs? If it did, why was it necessary for HUD to conduct a rush study at the cost of several million dollars to come up with the same conclusions as expressed by Administration spokesmen at the time of the suspension?

Response. By late 1972, it was evident to us in OMB, to a number of HUD officials, and to many people outside the Federal Government, that HUD's subsidized housing programs were not performing in an acceptable fashion. The information available to us was enough to warrant halting commitments under the programs, since each commitment obligated the taxpayers to make payments for 40 years.

Further action with respect to these programs was not warranted until we had learned why the programs were not functioning properly. This, in part, led to the housing study. The primary reason for undertaking the housing study, however, was not to run down the existing programs, but to identify more effective ways of helping families obtain adequate housing.

Question. Was it not true that budgetary considerations played a major role in the decision to suspend the HUD and Farmers Home Administration programs?

Response. The decision to suspend the HUD and Farmers Home Administration housing programs was based on budgetary consideration only to the extent that the benefits produced by these programs were not commensurate with the costs to the taxpayers.

For the most part the suspensions were not based on the need to constrain outlays in 1973 or 1974. In fact, the outlays tend to be quite modest during the first 1–3 years following commitments (especially under the multi-family housing programs such as Section 236, rent supplements, and public housing).

Question. Could you supply for us the increases in outlays that were contemplated for the purpose of providing housing assistance to low and moderate income families for FY 1974–76 at the time the FY 1974 budget was prepared and submitted to the Congress?

Response. The following table shows the estimates of outlays for low and moderate income housing which were prepared as part of the 1974 budget process:

	In millions
1974	2,000
1975	2,300
1976	2,590

(The estimates cover the following programs: Rent Supplements, Section 236 Homeownership Assistance, Section 236 Rental Housing Assistance, and Low-rent Public Housing.)

Question. In view of the recent opinion of the Comptroller General that the suspension of the 236 home ownership program is in effect a recision, not a deferral, would you recommend the reinstitution of the program or would you advise further efforts by the Administration to avoid using that program?

Response. I would recommend against reinstituting the program at this time. Based upon HUD's evaluation of the Section 235 program, I do not believe either the taxpayers' interest or the Nation's housing policy would be well served by reactivating this program.

APPENDIX 2

QUESTIONS SUBMITTED BY SENATOR JACKSON TO MR. O'NEILL AND HIS RESPONSES

QUESTIONS RELATING TO VETERANS READJUSTMENT ASSISTANCE

Question. What do you believe is the Nation's responsibility to the returning veteran, and specifically what role should the OMB serve in ensuring the Government fulfills that responsibility?

Response. I believe America has an obligation to the men and women who have returned from Vietnam service. Vietnam veterans, just as those who served in past conflicts, are willing and eager to take up again their civilian careers. Most have done so without any special help beyond that of the appropriate Federal readjustment and compensation benefits. There are, however, as the President pointed out in his Veterans Day address, some groups of returning veterans who are experiencing great difficulty in finding employment—the younger veteran, the disabled veteran, and the minority veteran. I believe the Nation has a responsibility to assist these latter groups of veterans find a productive role in the economy.

The Office of Management and Budget has been—and is used by the President to facilitate the Government's efforts to fulfill this responsibility. As a staff arm of the Executive Office of the President, OMB has helped mobilize the resources of Federal agencies to address the problems of returning veterans. For example, OMB contributed staff work in development and monitoring of the President's Jobs for Veteran's Program. In this role, as well as in OMB's review of Federal agency budgets, we have continually examined agency proposals as they relate to meeting veterans' needs, testing whether these proposals actually meet the declared goals and whether more effective alternatives are available within resource constraints.

Question. You are a principal advocate of a veto of H.R. 12628—the Veterans Readjustment Act of 1974. What are your reasons for this course of action, considering the cost of living has risen 23% since the current subsistence levels were enacted in 1972?

Response. I do not consider it my role to be an advocate of any position. Rather, I believe it is OMB's essential responsibility to present the facts to the President on issues he must consider for decision.

As you indicate, H.R. 12628 would, among other things, raise basic benefits by 23%. The consequence of this bill would be to add $500 million to the taxpayers' burden, on top of the generous increase proposed by the President. I believe this is a serious consequence in view of our general economic situation.

Question. While Donald Johnson served as Veterans Administrator, the Office of Management and Budget dominated every aspect of VA fiscal policy, from proposed disability cuts for severely disabled Vietnam-era veterans to oppose to adequate and effective readjustment assistance programs for veterans. Do you believe that the Veterans Administration's principal responsibility should be to serve the legitimate needs of the Nation's veterans or to advocate the fiscal policies of the OMB? If there is a conflict of interest, where should the Veterans Administration allegiance lie?

Response. The Office of Management and Budget and the Veterans Administration both are responsible to the President, and, through him, to the American people. I do not believe there is any conflict in these responsibilities. The President looks to the Veterans Administration for advice and program performance in veterans affairs, in consonance with veterans legislation enacted by the Congress. The President looks to the OMB for advice and help in coordinating those aspects of Federal programs which impinge upon other Federal programs, involving competing claims on scarce budgetary resources, legislative issues, or management problems. Upon occasion, there may be cases where the President may be given differing recommendations from VA and OMB, reflecting their differing perspectives and responsibilities. The President decides upon a policy which both VA and OMB carry out. There is not—nor should there be—an OMB or VA policy independent from that of the President.

Question. You served five years with the Veterans Administration prior to transferring to OMB. In view of your extensive experience in veterans affairs, do

you believe that the Veterans Administration has the competence to determine its priorities and policy requirements in an effective, expert and fiscally responsible manner, or does it require substantial assistance from OMB?

Response. I have a high regard for the administrative and program competence of the Veterans Administration. The Veterans Administration seeks assistance from OMB only in the sense that any agency receives help in relating its program to the policies and priorities of the President.

Question. The Veterans Readjustment Assistance Act (the G.I. Bill) is a program in which you have had major responsibility, experience and authority. It affects 12 million veterans and entails over 80 billion dollars in entitlements. The current GI Bill denies effective readjustment assistance to the majority of Veterans, limiting optimum effectiveness to a minority of single veterans in states with readily accessible low-cost public education. The Senate has attempted to rectify these inequities and provide effective readjustment assistance for all veterans through "tuition equalizer" and "accelerated entitlement" amendments to the GI Bill. These efforts have met with stauch opposition from OMB.

Response. I regard the GI bill as a very successful program. Since the inception of the current GI bill, over 5.2 million veterans have trained, and more than 2.5 million are exprected to train this year. The GI bill allows those veterans who wish to further their education and training to choose any of a number of types of programs. I do not believe the Congress has indicated that the intent of the GI bill is, or was to fully finance every veteran's education. Instead, it can be seen as a very substantial financial advantage which the veteran has over his nonveteran counterpart.

Question. Do you believe containing inflation through limiting effective use of the GI Bill is more important than providing veterans with effective readjustment assistance?

Response. I believe that the President's proposal of raising benefits by 18.2% is very generous, considering the burdens placed on the economy and on other Americans by inflation and unemploymet.

Question. Unemployment for veterans aged 20–24 is 12%; for minority veterans it is 23%. The Yankelovich Survey on Youth in America found that 56% of the veterans cited educational background as a job barrier, while only 46% of the vets surveyed felt they were able to make ends meet financially. What consideration have you given to the human consequences of the GI bill's failure to provide effective readjustment assistance for Vietnam-era veterans? What consideration has been given to the economic consequences of hundreds of thousands of unemployed and underemployed veterans consuming billions of dollars in unemployment compensation, welfare, and public service employment, when they could and should be training for productive employment under an equitable and effective GI bill?

Response. Of veterans 20–24 years old, 95% were employed at the end of last August. That statistic ceretainly indicates a fairly good measure of effective readjustment. Certainly, the 290,000 veterans who were unemployed represent a continuing concern, as do the non-veteran unemployed. There are several agencies actively involved in solving veteran unemployment issues. Generally speaking, veterans have lower unemployment rates than non-veterans, indicating progress in our efforts.

Question. What consideration has OMB given to correcting the inequities of the GI Bill to make it not only an effective education and training program, but also a productive and effective way to deal with unemployment and recession?

Response. I feel that there is a basic equity to the present structure. The equal pay structure is based on the fact that veterans equally underwent a period of service in the Armed Forces.

Question. Have you given consideration to the need to improve the effectiveness of the GI bill with regard to providing effective readjustment assistance for veterans who are not in a position to take advantage of the GI bill in the absence of an accelerated entitlement provision? In particular, have you given consideration to the trade off between veterans obtaining effective employment training through a short accelerated entitlement program and the alleged use of GI bill benefits as "income supplements" in program that have not enhanced the employability of veterans in an effective way?

Response. The accelerated entitlement idea is another method to equate the GI bill benefits with costs of education—whatever they may be. I do not believe that is a good idea.

APPENDIX 3

federal register

MONDAY, SEPTEMBER 23, 1974

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PART III

THE PRESIDENT

■

SPECIAL MESSAGE TO CONGRESS ON BUDGET RESCISSIONS AND DEFERRALS

presidential documents

Special Message on Budget Rescissions and Deferrals

To the Congress of the United States:

The recently enacted Congressional Budget and Impoundment Control Act of 1974 provides new procedures for executive reporting and congressional review of actions by the executive branch affecting the flow of Federal spending. It thereby serves to make the Congress a full partner in the continuing struggle to keep Federal spending under control.

The new law provides that the executive branch may seek to alter the normal course of spending either through deferrals of spending actions or by asking the Congress to rescind authority to spend. The use of funds may be deferred unless either House of the Congress enacts a resolution requiring that they be made available for spending. For executive rescission proposals to take effect, the Congress must enact rescission bills within 45 days of continuous session.

Following these procedures, I am today reporting the first in a series of deferrals and proposed rescissions.

As is often the case in the institution of new procedures, and in the implementation of new laws, there are questions as to what the law may require of the executive branch and what the Congress may expect. In this instance, the Attorney General has determined that this act applies only to determinations to withhold budget authority which have been made since the law was approved.

However, I am including in today's submission to the Congress reports on some actions which were concluded before the effective date of the act. While these items are not subject, in the Attorney General's opinion, to congressional ratification or disapproval as are those addressed in the recent law, I believe that it is appropriate that I use this occasion to transmit this information to the Congress.

Reasonable men frequently differ on interpretation of law. The law to which this message pertains is no exception. It is particularly important that the executive and legislative branches develop a common understanding as to its operation. Such an understanding is both in keeping with the spirit of partnership implicit in the law and essential for its effective use. As we begin management of the Federal budget under this new statute, I would appreciate further guidance from the Congress.

The added information on the status of funds not subject to Congressional action is being made available with this in mind. It will also permit a better understanding of the status of some funds reported previously under the earlier impoundment reporting law.

Virtually all of the actions included in this report were anticipated in the 1975 budget, and six of them were taken before July 12, when the new procedures came into effect. Failure to take these actions would cause more than $20 billion of additional funds to become available for obligation. The immediate release of these funds would raise Federal spending by nearly $600 million in the current fiscal year. More significantly, outlays would rise by over $2 billion in 1976 and even more in 1977, the first year in which the new procedures for congressional review of the budget will be in full effect.

The deferrals of budget authority being reported today total $19.8 billion. The major deferrals are:

—Grants for waste treatment plant construction ($9 billion). Release of all these funds would be highly inflationary, particularly in view of the rapid rise in non-Federal spending for pollution control. Some of the funds now deferred will be allotted on or prior to February 1, 1975.

—Federal aid highway funds ($4.4 billion for fiscal year 1975 and $6.4 billion for fiscal year 1976). Release of these funds would also be highly inflationary and would have to be offset by cuts in higher priority programs. Some of the funds are being withheld pending resolution of court cases concerning the environmental effects of proposed highway construction.

—Various programs of the Department of Health, Education, and Welfare ($39.6 million). Pending enactment of the 1975 appropriations, HEW funds are being provided under a continuing resolution. Amounts available under the continuing resolution above the budget request are deferred to preserve the flexibility of the Congress and the Administration in arriving at a final decision on the funding levels for these programs.

The larger of the two rescissions which I am proposing would write off the $456 million of budget authority provided for rural electric and telephone loans at a 2 percent interest rate. The release of these funds would be inconsistent with the legislation enacted in 1973, which limits the availability of 2 percent loans to cases of special need. Loans to borrowers who meet the specified criteria can be financed out of funds provided by the pending Agriculture Appropriations Act.

The deferrals and rescissions covered in this first report are those believed to be of particular interest to the Congress and which would have significant impact on budget spending if released. They are summarized in the attached table. A second report of a series on additional deferrals and rescissions will be submitted to the Congress soon.

Budgetary restraint remains a crucial factor in our efforts to bring inflation under control. In today's environment, we cannot allow excess

Federal spending to stimulate demand in a way that exerts further pressures on prices. And we cannot expect others to exercise necessary restraint unless the Government itself does so.

The responsible apportionment of congressional appropriations and other Federal budget authority is an essential—though often controversial—element of budget execution. Sound management principles and common sense dictate that Federal agencies spend money in an orderly fashion and only to the extent necessary to carry out the objectives for which the spending authority was provided. Current economic conditions require extra care to assure that Federal spending is held to the minimum levels necessary.

The deferrals and rescissions described in the attached report represent an essential step toward the goal of reducing spending and achieving the balanced budget we seek by fiscal year 1976. These actions, by themselves, will not be enough. However, failure to take and sustain this important step would jeopardize our ability to control Federal spending not only during the current fiscal year but, more importantly, for several years to come.

Gerald R. Ford

THE WHITE HOUSE,
September 20, 1974.

SUMMARY
PROPOSED RESCISSIONS AND DEFERRALS
(dollars in thousands)

Item	Budget Authority
Rescissions:	
Appalachian Regional Development Programs:	
Airport Construction*	40,000
Agriculture: Rural Electrification Administration: Loans*	455,635
Deferrals:	
To be deferred part of year:	
Corps of Engineers - General construction	108
Health, Education and Welfare:	
Library resources	5,437
Higher education:	
(University community services)	2,906
(Land grant colleges)	9,500
(State postsecondary education commissions)	350
School assistance in federally affected areas	16,000
Rehabilitation services (innovation and expansion)	5,000
Public assistance (Child welfare services)	375
Environmental Protection Agency:	
Construction Grants*	9,000,000
General Services Administration:	
Automatic data processing fund	4,300
To be deferred for entire year:	
Agriculture: Agriculture research service (Construction)*	770
Commerce: Fisheries loan fund*	4,039
Interior:	
Oregon and California Grant lands*	23,693
Construction and rehabilitation	1,055
Upper Colorado River Basin fund	1,150
State: International Center, Washington, D.C.	500
Transportation: Federal-aid highways	
1975 & prior programs	4,370,090
1976 program	6,357,500
Foreign Claims Settlement Commission:	
Payment to Vietnam prisoners of war	10,500
General Services Administration:	
Automatic data processing fund	14,000
Total	20,322,908

*Action taken prior to enactment of the Impoundment Control Act on July 12, 1974.

Rescission Proposal No.: R75-1

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Sec. 1012 of P.L. 93-344

Agency Appalachian Regional Commission (ARC)	New budgetary resources (P.L. 92-65)	$ 185,000,000
Bureau	Unobligated balance from prior years	240,000,000
Appropriation Title & Symbol Appalachian Regional Development Programs 11X0090 (Section 208 - Appalachian Airport Safety Improvements)	Total Budgetary Resources	425,000,000
	Amount proposed for rescission	40,000,000

JUSTIFICATION: Contract authority of $40,000,000 is proposed for withdrawal pursuant to the Antideficiency Act (31 U.S.C. 665). The airport safety activities provided for under this contract authority are already being achieved under the authority for the FAA program for navigation aids, the national program of grants-in-aid for airports and by State and local governments through ARC's Supplemental Grant authority. The Federal Cochairman of ARC does not plan to request an appropriation to liquidate this contract authority prior to the expiration of the authorization on June 30, 1975, and has so notified the State members of the Commission.

ESTIMATED EFFECTS: The withdrawal of this contract authority will not significantly affect the ability of localities in the Appalachian region to improve their airports because of the existence of other airport construction and safety programs.

Had there been an appropriation in 1975 to liquidate this contract authority, this withdrawal would represent outlay savings of approximately $2,000,000 in FY 1975 and future savings of approximately $4,000,000 in FY 1976 and $9,000,000 in FY 1977. The FY 1975 savings are assumed in the latest budget estimates. Thus, this withdrawal has the effect of maintaining the current budget estimates.

A BILL

To delete the contract authority contained in Section 208 of the Appalachian Regional Development Act of 1965

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That,

Subsection (f) of Section 208 of the Appalachian Regional Development Act of 1965 (85 Stat. 169, 40 App. U.S.C. 208) is deleted.

Rescission Proposal No.: R75-2

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Sec. 1012 of P.L. 93-344

Agency: Agriculture	New budget authority (P.L. _____) $ _____
Bureau: Rural Electrification Administration	Other budgetary resources 455,635,000
Appropriation Title & Symbol: Loans 12X3197	Total Budgetary Resources 455,635,000
	Amount proposed for rescission 455,635,000

Justification

Public Law 93-32, approved May 11, 1973, amended the Rural Electrification Act by establishing the Rural Electrification and Telephone Revolving Fund (RETRF). Insured electric and telephone loans are now financed from this fund. Public Law 93-32 recognized and dealt with two major objectives which were particularly essential to the reform of the REA program. First, it limited the availability of Federally insured loans at the "special" 2% interest rate to those electric or telephone borrowers in rural areas with a definite need as defined explicitly in the legislation. Second, it provided that in those areas in which the borrowers are able and can afford to help themselves, credit and assistance will come from the private sector.

The funds now proposed for recission, when appropriated, were for direct Government loans at 2% interest for all borrowers in rural areas for the purposes authorized in Sections 4 and 201 of the Act. We believe that the Congress in enacting Public Law 93-32, subsequent to this authorization, recognized that the need for the indiscriminate use of a 2% interest rate should now be limited to those borrowers meeting the criteria for need expressed in Section 305(b) of the Act, as amended by P.L. 93-32.

Estimated Effects

No effect is anticipated since use of the funds is not planned and the needs of the borrowers for insured loans at the special rate can be met within levels of funding to be provided when the Appropriation Act is enacted.

If the Department were to obligate these funds in 1975, they would be made available to borrowers that do not qualify under current law and added spending would result as follows:

	FY 1975	FY 1976	FY 1977
Electric loans.....	$122,155,333	$122,155,333	$122,155,334
Telephone loans.....	29,722,842	29,722,842	29,722,841
TOTAL.....	$151,878,175	$151,878,175	$151,878,175

DEPARTMENT OF AGRICULTURE
RURAL ELECTRIFICATION ADMINISTRATION
LOAN AUTHORIZATIONS

Authorizations provided under this heading in the Act of August 22, 1972 (Public Law 92-399) are reduced in the following amounts: rural electrification program, $366,466,000, and rural telephone program, $89,168,525.

42-657 O - 74 - 6

Deferral No.: D75-1

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Sec. 1013 of P.L. 93-344

Agency Department of the Army	New budget authority (P.L. _____)	$ - 0 -
Bureau Corps of Engineers, Civil	Other budgetary resources	108,000
Appropriation Title & Symbol Construction, General, COE, Civil 96X3122	Total Budgetary Resources	108,000
	Amount to be deferred part of year	_____
	Amount to be deferred for entire year	108,000

Justification

Pursuant to the Antideficiency Act (31 U.S.C. 665), funds for the construction of Lafayette Reservoir, Indiana, have been placed in reserve for contingencies because environmental opposition to the project required that a restudy of the project be conducted. An environmental study has been commissioned to reassess and update an earlier environmental impact statement which had been prepared in accordance with the National Environmental Protection Act, P.L. 91-190. A decision on the next steps will be made after review of the completed study.

Estimated Effects

The Corps' outlays will be reduced by $108,000 during the period of this deferral.

Deferral No. D75-2

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Sec. 1013 of P.L. 93-344

Agency Department of Health, Education, and Welfare	New budget authority (P.L. 93-324) $11,647,000
Bureau Office of Education	Other budgetary resources ----
	Total Budgetary Resources 11,647,000
Appropriation Title & Symbol Library Resources - 7550212 (Public Libraries)	Amount to be deferred part of year 5,437,000
	Amount to be deferred for entire year ---

Justification:

The 1975 budget proposed continuing the Public Libraries program at a level of $25.0 million. The House passed HEW-Labor appropriations bill provides $46,749 thousand, presumably the maximum annual rate available under the Continuing Resolution. In addition, the Library Partnership Act has been submitted by the Administration at $15.0 million and is designed to give greater impact to Federal funding directed toward public libraries. Demonstrations will be supported that test the integration of library and information service, and new methods of library service delivery. This deferral is proposed until enactment of the Labor-HEW appropriation bill.

Estimated Effects:

The effect of this deferral is to fund the program at a level of $6,210,000 in the first quarter as contrasted to $11,647,000 per quarter in FY 1974.

Deferral No. 075-3

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Sec. 1013 of P.L. 93-344

Agency Department of Health, Education, and Welfare	New budget authority (P.L. 93-324)	$3,206,000
Bureau Office of Education	Other budgetary resources	
	Total Budgetary Resources	3,206,000
Appropriation Title & Symbol Higher Education - 7550293 (University Community Services)	Amount to be deferred part of year	2,906,000
	Amount to be deferred for entire year	---

Justification:

No funds were requested in the 1975 President's Budget for the University Community Services program because this program provided support for projects of cooperation between communities and universities, which is primarily the responsibility of the State or locality. Aid directed to the student is a more desirable use of Federal resources in Higher Education. The House, in acting on the Labor-HEW bill, provided an appropriation of $14,250 thousand, presumably the maximum annual rate permissible under the Continuing Resolution. This deferral does not address the 10% of the appropriation which is reserved to the Commissioner which is not normally obligated until later in the fiscal year. Of the remaining 90%, an amount of $3,206 thousand would presumably be available for the first quarter.

Funds of $300 thousand have been released under the Continuing Resolution to cover operating expenses of State agencies during the first quarter. Although more funds could be released under the Continuing Resolution, there is no urgent need to do so. If an appropriation is enacted before the end of the first quarter; the entire amount appropriated can be utilized in an orderly and efficient manner. In the meantime, this proposed deferral, pending Senate action on the Labor-HEW bill, would preserve the flexibility of the Congress and the Administration in arriving at a final decision on the level at which this program should be continued.

Estimated Effects:

Except for the State agency operating expenses, for which funds have been released, the States and institutions do not begin using the funds until later in the year. Therefore, the effect on institutions of a deferral through the first quarter is not adverse. Excluding the released $300 thousand this proposal will have no budgetary impact. The total outlay saving is $2,906 thousand in the first quarter of FY 1975. These savings are reflected in the latest budget estimates.

Deferral No. D75-4

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Sec. 1013 of P.L. 93-344

Agency Department of Health, Education, and Welfare	New budget authority (P.L. 93-324) $9,500,000
Bureau Office of Education	Other budgetary resources ___
	Total Budgetary Resources 9,500,000
Appropriation Title & Symbol Higher Education - 7550293 (Land Grant Colleges)	Amount to be deferred part of year 9,500,000
	Amount to be deferred for entire year ---

Justification:

The Administration has submitted legislation to repeal the Bankhead-Jones Act which authorizes an annual appropriation for the support of land grant colleges. No funds were requested in the President's 1975 Budget to continue support for this activity. However, the House approved a $9.5 million appropriation in the Labor-HEW bill. This amount is presumably the maximum rate permissible under the Continuing Resolution. It is proposed to defer obligation and expenditure of funds for this activity pending Senate action on the Labor-HEW bill and in order to preserve the flexibility of the Congress and the Administration in arriving at a final decision on the future of this program.

Estimated Effects:

The programmatic effect of a first quarter deferral will not be severe, although institutions are accustomed to receiving these funds in August. Pending a final resolution of the future of the program, a deferral is preferable to a first quarter allotment of one-fourth of the funds authorized. Full obligation and expenditure of the annual amount at this time would preempt the Congress' ability to deal with the legislative question. Total outlay savings are $9.5 million and are reflected in the 1975 budget.

Deferral No. D-75-5

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Sec. 1013 of P.L. 93-344

Agency Department of Health, Education, and Welfare	New budget authority (P.L. 93-324) $750,000
Bureau Office of Education	Other budgetary resources
	Total Budgetary Resources 750,000
Appropriation Title & Symbol	
Higher Education - 7550293 (State Postsecondary Education Commissions)	Amount to be deferred part of year 350,000
	Amount to be deferred for entire year ---

Justification:

No funds were requested in the 1975 President's Budget to continue support for this activity, on the grounds that the programs which the commissions administer are now so small that the required funding level can be borne out of other State funds. However, the House, in acting on the Labor-HEW bill, provided an appropriation of $3 million, the same as the 1974 level and presumably the maximum annual rate permissible under the Continuing Resolution. An amount of $400 thousand has been released to provide funds needed by State agencies during the first quarter to administer certain Federal programs for which funds were appropriated during 1974. While additional funds of $350 thousand could be released under authority of the Continuing Resolution to carry out comprehensive planning activities, the relatively small increment for each State could not be utilized in an orderly way. This deferral is proposed pending Senate action on the Labor-HEW bill and to preserve the flexibility of the Congress and the Administration in arriving at a final decision on funding for this program.

Estimated Effects:

A first quarter deferral will have little programmatic effect. State agencies will not be helped by small incremental funding. Except for the $400 thousand already released, this proposed action has no budgetary impact. The total outlay savings is $350 thousand in the first quarter of FY 1975. These savings are reflected in the latest budget estimate.

Deferral No. D75-6

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Sec. 1013 of P.L. 93-344

Agency Department of Health, Education, and Welfare	New budget authority (P.L. 93-324) $16,000,000 Other budgetary resources --- Total Budgetary Resources 16,000,000
Bureau Office of Education	
Appropriation Title & Symbol School Assistance in Federally Affected Areas - 7550280 (Payments for "B" children)	Amount to be deferred part of year 16,000,000 Amount to be deferred for entire year ---

Justification:

This is a program of aid to school districts, authorized by P.L. 81-874, that provides support to eligible districts to offset revenue lost due to the presence of Federal, non-taxable land.

The Continuing Resolution (P.L. 93-324) continues funding through September 30, 1974 of payments to school districts with Section 3(b) children most of whose parents work on Federal property and live on private property paying local property taxes for the support of their schools. No funds were requested in the President's 1975 Budget for these children. An amount of $40 million was budgeted to provide funds on a hardship basis (no school district would lose an amount greater than 5 percent of its 1974 operating budget) for those school districts which will be most severely affected by the termination of funding for "B" children.

Neither the House nor the Senate has considered the proposed budget for this program. The requested deferral of $16.0 million represents the estimated amount which would be obligated through September 30, 1974 (the current expiration date of the Continuing Resolution). This amount is proposed for deferral to preserve the flexibility of the Congress and the Administration in arriving at a final decision on the level at which this program should be continued.

It is believed that this type of Federal activity does not really constitute an economic burden on local schools. Withholding of 3(b) funds will effect no severe hardship on any school district during the first quarter.

Estimated Effects:

The total outlay savings from deferring 3(b) funds is $16,000,000 through the first quarter of FY 1975. These savings are reflected in the latest budget estimate. Estimated outlays under the hardship provision (upon enactment) remain the same as reflected in the President's Budget; 1975, $28,000,000; 1976, $11,000,000; and 1977, $1,000,000.

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Deferral No.: D75-7

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Sec. 1013 of P.L. 93-344

Agency Department of Health, Education, and Welfare	New budget authority (P.L. 93-324)	$ 5,000,000
Bureau Social and Rehabilitation Service	Other budgetary resources	---
Appropriation Title & Symbol	Total Budgetary Resources	5,000,000
Rehabilitation Services - 7550508 (Innovation and Expansion)	Amount to be deferred part of year	5,000,000
	Amount to be deferred for entire year	---

Justification:

No funds were requested in the 1975 Budget for this program. The House-passed bill included $20,000,000 for this program, and we assume that is the authorized level of activity for purposes of the Continuing Resolution. The FY 1974 appropriation included funds to cover the final phase of a three year program to expand vocational rehabilitation services to recipients of Public Assistance. The objectives of this program have been achieved. The budget is based on full funding of Section 110, the basic state grant program, which provides funding for the same kinds of services for the rehabilitation of the handicapped in the regular State programs, at a much larger level of expenditure. In a period of two years, the amount requested for that program has increased by almost $100 million. This increase provides the States with the leeway necessary to accomplish all of the objectives of both the state grant program and the expansion grant program particularly since the latter program was made a formula grant program under the provisions of the 1973 Act. The Senate has not yet acted on the appropriations bill for this program.

This deferral is proposed to preserve the flexibility of the Congress and the Administration in arriving at a final decision of funding for this program.

Estimated Effects:

There are already a number of important initiatives to focus vocational rehabilitation services on the severely disabled within the basic state grant program. The total outlay savings for this deferral is $5,000,000 in the first quarter of FY 1975, i.e., one quarter of the $20,000,000 level available under the Continuing Resolution. These savings are reflected in the latest budget estimates.

Deferral No.: D75-8

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Sec. 1013 of P.L. 93-344

Agency Department of Health, Education, and Welfare	New budget authority (P.L. 93-324)	$ 11,875,000
Bureau Social and Rehabilitation Service	Other budgetary resources	---
Appropriation Title & Symbol	Total Budgetary Resources	11,875,000
Public Assistance - 754/50581 (Child Welfare Services)	Amount to be deferred part of year	375,000
	Amount to be deferred for entire year	---

Justification:

The amount of $46,000,000 was requested in the 1975 Budget for support of Child Welfare Services authorized under Title IV, Part B, Section 420 of the Social Security Act. The House-passed appropriations bill included $47,500,000 for this program, which is presumably the authorized level of activity under the Continuing Resolution. The budget request reflected the historic level of support which existed for the several preceeding years.

Federal support under Title IV, Part B, has always been a small portion (about 3%) of the total Child Welfare Services funded under Title IV, Parts A and B. Due to increases in other programs dealing with Child Welfare Services, especially under public assistance social services (Title IV, Part A), there is no need to increase this appropriation. The Senate has not yet acted on the appropriations for this program. This deferral is proposed to preserve the flexibility of the Congress and the Administration in arriving at a final decision on a funding level for this program.

Estimated Effects:

The proposed deferral for Title IV, Part B, Child Welfare Services until the end of the first quarter or until the 1975 appropriation is finalized, whichever is sooner, would have a negligible effect on the provision of services or the number of persons receiving services.

Federal dollars in this program represent a small portion of the activities funded by State and other Federal grant programs. The total outlay savings is $375,000. These savings are reflected in the latest budget estimate.

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Deferral No.: D75-9

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Sec. 1013 of P.L. 93-344

Agency Environmental Protection Agency	New budget authority (P.L. 92-500)	$ 9,000,000,000
Bureau Water Program Operations	Other budgetary resources	
Appropriation Title & Symbol Construction Grants 68X0103	Total Budgetary Resources	9,000,000,000
	Amount to be deferred part of year	9,000,000,000
	Amount to be deferred for entire year	

Justification:

1. Deferral of Funds

The Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500) authorized funds to finance the construction of waste treatment plants. The Administration has consistently held that the Act vests discretion in the Administrator of the Environmental Protection Agency to allot less than the maximum amounts of contract authority authorized by the Act. At this date, $9 billion authorized by the Act are either unallotted, or being withheld from obligation at the direction of the Federal Courts pending a Supreme Court review of lower court decisions. The matter before the courts involves the question of authority to allot amounts less than the maximums authorized in the Act.

2. Period of Deferral

The period of deferral of the unallotted contract authority is dependent upon two events:

a. An allotment of a substantial portion of the funds will be made to the States on or prior to February 1, 1975. The fiscal implications of allotting these funds at the present time require that determination of a specific allotment be deferred until this program's funding level can be balanced with the demand for funds for other programs in the context of the FY 1976 budget.

b. Implicit in the Supreme Court's grant of a writ of certiorari in the case is a recognition that the Administration's interpretation of the Federal Water Pollution Control Act is worthy of review. The Supreme Court's decision is anticipated prior to the end of the current fiscal year. Thus, any funds not allotted after February 1, 1975, are proposed for deferral until the Supreme Court is given the opportunity to decide the merits of the cases now before it.

Legal Authority

It is the position of the Executive Branch that the Act permits the allotment to the States for any fiscal year of sums less than the maximum authorized for that year. That position has been challenged in a number of cases in the Federal Courts with conflicting results. Two of those cases, City of New York v. Train (Sup. Ct. No. 73-1377) and Campaign Clean Water, Inc. v. Train (Sup. Ct. No. 73-1378), are now pending before the Supreme Court on writs of certiorari. The Court will be called upon to determine whether the Water Pollution Control Act Amendments of 1972 (P.L. 92-500) vest discretion in the Administrator at the allotment stage of the waste treatment facility program. The Government contends that the Conference Committee's insertion, in Section 207 of the Act, of a provision that the contract authority authorized is "not to exceed" the stated amounts and the Committee's deletion of the word "all" from the clause "all sums authorized to be appropriated..,shall be allotted..," in Section 205 establishes a clear grant of the discretion which the President has sought to exercise. This program is not one in which the Executive asserts a power to control spending in opposition to the wishes of Congress; it is one in which the President is seeking to exercise the discretion which the Congress intended that he should have. Thus, the Supreme Court is presented with a question of statutory construction as to which lower Federal courts have rendered conflicting decisions. The Court is clearly the appropriate forum in which to resolve that question, pending which contract authority should continue at present rates of availability.

Reason for the Deferral

The Federal Water Pollution Control Act authorized the allotment of a maximum of $18 billion over a three year period beginning in FY 1973. The following table shows the status of these funds as of July 1, 1974.

CONSTRUCTION GRANT OBLIGATIONS
($ in Millions)

Fiscal Year	Authorization	Allotment	Obligation of Allotments 1973	1974	1975 est.
1973	5,000	2,000	1,337	663	-
1974	6,000	3,000	194	700	2,106
1975	7,000	4,000	-	82	1,797
	$18,000	$9,000	$1,531	$1,445	$3,903

The obligation estimated for FY 1975 of nearly $4 billion from P.L. 92-500 funds is more than double the amount obligated from this source in FY 1973 or FY 1974 and nearly three times the $1.3 billion obligated in FY 1973 from funds provided by prior authorizations. Outlays are increasing even more dramatically, from a total of $684 million in FY 1973 to $1.6 billion in FY 1974 and an estimate of approximately $3 billion in FY 1975.

The fiscal year 1976 and 1977 outlays, related to an allotment of an additional $9 billion, would be in the range of a total of $1 billion. This would require reductions in spending for other programs if balanced budgets are to be achieved as called for by many members of Congress and the President. The main impact of this problem would occur in the first year that all Congressional and Executive budget actions will be subject to the new Impoundment Control Act of 1974.

Estimated Effects

The allotment of an additional $9 billion would add to the inflationary pressure currently being exerted on the national economy.

Inflation is now recognized as a crucial economic problem for this nation. In the first two quarters of 1974, for example, the implicit GNP price deflator has risen by 12.3 percent and 9.6 percent respectively. Certainly, without prudent governmental offset policies inflation would continue at this dangerous level into the foreseeable future. Thus, the fiscal and monetary policies of this administration and of the Federal Reserve System have been directed toward economic restraint. Additional fiscal stimulus would only fuel the current inflationary pressures. Moreover, in the current climate of inflation-oriented expectations, this additional fiscal stimuli might serve as a signal to business and labor as well as to consumers and investors that the government will not be able to check inflation and that they should therefore base their future decisions on the assumption that prices will continue to rise rapidly.

It should be emphasized that there is currently no dearth of investment in the pollution abatement sector. To the contrary, because of Federal regulatory activities, expenditures for this purpose are increasing at a substantial rate without any increase in Federal spending over existing levels. It has been estimated that U.S. nonfarm business spent $4.9 billion in 1973 for pollution abatement alone, and will spend $6.5 billion in 1974 for the same purpose, an increase of 26 percent.

Federal outlays for pollution control and abatement will approach $4 billion in 1975, an increase of over 50 percent from 1974 and an average annual increase of 74 percent since 1972. While up-to-date statistics are not available for the State and local sector, some understanding of their activity can be obtained through the activity of tax-exempt bonds for pollution control. In the first half of this year, tax-exempt bond financing for pollution abatement grew 42 percent over the equivalent period last year, growing from $859 million to $1,222 million, despite soaring interest rates. Though the majority of these issues will finance business construction, a growing percentage will finance governmental construction.

Collectively, these figures demonstrate a sizable and growing national investment in pollution abatement. In the judgment of the Administration, the allotment of an additional $9 billion at this time would generate inflationary pressures in both the industries concerned and the economy as a whole. For these reasons, the President has no choice but to defer this authority.

Deferral No.: D75-10

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Sec. 1013 of P.L. 93-344

Agency General Services Administration	New budget authority (P.L. _____)	$ --
Bureau	Other budgetary resources	81,653,000
Appropriation Title & Symbol Automatic Data Processing Fund	Total Budgetary Resources	81,653,000
	Amount to be deferred part of year	4,300,000
	Amount to be deferred for entire year	14,000,000

Justification

The 1975 budget provides a capital purchase level in the ADP Revolving Fund of $6M. Of this amount, $1.7M has been apportioned and $4.3M is being deferred, pending development by GSA of criteria for opportunity buy decisions. These opportunity buys represent purchases by GSA of bargain priced computer equipment which will be available for a limited time period and for which the using agency does not have funds available for procurement. It is expected that the $4.3M will be apportioned by the end of the first quarter.

The current estimate is that of the $81.7M in available resources, $42.1M will be obligated for operating costs and capital outlays. This will leave a balance for requirements in subsequent years of $37.5M. Of this balance, $14.0M is deferred for the entire fiscal year 1975 in order to achieve the most effective and economical use of funds (Anti-Deficiency Act, 31 U.S.C. 665), consistent with the Office of Management and Budget's oversight responsibility under the Federal Property and Administrative Services Act of 1949 (Section 111(g) U.S.C. 759). This action is consistent with present estimates of opportunity buys which could effectively meet agency demands and program requirements. It also anticipates greater reliance on long-term leasing which would be available upon enactment of pending legislation.

Estimated Effects:

There will be no impact on agency programs as it is not expected that discount purchases will be precluded where there is a justified agency program requirement for ADP purchases and financing is not otherwise available. The part-year deferral of $4.3M will have no effect on budget outlays. The $14M deferral will result in outlay savings of $7M in FY 75, no change in FY 76, and an increase of $7M in FY 77. The deferral will maintain current budget estimates.

Deferral No.: D75-11

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Sec. 1013 of P.L. 93-344

Agency U.S. Department of Agriculture	New budget authority (P.L. _____)	$ --
Bureau Agricultural Research Service	Other budgetary resources	4,556,000
Appropriation Title & Symbol Agricultural Research Service (Construction) 12X1400	Total Budgetary Resources	4,556,000
	Amount to be deferred part of year	--
	Amount to be deferred for entire year	770,000

Justification

At the present time, the research facilities of the ARS are not fully utilized - a recent review indicated that the 3,352 laboratories operated nationwide are staffed at 85% of their capacity in terms of scientific man-years, 73% with ARS personnel and 12% with non-ARS personnel.

Although this situation is due, in part, to efforts to hold down Federal employment, it also is due to the agency's efforts to optimize such staffing by terminating projects which have served their purpose and relocating and consolidating similar lines of work at the various locations.

The Department, with the support of the Congress, is continuing to improve utilization by further sharing of the resources with other Federal agencies.

In view of this situation and the need to continue efforts to hold down Federal employment and budgetary costs during the fiscal year 1975, the use of funds for the following projects have been deferred through June 30, 1975:

1. Beckley, West Virginia; $700,000 for construction of a soil and water research laboratory.

2. Ithaca, New York; $40,000 for planning a soil and water conservation research facility.

3. Albany, California; $15,000 for updating the planning of a wool research laboratory. Initial planning has been completed.

4. Riverside, California; $15,000 for updating the planning of a soil and water conservation laboratory. Initial planning has been completed.

Estimated Effects

No significant impact. Outlay savings would be approximately $250,000 annually over a three-year period or until the year the construction is initiated.

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34246 THE PRESIDENT

Deferral No.: D75-12

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Sec. 1013 of P.L. 93-344

Agency Department of Commerce	New budget authority (P.L. _____)	$ _____
Bureau National Oceanic and Atmospheric Administration	Other budgetary resources	4,659,000 1/
Appropriation Title & Symbol	Total Budgetary Resources	4,659,000
Fisheries Loan Fund 137/04317	Amount to be deferred part of year	_____
	Amount to be deferred for entire year	4,039,000

1/ Reflects an increase of $2,924,000 over amounts shown in the President's FY 1975 Budget due to current receipts from loan repayments.

Justification

The Fisheries Loan Fund was established pursuant to section 4 of the Fish and Wildlife Act of 1956, as amended (16 USC 742c). The purpose of the Fund, "is to provide financial assistance which will aid the commercial fishing industry to bring about a general upgrading of the condition of both commercial fishing vessels and gear thereby contributing to more efficient and profitable fishing operations" (50 CFR 250.2). This is a revolving fund with an authorized level of $20 million. Loans from the Fund can be provided whenever members of the fishing industry are unable to obtain commercial loans on reasonable terms.

By notice of action recorded in the Federal Register on February 20, 1973, the Administrator of the National Oceanic and Atmospheric Administration (NOAA) declared a moratorium on accepting further loan applications effective March 1, 1973, until further notice. The order indicated that, "the aggregate amount of outstanding loans, applications on hand or anticipated, and the Fund's actual or contingent expenses are expected to exhaust the Fund's ability to make further loans in a meaningful manner until such a time as scheduled collections sufficiently restore the Fund's available capital."

On February 22, 1973, the General Accounting Office issued a report entitled the "Need to Establish Priorities and Criteria for Managing Assistance Programs for U. S. Fishing-Vessel Operators (B-177024). The GAO concluded in its report that loans made from the Fisheries Loan Fund (1) allowed the continued use of inefficient vessels rather than improving vessels and equipment for more efficient and profitable fishing, and (2) maintained or added vessels to segments of the fishing industry which were considered to have excess, but not necessarily efficient harvesting capacity. GAO recommended that the Secretary of Commerce, to the extent legally permissible, develop criteria for evaluating vessel efficiency and priorities for directing these program funds.

NOAA has had the management of the Fisheries Loan Fund and the recommendations of the GAO under review. NOAA agrees with the GAO on the need to restrict loans from the Fund to improving efficient vessels in under-capitalized areas or where an excess harvesting capacity does not already exist. NOAA has determined that legislative clarification of the Act will be required to establish criteria for directing the Fund. A legislative proposal is expected to be included in the Department of Commerce's legislative program submitted with the FY 1976 budget. Until such time as legislative clarification has been obtained and the Fund regains a stronger capital position, we believe that prudent management dictates that the moratorium remain in effect and the receipts of the Fund continue to be held in reserve for contingencies (31 USC 665).

Estimated Effects

If these funds are released, then the probability exists that loans made from the Fund would not be directed toward improving U.S. fishing fleet efficiency and competitiveness due to lack of meaningful criteria. Release of these funds would also result in increasing FY 1975 outlays by $1,750,000 over that shown in the President's Budget.

34248 THE PRESIDENT

Deferral No.: D75-13

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Sec. 1013 of P.L. 93-344

Agency Dept. of the Interior	New budget authority (P.L. _____)	$ 47,200,000
Bureau Bureau of Land Management	Other budgetary resources	8,743,000
Appropriation Title & Symbol	Total Budgetary Resources	55,943,000
14X5136 Oregon and California Grant Lands	Amount to be deferred part of year	0
	Amount to be deferred for entire year	23,693,000

Justification: Annual appropriation bill language in recent years consistently provides that 25 percent of current year receipts from Oregon and California grant lands be used to fund this account. The account provides for management, development, and protection of Federal Oregon and California grant lands including the construction, and maintenance of roads. The President's budget estimated 25 percent of 1975 receipts to be $28,750,000, and a program was designed to obligate that amount. The budget predicted that $5,243,000 of unobligated balances from prior years would be carried into FY 1975 and a like amount would be carried into FY 1976.

Subsequent to preparation of the budget, $3,500,000 planned for use in 1974 was deferred until 1975; thus, the current estimate of 1975 obligations is $32,250,000. The 1975 budget authority estimate has now been increased by the Department of the Interior to $47,200,000 because of higher estimated prices for sawtimber. The program plan for use of the funds has not been changed. Therefore, the total amount now expected to be deferred through FY 1975 is $23,693,000 - $5,243,000 originally planned plus the $18,450,000 increase.

The program plan remains the same as budgeted because the management, protection, and development opportunities are largely independent of sawtimber prices. Because budget authority is based on current year receipts, the budget authority available for a year is never finally known until the end of the year. For these reasons, carryovers are retained as a cushion for the possibility that receipts turn out to be lower than anticipated. Failure to do this could result in over programming. As receipts estimates are changed after submission of the President's budget, the program level is held relatively constant as a matter of sound management practice and the changes in funding are accounted for by adjusting the amount deferred. This may either be an increase or decrease in the amount deferred. This is a reserve for contingencies (81 U.S.C. 665).

Estimated Effects: Obligation in FY 1975 of all the deferred funds would result in $12 million of expenditures in 1975. The remainder would be expended in 1976.

Deferral No.: D75-14

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Sec. 1013 of P.L. 93-344

Agency Department of the Interior	New budget authority (P.L. _____)	$ - 0 -
Bureau Bureau of Reclamation	Other budgetary resources	1,055,000
Appropriation Title & Symbol Construction and Rehabilitation 14X5061	Total Budgetary Resources	1,055,000
	Amount to be deferred part of year	
	Amount to be deferred for entire year	1,055,000

Justification

Funds to begin construction of the 2nd Bacon Siphon and Tunnel, the first feature of the East High-East Low area of the Columbia Basin Irrigation Project, Washington are presently in reserve. The project has a total estimated Federal cost of approximately $1B. Using a discount rate of 5 7/8%, the current rate, the benefit cost ratio would be less than unity. The beneficiaries are estimated to be able to repay only 12% of the total Federal investment, requiring a subsidy of approximately $175,000 per 160 acre farm. In view of the above, an economic restudy has been undertaken. Pending the economic restudy, the 1975 budget proposed reprogramming the $1,055,000 to other projects. Though the appropriation committees called for use of the $1,055,000 for the 2nd Bacon and Siphon only, the Senate appropriation committee recommended that a study of possible alternatives to the present design of the 2nd Bacon Siphon and Tunnel be undertaken. Therefore, the funds will be deferred pending the outcome of the studies. This is a reserve for contingencies (31 U.S.C. 665).

Estimated Effects

The deferral of $1,055,000 in FY 75 results in a reduction in outlays this year by approximately that amount. If at a later date the funds were rescinded the deferral could result in a savings of some $1B. If the study produces a different design in the project feature this also could result in some savings. Should the project ultimately be built as presently designed the FY 75 deferral would result only in temporary savings.

34250 THE PRESIDENT

Deferral No.: D75-15

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Sec. 1013 of P.L. 93-344

Agency Department of the Interior	New budget authority (P.L.)	$ - 0 -
Bureau Reclamation	Other budgetary resources	1,150,000
Appropriation Title & Symbol Upper Colorado River Basin Fund 14X4081	Total Budgetary Resources	1,150,000
	Amount to be deferred part of year	
	Amount to be deferred for entire year	1,150,000

Justification

Funds to begin construction of 3 water resources projects (Dallas Creek participating project, Colo. - $250,000, Fruitland Mesa, Colo. - $500,000 and Savery Pot Hook project Colo., Wyo., - $250,000) have been placed in reserve pending the completion of salinity effect studies to determine each projects impact on Colorado River Salinity levels. Salinity has become an economic problem in the lower Colorado and has led to the requirement, under recent agreements, to desalt irrigation return flows before water enters Mexico. Though the specific studies described are called for by the Executive and not mandated by law, the Water Pollution Control Act amendments of 1972 provide for determining pollution abatement requirements for irrigation return flows as for other pollution sources. The reanalysis is to include estimates of the costs for pollution abatement facilities necessary to control water quality conditions. These external costs will then be considered in the justification for development of these projects. Funds for the Jensen Unit, Central Utah project, Utah - $150,000) have been placed in reserve pending the completion of a definite plan report and draft environmental impact statement. Therefore, the funds will be deferred pending the completion of these two reports. This is a reserve for contingencies (31 U.S.C. 655).

Estimated Effects

The total estimated Federal cost of these 4 projects is approximately $171.4M. The external costs of mitigating the effects of higher levels of total desolved salts in the Colorado River, as a result of constructing the 3 projects as presently designed, is being studied. Deferring the expenditure of the $1,000,000 until the external costs can be estimated delays the expenditure of that amount and may result in less costly final designs for the projects. Deferring the expenditure of the $150,000 for the Jensen Unit results in a temporary savings of that amount.

Deferral No.: D75-16

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Sec. 1013 of P.L. 93-344

Agency Department of State	New budget authority (P.L. _____)	$ _____
Bureau NA	Other budgetary resources	2,200,000
Appropriation Title & Symbol International Center, Washington, D.C. 19X5151	Total Budgetary Resources	2,200,000
	Amount to be deferred part of year	_____
	Amount to be deferred for entire year	500,000

Justification:

Public Law 90-553, approved October 8, 1968, provided "That in order to facilitate the conduct of foreign relations by the Department of State in Washington, District of Columbia, through the creation of a more propitious atmosphere for the establishment of foreign government and international organization offices and other facilities, the Secretary of State is authorized to sell or lease to foreign governments and international organizations property owned by the United States in the Northwest section of the District of Columbia bounded by Connecticut Avenue, Van Ness Street, Reno Road, and Tilden Street." It also provided that certain design and site preparation activities in the described area shall be undertaken by the Secretary, in coordination with the Administrator of General Services and the government of the District of Columbia, and that the costs of those activities shall be funded from proceeds of the sale or lease of property to foreign governments and international organizations.

Public Law 93-40, approved June 12, 1973, amended the 1968 Act to authorize the appropriation, without fiscal year limitation, of not to exceed $2,200,000 to fund the design and site preparation costs, provided that the sums appropriated shall be reimbursed to the Treasury from proceeds of the sale or lease of property to foreign governments and international organizations.

The Department of State Appropriation Act, 1974 (Title I, Public Law 93-162), approved November 27, 1973, appropriated $2,200,000, to remain available until expended, for payment to a special account with the Secretary of Treasury from which the design and site preparation costs would be administered by the Secretary of State. The entire $2,200,000 was apportioned within thirty days, to that special account.

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The full amount which can be utilized in the current fiscal year, $1,700,000, has been apportioned from the special account for obligation in 1975 for necessary design and site preparation. The balance of $500,000 has been apportioned to reserve to achieve the most economical use of appropriations and to provide for contingencies (31 U.S.C. 665 (c)(1) and (2)). It is anticipated that the reserve will be apportioned for use in 1976 as needed.

Estimated effects:

None. The amount deferred could not be obligated this year.

Deferral No.: D75-17

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Sec. 1013 of P.L. 93-344

Agency Department of Transportation	New budget authority (P.L. 93-87)	$ 6,357,500,000
Bureau Federal Highway Administration	Other budgetary resources	8,970,090,427
Appropriation Title & Symbol	Total Budgetary Resources	15,327,590,427
Federal-aid Highways 69-20X8102	Amount to be deferred part of year	
	Amount to be deferred for entire year 1975 & prior years program 1976 program	4,370,090,427 6,357,500,000 10,727,590,427

Justification

The $10.7 billion deferral of obligational authority consists of two components. The first is $4.37 billion associated with the contract authority for FY 1975 and prior years and already apportioned to the States. The second portion is $6.36 billion of FY 1976 authority which will be available for obligation by January 1, 1975, but cannot be expended until July 1, 1975. The FY 1976 authority will be apportioned to the States prior to January 1, 1975. In accordance with past practice, a substantial portion of the deferred funds are expected to be released at the beginning of FY 1976.

These funds are being withheld for reasons relating to economic policy, and program priorities and management. Each will be discussed in turn.

A. Economic Policy

The deferral of Federal-aid highway obligations is one of many temporary deferrals which stretch out Federal spending to minimize immediate unfavorable budgetary impact. It is one of many actions which will help reduce the 1975 deficit and balance the 1976 budget. These deferrals are consistent with the type of fiscal policy actions recommended by 54 Senators who in a letter to President Nixon on June 19, 1974, urged "remedial, dramatic action" to halt excessive spending practices that are contributing to the nation's intolerable inflation problems and requested "a proposed balanced budget for fiscal year 1975, incorporating changes in programs and funding of programs you believe necessary to meet that objective."

Without careful government policies, inflation could continue at a dangerous rate into the foreseeable future. The fiscal and monetary policies of this Administration are being directed toward economic restraint. Additional fiscal stimulus of any kind would enhance inflationary pressure directly by increasing the demand for scarce goods and services. Moreover, in the current climate of rising inflationary expectations, additional fiscal stimulus would be a signal to business and labor, to consumers and investors, that

the government is not doing its share to check inflation and that they should therefore base their future decisions on a long-lasting period of fast-rising prices. For this reason, Federal expenditures must be restrained. The impact of the deferrals and recissions must be assessed in the aggregate to determine the macroeconomic effects of this policy of budget restraint.

Full release of these highway funds would make $15.3 billion available to the states in 1975 alone. This would be larger than the total amounts advanced in any prior three year period. Although it is obvious that this entire amount could not be utilized in 1975, national highway construction in 1975 and 1976 would nevertheless be greatly accelerated. It is important to note that the inflationary effects of highway construction are actually measured by the bid prices for such work despite the natural lag of outlays arising out of highway obligations. Bid prices, which generally are determined quickly after obligations are available, are a leading indicator of events. A sudden, high increase in demand should not descend upon highway construction at a time when its price index has just skyrocketed 38 percent during the 12 months ending June 30. Over-stimulation of demand for materials such as certain steel and cement products at a time when their prices have experienced some of the highest inflation in the economy, and when spot supply shortages are occuring, is precisely the kind of activity which should be avoided. Comparable effects would be felt in related wages, equipment, and petroleum-based products used in highway construction. It can be reasonably assumed that a large number of additional projects in many local areas would require such large amounts of labor, material and supply resources that local inflationary pressures would be further stimulated. Accordingly, prudent management of existing Federal highway resources combined with a successful campaign against inflation on a national scale could trigger a significant reversal in these price indicies and allow future contracts to produce more work per dollar than under present circumstances.

B. Program Priorities and Management

While highway construction continues to remain a national priority (50% of obligations in DOT's 1975 budget even under the proposed deferral program level), its claim to a larger share of our budgetary resources ($4.6 billion in obligations in FY 1975) is less clear than in 1956 when construction of the Interstate System commenced. As of July 1, 1974, over 84% of the Interstate System was open to traffic. With the capital infrastructure of the finest highway system in the world largely in place, the rate of highway construction can proceed at a moderate rate without frustrating the legislative purposes expressed in the Federal-Aid Highway Acts.

In making appropriations for FY 1977, the Congress will for the first time be able to weigh the claims of highway construction against the claims of other essential programs. Outlays for highways in FY 1977, however, are a function of obligations incurred in 1975 and 1976. If

the total obligational authority for highways were released in 1975, this would cause outlays to approach $7.5 billion in that fiscal year. Clearly this is undesirable in light of both Administration and Congressional goals to control the level of the Federal budget.

The release of these funds would also result in substantial program management problems. It is anticipated that States would attempt to place these funds under contract as quickly as possible both to avoid a potential loss of funds through later Executive or Congressional recall actions and to satisfy project requests of local highway officials. Such release, as noted earlier, would result in severe strain on the resources of a specialized industry, geared to handle a relatively stable program level. Saturating contractors with work would increase bid prices, and in turn result in higher unit costs, leading to less highway construction per dollar of investment. Secondly, the release of these funds would create an immediate, relatively short term bulge in project volume which would overtax Federal, State and private resources. If resources were quickly shifted into highway construction, there would be not only substantial near-term social and economic dislocational costs in other sectors of the economy, but also potential longer term costs for relocating these resources (manpower and equipment) into other productive areas after this $10B, one time bulge has passed.

Deferral rather than rescission of so large a sum is being recommended as a result of the basic structure of the Federal-Aid Highway program. The program includes about ten separate authorizations. Each year funds for each authorization are apportioned to each State by statutory formula. Obligations are then incurred against these various authorizations by activity and by year. Over time, different States have had different priorities and spending rates and thus, the relative amounts available to each State for each activity differ significantly. As a result, rescission of authorizations would not uniformly impact all the States but rather would penalize the slow-spending states. While we believe that the program level should be substantially lower than that authorized and available, we do not believe that these reductions should be taken at the expense of some States and not others.

There is no provision in the Federal-Aid Highway Act, as amended (23 U.S.C. 101 et seq.), which mandates the rates at which highway funds will be made available to the States for obligation. On the contrary, the Congress has rejected several attempts to insert such mandatory language in the Act. For this reason it is the position of this Administration, and has been the position of Administrations since 1967, that the Executive has authority to control the rate of spending under the highway program so long as the purposes of the program are not frustrated. A number of States have brought suits in the Federal District Courts challenging the Administration's position. Two of these cases are pending in the United States Courts of Appeal. These courts, and probably later the Supreme Court, will be called upon to decide whether the Federal-Aid Highway Act, when construed in the light of the President's responsibilities for maintaining a stable economy, the duties of fiscal prudence imposed by such statutes as the Anti-deficiency Act and and the Budget and Accounting Act of 1921, and the President's powers under

Article II of the Constitution, requires that the States be permitted to use highway obligational authority at the maximum rates authorized by law. (One Court of Appeals decision, State Highway Commission of Missouri v. Volpe (479 F.2d 1099), has become final, but the foregoing issues were not presented by the record in that case).

Estimated Effects: This deferral is subsumed in the President's 1975 budget. If it were released, it is estimated that outlays would increase by $350 million in 1975, $1.6 billion in 1976, and $2.5 billion in 1977, over levels consistent with the program request of 1975 budget, reflecting anticipated delay in obligating these funds and the average 18-month lag between obligation and outlay. The deferral in effect delays the Federal-aid highway programs by 8-12 months. Since the States will eventually receive all apportioned funds in every program category (no apportioned Federal-aid funds for highways have ever permanently lapsed), Congressional allocations among programs and States are preserved.

Deferral No.: D75-18

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Sec. 1013 of P.L. 93-344

Agency Foreign Claims Settlement Commission	New budget authority (P.L.)	$
Bureau NA	Other budgetary resources	11,592,000
Appropriation Title & Symbol	Total Budgetary Resources	11,592,000
Payment of Vietnam Prisoners of War Claims 79X0104	Amount to be deferred part of year	
	Amount to be deferred for entire year	10,500,000

Justification:

Public Law 91-289, approved June 24, 1970, authorized a program for the payment of claims of American military and civilian prisoners of war held during the Vietnam conflict or their survivors and provides for the Foreign Claims Settlement Commission to adjudicate the claims and certify payment. A total of $16,565,000 was appropriated for that purpose during 1971, 1972, and 1973, to remain available until expended. The Commission has largely adjudicated and certified the claims of returned prisoners of war. However, the Commission does not certify claims for payment to survivors of servicemen missing in action in the Vietnam conflict until the appropriate military service determines the status of each serviceman missing in action and reports it to the Commission. Furthermore, by court order, the Secretaries of the respective services cannot make a final status determination until a hearing is held on each case and certain rights have been afforded to the next of kin. This procedure results in an extended process requiring additional time that will defer the Commission's receipt and adjudication of claims beyond June 30, 1975. Accordingly, of the $11,592,000 available for 1975, $1,092,000 has been apportioned for obligation in 1975 and $10,500,000 has been reserved. This deferral of 1975 budget authority is necessary to achieve the most economical use of appropriations (31 U.S.C. 665(c)(1)) and to provide for contingencies after 1975 (31 U.S.C. 665(c)(2)).

Estimated effects:

No savings result from the deferral, since no claims can be adjudicated or payments made until after status determinations are made by the military services.

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