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Accountability • Integrity • Reliability

United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

B-307122

March 2, 2006

The Honorable Joshua B. Bolten
Director
Office of Management and Budget

Subject: *Impoundments Resulting from the President's Proposed Rescissions of October 28, 2005*

Dear Mr. Bolten:

On October 28, 2005, the President transmitted to Congress a proposal to rescind \$2.3 billion of available funding to offset the cost of Hurricane Katrina relief. The proposal called for cancellations from 53 different federal programs.

Notwithstanding the President's characterization of his proposals as cancellations, in anticipation of congressional enactment of these cancellations, agencies withheld over \$470 million in budget authority from obligation, affecting 12 programs, for approximately 2 months. The agencies' withholding in these 12 instances constituted impoundments under the Impoundment Control Act.

Under the Impoundment Control Act, title X of the Congressional Budget and Impoundment Control Act, Public Law 93-344, 88 Stat. 297 (1974) (codified at 2 U.S.C. §§ 682-688), whenever the President proposes budget authority for rescission, he must transmit a special message to Congress, detailing the amounts, reasons for, and effect of the proposed rescission. Agencies may withhold from obligation budget authority proposed for rescission in a special message for up to 45 legislative days following submission of the special message. 2 U.S.C. § 683(b). If Congress does not pass rescission legislation within this 45-day period, the budget authority must be released. *Id.*

According to your staff, the October 28 proposal was not a special message under the Impoundment Control Act notwithstanding the fact that by its text it was termed a rescission proposal. Your staff advised us that the proposals were cancellations and that the agencies potentially affected by the October 28 proposal were specifically instructed not to withhold funds in anticipation of an impending rescission. As a result, your staff advised us that none of the proposed cancellations constituted

withholdings under the Impoundment Control Act nor did they trigger the Impoundment Control Act's reporting requirements.

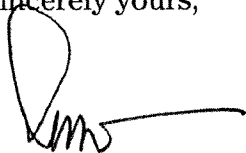
Because the Comptroller General is responsible under the Impoundment Control Act for monitoring impoundments of budget authority, we contacted each agency affected by the President's proposal to determine whether they were withholding budget authority from obligation in response to the President's proposal. We asked the agencies to document the status of the funds proposed for cancellation by the President, whether the funds were being withheld from obligation, and whether the agencies had issued any internal guidance regarding the status of the funds.

In the course of these inquiries, we identified 12 instances where agencies withheld budget authority from obligation in direct response to the October 28 proposal, totaling over \$470 million. The enclosed table details these instances, with a brief description of the circumstances surrounding each instance.

Agencies may only withhold budget authority from obligation if the President has first transmitted a rescission proposal in a special message to Congress. 2 U.S.C. § 683(a). Because the President's October 28 proposal was not, according to your staff, a special message, the agencies we identified impounded budget authority in violation of the Impoundment Control Act.

In the future, when the President chooses to propose cancellations of budget authority rather than rescissions of budget authority pursuant to the procedures specified in the Impoundment Control Act, your office should ensure that agencies appreciate the distinction and do not withhold budget authority from obligation in anticipation of a possible rescission. Agencies that withhold budget authority in this manner violate the Impoundment Control Act. A copy of this letter has been provided to the congressional appropriations committees.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'DMW', with a long horizontal flourish extending to the right.

David M. Walker
Comptroller General
of the United States

Enclosure

FUNDS WITHHELD FROM OBLIGATION UNDER THE PRESIDENT'S RESCISSION PROPOSAL				
Agency	Account	Amount Proposed for Rescission/Withheld	Agency Comments	Status
Department of State	Embassy Security, Construction, and Maintenance	\$50,000,000	Funds withheld in expectation of a rescission	\$20,000,000 rescission enacted by Pub. L. No. 109-148, 12/30/05; remaining \$30,000,000 released for obligation after 12/30/05
EPA	State & Tribal Assistance Grants	\$166,000,000	Funds withheld in expectation of a rescission	No congressional action on rescission proposal; funds released for obligation 12/22/05
Broadcasting Board of Governors	Broadcasting Capital Improvements	\$3,800,000	Funds withheld in expectation of a rescission	No congressional action on rescission proposal; funds released for obligation 1/9/06
Department of Labor	Responsible Reintegration of Youthful Offenders	\$45,000,000	Although the agency states it is not withholding the funds, it also states that it is not accepting any proposals to commit or obligate the funds until further notice from OMB.	No congressional action on rescission proposal; funds released for obligation after 12/30/05
Department of Defense	Research, Development, Test & Evaluation, Army	\$48,600,000	Funds withheld in expectation of a rescission	No congressional action on rescission proposal; funds released for obligation after 12/30/05
Department of Defense	Support for International Sporting Competition	\$26,000,000	Funds withheld in expectation of a rescission	No congressional action on rescission proposal; funds released for obligation 12/23/05
Department of Health & Human Services	Disease Control Research & Training	\$7,000,000	Funds withheld in expectation of a rescission	No congressional action on rescission proposal; funds released for obligation after 12/30/05
Department of Agriculture	Direct Credit & Food for Progress	\$10,000,000	Funds withheld in expectation of a rescission	No congressional action on rescission proposal; funds released for obligation after 12/30/05

FUNDS WITHHELD FROM OBLIGATION UNDER THE PRESIDENT'S RESCISSION PROPOSAL					
Agency	Account	Amount Proposed for Rescission/Withheld	Agency Comments	Status	
Department of Defense	Disposal of Department of Defense Real Property	\$45,000,000	Funds withheld in expectation of a rescission	Rescission enacted Pub. L. No. 109-148, 12/30/05	
Department of Defense	Lease of Department of Defense Real Property	\$30,000,000	Funds withheld in expectation of a rescission	Rescission enacted Pub. L. No. 109-148, 12/30/05	
Department of Defense	Operation & Maintenance, Overseas Military Facility Investment Recovery Account	\$5,000,000	Funds withheld in expectation of a rescission	Rescission enacted Pub. L. No. 109-148, 12/30/05	
Department of Agriculture	Ocean Freight Differential Grants	\$35,000,000	Funds withheld in expectation of a rescission	Rescission enacted Pub. L. No. 109-148, 12/30/05	
Total Amount Withheld:		\$471,400,000			
Total Amount Rescinded:		\$135,000,000			



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March 2, 2006

The Honorable Jerry Lewis
Chairman
Committee on Appropriations
House of Representatives

The Honorable David R. Obey
Ranking Member
Committee on Appropriations
House of Representatives

Subject: *Impoundments Resulting from the President's Proposed Rescissions of
October 28, 2005*

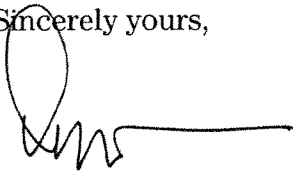
This is to advise you that we have recently identified 12 instances in which agencies impounded budget authority as a result of the President's October 28, 2005, proposal to rescind \$2.3 billion of available funding. The agencies withheld from obligation over \$470 million in budget authority. Because the President's October 28, 2005, proposal was not a rescission proposal in the form of a special message transmitted pursuant to the Impoundment Control Act, the agencies' actions constituted violations of the Impoundment Control Act.

Enclosed for your information is our letter to the Office of Management and Budget (OMB) detailing our findings and conclusions in this regard. In the letter, we state that if the President chooses in the future to propose cancellations of budget authority rather than rescissions pursuant to the procedures of the Impoundment Control Act, OMB should ensure that agencies do not withhold budget authority from obligation in anticipation of a possible rescission.

We are not transmitting to Congress a report under the Impoundment Control Act because the impoundments we identified are no longer taking place. Of the over \$470 million the agencies in question originally withheld from obligation, Congress rescinded \$135 million in December, 2005. The agencies in question informed us that they released the remaining amounts for obligation shortly thereafter. Thus all funds agencies impounded in response to the President's proposal have either been rescinded by Congress or released. In the past, we have declined to transmit to Congress a report under the Impoundment Control Act under similar circumstances.

Whenever the President submits a proposal to rescind or cancel funds, we will continue to closely monitor the actions of any agencies affected by the proposal to ensure that any agency impoundments are brought to your attention as promptly as possible.

Sincerely yours,

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a series of loops and a long horizontal stroke extending to the right.

David M. Walker
Comptroller General
of the United States

Enclosures: 2



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March 2, 2006

The Honorable Thad Cochran
Chairman
Committee on Appropriations
United States Senate

The Honorable Robert C. Byrd
Ranking Member
Committee on Appropriations
United States Senate

Subject: *Impoundments Resulting from the President's Proposed Rescissions of
October 28, 2005*

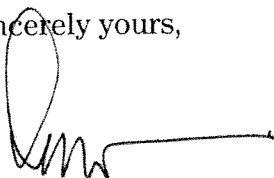
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