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B-330045

May 22, 2018

The Honorable Michael R. Pence  
President of the Senate

The Honorable Paul Ryan  
Speaker of the House of Representatives

Subject: *Impoundment Control Act of 1974: Review of the President's Special Message of May 8, 2018*

Under section 1012 of the Congressional Budget and Impoundment Control Act of 1974 (ICA), the President may transmit to Congress a special message proposing that Congress rescind budget authority. Pub. L. No. 93-344, title X, § 1012, 88 Stat. 297, 333–34 (July 12, 1974), *classified at* 2 U.S.C. § 683. Pursuant to this authority, on May 8, 2018, the President transmitted to Congress a special message proposing rescissions from 38 appropriation accounts. 164 Cong. Rec. S2548 (daily ed. May 8, 2018); 83 Fed. Reg. 22525 (May 15, 2018). Where the President properly transmits a special message, an agency may withhold corresponding amounts from obligation for a limited time period. ICA, § 1012(b), 2 U.S.C. § 683(b).

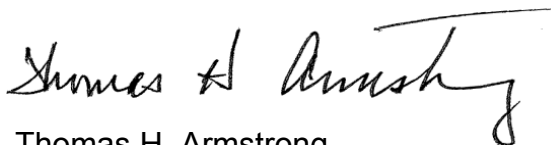
We are submitting this letter pursuant to our statutory duty to assist Congress by reviewing the special message. ICA, § 1014(b), 2 U.S.C. § 685(b). We performed a review of each of the President's 38 proposed rescissions:

1. Consistent with section 1015(b) of the ICA, we concluded that each proposed rescission was properly classified as a rescission proposal and not as a deferral. 2 U.S.C. § 686(b).
2. After the President transmits the special message, the Office of Management and Budget (OMB) transmits updated apportionments to the directly affected agencies. These apportionments may instruct agencies to withhold budget authority from obligation pending congressional action on the proposed rescission. We reviewed the updated apportionments for this special message to ensure their instructions were consistent with the special message. We found that for 32 proposals, OMB instructed agencies to withhold from obligation an amount equal to the amount proposed for rescission. For 6 proposals, OMB instructed agencies to withhold from obligation an amount less than the amount proposed for rescission. In no case did OMB instruct an agency to withhold from obligation an amount greater than that proposed for

rescission. In the Enclosure we identify each proposal for which the amount that OMB instructed agencies to withhold differed from the amount the special message proposed for rescission.

3. We contacted officials at each agency directly affected by the proposed rescissions to determine whether they withheld budget authority from obligation in a manner consistent with the special message. In no case did an agency withhold from obligation an amount that exceeded the amount proposed for rescission.
4. Section 1001(4) of the ICA provides that the Act does not supersede any provision of law which requires the obligation of budget authority or the making of outlays thereunder. 2 U.S.C. § 681(4). We reviewed each instance where an agency withheld amounts from obligation to ensure that such withholding was consistent with this provision. Except as noted, we concluded that each proposal was consistent with section 1001(4). We concluded that two proposals, R18-28 and R18-30, were not consistent with section 1001(4). These proposals involve amounts for which the appropriation vests in the agency no discretion over the obligation of funds. These amounts may not be withheld from obligation pending congressional consideration of the rescission proposal. We discuss this conclusion further in the Enclosure.
5. To identify additional facts surrounding each proposed rescission and its probable effects, we determined whether prior GAO work addressed the subject matter of each proposal. In the Enclosure we note the existence of this prior work where applicable.

In addition to the information given above, in the Enclosure we offer further observations on some of the proposed rescissions. If you have any questions, please contact Julia C. Matta, Managing Associate General Counsel, at (202) 512-4023, or Omari Norman, Assistant General Counsel for Appropriations Law, at (202) 512-8272.



Thomas H. Armstrong  
General Counsel

Enclosure

### **R18-3**

**Department of Agriculture  
Natural Resources Conservation Service  
Watershed and Flood Prevention Operations (012-1072 /X)  
Amount proposed for rescission: \$157,482,457**

In the apportionment schedule, OMB instructed the Department of Agriculture to withhold \$157,000,000 from obligation, which is \$482,457 less than the amount proposed for rescission.

### **R18-4**

**Department of Agriculture  
Rural Housing Service  
Rental Assistance Program (012-0137 2017/2018)  
Amount proposed for rescission: \$40,000,000**

The justification for this proposal states that fiscal year 2018 appropriations fully funded the program and that unobligated amounts are not needed to fully renew all the rental assistance contracts in fiscal year 2018.

In [GAO-17-725](#), we found some weaknesses in Rural Housing Service's (RHS) budget estimation process identifying its needs. We noted that, if faced with funding gaps in the future, RHS officials said they would implement mitigation measures, such as using unexpended funds from properties that exited the program, which would reduce the total number of rental assistance units in the program.

### **R18-6**

**Department of Agriculture  
Rural Business-Cooperative Service  
Rural Cooperative Development Grants (012-1900 /X)  
Amount proposed for rescission: \$14,705,229**

The justification for this proposal states that amounts would be rescinded from the value-added agricultural product market development grants. However, we note that although the Consolidated Appropriations Act, 2017, made a line-item appropriation for value-added agricultural product market development grants, the proposed appropriations language would rescind amounts from the broader lump-sum appropriation for rural cooperative development grants, not from the more specific line-item appropriation. Pub. L. No. 115-31, 131 Stat. 135, 156 (May 5, 2017).

## **R18-9**

**Department of Agriculture  
Rural Utilities Service  
Rural Water and Waste Disposal Program Account (012-1980 /X)  
Amount proposed for rescission: \$37,000,000**

The justification for this proposal states that fiscal year 2018 appropriations fully funded the Rural Water and Waste Disposal Program.

In [GAO-17-559](#), we noted that the Department of Agriculture was unable to fully obligate available loan funds for fiscal years 2012 through 2016. In [GAO-13-111](#), we found that duplicative application processes—including duplicate engineering reports and environmental analyses—made the application process burdensome for communities applying for federal loans, including loans from the Department of Agriculture.

## **R18-11**

**Department of Commerce  
Economic Development Administration  
Economic Development Assistance Programs (013-2050 /X)  
Amount proposed for rescission: \$30,000,000**

The justification for this proposal states that GAO has identified Economic Development Administration (EDA) programs as duplicative of other economic development programs.

In [GAO-12-819](#), we found that overlap and fragmentation exist among federal economic development programs that support entrepreneurial efforts, including some EDA programs. However, based on available data, we did not find evidence of duplication among these programs (that is, instances when two or more agencies or programs are engaged in the same activities to provide the same services to the same beneficiaries). We recommended that the Department of Commerce (1) consistently collect information that would enable it to track the specific type of assistance these programs provide and the entrepreneurs it serves and (2) conduct more program evaluations to better understand why programs have not met performance goals and their overall effectiveness. These are currently open priority recommendations. In our report we noted that decisions about funding and restructuring would be difficult without better performance and evaluation information.

## R18-12

**Department of Energy**  
**Energy Programs**  
**Advanced Technology Vehicles Manufacturing Loan Program (089-0322 /X)**  
**Amount proposed for rescission: \$4,333,499,814**

The justification for this proposal states that only five loans have been closed under the Advanced Technology Vehicles Manufacturing (ATVM) Loan Program since it was established in 2007, and that no new loans have closed since 2011.

In [GAO-14-343SP](#), GAO's annual report on opportunities to reduce fragmentation, overlap, and duplication, and achieve other financial benefits, we recommended that Congress consider rescinding all or part of the ATVM program's remaining credit subsidy appropriation. In the associated duplication and cost-savings [action tracker](#), we noted that as of February 2018, the Department of Energy (DOE) had not demonstrated demand for ATVM loans sufficient to use a substantial portion of the program's remaining credit subsidy appropriations.

## R18-13

**Department of Energy**  
**Energy Programs**  
**Title 17 Innovative Technology Loan Guarantee Program (089-0208 /X)**  
**Amount proposed for rescission: \$160,682,760**

In the proposed rescission appropriations language, the citation to 42 U.S.C. § 15513 likely should read 42 U.S.C. § 16513.

The justification for this proposal states that only three loans have been closed through this program since it was established.

In [GAO-12-157](#), we noted that DOE guaranteed 30 loans under section 1705 of the Energy Policy Act of 2005 as of the end of fiscal year 2011, using appropriations provided in the American Recovery and Reinvestment Act of 2009. In [GAO-14-645T](#), we explained that in 2011, Congress provided additional appropriations to pay credit subsidy costs for energy efficiency and renewable energy projects. DOE's authority to enter into loan guarantees under section 1705 expired on September 30, 2011. As of February 2014, DOE had guaranteed two loans under section 1703; however, the credit subsidy cost was not covered by the 2011 appropriation, as these loans were for nuclear generation projects.

**R18-14**

**Department of Energy**

**Energy Programs**

**Title 17 Innovative Technology Loan Guarantee Program, Recovery (089-0209 /X)**

**Amount proposed for rescission: \$523,212,221**

Section 1306(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, title XIII, § 1306(c), 124 Stat. 1376, 2135–36 (July 21, 2010), amended section 1603 of division A of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, div. A, title XVI, § 1603, 123 Stat. 115, 302 (Feb. 17, 2009) (ARRA), to provide that any unobligated balances of discretionary appropriations provided in division A of such act that remained unobligated as of December 31, 2012 were rescinded. The section also provided the President with the authority to waive the rescission requirements for unobligated balances if rescinding the balances was not in the best interest of the Nation. *Id.* On December 28, 2012, President Obama used the waiver authority provided by section 1603(c) of ARRA, as amended, to waive the rescission requirements for \$96 million in unobligated balances of appropriations provided in division A of ARRA for DOE's Title 17 Technology Loan Guarantee Program. *Waiver From Rescission of Unobligated Funds Under the American Recovery and Reinvestment Act of 2009*, 78 Fed. Reg. 661 (Jan. 4, 2013).

OMB advised us that on December 31, 2012, DOE followed the directive in section 1603(b) of ARRA and rescinded the remaining unobligated balances provided for this program. After this date, DOE received recoveries of ARRA funds that were obligated as of December 31, 2012. OMB and DOE do not view the language in section 1603(b) of ARRA that rescinds funds as applying to recoveries of amounts that were obligated as of December 31, 2012. OMB advised us that the \$523 million rescission from the ARRA funding proposed in the special message is a combination of the \$96 million that was not subject to the rescission requirement pursuant to the Presidential waiver and recoveries of balances that were obligated as of December 31, 2012.

The justification for this proposal states that the rescission would have no effect on outlays.

In [GAO-15-438](#) and [GAO-13-331R](#) we reported that the authority to enter into loan guarantees under section 1705 of the Energy Policy Act of 2005 expired on September 30, 2011. Because the authority has expired, DOE cannot guarantee any additional loans under section 1705.

#### **R18-15**

**Department of Health and Human Services  
Centers for Medicare and Medicaid Services  
Children's Health Insurance Fund (075-0515 /X)  
Amount proposed for rescission: \$5,149,512,000**

The amount proposed for rescission is \$5,149,512,000. In the apportionment schedule, the OMB instructed the Department of Health and Human Services (HHS) not to withhold any amounts from obligation.

#### **R18-17**

**Department of Health and Human Services  
Centers for Medicare and Medicaid Services  
Child Enrollment Contingency Fund (075-5551 /X)  
Amount proposed for rescission: \$1,865,000,000**

The amount proposed for rescission is \$1,865,000,000. In the apportionment schedule, OMB instructed HHS not to withhold any amounts from obligation.

#### **R18-19**

**Department of Housing and Urban Development  
Public and Indian Housing Programs  
Public Housing Capital Fund (086-0304 2015/2018)  
Amount proposed for rescission: \$1,192,287**

In the apportionment schedule, OMB instructed the Department of Housing and Urban Development (HUD) to withhold a total of \$1,192,287 from obligation. A footnote in the apportionment schedule indicates that HUD is to withhold \$598,070 from Modernization, \$4,494 from Emergency/Disaster Reserve, \$2,041 from Financial and Physical Assessments, \$438,000 from Resident Opportunity and Supportive Services, and \$149,682 from Administrative and Judicial Receiverships.

#### **R18-20**

**Department of Housing and Urban Development  
Public and Indian Housing Programs  
Public Housing Capital Fund (086-0304 2016/2019)  
Amount proposed for rescission: \$5,243,222**

In the apportionment schedule, OMB instructed HUD to withhold a total of \$5,243,222 from obligation. A footnote in the apportionment schedule indicates that HUD is to

withhold \$2,857,193 from Modernization, \$501,697 from Safety and Security, \$3,777 from Financial and Physical Assessments, \$465,279 from Resident Opportunity and Supportive Services, \$602,447 from Jobs-Plus Pilot, and \$812,829 from Administrative and Judicial Receiverships.

## **R18-21**

**Department of Housing and Urban Development  
Public and Indian Housing Programs  
Public Housing Capital Fund (086-0304 2017/2020)  
Amount proposed for rescission: \$34,051,236**

In the apportionment schedule, OMB instructed HUD to withhold a total of \$31,980,121 from obligation, which is \$2,071,115 less than the amount proposed for rescission. A footnote in the apportionment schedule indicates that HUD is to withhold \$12,380,130 from Modernization, \$3,693,455 from Emergency/Disaster Reserve, \$116,816 from Safety and Security, \$7,334 from Financial and Physical Assessments, \$26,927 from Resident Opportunity and Support Services, \$15,000,000 from Jobs-Plus Pilot, and \$755,459 from Administrative and Judicial Receiverships.

## **R18-22**

**Department of Housing and Urban Development  
Public and Indian Housing Programs  
Public Housing Capital Fund (086-0304 /X)  
Amount proposed for rescission: \$518,885**

In the apportionment schedule, OMB instructed HUD to withhold a total of \$518,885 from obligation. A footnote in the apportionment schedule indicates that HUD is to withhold \$79,649 from Modernization and \$439,236 from Technical Assistance.

## **R18-23**

**Department of Justice  
Legal Activities and U.S. Marshals  
Assets Forfeiture Fund (015-5042 /X)  
Amount proposed for rescission: \$106,000,000**

The proposed rescission appropriations language refers to these amounts as “permanently rescinded.” Rescission of amounts appropriated from special and trust fund receipts, as well as spending authority from offsetting collections from non-Federal sources, are usually temporary unless the legislation makes clear that the amounts are permanently rescinded. OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, §. 20.4(i) (Aug. 1, 2017).



The justification for this proposal states that the unobligated balance exceeds the amount that is necessary to carry out Asset Forfeiture Fund (AFF) activities in fiscal year 2018.

In [GAO-16-297](#), we reported that these unobligated balances have been used for departmental priorities and to cover yearly rescissions enacted by Congress.

## **R18-24**

**Department of Labor  
Employment and Training Administration  
Training and Employment Services (016-0174 /X)  
Amount proposed for rescission: \$22,913,265**

Under the account closing statute, appropriations available for a fixed period are closed on September 30<sup>th</sup> of the fifth fiscal year after the period of availability for obligation ends. 31 U.S.C. § 1552. Section 1899K of ARRA appropriated \$10 million for fiscal year 2002 and \$150,000,000 for the period of fiscal years 2009 through 2010. Pub. L. No. 111-5, 123 Stat. 115, 433-435 (Feb. 17, 2009). OMB has advised us that, pursuant to 29 U.S.C. § 3227(f) and to section 203(c) of the Trade Act of 2002, Pub. L. No. 107-210, 116 Stat. 933, 969 (Aug. 6, 2002), the Department of Labor has concluded that these funds remain available for particular purposes after 2010 and, accordingly, these amounts have been placed into a no-year account.

The justification for this proposal states that the program has only distributed \$1.4 million in National Emergency Grants to States to help implement the Health Coverage Tax Credit (HCTC) for Trade Adjustment Assistance (TAA) since 2015, and that the Department of Labor does not have plans for the remaining funds.

## **R18-25**

**Department of State  
Other  
Complex Crises Fund (072-1015 /X)  
Amount proposed for rescission: \$30,000,000**

The justification for this proposal states that other resources are available to carry out the activities that this account has been used to support. Specifically, the justification states that this fund has been largely used to support long-term development work, for which the Economic Support Fund is available, rather than the rapid response programs it was designed to support.

The fund had unobligated balances nearly matching or exceeding its budget request in five of the six fiscal years between 2010 and 2015.

## **R18-26**

**International Assistance Programs  
Millennium Challenge Corporation  
Millennium Challenge Corporation (524-2750 /X)  
Amount proposed for rescission: \$52,000,000**

The justification for this proposal states that the funds are not needed to carry out the program in fiscal year 2018, noting that funds from the Indonesia compact are anticipated to be returned to the Millennium Challenge Corporation (MCC), and that MCC's fiscal year 2018 appropriations exceeded the President's request.

MCC has consistently carried over large unobligated balances over the past several fiscal years, ranging from about \$1.3 billion at the end of fiscal year 2011 to about an estimated \$2.2 billion at the end of fiscal year 2017.

## **R18-27**

**International Assistance Programs  
Agency for International Development  
International Disaster Assistance (072-1035 /X)  
Amount proposed for rescission: \$252,000,000**

The justification for this proposal states that the funds were appropriated for the Ebola outbreak in 2015 and are no longer needed because the Ebola response has largely concluded.

In [GAO-18-350](#), we found that the U.S. Agency for International Development (USAID) has initiated or completed most Ebola recovery projects, but that a complete project inventory is still needed for evaluating its efforts.

## **R18-28**

**Department of Transportation  
Federal Highway Administration  
Miscellaneous Appropriations (069-0538 /X)  
Amount proposed for rescission: \$85,938,251**

OMB instructed the Department of Transportation to withhold \$85,938,251 from obligation pending congressional action on the rescission proposal, and the Department is withholding amounts in a manner consistent with the special message and OMB's instructions.

Section 1001(4) of the ICA, referred to as the “fourth disclaimer,” provides that “Nothing contained in this Act, or in any amendments made by this Act, shall be construed as . . . superseding any provision of law which requires the obligation of budget authority or the making of outlays thereunder.” Pub. L. No. 93–344, title X, § 1001(4), 88 Stat. 297, 332 (July 12, 1974), *classified at* 2 U.S.C. § 681(4). This provision made line-item appropriations for specified transportation projects. Based on the information available for our review, the Secretary of Transportation has no discretion over the obligation of funds provided for the specified projects. Accordingly, we regard these amounts as falling within the fourth disclaimer and conclude that these funds may not be withheld from obligation pending congressional consideration of the rescission proposal.

## **R18-30**

**Department of Transportation  
Federal Highway Administration  
Miscellaneous Highway Trust Funds (069-8058 /X)  
Amount proposed for rescission: \$48,019,600**

OMB advised us that there was a drafting error in this rescission proposal. The proposed rescission appropriations language should refer to the “Miscellaneous Highway Projects” *account* instead of the “Miscellaneous Highway Projects” *heading*; the Department of Transportation and Related Agencies Appropriations Act, 2001 has no such heading. OMB advised us that the funds proposed for rescission were appropriated in section 378 of the Department of Transportation and Related Agencies Appropriations Act, 2001. Pub. L. No. 106-346, title III, § 378, 114 Stat. 1356, 1356A-38–1356A-41 (Oct. 23, 2000).

OMB instructed the Department of Transportation to withhold \$48,019,600 from obligation pending action on the rescission proposal, and the Department is withholding amounts in a manner consistent with the special message and OMB’s instructions.

Section 1001(4) of the ICA, referred to as the “fourth disclaimer,” provides that “Nothing contained in this Act, or in any amendments made by this Act, shall be construed as . . . superseding any provision of law which requires the obligation of budget authority or the making of outlays thereunder.” Pub. L. No. 93–344, title X, § 1001(4), 88 Stat. 297, 332 (July 12, 1974), *classified at* 2 U.S.C. § 681(4). This provision made line-item appropriations for specified transportation projects. Based on the information available for our review, the Secretary of Transportation has no discretion over the obligation of funds provided for the specified projects. Accordingly, we regard these amounts as falling within the fourth disclaimer and conclude that these funds may not be withheld from obligation pending congressional consideration of the rescission proposal.

### **R18-33**

**Department of the Treasury  
Departmental Offices  
Treasury Forfeiture Fund (020-5697 /X)  
Amount proposed for rescission: \$53,000,000**

The proposed rescission appropriations language refers to these amounts as “permanently rescinded.” Rescission of amounts appropriated from special and trust fund receipts, as well as spending authority from offsetting collections from non-Federal sources, are usually temporary unless the legislation makes clear that the amounts are permanently rescinded. OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, §. 20.4(i) (Aug. 1, 2017).

The justification for this proposal states that the funds exceed amounts needed to carry out the program in fiscal year 2018.

In [GAO-16-297](#), we reported that unobligated balances in this fund have been used for law enforcement purposes and rescissions enacted by Congress.

### **R18-34**

**Department of the Treasury  
Departmental Offices  
Community Development Financial Institution Fund Program Account (020-1881  
2017/2018)  
Amount proposed for rescission: \$22,787,358**

The justification for this proposal states that the proposal would rescind \$22.8 million in funds appropriated in fiscal year 2017 for the Department of the Treasury’s Bank Enterprise Award (BEA) program.

In [GAO-06-824](#), we found that the BEA program’s impact on investments in distressed communities is difficult to determine, but likely not significant.

### **R18-35**

**Department of the Treasury  
Departmental Offices  
Capital Magnet Fund, Community Development Financial  
Institutions (020-8524 /X)  
Amount proposed for rescission: \$151,281,335**

In the apportionment schedule, OMB instructed the Department of the Treasury (Treasury) to withhold \$141,716,839 from obligation, which is \$9,564,496 less than the amount proposed for rescission. Treasury is withholding amounts from obligation consistent with OMB's instructions.

The proposed rescission appropriation language states that amounts were made available pursuant to sections 1337 and 1339 of the Housing and Economic Recovery Act of 2008. In fact, these amounts were made available by sections 1337 and 1339 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by section 1131 of the Housing and Economic Recovery Act of 2008. See Pub. L. No. 110-289, 122 Stat. 2654, 2711 (July 30, 2008).

### **R18-36**

**Environmental Protection Agency  
Environmental Protection Agency  
Environmental Programs and Management (068-0108 2017/2018)  
Amount proposed for rescission: \$10,000,000**

The amount proposed for rescission is \$10,000,000. In the apportionment schedule, OMB instructed the Environmental Protection Agency (EPA) not to withhold any amounts from obligation.

### **R18-38**

**Railroad Retirement Board  
Railroad Retirement Board  
Railroad Unemployment Insurance Extended Benefits Payments (060-0117 /X)  
Amount proposed for rescission: \$132,612,397**

The President or the head of the agency concerned may close an appropriation account available for an indefinite period, that is, a no-year account, after determining that (1) the purposes for which the appropriation was made have been carried out, and (2) no disbursement has been made against the appropriation for two consecutive fiscal years. 31 U.S.C. § 1555. After closing, amounts in the account are canceled and are not available for obligation or expenditure for any purpose. *Id.* If the amounts proposed for rescission are not rescinded, the President or the head of the Railroad Retirement Board may use the authority provided in 31 U.S.C. § 1555 to cancel the amounts without any further Congressional action.