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The Honorable Jamie Whitten Chairman, Committee on Appropriations House of Representatives

Dear Mr. Chairman:

This responds to your staff's request for our views on the scoring of two provisions of the Dire Emergency Supplemental Appropriations Act, Fiscal Year 1991 (Emergency Supplemental), Pub. L. No. 102-27, Stat. (April 10, 1991). The two provisions in question exempt previously obligated funds appropriated to the Library of Congress and the Department of Housing and Urban Development (HUD) from the new account closing provisions of the Defense Authorization Act, FY 1991, Pub. L. No. 101-510, Sec. 1405, 104 Stat. 1679 (1990), and extend the life of the obligated funds until expended. The Office of Management and Budget (OMB) maintains that the obligated funds affected by these provisions should be scored as new budget authority. The Congressional Budget Office (CBO) disagrees because the language of the two provisions of the Emergency Supplemental cannot be interpreted as creating any new budget authority. See Memorandum to Jim Blum from Gail Del Balzo dated April 15, 1991. We agree with CBO.

Prior to the enactment of the new appropriation account closing procedures in the Defense Authorization Act, FY 1991, obligated balances of expired appropriations remained indefinitely in the so-called "M" accounts to liquidate obligations. See 31 U.S.C. Sec. 1552 (1988). Section 1405(b) (6) of the Defense Authorization Act, FY 1991, however, required the deobligation and withdrawal of any amounts that had been in the former "M" accounts for more than five years on March 6, 1991, except in certain limited circumstances. While the obligated amounts in the "M" accounts were required to be deobligated, withdrawn, and made unavailable for restoration by the agencies, the underlying legal liability continued. Thus, section 1405(b)(7) authorized the use of one percent of current budget authority (available for the same general purpose) to pay liabilities deobligated under section 1405 (b)(6). However, the law is silent on the effect that the deobligation and withdrawal of previously obligated amounts has on legal liabilities (e.g., contracts) originally supporting the obligation, when current budget authority is insufficient to pay the pre-existing liability.

To avoid the effect of this provision on funds previously obligated for the Library of Congress, Books for the Blind Program, and HUD's Community Development Grant and Urban Development Action Grant programs, Congress in the Emergency Supplemental provided that "previously obligated funds appropriated" to these appropriation accounts "shall be exempt, effective as of March 5, 1991, from the application of" section 1405(b) of the Defense Authorization Act, FY

1991, "and shall remain available until expended for the purposes for which originally obligated . . ." /1/

The plain language of the two provisions makes abundantly clear that Congress' purpose in enacting these provisions was to preserve the amounts of obligated balances to complete previously funded grant projects and contracts and to liquidate the supporting obligations; not to extend the period of availability of unobligated budget authority for purposes of incurring new obligations. See Sen. Rep. No. 10224 at 42, 60 (1991) and H.R. Rep. No. 102-9 at 37-38, 46 (1991). Only the latter is what both we and OMB have referred to as a "reappropriation" which, for obvious reasons, both OMB and CBO score as new budget authority. GAO Glossary of Terms Used in the Federal Budget Process, PAD-81-27 at 44 (March 1981) (defining "reappropriation" as congressional action continuing the obligational availability "of the unobligated portion of budget authority that has expired or would otherwise expire."); OMB Circular A-11, Sec. 14.2(f) (July 1990) (to same effect). /2/

Indeed, the Congressional Budget Act of 1974 (Budget Act), as recently amended, incorporates this distinction in its definition of "new budget authority" as "a change in any accountin the availability of unobligated balances of budget authority carried over from a prior year. . . ." Pub. L. No. 93-344, Sec. 3, 88 Stat. 299 (1974), as amended by the Pub. L. No. 101-508, Sec. 13211, Stat. (1990) (codified at 2 U.S.C. Sec. 622.) /3/ A second part or the Budget Act's definition of "new budget authority" contains an identical understanding of the scorekeeping consequences of extending previously obligated budget authority to liquidate prior obligations. In this regard, "new budget authority" also includes, with respect to a fiscal year, "budget authority that first becomes available for obligation in that year including budget authority that becomes available in that year as a result of a reappropriation." Id. Thus, the Budget Act does not view the extension of previously obligated budget authority to liquidate obligations of the United States as the appropriation of new budget authority.

We view, as apparently does CBO, the preservation of these obligated balances as akin to the enactment of appropriations to liquidate contract authority. The practice in such cases has been to score the budget authority against the legislation that authorized the agency to incur obligations in advance of appropriations to liquidate obligations. To score the liquidating appropriations as budget authority would result in double counting and would confuse authorizing the incurrence of new obligations with the liquidation of government obligations, i.e., outlays.

We also understand OMB to argue that because section 1405 of the Defense Authorization Act, FY 1991, cancelled the obligated balances at issue as of March 6, 1991 and because the Emergency Supplemental Appropriations Act was not signed into law until April 10, 1991, the necessary effect of the back-dated preservation of these obligated balances is the creation of new budget authority. We think OMB's argument misses the mark for the reasons pointed out by CBO. Suffice it to say that OMB's argument fails simply because, by retroactive operation of the Emergency Supplemental, these funds were not deobligated and withdrawn. Since they are to be treated, as a matter of law, as having never been canceled, i.e., deobligated and withdrawn, there is no need to provide new budget authority to liquidate these preexisting obligations. Nothing in the language of the two provisions at issue here suggests otherwise.

Sincerely yours,

Milton J. Socolar Comptroller General of the United States

1. The full text of the Library of Congress provision is as follows:

"LIBRARY OF CONGRESS "ADMINISTRATIVE PROVISION

"Previously obligated funds appropriated to the account 'Library of Congress, Books for the blind and physically handicapped, Salaries and expenses' ln Legislative Branch Appropriations Acts for prior fiscal years shall be exempt, effective as of March 5, 1991, from the application of the provisions of sections 1405 (b)(4) and (b)(6) of Public Law 101-510 (104 Stat. 1679) and section 1552 of title 31, United States Code, and shall remain available until expended for the purposes for which originally obligated, in amounts as follows:

"From amounts appropriated for fiscal year 1978 in Public Law 95-94, $223, 000

"From amounts appropriated for fiscal year 1980 in Public Law 96-86, $393,000.

"From amounts appropriated for fiscal year 1981 in Public Law 96-536, $4,905,426.

"From amounts appropriated for fiscal year 1982 in Public Law 97-51, $1,960,000.

"From amounts appropriated for fiscal year 1985 in Public Law 98-367, $2,226,243.

"From amounts appropriated for fiscal year 1989 in Public Law 100-458, $1,391,280."

The HUD provision provides in full as follows:

"All previously obligated funds appropriated to the Department of Housing and Development under the respective heads 'Community development grants' and 'Urban development action grants' for prior fiscal fears shall be exempt, effective as of March 5, 1991, from the application of the provisions or sections 1405 (b)(4) and (b)(6) of Public Law 101 510 (104 Stat. 1679) and section 1552 of title 31, United States Code, and shall remain available until expended for the purposes for which originally obligated."

2. Rule 6 of the Scorekeeplng Guidelines set forth in the Joint Explanatory Statement of the Conference Committee accompanying the Omnibus Budget Reconciliation Act of 1990 is fully consistent with our understanding of a reappropriation as the extension of the period of availability of unobligated, expiring balances of an appropriation. Rule 6 provides that a "[rleappropriation of expiring balances of budget authority will be scored as new budget authority in the fiscal year in which the balances become newly available." 136 Cong. Rec. H12749 (daily ea., October 26, 1990).

3. Although the definition of "new budget authority" is effective for fiscal year 1992 and thereafter, Pub. L. No. 101-508, Sec. 13211 (b), Stat. (1990), we think the definition nonetheless illustrates a congressional appreciation of the distinction between obligated and unobligated balances relevant to this issue.