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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

B-308011

August 4, 2006

The Honorable Thad Cochran
Chairman, Committee on Appropriations
United States Senate

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

Subject: *Status of Funds Proposed for Cancellation in the President's Fiscal Year 2007 Budget*

On February 6, 2006, President Bush submitted his proposed Budget for Fiscal Year 2007 to Congress. In the Budget he requests cancellation or rescission of previously appropriated funds from 40 programs, administered by 13 agencies.[1] All of these programs are funded through multiyear, no-year, or advance appropriations. On March 23, 2006, you requested that we undertake an assessment of whether executive branch agencies have withheld funds proposed for cancellation in the Budget.

In response to your letter, we contacted the agencies responsible for these programs to obtain information on whether they were withholding funds from obligation in response to the cancellation and rescission proposals in the Budget.[2] After evaluating the information provided, we concluded that in only one instance—the Maritime Guaranteed Loan Program Account, administered by the Department of Transportation's Maritime Administration—has an agency withheld funds from obligation in response to proposed cancellations or rescissions in the Budget.

The Maritime Guaranteed Loan Program provides for guaranteed loans for purchasers of ships from, and the modernization of, U.S. shipyards. The Budget calls for cancellation of $2 million from the Loan Program account, which contains no-year funds. *Appendix,* at 904. The Maritime Administration (MARAD) states that this figure represents a recovery of funds resulting from the overestimation of the subsidy costs associated with an earlier loan guarantee. The latest apportionment

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[1] *Budget of the United States Government for Fiscal Year 2007—Appendix* (*hereafter* Budget), *available at* www.omb.gov/budget/fy2007/appendix.html (last visited July 25, 2006).

[2] A detailed scope and methodology appears in Enclosure 1.

schedule for this account reflecting the recovery of these funds, dated June 12, 2006, shows a balance of $7,633,020 in this account, of which $2,068,018 is designated as "withheld pending rescission." MARAD states that the $2,068,018 amount is the sum recovered from the subsidy overestimation, which had been set aside in reserve, unavailable for obligation, pending congressional action on the Budget's proposed cancellation.

The President has not submitted a special message under the Impoundment Control Act proposing the rescission of funds in the Maritime Guaranteed Loan Program account. MARAD advised us that it has been withholding $2,068,018 in response to a legislative proposal appearing in the Budget. This MARAD cannot do, as the Impoundment Control Act affords agencies the only means by which they may withhold funds from obligation pending a proposal to rescind budget authority.[3]

The Department of Transportation (DOT) subsequently advised us that as of August 1, 2006, the funds withheld from obligation were in the process of being reapportioned and made available for obligation. According to DOT, MARAD mistakenly withheld $2,068,018 from obligation due to confusion at the agency level as to the proper manner in which to respond to a proposed cancellation in the Budget. A DOT official informed us that although the funds have been unavailable for obligation, no Maritime Guaranteed Loan program activities have been denied funds or otherwise suffered as a result.

As mentioned above, agencies are not withholding funds in response to the remaining cancellation and rescission proposals in the Budget. For 18 of the 40 programs targeted for cancellation or rescission, the Office of Management and Budget (OMB) has apportioned the funds, and the agencies administering the programs have allotted funds and are moving forward with the programs. Any delays in obligating available funds for these programs are attributable to programmatic factors. For example, the Budget seeks cancellation of $75 million from the Department of Labor's Job Corps centers Construction, Rehabilitation, and Acquisition account. *Appendix,* at 718. In response to our inquiry, the Department of Labor (DOL) stated that although all funds in the account had been apportioned and allotted, the rate of obligation of newly appropriated funds was sluggish. DOL states that it normally needs approximately 1 year to identify which of the more than 120 Job Corps centers should receive funds. According to DOL, a lengthy bid process for DOL contracts under the program follows, after which DOL awards a contract and work begins.[4]

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[3] 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), agencies may withhold budget authority from obligation after the President has transmitted to Congress a special message seeking the rescission of the funds and 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.*

[4] The programs comprising this group are listed as "Category 1" in Enclosure 3, a table grouping all 40 programs targeted for rescission or cancellation by the status of the program funds.

Sixteen of the 40 proposed cancellations or rescissions pertain to previously appropriated funds that will not become available for obligation until fiscal year 2007. The agencies administering these programs are thus not withholding funds from obligation, as these funds are not yet available.[5]

In three instances, the National Transportation Safety Board's Salaries and Expenses account and its Emergency Fund, and the Department of Homeland Security's Counterterrorism Fund, OMB apportioned the funds proposed to be cancelled or rescinded.[6] However, the agencies are not obligating the funds because the purposes for which Congress made the funds available no longer need funding. For example, the Budget calls for rescission of $1.7 million from the National Transportation Safety Board's Salaries and Expenses account. *Appendix,* at 1189. These are balances remaining from no-year funds Congress appropriated in fiscal year 2000 to investigate the 1999 crash of Egypt Air flight 990 and the 2000 crash of Alaska Airlines flight 261. Emergency Supplemental Act, 2000, Pub. L. No. 106-246, div. B, title II, ch. 6, 114 Stat. 511, 557 (July 13, 2000). The National Transportation Safety Board (NTSB) issued its findings regarding these two crashes in fiscal year 2003. Because the reports for these crashes were completed several years ago, NTSB believes the likelihood the remaining funds will be used is very low. Although OMB has apportioned all the funds in the account, no funds have been obligated in fiscal year 2006 because no further activity is occurring regarding these airline crashes.[7]

In two cases, funds from the Small Business Administration (SBA) Business Loans Program account and Disaster Loans Program account proposed for cancellation are unapportioned and unavailable for obligation by operation of law,[8] rather than by virtue of actions on the part of SBA. Following the attacks of September 11, 2001, Congress appropriated $75 million each in no-year funds to the Business Loans Program Account and the Disaster Loans Program Account. Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, 2002, Pub. L. No. 107-117, 115 Stat. 2230, 2297 (Jan. 10, 2002). The purpose of these funds was to administer loans to businesses and individuals damaged by the attacks and their immediate aftermath. *Id.* In the case of the Business Loans Program Account, Congress limited the duration of a special program financed out of the $75 million appropriation to one year. Pub. L. No. 107-117, § 203. With respect to the Disaster Loans Program account, SBA regulations provide that disaster loan applications are only accepted within 9 months of the relevant disaster. Small Business Administration Standard Operating Procedure 50 30 5, *Disaster Assistance Program,* § 66 (May 6, 2004). Thus, SBA says it only accepted disaster loan applications related to the terrorist attacks

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[5] These programs are listed as "Category 2" in Enclosure 2.

[6] These programs are listed as "Category 3" in Enclosure 2.

[7] Under 31 U.S.C. § 1555, the President may close an account consisting of no-year funds if: 1) the President determines that the purposes for which Congress appropriated the funds have been fulfilled; and 2) no disbursement has been made against the appropriation for two consecutive fiscal years. This procedure may be an option for the President to consider regarding the NTSB Emergency Fund and the Department of Homeland Security Counterterrorism Fund.

[8] Funds in the Disaster Loans Program account are unavailable by operation of regulations having the force and effect of law.

for 9 months following the attacks. According to SBA, the funds proposed for cancellation in these two accounts represent the amounts appropriated in the wake of the terrorist attacks that SBA allocated towards these two programs. These programs are now defunct. Because the funds were appropriated specifically to deal with the effects of the terrorist attacks, SBA may not use them for another purpose.[9] 31 U.S.C. § 1301; B-300826, Mar. 3, 2005.

The most recent apportionment schedules for these 40 accounts show that adequate funds exist in most of the accounts to cover the amounts proposed for cancellation or rescission, should Congress decide to act on the proposals. However, the Budget calls for cancellation or rescission of *all* unobligated balances in four accounts. For example, the President seeks cancellation of all unobligated balances from the Department of Transportation's National Defense Tank Vessel Program account. If Congress were to pass legislation effectuating the President's requests for these four programs, Congress would effectively cancel these programs for the remainder of fiscal year 2006.

As noted above, with the exception of the Maritime Guaranteed Loan Program account, no funds are being withheld in response to the proposed cancellations and rescissions in the Budget. While the President is free to propose cancellations to Congress in the same manner as any other legislative proposal, the Impoundment Control Act (ICA) is the only avenue through which agencies may properly withhold funds from obligation. We caution that should the President choose to propose cancellations through means other than a special message under the ICA, affected agencies should be cognizant of the differences between such proposals and a special message under the ICA, and that they may not withhold budget authority from obligation in response to any proposal other than a special message under the ICA.[10]

A detailed summary of our findings for each of the 40 programs appears in Enclosure 3. We trust that you will find this information useful.

Sincerely yours,

David M. Walker
Comptroller General
of the United States

Enclosures: 3

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[9] These programs are listed as "Category 4" in Enclosure 2.

[10] On April 7, 2006, OMB apprised the executive agencies of the difference between a special message under the ICA and the cancellations proposed in the Budget, advising that because the proposed cancellations are not special messages, agencies may not withhold the funds proposed for cancellation. OMB Memorandum M-06-10, *Reminder: Treatment of the Cancellation Proposals in the President's FY 2007 Budget* (Apr. 7, 2006).

SCOPE AND METHODOLOGY

To identify proposed cancellations or rescissions in the President's Budget for Fiscal Year 2007, we examined the *Appendix* to the Budget in electronic pdf format, available at www.omb.gov/budget/fy2007/appendix.html (last visited July 25, 2006). Using the pdf software's search function, we searched the *Appendix* for each variation of the words "cancel" and "rescind." This search yielded 40 proposed cancellations or rescissions in 13 agencies.

To obtain information on the proposed cancellations or rescissions, we sent letters of inquiry to the General Counsels and Chief Financial Officers of the affected agencies. Regarding each account proposed for cancellation or rescission in the budget transmittal, we asked whether funds in the account were being withheld from obligation. In addition, we asked for the following information:

1. The most recent SF 132 *Apportionment and Reapportionment Schedule* for each program account.
2. Any obligational documentation or obligational data that show that the funds for each program account have been allotted and are available for obligation.
3. The most recent SF 133 *Report on Budget Execution and Budgetary Resources* for each program account.
4. The Department/Agencies' fiscal year 2007 budget justifications for each program.
5. Documentation for the Department/Agencies' funds control system.
6. Any other pertinent information that reflects that budget authority for the programs proposed for cancellation or rescission in the President's proposed fiscal year 2007 budget is available for obligation.

We reviewed the agencies' replies to determine whether they were withholding funds from obligation. In most cases, we contacted agency officials by telephone to further develop the factual record. We also researched the nature and funding history of the affected programs to better understand how the programs work from a fiscal perspective.

Status of Program Funds Proposed for Cancellation or Rescission

Program	Category 1[a]	Category 2[b]	Category 3[c]	Category 4[d]
USDA – High Energy Cost Grants	X			
USDA – Rural Economic Development Grants	X			
USDA – Rural Economic Development Loans		X		
USDA – Environmental Quality Incentives Program		X		
USDA – Wildlife Habitat Incentives Program		X		
USDA – Small Watershed Rehabilitation Programs		X		
USDA – Broadband Programs		X		
USDA – Value-added Grant Programs		X		
USDA – Market-access Programs		X		
USDA – Farm and Ranch Lands Protection Programs		X		
USDA – Agricultural Management Assistance Programs		X		
USDA – Biomass Research and Development Programs		X		
USDA – Renewable Energy Systems and Energy Efficiency Improvements Programs		X		
USDA – Ground and Surface Water Conservation Programs		X		
Commerce – Emergency Steel Guaranteed Loans	X			
Energy – Clean Coal Technology		X		
HHS – Health Centers Loan Guarantee	X			
DHS – Counterterrorism Fund			X	
HUD – Housing Certificate Fund	X			
HUD – HOPE VI	X			
HUD – Community Development Fund	X			
Interior – At-Risk Terminal Lakes	X			
Interior – Land and Water Conservation Fund		X		
DOJ – Project Seahawk	X			
DOJ – Buildings and Facilities	X			
DOJ – Assets Forfeiture Fund	X			
DOJ – Justice Assistance	X			

Status of Program Funds Proposed for Cancellation or Rescission

Program	Category 1	Category 2	Category 3	Category 4
DOJ – Crime Victims Fund		X		
DOJ – Community-Based Policing Assistance	X			
Labor – Job Corps Construction, Rehabilitation and Acquisition	X			
Transportation – Airport and Airway Trust Fund		X		
Transportation – Maritime Guaranteed Loans**				
Transportation – Compensation for Air Carriers	X			
Transportation – Formula and Bus Grants	X			
Transportation – National Defense Tank Vessel Construction	X			
Executive Office of the President – Unanticipated Needs for Natural Disasters			X	
NTSB – Salaries and Expenses			X	
NTSB – Emergency Fund	X			
SBA – Salaries and Expenses	X			
SBA – Business Loans Program				X
SBA – Disaster Loans Program				X

[a] This category contains the 19 programs for which OMB has apportioned funds, and for which the agencies administering the programs have allotted funds and are moving forward. Any delays in obligating available funds for these programs are attributable to programmatic factors.

[b] This category contains the 16 programs for which the proposed cancellations or rescissions pertain to previously appropriated funds that will not become available for obligation until fiscal year 2007. The agencies administering these programs are not withholding funds from obligation, as these funds are not yet available.

[c] This category contains the 3 programs for which agencies are not obligating funds because the purposes for which Congress made the funds available no longer need funding.

[d] This category contains the 2 SBA programs in which the funds are unapportioned and unavailable for obligation by operation of law.

** Funds withheld pending rescission; reapportionment forthcoming.

Enclosure 3 – Summary of Status of Accounts by Agency

Department of Agriculture

The Budget calls for cancellation of $25.3 million from the High Energy Cost Grants account. The Department of Agriculture's Rural Utilities Service administers the High Energy Cost Grants program. The program provides grants to local utilities to construct facilities and improve energy generation in areas where the average annual expenditure for home energy costs is at least 275 percent of the national average. 7 U.S.C. § 918a. Congress appropriated $26 million for the program in fiscal year 2006. Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006, Pub. L. No. 109-97, title III, 119 Stat. 2120, 2137 (Nov. 10, 2005). All available funds in the program account have been apportioned and allotted. The program account contains $56 million, all of which are no-year funds, enough to cover the proposed cancellation. The Department of Agriculture (USDA) last issued a Notice of Funds Availability (NOFA) for this account on May 25, 2005. USDA officials told us they received a large volume of applications, which created a backlog for review. USDA states that before it may obligate grant funds, prospective grantees must complete an environmental impact review for the proposed project. These reviews are currently ongoing, according to USDA.

The Budget also calls for rescission of $81 million from the Rural Economic Development Grants account, and $7.6 million from the Rural Economic Development Loans account. USDA's Rural Business-Cooperative Service (RBCS) administers the two Rural Economic Development Programs. Under these programs, electric and telephone utilities that have current loans with the Rural Utilities Service or Rural Telephone Bank loans may receive loans or grants to promote rural economic development and job creation projects.

Both the Loans program and the Grants program are financed from the cushion-of-credit sub-account in the Rural Electrification and Telephone Revolving Fund. 7 U.S.C. § 940c(a). Because of a statutory formula, the balance in the cushion-of-credit sub-account has grown beyond what RBCS believes is needed to fund the Rural Economic Development Grant and Loan programs.[1]

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[1] The balance in the cushion-of-credit sub-account is determined by a formula that considers amounts deposited by borrowers of Rural Economic Development Loans into their own individual cushion-of-credit accounts in the Rural Electrification and Telephone Revolving Fund. These individual accounts assist borrowers in repaying their Rural Economic Development loans. Deposits made by borrowers to these accounts accrue 5 percent interest annually. 7 U.S.C. § 940c(a). The formula multiplies the outstanding cushion-of-credit payments by the difference between the average weighted interest rate paid on outstanding certificates of beneficial ownership issued by the Rural Electrification and Telephone Revolving Fund and the 5 percent interest rate provided to borrowers on their individual cushion-of-credit accounts. 7 U.S.C. § 940c(b)(2). As the number of borrowers opening cushion-of-credit accounts has rapidly increased in recent years, the corresponding level of funds in the rural economic development sub-account has risen dramatically, according to USDA.

In fiscal year 2006, Congress rescinded $170 million from the rural economic development sub-account. Pub. L. No. 109-97, 119 Stat. 2141. The remaining amounts for the Rural Economic Development Grants and Loans programs are apportioned and allotted. USDA states that the $81 million proposed for rescission represents amounts that will accrue in the rural economic development sub-account in fiscal year 2006 that are greater than amounts RBCS and OMB believe are needed for the programs.

The $7.6 million proposed for rescission would come from amounts accrued in the rural economic development sub-account in fiscal year 2007. Thus, these funds are not yet available to RBCS.

In addition, the Budget proposes the cancellation or rescission of funds from the following 11 USDA programs:

- Environmental Quality Incentives Program – amounts in excess of $1 billion
- Wildlife Habitat Incentives Program – amounts in excess of $55 million
- Small Watershed Rehabilitation Programs – $65 million
- Broadband Programs – $10 million
- Value-added Grant Programs – $40 million
- Market-access Programs – amounts in excess of $100 million
- Farm and Ranch Lands Protection Programs – amounts in excess of $50 million
- Agricultural Management Assistance Programs – $14 million
- Biomass Research and Development Programs – amounts in excess of $12 million
- Renewable Energy Systems and Energy Efficiency Improvements Programs – $3 million
- Ground and Surface Water Conservation Programs – amounts in excess of $51 million

These represent amounts provided by advance appropriations that would not become available to USDA until fiscal year 2007. Thus, USDA is not impounding the funds because they are not yet available for obligation.

Department of Commerce

The Budget calls for cancellation of all remaining amounts from the Emergency Steel Guaranteed Loan Program, which as of December 31, 2005, totaled $50.8 million. Congress created this program in 1999 to assist the domestic steel industry. Emergency Steel Guarantee Loan Act of 1999, Pub. L. No. 106-51, ch. 1, 113 Stat. 252 (Aug. 17, 1999). The program provides loan guarantees to distressed domestic steel manufacturers. Congress appropriated $140 million, to remain available until expended, to fund the loan guarantees. *Id.* § 101(f)(5).

All available funds in this account are apportioned. As of May 24, 2006, only $222,008.49 had been obligated, for salaries and administrative expenses. The Department of Commerce says that the Emergency Steel Loan Guarantee Board, which administers the program, has received no loan guarantee applications in fiscal year 2006; thus it has made no new loans with the available funds.

Department of Energy

The Budget calls for cancellation of $203 million from the Clean Coal Technology (CCT) program. The CCT program consists of cooperative research efforts between the Department of Energy (DOE) and the private sector to develop new, more efficient and cleaner means of generating electricity from coal. DOE enters into cooperative agreements with private industry, universities, and other entities to achieve program goals. This program is financed with no-year funds. DOE has issued several notices of opportunities for cooperative agreements under the program in fiscal year 2006. DOE states that the amount proposed for cancellation is part of a $257 million advance appropriation not available for obligation until fiscal year 2007. Energy and Water Development Appropriations Act, 2006, Pub. L. No. 109-103, title III, 119 Stat. 2247, 2270 (Nov. 19, 2005). Because this budget authority is not otherwise available for obligation, DOE is not withholding these funds from obligation.

Department of Health and Human Services

The Budget calls for cancellation of available funds in the Health Centers Loan Guarantee Program. As of February 8, 2006, this program account contained $6.9 million, all of which are no-year funds. This program is administered by the Department of Health and Human Services' Health Resources and Service Administration (HRSA). Under this program, HRSA may guarantee up to 90 percent of the principal and interest of loans made by private institutions to primary health care providers assisting medically underserved populations. 42 U.S.C. § 254b(d). Congress last appropriated funds for the program in fiscal year 2006. Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2006, Pub. L. No. 109-149, title II, 119 Stat. 2833, 2844 (Dec. 30, 2005). All available funds in this program account are apportioned and allotted. However, HRSA has received a very small number of loan guarantee applications in recent years, and, as a result, as of February 8, 2006, HRSA had obligated only $140,000 for fiscal year 2006. HRSA says that from the beginning of fiscal year 2004 to the present, it has issued only seven loan guarantees, with five additional applications pending.

Department of Homeland Security

The Budget calls for cancellation of the unobligated balances in the Counterterrorism Fund. The Counterterrorism Fund contains no-year funds which are available for the Department of Homeland Security (DHS) to reimburse

other federal agencies for costs those agencies incur while supporting DHS's counterterrorism activities. *See, e.g.,* Department of Homeland Security Appropriations Act, 2006, Pub. L. No. 109-90, title III, 119 Stat. 2064, 2077 (Oct. 18, 2005). All amounts in the Counterterrorism Fund are apportioned. However, according to DHS no reimbursement claims are currently pending; consequently it is not obligating these funds. The appendix to the Budget states that Congress, through supplemental appropriations, has provided other federal agencies with funds to support counterterrorism activities, minimizing the need for these agencies to seek reimbursement from the Counterterrorism Fund. *Appendix,* at 475.

Department of Housing and Urban Development

The Budget calls for cancellation or rescission of funds from the following Department of Housing and Urban Development (HUD) programs:

- Housing Certificate Fund – $2 billion
- HOPE VI – $99 million
- Community Development Fund – $356.4 million

The Housing Certificate Fund provides subsidized rent to low-income individuals and families. The Housing Certificate Fund administers two types of rental assistance—project-based and tenant-based. Under project-based assistance, HUD enters into contracts with low-income housing owners to make rents affordable for low-income households. Under such contracts, HUD pays the property owner the difference between a HUD-approved unit rent and the household's rent payment. Under tenant-based assistance, individual households receive vouchers which they use toward their rent in the private market. Until fiscal year 2005, Congress appropriated no-year funds for both of these programs to the Housing Certificate Fund. *See, e.g.,* Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2004, Pub. L. No. 108-199, div. G, title II, 118 Stat. 3, 372 (Jan. 23, 2004). In fiscal year 2005, Congress began funding assistance with two new and separate accounts, one for tenant-based assistance and one for project-based. Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2005, Pub. L. No. 108-447, div. I, title II, 118 Stat. 2809, 3295–96 (Dec. 8, 2004). The original Housing Certificate Fund has not received appropriations since, and, according to HUD, exists now only to administer project-based contracts entered into prior to fiscal year 2005.

All available balances in the Housing Certificate Fund are apportioned. Approximately half of the available funds have been allocated, based on current program needs. HUD states that remaining funds will be allocated as program needs arise.

The HOPE VI program provides grants to local public housing authorities for revitalization of public housing projects. Congress last appropriated funds for the program in fiscal year 2006. Department of Housing and Urban Development Appropriations Act, 2006, Pub. L. No. 109-115, title III, 119 Stat. 2396, 2444 (Nov. 30, 2005). This appropriation consisted of $100 million of 2-year funds (2006–07). The Budget calls for cancellation of the remaining amounts of this sum at the beginning of fiscal year 2007. All available funds for this program account have been apportioned and allotted.[2] HUD published a NOFA for this program April 11, 2006.

The Community Development Fund finances the Community Development Block Grant Program. Through this program, HUD provides grants to metropolitan cities and urban counties, known as entitlement communities, and to states who distribute the funds to non-entitlement communities. Recipients use the grant funds for housing, economic development, neighborhood revitalization, and other community development activities. Congress appropriated $4.2 billion in 3-year funds (2006–08) for the Community Development Fund in fiscal year 2006. Pub. L. No. 109-115, title III, 119 Stat. 2447. HUD has identified the funds proposed for cancellation as coming from two sub-programs of the Community Block Grant Program—$306.9 million from its Economic Development Initiative Grants program and $49.5 million from the Neighborhood Initiative Demonstration program. These sums are apportioned and allotted to the respective program offices. In addition, HUD says that its Office of Community Planning and Development, which administers the Community Block Grant Program, has issued its formula grant allocations for each state and U.S. territory for fiscal year 2006.

Department of the Interior

The Budget calls for cancellation or rescission of funds from the following Department of the Interior programs:

- At-Risk Terminal Lakes Program – $88 million
- Land and Water Conservation Fund – unobligated amounts available for fiscal year 2007

The Farm Security and Rural Investment Act of 2002 provided that $200 million be transferred from the Commodity Credit Corporation to the Bureau of Reclamation Water and Related Resources account to provide water to at-risk natural desert lakes. Pub. L. No. 107-171, § 2507, 116 Stat. 134, 275 (May 13, 2002). The funds are

[2] None of the funds appropriated for this program for fiscal year 2006 may be used by HUD for technical assistance, training, or management improvements until HUD provides to the congressional Appropriations Committees a description of each proposed activity and a detailed budget estimate of the costs associated with each program. Pub. L. No. 109-115, § 309. We have no knowledge of whether HUD has provided such a description.

available until expended, but are not available to purchase or lease water rights. *Id.* The Department of the Interior (Interior) states that because the purpose of the funds is to provide water to lakes, the restriction on water rights purchases limits its use of the funds. Since enactment of the funds transfer, Congress has enacted a series of laws directing specific uses for portions of these funds. For example, in fiscal year 2006 Congress directed Interior to give up to $70,000,000 of the funds in this account to the University of Nevada to establish an agricultural and natural resources center. Pub. L. No. 109-103, § 208. All funds available, in light of the restrictions on their use and the congressional directives, are apportioned.

The proposed rescission of the Land and Water Conservation Fund is not a rescission of currently available budget authority. The contract authority proposed for rescission will not be available to Interior until fiscal year 2007. 16 U.S.C. § 460l-10a. Therefore, Interior is not withholding funds available for obligation.

Department of Justice

The Budget calls for cancellation or rescission of no-year funds from the following five Department of Justice (DOJ) programs:

- Salaries and Expenses, U.S. Attorney's Office (Project SeaHawk) – $27 million
- Buildings and Facilities – $142 million
- Assets Forfeiture Fund – $120 million
- Community-Oriented Policing Services – $127.5 million
- Justice Assistance – $127.5 million
- Crime Victims Fund – amounts in excess of $625 million

Project SeaHawk is a pilot port security project in Charleston, South Carolina, that Congress created in fiscal year 2003. Department of Justice Appropriations Act, 2003, Pub. L. No. 108-7, div. B, title I, 117 Stat. 11, 53 (Feb. 20, 2003). The project's purpose is to facilitate cooperation between federal, state, and local resources to more efficiently and effectively protect American ports. Available funding for Project SeaHawk is fully apportioned and allotted, and DOJ states that as of March 31, 2006, it had obligated $6.8 million from the account.

DOJ's Bureau of Prisons (BOP) administers the Buildings and Facilities account. BOP currently utilizes this account to fund the ongoing construction of prison facilities. As of February 9, 2006, this account contained $527 million. All funds in the account are apportioned and allocated. DOJ states that as of March 31, 2006, BOP had obligated $74 million of these funds, and plans to obligate more as program needs dictate.

The Assets Forfeiture Fund finances civil and criminal seizure and forfeiture of property pursuant to any law enforced or administered by DOJ. 28 U.S.C. § 524(c). This account contains the proceeds of forfeited property sales, as well as appropriated funds. The funds in this account have been apportioned and allotted. As of March 31, 2006, this account contained $859.8 million, and DOJ states it had obligated $321 million.

The Community-Oriented Policing Services Program account awards grants to state, local, and tribal law enforcement agencies with the goal of enhancing interaction between law enforcement and the local community, and preventing rather than responding to crime. The funds in this account are apportioned and allotted. As of March 23, 2006, this account contained $540.2 million. DOJ states that as of March 31, 2006, it had obligated $275 million in new grant awards and was reviewing a number of applications.

The Justice Assistance account funds a wide variety of grant programs, administered by DOJ's Office of Justice Programs. These grant programs aim to assist state, local and tribal authorities to prevent and reduce violence and crime. Should Congress enact the proposed cancellation, DOJ says it will reduce funds for each grant program proportionally, as they are all funded out of the same large budgetary account. The funds in this account are apportioned and allotted. As of February 24, 2006, this account contained $497.5 million. DOJ states that as of March 31, 2006, it had obligated $83 million in grant awards, and it expects to obligate additional funds, as awards for these grants typically occur late in the fiscal year.

The Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006, provides that notwithstanding any other provision of law, amounts in the Crime Victims Fund in excess of $625 million are not available for obligation until the following fiscal year. Pub. L. No. 109-108, § 612, 119 Stat. 2290, 2336 (Nov. 22, 2005). Thus, the Department of Justice is not withholding these funds from obligation as they are not yet available.

Department of Labor

The Budget calls for cancellation of $75 million of funds from the Job Corps centers program's Construction, Rehabilitation, and Acquisition (CRA) account. The Job Corps program is an education and job training program for at-risk youth. Job Corps centers are facilities offering educational and vocational training under the Job Corps program. The CRA account operates with multiyear funds, to correspond with the lengthy nature of program implementation. For example, the CRA account contains funds available for fiscal years 2004–2006, 2004–2007, 2005–2007, and so on. Upon enactment of a multiyear appropriation, the Department of Labor (DOL) says that it normally needs approximately 1 year to identify which of the more than 120 Job Corps centers should receive funds. According to DOL, a lengthy bid process for DOL contracts under the program

follows, after which DOL awards contracts and work begins. As of December 19, 2005, the latest date for which apportionment data are available, this program account contained $319.6 million in budgetary resources. Funds in this program account have been fully apportioned and allotted. DOL states that it has numerous solicitations pending for contracts related to Job Corps centers, and is moving forward with the program.

Department of Transportation

The Budget calls for cancellation or rescission of funds from the following five Department of Transportation programs:

- Airport and Airway Trust Fund – $1.6 billion
- Maritime Guaranteed Loan Program – $2 million
- Compensation for Air Carriers – $50 million
- Formula and Bus Grants – $28.7 million
- National Defense Tank Vessel Construction Program – unobligated balances

Amounts proposed for rescission from the Airport and Airway Trust Fund represent amounts of contract authority that would not be available to the Department of Transportation (DOT) until fiscal year 2007. Therefore, DOT is not withholding these funds from obligation.

The Maritime Guaranteed Loan Program provides for guaranteed loans for purchasers of ships from, and the modernization of, U.S. shipyards. Funds proposed for rescission are no-year funds. The Budget calls for cancellation of $2 million from the Loan Program account, which contains no-year funds.[3] *Appendix,* at 904. The Maritime Administration (MARAD) states that this figure represents a recovery of funds resulting from the overestimation of the subsidy costs associated with an earlier loan guarantee. The latest apportionment schedule for this account reflecting the recovery of these funds, dated June 12, 2006, shows a balance of $7,633,020 in this account, of which $2,068,018 is designated as "withheld pending rescission." MARAD states that the $2,068,018 amount is the sum recovered from the subsidy overestimation, which had been set aside in reserve, unavailable for obligation, pending congressional action on the Budget's proposed cancellation. The Department of Transportation (DOT) states that as of August 1, 2006, the funds withheld from obligation were in the process of being reapportioned and made available for obligation. According to DOT, MARAD mistakenly withheld the $2,068,018 from obligation due to confusion at

[3] The Budget language contains a latent ambiguity regarding the type of funds proposed for cancellation. It seeks cancellation of $2 million of unobligated balances available under "this heading." The heading refers to the loan program account, but the first sentence under the heading seeks funds for administrative expenses, not subsidy costs for the program account. DOT confirms that the cancellation would come from the program account, not the administrative expenses account.

the agency level as to the proper manner in which to respond to a proposed cancellation in the Budget. DOT says that although the funds have been unavailable for obligation, no Maritime Guaranteed Loan program activities have been denied funds or otherwise suffered as a result.

The Compensation for Air Carriers account was established to assist air carriers who suffered losses as a result of the September 11, 2001, terrorist attacks. Air Transportation and System Stabilization Act, Pub. L. No. 107-42, 155 Stat. 230 (Sept. 22, 2001). The amount to be paid each eligible carrier is subject to formulaic caps, and the entire amount available for the program need not be expended. DOT states that it has paid air carriers the maximum amounts to which it believes the carriers are entitled, and the remaining $72.6 million of no-year funds in the Compensation for Air Carriers account are available for litigation costs should the air carriers challenge DOT's actions.

The Formula and Bus Grants account funds several different formula grant programs administered by the Federal Transit Administration (FTA). Formula and Bus grants for fiscal years 2000 and 2001 were funded by contract authority provided in The Transportation Equity Act for the 21st Century[4] (TEA-21) and received liquidating no-year appropriations in the relevant annual appropriations acts.[5] Department of Transportation and Related Agencies Appropriations Act, 2000, Pub. L. No. 106-69, 113 Stat. 986, 1000 (Oct. 9, 1999); Department of Transportation and Related Agencies Appropriations, 2001, Pub. L. No. 106-346, app., 114 Stat. 1356, 1356A-15 (Oct. 23, 2000). Congress rescinded $28.7 million of the obligation limitation applicable to the Formula and Bus Grants as part of the governmentwide reductions for fiscal years 2000 and 2001. Consolidated Appropriations Act, 2000, Pub. L. No. 106-113, app. E, § 301, 113 Stat. 1501, 1501A-303 (Nov. 29, 1999); Consolidated Appropriations Act, 2001, Pub. L. No. 106-554, app. D, §1403, 114 Stat. 2763, 2763A-214 (Dec. 21, 2000). Although the obligation limitation was reduced as part of the governmentwide rescission, the corresponding contract authority provided in TEA-21 was not reduced. Thus, this contract authority cannot be obligated because it is over and above the obligational limitations provided in the fiscal year 2000 and 2001 appropriation acts.

Congress directed DOT to create the National Defense Tank Vessel Construction Program in 2003. National Defense Authorization Act for Fiscal Year 2004, Pub. L. No. 108-136, div. C, title XXXV, subtitle D, 117 Stat. 1392, 1820–22 (Nov. 24, 2003). MARAD, which administers this program, is instructed to solicit proposals from private shipyards to construct up to five privately owned tankers, to be made

[4] Pub. L. No. 105-178, § 3029, 112 Stat. 107, 368 (June 9, 1998).

[5] Contract authority is budget authority that permits an agency to incur obligations in advance of appropriations. Although Formula and Bus grants are funded by contract authority, Congress appropriates funds from the Highway Trust Fund to reimburse grantees. Also, Congress limits the availability of the contract authority by imposing an obligation limitation in annual appropriation acts.

available for purposes of national defense during times of war or national emergency. Congress appropriated $75 million in no-year funds for the program in 2004. Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005, Pub. L. No. 108-447, div. H, title I, 118 Stat. 2809, 3231 (Dec. 8, 2004). Although MARAD has not obligated these funds, the delays are programmatic. MARAD began accepting proposals for tanker construction in 2004. MARAD says it has implemented a very detailed application process, involving several phases. According to MARAD, it is moving forward with this process, and it intends to obligate all available funds when the application process is complete.

Executive Office of the President

The Budget calls for cancellation of all balances in the Executive Office of the President's Unanticipated Needs for Natural Disasters account, totaling $11.8 million of no-year funds. Congress appropriated the funds in this account in two separate acts. The first was the Dire Emergency Supplemental to Meet the Needs of Natural Disasters of National Significance, which appropriated $250 million to respond to unanticipated needs arising in the aftermath of Hurricane Hugo and the Loma Prieta earthquake. Pub. L. No. 101-130, 103 Stat. 775 (Oct. 26, 1989). These funds were to be transferred to any federal agency to meet their requirements in dealing with these two disasters.

The second appropriation came in the Emergency Supplemental Appropriations Act of 1994, which provided $550 million for emergency expenses arising from the January 1994 Southern California earthquake, the 1993 Midwest floods, and other natural disasters. Pub. L. No. 103-211, 108 Stat. 3, 14 (Feb. 12, 1994). These funds too were to be transferred to any federal agency to meet their requirements in dealing with these disasters.

Because Congress appropriated these funds to deal with certain disasters, the Executive Office of the President may not use them for another purpose. All funds in this account have been apportioned and are available for obligation.

National Transportation Safety Board

The Budget calls for cancellation or rescission of funds from the following National Transportation Safety Board programs:

- Salaries and Expenses – $1.7 million
- Emergency Fund – $2 million

The funds in the Salaries and Expenses account proposed for rescission are balances remaining from no-year funds Congress appropriated to investigate the crashes of Alaska Airlines flight 261 in 2000 and Egypt Air flight 990 in 1999. Emergency Supplemental Act, 2000, Pub. L. No. 106-246, div. B, title II, ch. 6,

114 Stat. 525, 557 (July 13, 2000). Congress made these funds available for wreckage location and recovery, testing, and technical support. The National Transportation Safety Board (NTSB) issued its findings on these two crashes in fiscal year 2003. Congress rescinded $8 million and $1 million of these funds in fiscal years 2005 and 2006, respectively. Pub. L. No. 108-447, div. H, title IV, 118 Stat. 2809, 3262 (Dec. 8, 2004); Transportation, Treasury, Housing and Urban Development, the Judiciary, and Independent Agencies Appropriations, 2006, Pub. L. No. 109-115, div. A, title VI, 119 Stat. 2396, 2487 (Nov. 30, 2005). Because the reports for these crashes were completed several years ago, NTSB believes the likelihood the remaining funds will be used is very low. Nevertheless, all funds in this account are apportioned and available should the need arise.

NTSB's Emergency Fund funds emergency expenses for accident investigations for which NTSB has no other available funding. 49 U.S.C. § 1118(b). For example, NTSB states it would tap its Emergency Fund if several simultaneous, complex crash investigations resulted in costs exceeding available funding in NTSB's Salaries and Expenses account. NTSB has not found it necessary to utilize the Emergency Fund in fiscal year 2006, so no funds have been obligated out of this account. However, all funds in the account are apportioned and are available for obligation if needed.

Small Business Administration

The Budget calls for rescission of funds from the following 3 Small Business Administration (SBA) programs:

- Business Loans Program – $5 million
- Disaster Loans Program – $3.7 million
- Salaries and Expenses – $6.1 million

Following the attacks of September 11, 2001, Congress appropriated $75 million each in no-year funds to the Business Loans Program Account and the Disaster Loans Program Account. Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, 2002, Pub. L. No. 107-117, 115 Stat. 2230, 2297 (Jan. 10, 2002). These funds were "for disaster recovery activities and assistance related to the terrorist acts." *Id.*

In the same appropriations act, Congress provided that, for 1 year following the appropriation act's enactment, SBA would collect an annual fee of 0.25 percent of the outstanding balances of business loans made to small businesses affected by the terrorist attacks. Pub. L. No. 107-117, § 203. Normally, SBA collects an annual fee of 0.55 percent on business loans. 15 U.S.C. § 636(a)(23)(A). The cost of the reduced fees was to be offset by the $75 million appropriation to the Business Loans Program Account. Pub. L. No. 107-117, § 203. According to SBA, the $5 million proposed for rescission in the Budget from the Business Loans Program

is the remainder of this $75 million appropriation not used to offset the costs of the reduced fee collection. By operation of law, this program is defunct. Because the funds were appropriated specifically to deal with the effects of the terrorist attacks, SBA may not use them for another purpose.

The $3.7 million proposed for rescission in the Budget represents the portion of the $75 million appropriation to the Disaster Loans Program that may no longer be obligated by SBA for programmatic reasons. Typically, applications for disaster loans must be made within 9 months of a presidential disaster declaration. Small Business Administration Standard Operating Procedure 50 30 5, *Disaster Assistance Program,* § 66 (May 6, 2004). The President declared parts of New York, New Jersey, and Virginia major disaster areas on September 11, September 19, and September 21, 2001, respectively. 66 Fed. Reg. 48,682 (Sept. 21, 2001); 66 Fed. Reg. 49,674 (Sept. 28, 2001); 66 Fed. Reg. 51,435 (Oct. 9, 2001). Thus, SBA says it only processed loan applications for those areas for 9 months after the disaster declaration.
Normally, only businesses and individuals located in a designated disaster area and contiguous counties are eligible for disaster loans. 13 C.F.R. § 123.4. Following the terrorist attacks, SBA temporarily expanded its Economic Injury Disaster Loan Program so that businesses nationwide that were damaged by the attacks and subsequent federal response were eligible for loans. *Id.* § 123.600. SBA funded this program with the $75 million appropriation to the Disaster Loans Program Account. The loan application deadline for this program was May 22, 2002. 67 Fed. Reg. 15,851 (Apr. 3, 2002).

The application deadline for disaster loans related to the terrorist attacks expired several years ago, so SBA is no longer accepting and processing applications. The $75 million appropriation to the Disaster Loan Program Account may only be used for disaster loans related to the terrorist attacks. Thus, SBA may no longer use the $3.7 million remaining from the original $75 million.

Because these funds are no longer available to SBA for obligation, they remain unapportioned balances in their respective accounts.

According to SBA, the amounts proposed for rescission in the Salaries and Expenses account are amounts set aside by SBA for the administrative costs of the above programs. The $75 million emergency appropriations for the business loan program account and the disaster loan program account were no-year funds, and SBA transferred and merged a portion of these $75 million appropriations into its Salaries and Expenses account to fund the administrative costs of the Business Loans and Disaster Loans activities stemming from the terrorist attacks. Because these funds were appropriated for purposes directly related to the terrorist attacks, SBA may not use them for any other purpose. All amounts in SBA's Salaries and Expenses account are apportioned.