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THE WHITE HOUSE

WASHINGTON

December 9, 1974

ACTION

MEMORANDUM FOR: ~~THE~~ PRESIDENT
FROM: ~~ROY L.~~ ASH
SUBJECT: CONGRESSIONAL ACTION ON
PROPOSED BUDGET RESCISSIONS

On December 5, in response to your first three special messages on budget rescissions and deferrals pursuant to the Impoundment Control Act, the House of Representatives passed a rescission bill (H.R. 17505). The bill would carry out your rescission proposals with two major exceptions: the House refused to rescind funds for the Rural Electrification Administration (REA) (\$455.6M) and the Agricultural Conservation Program (REAP) (\$85M). The Senate is expected to consider the bill this week. With Earl Butz's help, we are attempting to secure Senate passage of the bill, amended to restore the two rescissions disapproved by the House.

The Impoundment Control Act requires the release of funds proposed for rescission unless both Houses complete action on a rescission bill within 45 days of continuous session after the receipt of the Presidential special message. You proposed rescission of the REA funds in your first special message on September 20. Counting from that date, the 45-day period would expire on December 11. However, the Attorney General has rendered an opinion that the Act does not apply to withholdings (such as REA) made prior to the Act's effective date. The Comptroller General has submitted a contrary opinion to the Congress and his view has been adopted by every Member who has addressed the issue.

If, by December 11 or shortly thereafter, the Senate fails to pass the rescission bill or passes it without the REA rescission, the question whether to release the REA funds or to continue withholding on the strength of the Attorney General's opinion will be presented for Presidential decision.

Option 1 - Release the funds when Congressional disapproval of the rescission is apparent.

Pro:

- Would be consistent with your first special message in which you pointed out that reasonable men differ on interpretation of law and asked for further guidance from the Congress on this legal issue.
- Would avoid a possible confrontation in court between the Legislative and Executive branches.
- Would be in accord with what the Comptroller General and most members of Congress believe the law requires.

Con:

- Would increase spending by approximately \$150 million this year and for each of the next two years.
- Could be perceived as a rejection of the Attorney General's advice; however, the Department of Justice does not object to this course of action and perceives no important constitutional or other legal issues which could and should be litigated.

Option 2 - Continue to withhold the funds despite Congressional disapproval.

Pro:

- Would avoid, or at least delay, an increase in spending in the near term for a dubious program which provides a subsidy without regard to need.
- Would demonstrate your determination to exercise fiscal restraint through any means available.

Con:

- Would be perceived by some as refusal to execute the law (Impoundment Control Act).

- Would be perceived by Congress as abandonment of the willingness to cooperate expressed in your first special message.
- Would lead to litigation against the Executive branch, perhaps by the Comptroller General and almost certainly by rural cooperatives, with a final decision ordering release of the funds the likely eventual result.

Recommendation: Option 1

Action: Option 1 _____ (Buchen, Cole, Seidman
and Timmons concur.)

Option 2 _____

See me

SPY