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SUMMARY

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The Impoundment Control Act of 1974: Background and Congressional Consideration of Rescissions

Under the U.S. Constitution, Congress exercises the "power of the purse." This power is expressed through the application of several provisions, particularly Article I, Section 9, clause 7, which states that funds may be drawn from the Treasury only pursuant to appropriations made by law. When Congress enacts an appropriation, it means, in practice, that an agency is provided with budget authority to finance federal programs and activities. This budget authority allows agencies to enter into various financial obligations and for the Treasury to subsequently outlay the funds necessary to meet those obligations. Impoundment occurs when appropriated funds are withheld from obligation or expenditure.

Historically, most impoundments were noncontroversial, primarily undertaken to manage expenditures or effect savings. In the 1970s, however, President Richard Nixon asserted the authority to act on his own to withhold funds or curtail programs he opposed. This assertion was challenged in the courts in a number of suits to compel the release of impounded funds or require the Administration to carry out statutory duties that would result in the expenditure of funds. Congress ultimately responded by enacting impoundment control legislation as Title X of the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344). The Impoundment Control Act (ICA) amended the Antideficiency Act to limit its use for impounding funds and divided impoundments into two categories: deferrals, which provide for a temporary delay of spending, and rescissions, which provide for the permanent cancellation of spending. In doing so, it also provided a statutory framework for the President to submit them to Congress for further action. The act also made special procedures available to allow Congress to consider presidential proposals to delay or rescind budget authority expeditiously.

Enactment of the ICA made two fundamental changes to codify the limits of presidential discretion with respect to impoundments.

Prior to the enactment of the ICA, there was no express statutory limit on the length of time the President could withhold appropriated funds. Under the ICA, however, whenever a President wishes to permanently withhold funds from obligation, he must submit a special rescission message to Congress. Under the ICA, funds can be withheld from obligation for a period of 45 days of continuous session (as defined in the act) after the receipt of this special presidential message. After this period, funds withheld under this authority must be released for obligation unless Congress has completed action on a bill to rescind the budget authority. If the President proposes to *defer* obligating funds, he must send a special message justifying the deferral. The Comptroller General of the Government Accountability Office (GAO) is granted responsibilities in the act to oversee and enforce executive branch compliance.

Second, the ICA established legislative procedures that the House and Senate can choose to use to facilitate their consideration of legislation to enact rescissions proposed by the President. These procedures include limits on debate time, which effectively eliminates the need to invoke cloture to reach a final vote on the bill. These expedited procedures are available only during the period when funds may be withheld from obligation. The procedure in the ICA, however, is not the exclusive means for considering rescissions, nor is there any requirement that the House or Senate must use this procedure (or any other) to consider rescission requests transmitted by the President. Congress has used this procedure infrequently, and as a consequence there are few precedents or examples to guide its interpretation and application.

Although the House and Senate have infrequently considered rescission bills under the terms of the expedited procedure in the ICA, Congress regularly considers rescissions—both those requested by the President and those initiated by Congress—in other measures. The most frequent consideration of rescissions occurs in the context of general appropriations bills, but rescissions have also been included in measures solely comprising rescissions or in legislation including other provisions, such as the Fiscal Responsibility Act of 2023 (P.L. 118-5).

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Introduction

The U.S. Constitution provides for Congress to exercise the "power of the purse" through the application of several provisions, particularly Article I, Section 9, clause 7, which states that funds may be drawn from the Treasury only pursuant to appropriations made by law. When Congress enacts an appropriation, it means, in practice, that an agency is provided with *budget authority*[1] that can be used to finance federal programs and activities. This budget authority allows agencies to enter into various financial obligations and for the Treasury to subsequently outlay the funds necessary to liquidate those obligations. *Impoundment* occurs when appropriated funds are withheld from obligation.

This report provides background on the historical use of impoundments and the circumstances that led to the enactment of the Impoundment Control Act (ICA) in 1974.[2] The report also discusses the provisions of the ICA and how these relate to the consideration of rescissions.

Background on Impoundment Before the ICA

Historically, Presidents impounded funds in a variety of circumstances and for a variety of purposes. In most cases, the impoundments were noncontroversial, primarily undertaken by Presidents or agency heads to effect savings made possible by efficient operations or the prudent reservation of funds for future contingencies, and they met with congressional acquiescence. For example, in Thomas Jefferson's Third Annual Address to Congress on October 17, 1803, he addressed developments concerning the purchase of the Louisiana territory:

> The sum of $50,000 appropriated by Congress for providing gunboats remains unexpended. The favorable and peaceable turn of affairs on the Mississippi rendered an immediate execution of that law unnecessary, and time was desirable in order that the institution of that branch of our force might begin on models the most approved by experience, The same issue of events dispensed with a resort to the appropriation of $1,500,000, contemplated for purposes which were effected by happier means.[3]

Typically, impoundments were routine and relatively small in scale. Presidents and agency heads had long regarded appropriated amounts as permissive—meaning that they were maximums—and allowed money to go unspent in a variety of circumstances.[4] In the 20th century, Presidents often pointed to the Antideficiency Act as a source for statutory authority for these actions.[5] The Antideficiency Act had been enacted with the intention of preventing federal agencies from spending at a rate that would exhaust budgetary resources prematurely therefore necessitating additional appropriations. The act also allowed for the establishment of financial reserves for contingencies, or to effect savings through greater efficiency of operations, or because of other

[1] For more information, see CRS In Focus IF12105, *Introduction to Budget Authority*, by James V. Saturno.

[2] Title X of the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344, 2 U.S.C. §§681-688) is known as the Impoundment Control Act (ICA).

[3] James D. Richardson (ed), *A Compilation of the Messages and Papers of the Presidents*, vol. I, part 3, https://onlinebooks.library.upenn.edu/webbin/gutbook/lookup?num=10893.

[4] Louis Fisher, *Presidential Spending Power* (Princeton University Press, 1975), p. 148.

[5] Although antideficiency legislation dates back to 1870, *Antideficiency Act* is generally used to refer to the 1905 act (P.L. 58-217, 33 Stat. 1214, at 1257) that established a clear mandate for agencies to apportion funds to prevent premature exhaustion of funds and a need for deficiency or supplemental appropriations. This requirement was supplemented in 1906 by further legislation to limit waivers and exceptions (P.L. 59-28, 34 Stat. 27, at 48). Today, apportionment is overseen by the Office of Management and Budget (OMB). The provisions of the Antideficiency Act concerning apportionment are codified at 31 U.S.C. §§1511-1519.

developments that occurred after the appropriation was made. These reserves often served as the statutory basis for routine impoundments. There were also some larger-scale impoundments, such as when President Franklin D. Roosevelt curtailed public works spending during World War II on the grounds that these resources were needed for the war effort. These actions were generally taken in consultation with congressional leaders and so did not provoke confrontation between Congress and the President. On occasions, however, confrontations did arise, such as when President Harry Truman impounded funds in 1949 intended for the purchase and operation of aircraft for 58 Air Force groups rather than the 48 requested by the Administration.

Later, congressional concern about deficits and their potential effect on the economy, especially with respect to inflation, led to the enactment of a series of laws establishing limits on the level of federal outlays in FY1969-FY1971.[6] These spending limits provided a significant part of the statutory basis for the Nixon Administration to argue that impoundments and other executive branch actions were necessary to limit outlays. Although Congress did not enact a similar limit for FY1972, President Nixon asserted the authority to act on his own without a specific, broad statutory delegation of authority from Congress to withhold funds or curtail programs he opposed.[7] This assertion was challenged in the courts to compel the release of impounded funds or require the Administration to carry out statutory duties that would result in the expenditure of funds. Altogether, the decisions in these cases formed the basis for an interpretation by the courts of responsibilities and discretion that had been delegated to the President or agency heads by various statutes.[8] Similar concerns about presidential responsibility and discretion incited congressional efforts to address impoundment through legislation.

For example, Nixon Administration's refusal to provide comprehensive or timely information on impoundment actions frustrated some in Congress. In response, Senator Hubert Humphrey introduced S. 2604 (92nd Congress), stating that the Nixon Administration had frozen more than $10 billion in appropriated funds[9] "without informing the public or the Congress. His administration has not disclosed the extent of the freeze or told Congress exactly what programs have been frozen."[10] Disclosure requirements were subsequently enacted on the last day of the Congress as the Federal Impoundment and Information Act[11] and required the Administration to provide the following information:

> SEC. 203. (a) If any funds are appropriated and then partially or completely impounded, the President shall promptly transmit to the Congress and to the Comptroller General of the United States a report containing the following information:
>
> (1) the amount of the funds impounded;

[6] Title II of the Revenue and Expenditure Control Act of 1968 (P.L. 90-364); Title IV of the Second Supplemental Appropriations Act, 1969 (P.L. 91-47); Title V of the Supplemental Appropriations Act, 1970 (P.L. 91-305).

[7] Louis Fisher, "Impoundment of Funds: Uses and Abuses," *Buffalo Law Review*, vol. 23 (1973), p. 142.

[8] With respect to actions to curtail operations that could result in outlays, for example, in *Commonwealth of Pennsylvania* v. *Lynn*, 362 F. Supp. 1363, 1372 (1973), the U.S. District Court for the District of Columbia held that the Secretary of Housing and Urban Development did not have the discretion to refuse to process applications or suspend the operations of the housing programs in question, stating, "If a decision to suspend or terminate these programs is made, it shall be made by Congress" and further that "[i]t is not within the discretion of the Executive to refuse to execute laws passed by Congress but with which the Executive presently disagrees." More directly with respect to impoundments under the Federal Water Pollution Control Act, in *Train* v. *City of New York*, 420 U.S. 35 (1975), the U.S. Supreme Court held that Congress had not provided the executive with "the seemingly limitless power to withhold funds from allotment and obligation" under the formula grant program established by the statute.

[9] Other estimates of impoundments reached as high as $18 billion, making the level of impoundment approximately 5%-10% of total outlays in FY1971.

[10] *Congressional Record*, v. 118, September 29, 1971, pp. 33902-33903.

[11] Title IV of P.L. 92-599.

(2) the date on which the funds were ordered to be impounded;
(3) the date the funds were impounded;
(4) any department or establishment of the Government to which such impounded funds would have been available for obligation except for such impoundment;
(5) the period of time during which the funds are to be impounded;
(6) the reasons for the impoundment; and
(7) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the impoundment.

In dealing with interbranch conflict, Congress had previously used or considered a variety of legislative approaches. These conflicts included executive branch policy implementation, such as conflicts about how appropriated funds should be spent. For example, Congress considered language that would reduce executive branch discretion (e.g., using terms such as *shall* or *directed* rather than *may*) to require the President to undertake specific activities, such as when the Truman Administration impounded funds intended for additional Air Force groups or when the Kennedy Administration opposed development of new long-range bombers. In those cases, however, Congress and the President reached accommodation without using the mandatory language.

In other cases, such as certain highway grant programs, Congress used formulas that would require grants to be distributed based on whether states or local governments met statutory eligibility guidelines rather than on discretionary executive branch determinations.[12] However, the use of formula-based mandatory language was limited.

Congress also used language, on occasion, specifically to limit the level of impoundments. One example is the Departments of Labor and Health and Human Services Appropriations Act, 1974, which included language limiting total impoundments in the bill to $400 million, with the added proviso that none of the appropriations, activities, programs, or projects in the bill could be reduced by more than 5 percent.[13]

In general, however, these approaches were limited to specific circumstances. Congressional concern about impoundment had become sufficiently widespread in the early 1970s that a broader approach was considered.

From the Antideficiency Act to the Impoundment Control Act

In the 93rd Congress, legislation was introduced in the Senate (S. 373) and the House (H.R. 5193) to expand on the notice and information requirements established in P.L. 92-599 and proposed to establish mechanisms to allow Congress to affirm or disapprove any impoundment. Although both bills passed in their respective chambers, conferees were not able to resolve differences in the measures before the effort to enact impoundment control legislation was merged with congressional interest in budget process reform generally. Impoundment control provisions were subsequently included in H.R. 7130 (93rd Congress), the measure that was ultimately enacted as the Congressional Budget and Impoundment Control Act of 1974.[14]

[12] For example, in 1973, a court of appeals held in *State Highway Commission of Missouri v. Volpe* (479 F.2d 1099 [8th Cir. 1973]) that funds appropriated for highway construction pursuant to the Federal-Aid Highway Act of 1956 were "not to be withheld from obligation for purposes totally unrelated to the highway program."

[13] P.L. 93-192.

[14] H. Rept 93-658. H.R. 7130 was passed by the House on December 5, 1973, 386-23. Consideration in the Senate was focused on S. 1541 (93rd Congress, S. Rept. 93-688) before H.R. 7130 was passed on March 22, 1974, 80-0. The conference report for H.R. 7130 (H.Rept. 93-1101) was filed on June 12, 1974, agreed to by the House on June 18, 401-6, and the Senate on June 21, 75-0, and was signed into law on July 12.

Enacting impoundment control legislation was intended to preserve Congress's "power of the purse" by describing the extent of the President's asserted power to impound funds.[15] To do so, the ICA amended the Antideficiency Act to limit the purposes for which the President might reserve funds from apportionment and obligation. Prior to the ICA, the Antideficiency Act permitted the establishment of reserves "to provide for contingencies, or to effect savings whenever savings are made possible through changes in requirements, greater efficiency of operations, *or other developments subsequent to the date on which such appropriation was made available*." Section 1002 of the ICA, however, amended this to provide that

> reserves may be established solely to provide for contingencies, or to effect savings whenever savings are made possible by or through changes in requirements or greater efficiency of operations. Whenever it is determined by an officer designated in subsection (d) of this section to make apportionments and reapportionments that any amount so reserved will not be required to carry out the full objectives and scope of the appropriation concerned, he shall recommend the rescission of such amount in the manner provided in the Budget and Accounting Act, 1921, for estimates of appropriations. Except as specifically provided by particular appropriations Acts or other laws, no reserves shall be established other than as authorized by this subsection. Reserves established pursuant to this subsection shall be reported to the Congress in accordance with the Impoundment Control Act of 1974.

The ICA also divided impoundment into two categories: deferrals, which provide for a temporary delay of spending—when, for example, the President anticipates future, but not current, need of the funds—and rescissions, which provide for the permanent cancellation of spending "for fiscal policy or other reasons."[16] The act also made special procedures available to allow Congress to consider presidential proposals to delay or rescind budget authority expeditiously (described below). Most significantly, enactment of the ICA made two fundamental changes to codify the limits of presidential discretion with respect to impoundments, as described below.

Prior to the enactment of the ICA, there was no express statutory limit on the length of time the President could withhold appropriated funds. Under the ICA, however, whenever the President wishes to withhold funds from obligation, he must submit a special message to Congress. When the special message proposes the rescission of appropriated (but not yet obligated) funds, the funds in question may be withheld under this authority—but only for a 45-day period after receipt of the special message, as specified in the act. Withheld funds must be released and available for obligation after that period unless Congress enacts legislation to rescind the budget authority. The Comptroller General is granted responsibilities in the act to oversee and enforce executive branch compliance.[17]

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[15] See, for example, U.S. Congress, House Committee on Rules, *Impoundment Control and 1974 Expenditure Ceiling*, 93rd Cong., 1st sess., June 27, 1973, H.Rept. 93-336 (Washington: GPO), p. 2. According to the House Rules Committee, impoundment control legislation was intended "to provide for more effective and responsible congressional control over both the expenditure and nonexpenditure of funds by the executive branch."

[16] For more on the ICA and impoundment issues generally, see William Bradford Middlekauff, "Twisting the President's Arm: The Impoundment Control Act as a Tool for Enforcing the Principle of Appropriation Expenditure," *Yale Law Journal*, vol. 100 (1990), pp. 209-228. See also, U.S. Congress, Senate Committee on the Budget, *The Congressional Budget Process*, 117th Cong., 2nd sess., December 2022, committee print, S.Prt. 117-23 (Washington: GPO, 2022), pp. 911-969.

[17] Under Section 1014, presidential messages must be submitted to the Comptroller General simultaneous to their submission to the House and Senate. In addition, Sections 1015 and 1016 prescribe the Comptroller General's responsibilities for reporting to Congress, monitoring impounded funds, and bringing suit in federal court to compel compliance. Although such a suit was filed in 1975 (*Staats* v. *Ford*), that case was dismissed at the request of both parties after the agency in question resumed use of the funds in question. The ability of the Comptroller General to (continued...)

Second, the ICA established legislative procedures that the House and Senate could use to facilitate its consideration of legislation to enact rescissions proposed by the President. These procedures include limits on the debate time allowed, which effectively eliminates the need to invoke cloture as provided under Senate Rule XXII by a vote of three-fifths of the Senate to reach a final vote on the bill. These expedited procedures are available only during the period when funds may be withheld from obligation.[18]

Deferrals Under the ICA

Section 1013 of the ICA provides that the President must notify Congress in a special message of his intent to delay the obligation of budget authority (i.e., a deferral). As originally enacted, the ICA allowed either the House or the Senate to end the deferral by adopting a resolution disapproving it. The process by which a single chamber could prevent the exercise of authority delegated to the executive branch (known as a "legislative veto") was later found unconstitutional, however. After the Supreme Court invalidated a different one-house legislative veto in *INS* v. *Chadha*,[19] the Court of Appeals for the D.C. Circuit applied the reasoning of *Chadha* to invalidate the deferral-related provisions in the ICA. The decision in *City of New Haven* v. *United States*[20] also struck down the statutory authority of the President to make "policy" deferrals as inseverable from the unconstitutional legislative veto. After the court decisions, as well as Government Accountability Office (GAO) administrative interpretations of the issue, Congress amended Section 1013(b) of the ICA in 1987[21] to eliminate the one-house disapproval mechanism and specify that deferrals be "permissible only—(1) to provide for contingencies; (2) to achieve savings made possible by or through changes in requirements or greater efficiency of operations; or (3) as specifically provided by law." In addition, under the amended statute, deferrals could not be proposed for any period extending beyond the end of the fiscal year for which the proposal was reported.[22]

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bring such suits has not been firmly established, however. For example, in *Walker* v. *Cheney*, 230 F. Supp. 2d 51 (D.D.C. 2002), a suit filed by the Comptroller General pursuant to a different law was dismissed for lack of standing. Additionally, in a signing statement to 1987 amendments to the Balanced Budget and Emergency Deficit Control Reaffirmation Act (P.L. 100-119, 101 Stat. 785), President Reagan argued that the ICA provision authorizing the Comptroller General to bring suit violated the separation of powers, based on the Supreme Court's decision in *Bowsher* v. *Synar*, 478 U.S. 714 (1986), holding that, more generally, Congress cannot assign executive authority to the Comptroller General. See President Ronald Reagan, "Statement on Signing the Federal Debt Limit and Deficit Reduction Bill," September 29, 1987, https://www.reaganlibrary.gov/archives/speech/statement-signing-federal-debt-limit-and-deficit-reduction-bill.

[18] Section 1012 limits the period for which funds may be withheld from obligation to 45 days of continuous session. *Continuous session* is defined in Section 1011(5), which provides that "the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 45-day period." Days after a *sine die* adjournment between sessions of a Congress are also not included in the computation. The section further provides that if the last session of a Congress adjourns *sine die* during the 45 calendar days after receipt of the special message, or if the President transmits a special message after the last session of a Congress has adjourned *sine die*, "the message shall be deemed to have been retransmitted on the first day of the succeeding Congress," and the 45-day period commences on the day after. This effectively allows some funds to be withheld from obligation for a period of longer than 45 calendar days. For more information on measuring periods of action prescribed in expedited procedure statutes, see CRS Report R42977, *Sessions, Adjournments, and Recesses of Congress*, by Valerie Heitshusen.

[19] 462 U.S. 919 (1983).

[20] 809 F.2d 900 (D.C. Cir. 1987).

[21] P.L. 100-119 (101 Stat. 785), §206.

[22] In 2018, the Government Accountability Office (GAO) concluded that the ICA similarly does not permit the (continued...)

It does not appear that any measures to disapprove a deferral have been considered since these amendments were made.

Rescissions Under the ICA

GAO defines *rescission* as "[l]egislation enacted by Congress that cancels the availability of budget authority previously enacted before the authority would otherwise expire."[23] The ICA codifies the authority for the President to withhold budget authority from obligation in certain circumstances pending congressional consideration of a special message proposing its recission.

In general, Section 1012 of the ICA provides that the President may transmit to Congress a request to rescind budget authority[24] if he determines that all or part of any budget authority will not be required to carry out the full objectives or scope of programs for which it is provided or that such budget authority should be rescinded for fiscal policy or other reasons (including the determination of authorized projects or activities for which budget authority has been provided) or whenever all or part of budget authority provided for only one fiscal year is to be reserved from obligation for such fiscal year.

The special message is required to include:

- the amount of budget authority;
- the account or department for which the budget authority was provided and any specific project or governmental functions involved;

withholding of funds proposed for rescission when that would extend beyond their date of expiration. In reaching this conclusion, GAO determined that there was "no basis to interpret the ICA as a mechanism by which the President may unilaterally abridge the enacted period of availability of a fixed-period appropriation" (GAO, *Impoundment Control Act—Withholding of Funds through Their Date of Expiration*, B-330330.1, December 10, 2018, https://www.gao.gov/products/D19743). In contrast, OMB argued that the "text of the ICA places no limit on how late in the fiscal year a President may propose funds for rescission or withhold funds pending Congressional consideration of a rescission proposal." Furthermore, OMB stated, "There are several historical examples of presidentially proposed rescissions and withholdings beginning late in the fiscal year, including several that were withheld so late as to cause funds to lapse prior to the expiration of the 45-day withholding period" (letter from Mark R. Paoletta, General Counsel, OMB, to Tom Armstrong, General Counsel, GAO, November 16, 2018, https://trumpwhitehouse.archives.gov/wp-content/uploads/2019/11/Letter-to-GAO-on-Rescissions.pdf).

[23] GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, September 2005, p. 85.

[24] This language does not distinguish between "discretionary" and "direct" (or mandatory) spending as used by Congress for procedural and budget enforcement purposes. These terms were first defined in the Budget Enforcement Act of 1990 (Title XIII of P.L. 101-508) and currently appear in Section 250(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177, 2 U.S.C. §900(c)), as amended, to mean:

> (7) The term "discretionary appropriations" means budgetary resources (except to fund direct-spending programs) provided in appropriation Acts.
>
> (8) The term "direct spending" means—
>
> (A) budget authority provided by law other than appropriation Acts;
>
> (B) entitlement authority; and
>
> (C) the Supplemental Nutrition Assistance Program.

Congress has considered legislation to rescind amounts that were considered to be direct spending when they were enacted, such as in Division B of the Fiscal Responsibility Act (P.L. 118-5).

There may be instances, however, when budget authority for certain purposes may not be reserved pending congressional consideration of a rescission proposal. Section 1001(4) of the ICA states that nothing in the ICA shall be construed as "superseding any provision of law which requires the obligation of budget authority or the making of outlays thereunder." This has been understood to refer to provisions of law that specify that all or part of an amount of budget authority must go to particular recipients, denying a federal officer or employee discretion in allocating the budget authority, such as with formula grant programs.

- the reasons why the budget authority should be rescinded;
- any estimated fiscal, economic, or budgetary effect; and
- any additional facts, circumstances, or considerations relating to the proposed rescission.

Section 1012(b) of the ICA requires that any funds withheld from obligation pursuant to a special message must be made available for obligation within a prescribed 45-day period unless Congress has rescinded all or part of the amount proposed to be rescinded. There is no statutory requirement that Congress must act on a proposed rescission after a special message is received, however. Congress can choose to consider all, some, or none of the rescission proposals submitted under the terms of the ICA. Congress may also choose other procedures under which it may consider rescission legislation. There is no specific form of legislation (prescribed in the ICA or other acts) to allow Congress to require the obligation of funds withheld from obligation by the President prior to the end of the 45-day period prescribed in the ICA. Once funds are made available for obligation after being reserved under this procedure, they may not be proposed for rescission again.

After a special message has been transmitted to Congress, any Member may introduce legislation incorporating the rescissions included in one or more such special messages,[25] and the measure is then referred to committee. In the House, in most cases, the bill is referred to the Appropriations Committee.[26] In the Senate, such measures are generally referred concurrently to the Appropriations Committee and the Budget Committee.[27]

Consideration of Rescissions Under Section 1017 of the ICA

Section 1017 of the ICA allows for expedited consideration of a rescission bill by the House and Senate. This procedure can be used to facilitate congressional consideration of rescissions proposed by the President prior to the expiration of the 45-day period during which the funds may be withheld from obligation under Section 1012(b). There is no requirement, however, that the House or Senate must use this procedure (or any other) to consider rescission requests transmitted by the President.

There is no requirement that a House or Senate committee must report a rescission bill within a specific time frame. However, Section 1017(b) of the ICA provides that if a committee to which a rescission bill has been referred has not reported it at the end of 25 calendar days of continuous

[25] Section 1011(3) defines *rescission bill* as one that "only rescinds, in whole or in part, budget authority proposed to be rescinded in a special message transmitted by the President under section 1012." Neither the House nor the Senate, however, has established by precedent what this requires, includes, or excludes from the measure or any amendments to it.

[26] House Rule X, clause (1)(b)(2), confers jurisdiction over "Rescissions of appropriations contained in appropriations Acts" to the Appropriations Committee. Measures proposing to rescind funds provided in laws other than appropriations acts would presumably be referred to the committee(s) with jurisdiction over such laws.

[27] A Senate standing order (originally agreed to on January 30, 1975, and modified by unanimous consent on April 11, 1986), provides that messages received pursuant to the ICA, and any legislation introduced with respect to those messages, be referred concurrently to the Appropriations Committee and to the Budget Committee (as well as to any other appropriate committee exercising jurisdiction over contract or borrowing authority included in the message). The Budget Committee's consideration extends "only to macroeconomic implications, impact on priorities and aggregate spending levels, and the legality of the President's use of the deferral or rescissions mechanism under title X" (*Congressional Record*, vol. 132 [April 11, 1986], pp. 7318-7319). The Appropriations Committee (or any other committee) retains its normal jurisdictional responsibilities under Senate Rule XXV, clause 1. The standing order further provides that the Budget Committee (and any other committee) must report its views, if any, to the Appropriations Committee within 20 days following referral.

session after its introduction, it is in order in the House or Senate to make a motion on the floor to discharge the committee from further consideration of the bill. A motion to discharge would be debatable for one hour, equally divided and controlled, with no amendment to the motion in order. If the motion to discharge is agreed to, the bill would be placed on that chamber's calendar, making it available for consideration by the full chamber.[28]

In the House, Section 1017(c) provides that, once placed on the Calendar, such a measure is privileged for consideration. In current practice, however, measures with privilege—including those made privileged under rule-making statutes such as the Budget Act—are routinely considered under the terms of special rules reported by the Rules Committee. This was the case in the two most recent instances in which the House considered rescission bills pursuant to presidential special messages: in 1992 when H.R. 4990 (102nd Cong.), rescinding certain budget authority, and for other purposes, was considered by the House under the terms of H.Res. 447 (102nd Cong.), and in 2018 when H.R. 3 (115th Cong.), Spending Cuts to Expired and Unnecessary Programs, was considered under the terms of H.Res. 923 (115th Cong.).[29]

In the Senate, Section 1017(d) provides for the floor consideration of a rescission bill. Although it is not explicit in the text of the ICA, a motion to proceed to the consideration of a rescission bill appears to be nondebatable.[30] Once the Senate agrees to proceed to consideration of a rescission bill, the ICA limits the total time for debate on a rescission bill to 10 hours. This language is analogous to the language in Title III of the Budget Act, which establishes similar debate limits for budget resolutions and reconciliation bills. These limits are considered by the Senate to be limits on debate time only, not on total consideration.[31] As a consequence, additional actions (such as offering of amendments, other motions, and voting) may be able to continue, without further debate, after this time expires. A rescission bill may be amended, but all amendments must be germane.[32] Within the 10-hour period for debate, the ICA limits debate on any amendment to

[28] See footnote 18 for the definition of *days of continuous session*. Section 1017(b) further allows the motion to discharge to apply also to any other rescission bill that includes only rescissions proposed in the same special message. A motion to discharge may be made only by a Member favoring the bill and if supported by one-fifth of the Members of the chamber (a quorum being present). In the House, debate time would be divided equally between those favoring and those opposing the bill. In the Senate, debate time would be divided equally between the majority leader and the minority leader or their designees. On June 20, 2018, a motion to discharge H.R. 3 (115th Cong.) was made in the Senate after a Senator stated that he had "a discharge petition at the desk" (*Congressional Record* [daily edition], vol. 164, June 20, 2018, p. S4257). The motion to discharge subsequently failed, however, 48-50.

[29] H.R. 4990 (102nd Cong.) was considered by the House on May 7, 1992, and subsequently became P.L. 102-298. H.R. 3 (115th Cong.) was considered by the House on June 7, 2018, but the Senate rejected a motion that would have allowed it to be considered on the floor.

[30] For an example in which the Senate took up a rescission bill after agreeing to a motion to proceed without debate, see consideration of S. 2403 (102nd Cong.) in 1992 as described in this report and considered in the *Congressional Record*, vol. 138, May 5, 1992, p. 10137. Although the ICA does not explicitly state that a motion to proceed is not subject to debate, the language is similar to language in Title III of the Congressional Budget Act of 1974 that applies to other measures for which debate is limited, such as a budget resolution and a budget reconciliation bill. In those cases, the Senate has interpreted the Budget Act to preclude debate on a motion to proceed. See Floyd M. Riddick and Alan S. Frumin, *Riddick's Senate Procedure: Precedents and Practices*, 101st Cong., 2nd sess., S.Doc. 101-28 (Washington: GPO, 1992) (hereinafter *Riddick's Senate Procedure*), p. 503, 600.

[31] For example, *Riddick's Senate Procedure*, p. 606, states, "When the time on a budget resolution or reconciliation bill has expired, any motion relating thereto, such as a motion to instruct the conferees, is decided without debate." This is in contrast to Senate Rule XXII, which provides for "no more than thirty hours of consideration" once cloture is invoked.

[32] Section 1017(d)(2) of the ICA states, "No amendment that is not germane to the provisions of a rescission bill shall be received." This language permits points of order against such amendments only when the time on the amendment has expired and does not permit the presiding officer to rule on such amendments on his or her own initiative (*Riddick's Senate Procedure*, p. 619). However, the Senate apparently has no published precedents to guide Senators on what (continued...)

the bill to two hours, equally divided and controlled by the Senator offering the amendment and the manager of the bill. For any second-degree amendment or other debatable motion, debate is limited to one hour, also equally divided and controlled between the mover and a manager. Debate on appeals from any ruling of the chair relating to the expedited procedures is limited to one hour.[33] The language in Section 1017(d) does not limit the application of other points of order that may be raised against a rescission bill, meaning that any point of order that requires a vote of three-fifths of all Senators to waive or sustain an appeal of a ruling would still require a vote of three-fifths of all Senators.

The ICA includes no provisions that explicitly address actions to be taken to achieve a resolution of any differences between House- and Senate-passed rescission bills, although it does limit floor debate on a conference report in the Senate to two hours (equally divided and controlled by the majority leader and minority leader or their designees). The ICA further provides that debate on any debatable motion or appeal related to the conference report is limited to 30 minutes, but it is not explicit about what this would apply to.

A search of *Statutes at Large* identified 10 laws as enacted pursuant to special messages submitted by the President, all of them between 1974 and 1979.[34] It appears that Senate consideration of these measures was governed by the routine use of unanimous consent—including bringing the measures to the floor and actions related to going to conference—rather than with specific reference to the special procedures in the ICA.[35] As described below, Congress has used the procedures in Section 1017 of the ICA for consideration of rescission bills incorporating one or more special messages on two occasions since 1979, although unanimous consent was used to take some actions. As a consequence, there are few precedents or examples from practice to guide Section 1017's interpretation or application, particularly for questions on which the prescribed procedures are silent.

1992

In the first four months of 1992, President George H. W. Bush transmitted to Congress a series of special messages proposing 128 rescissions, totaling almost $7.9 billion. One of the most notable aspects of these proposals was the volume of separate special messages involved. One message containing 30 proposed rescissions was submitted on March 10, 1992, and a package of 68 proposed rescissions contained in 67 separate messages followed on March 20. A third batch of 28 special messages with 28 separate proposed rescissions was transmitted April 9.[36]

According to press reports and statements made in Congress during the subsequent consideration of a rescission bill, the Administration transmitted recission proposals in separate special messages in hopes that the procedures described in Section 1017 of the ICA could be used to

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would constitute a germane amendment to a rescission bill. In addition, the germaneness requirement is not listed in Section 904 of the Congressional Budget and Impoundment Control Act of 1974 as being subject to a waiver motion.

[33] Section 904(d)(1) of the Congressional Budget Act of 1974.

[34] The 10 measures were identified by searching the *Statutes at Large* for public laws entitled "An Act To rescind certain budget authority recommended in the message(s) of the president of [date]." These measures include P.L. 93-529, P.L. 94-14, P.L. 94-15, P.L. 94-111, P.L. 94-249, P.L. 95-10, P.L. 95-15, P.L. 95-186, P.L. 95-254, and P.L. 96-7.

[35] For example, H.R. 3260 (94th Congress), a House-passed rescission bill, was brought to the Senate floor by unanimous consent, two amendments were offered and agreed to, and the actions to go to conference were agreed to by unanimous consent, with no reference to time limits or the special procedure (*Congressional Record*, vol. 139 [March 17, 1975], p. 7005).

[36] CRS Issue Brief IB92077, *Rescission of Funds for FY1992: Presidential Proposals and Congressional Actions*, by Virginia A. McMurtry (archived but available from the author for congressional clients).

trigger separate votes on each proposed rescission.[37] As stated by a member of the House Appropriations Committee, however, using this procedure separately on each of the special messages would be too time consuming:

> Under the rules, each one of these rescissions could take in excess of 3 hours. If they could tie us up on 99 rescissions for that much time, we could not do anything until summer.[38]

Instead, the House Appropriations Committee reported a measure on April 29 (H. Rept. 102-505), that packaged together some of the rescissions proposed by the President with additional rescissions of the committee's own initiative. The resulting measure, H.R. 4990 (102nd Cong.), was considered by the House under the terms of a special rule, H.Res. 447, on May 7 and passed 412-2.

In the Senate, S. 2403, consisting of rescissions proposed by the President in multiple special messages received on March 20, was reported by the Senate Appropriations Committee with a substitute and brought to the Senate floor for consideration as a privileged measure under Section 1017 on May 5.[39] Although the measure consisted largely of rescissions different than those proposed by the President, it was nevertheless considered by the Senate under the expedited procedures of the ICA, including the two-hour debate limitation on amendments and the 10-hour overall debate limit. A substitute, as amended with additional rescissions, was agreed to on May 6, 61-38.

By unanimous consent, the Senate agreed that upon receipt of H.R. 4990, the measure would be considered as passed with an amendment consisting of the text of S. 2403. In addition, the unanimous consent agreement provided for all necessary actions for the Senate to go to conference.[40] Because these actions were done by unanimous consent, however, they do not establish any precedent that would guide future interpretation or application of Section 1017 with respect to resolving differences between the chambers.

A conference report was subsequently considered by the House under the terms of H.Res. 462 and agreed to, 404-11, on May 21. The Senate agreed by unanimous consent to consider the conference report the same day, and the presiding officer specified that consideration would then proceed under the two-hour debate limit provided in Section 1017(d)(5). The conference report was agreed to by a vote of 90-9. President Bush signed the bill into law on June 4.[41]

2018

In the other instance of a bill considered pursuant to procedures in the ICA, President Donald Trump transmitted a special message with 38 proposed rescissions on May 8, 2018. H.R. 3,[42] a

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[37] See, for example, "Bush Goes on Economic Offensive" *CQ Weekly Report*, March 21, 1992, p. 713. In the House, Rep. Fawell stated, "What we would like to have, very honestly, is a vote on all of these projects because we think, if somebody had to vote on these projects because we think, if somebody had to vote on these projects, they would not carry because an awful lot of them are not high priority" (*Congressional Record*, vol. 138 [May 5, 1992], p. 10122). In the Senate, Sen. Adams stated that sending so many "separate rescissions, and demanding a separate vote on each one, was simply never contemplated by the act and is very destructive to the manner in which the Congress and the administration should operate" (*Congressional Record*, vol. 138 [May 6, 1992], p. 10277).

[38] Statement of Rep. Neal Smith, *Congressional Record*, vol. 138 (May 7, 1992), pp. 10600-10601.

[39] The motion to proceed is made and agreed to at *Congressional Record*, vol. 138 (May 5, 1992), p. 10137.

[40] Control of time under Section 1017 for the consideration of S. 2403 appears at *Congressional Record*, vol. 138 (May 5, 1992), p. 10141.

[41] P.L. 102-298.

[42] The official title of the bill was "A bill to rescind certain budget authority proposed to be rescinded in special (continued...)

bill comprising the President's rescission proposals submitted to Congress on May 8, 2018, was introduced in the House on May 9 and referred to the House Appropriations Committee. Subsequently, an identical bill, S. 2979, was introduced in the Senate on May 24 and referred to the Appropriations and Budget Committees.

Although it was not reported from the House Appropriations Committee, H.R. 3 was considered in the House under the terms of a special rule, H.Res. 923, on June 7. Upon agreement to H.Res. 923, one amendment was considered as adopted to align the bill with the Supplementary Special Message transmitted by the President on June 5.[43] H.R. 3, as amended, was passed, 210-206. On June 11 it was received in the Senate and referred concurrently to the Committees on Appropriations and the Budget.

On June 20, a Senator stated that he had a discharge petition at the desk and offered a motion to discharge the Senate Appropriations and Budget Committees from further consideration of H.R. 3 pursuant to the ICA.[44] The motion failed, 48-50. No further action was taken with respect to either H.R. 3 or S. 2979.

Consideration of Rescissions in Other Legislation

Although the House and Senate have infrequently considered presidential rescission requests under terms of the expedited procedure in the ICA, Congress regularly considers rescissions in other measures regardless of whether they were initially proposed by the President.[45] In addition, the procedure in the ICA supplements rather than supplants other forms of congressional procedure, and therefore consideration of rescission bills under the procedure in Section 1017 is not the exclusive means for considering rescissions.[46] For example, while Congress chose to use the ICA procedure to consider some of the rescission proposals submitted by President Gerald Ford, it chose to enact other rescission requests submitted by the President in the Transportation Appropriations Act, 1976 (P.L. 94-134).

The President is not limited to requesting rescissions pursuant to the ICA. He can also propose cancellations of budget authority in other ways. Although the terms *cancellation* and *rescission* are sometimes used interchangeably, the Office of Management and Budget distinguishes between "proposals for rescissions" and "proposals for cancellations" of budgetary resources.[47] In summary, *rescission proposals* are those made pursuant to the provisions and requirements of the

messages transmitted to the Congress by the President on May 8, 2018, in accordance with title X of the Congressional Budget and Impoundment Control Act 1974."

[43] As reported in Jennifer Shutt, "Tweaked Trump Cuts Request Restores EPA, Ebola, Sandy Funds," *CQ News*, June 5, 2018, https://plus.cq.com/doc/news-5329287.

[44] Section 1017(b) does not state the method by which the House or Senate should determine if one-fifth of the Members of the House involved (a quorum being present) support the discharge of a rescission bill (*Congressional Record* [daily edition], vol. 164 [June 20, 2018], p. S4257).

[45] For example, Presidents George W. Bush, Barack Obama, and Joe Biden did not submit any rescission requests pursuant to the ICA.

[46] In response to a 1975 parliamentary inquiry involving whether the Senate could act on proposed rescission legislation when the time for the consideration of a rescission bill specified in ICA had expired, the chair informed the Senate that, notwithstanding the fact that the time frame in the act had already elapsed, Congress nevertheless had the power to act on a rescission bill irrespective of the act, stating that "it is the Chair's view that this is simply a regular bill and conference report thereon and it is proper for the Senate to act on them, but that the provisions of the act relative to rescission bills and conference reports thereon do not obtain. Thus, rescission bills can either be defined under the Congressional Budget Act, in which case they are considered under the special procedures, or under Rule XXV, as amended, in which case they are treated as any other bill" (*Riddick's Senate Procedure*, pp. 629-630).

[47] OMB, *Preparation, Submission, and Execution of the Budget, Section 112-Deferrals and Presidential Proposals to Rescind or Cancel Funds*, Circular No. A-11, August 2022.

ICA, and the President has the authority under the ICA to withhold such funds from obligation for a period of up to 45 days of continuous session as defined in the act. In contrast, *cancellation* is the term applied to proposals by the President to reduce budgetary resources, but they do not conform to the requirements for rescission requests. Because they do not meet the requirements of the ICA for rescission requests, GAO has indicated that the President cannot temporarily withhold such funds.[48] In either case, Congress may choose whether or how to consider legislation to rescind the funds.

In addition, Congress frequently considers rescissions of its own initiative, typically in the context of regular appropriations bills. When previously enacted appropriations are rescinded in an appropriations bill, they may generally be used as an offset to other spending in the bill. The jurisdiction of the House and Senate Appropriations Committees includes "Rescissions of appropriations contained in appropriation Acts."[49] Rescissions included by the committee in appropriations bills are excepted from the prohibition in House Rule XXI, clause 2(b), against provisions "changing existing law." This exception, however, does not extend to amendments or to other types of rescissions.[50] Similarly, the prohibition in the Senate, Rule XVI, paragraph 4, against legislative amendments precludes amendments to appropriations bills that include rescissions.[51]

Recent examples of acts including rescissions include many of the appropriations acts for FY2024. Each of the six regular appropriations bills comprising the Consolidated Appropriations Act, 2024 (P.L. 118-42), and five of the six regular appropriations bills comprising the Further Consolidated Appropriations Act, 2024 (P.L. 118-47), included rescissions (all but Division E, the Legislative Branch Appropriations Act, 2024).

Supplemental appropriations measures have also included rescissions. For example, in 1995, Congress enacted a supplemental appropriations measure that comprised $7.2 billion of emergency spending and $16.3 billion in rescissions.[52]

Congress may also choose to consider measures dedicated solely to rescissions, such as the 1992 example cited above. Congress may also consider legislation that combines rescissions with other legislation, such as the Fiscal Responsibility Act.[53]

[48] In a letter from GAO to OMB, the Comptroller General stated that "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" (GAO, *Impoundments Resulting from the President's Proposed Rescissions of October 28, 2005*, B-307122, March 2, 2006).

[49] House Rule X, clause 1(b)(2), and Senate Rule XXV, paragraph 1(b)(2), respectively.

[50] John V. Sullivan, Thomas J. Wickham Jr., and Jason A. Smith, *House Practice: A Guide to the Rules, Precedents and Procedures of the House*, 118th Cong., 2nd sess. (Washington: GPO, 2024), chapter 7, §20.

[51] *Riddick's Senate Procedure*, p. 630.

[52] P.L. 104-19.

[53] Title I of Division B of P.L. 118-5 comprised 81 sections rescinding budget authority.

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