

# Pocket Rescissions and the Impoundment Control Act: Legal Authority and Options for Congress

September 25, 2025

On July 24, 2025, President Donald J. Trump signed into law the [Rescissions Act of 2025](#). The statute marks the [first time](#) since [1992](#) that a President has successfully invoked the [Impoundment Control Act of 1974](#) (ICA) to secure passage of a rescission bill. Congress acted after President Trump's May 2025 [transmission to Congress](#) of a rescission special message. The special message made available [special legislative procedures](#), including limits on debate in the Senate on a rescission bill introduced with respect to the special message. Due to [Section 1012\(b\) of the ICA](#), the special message also resulted in funds that were proposed for rescission [being withheld from obligation](#) while Congress considered the special message.

While Congress largely assented to President Trump's May 2025 rescission proposal, [senior Trump Administration officials have argued](#) that a President may use the ICA to reduce federal spending when Congress does not enact a rescission bill by using a *pocket rescission*. Based on a [new rescission special message](#) transmitted to Congress on August 28, 2025, the White House states that it is [now pursuing](#) such a pocket rescission strategy with respect to nearly \$5 billion in foreign assistance appropriations.

Pocket rescissions raise a number of questions. A [prior Legal Sidebar](#) addressed frequently asked questions concerning the nature and extent of pocket rescissions. This Legal Sidebar continues this discussion of pocket rescissions by examining competing legal claims about whether the ICA authorizes pocket rescissions. It also discusses the August 2025 special message's relevance to pending litigation, where for the first time a federal court has addressed the question of whether the President may rely on Section 1012(b) to withhold budget authority from obligation. The Legal Sidebar concludes with a discussion of Congress's options concerning pocket rescissions.

## Does the ICA Authorize Pocket Rescissions?

As discussed in the [companion Legal Sidebar](#), the historical record appears to contain only a few examples of pocket rescissions. Given their apparent infrequency, with one exception (discussed below), courts have not decided the merits of whether the ICA permits such action. Most of the recent legal debate

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concerning pocket rescissions has instead involved the Government Accountability Office (GAO) and the Office of Management and Budget (OMB), which have reached different legal conclusions. Their disagreement centers on the text of Section 1012(b), [which reads](#):

Any amount of budget authority proposed to be rescinded or that is to be reserved as set forth in such special message shall be made available for obligation unless, within the prescribed 45-day period, the Congress has completed action on a rescission bill rescinding all or part of the amount proposed to be rescinded or that is to be reserved. Funds made available for obligation under this procedure may not be proposed for rescission again.

GAO contends that Section 1012(b) [may not lawfully be used to effect a pocket rescission](#). In GAO's view, Section 1012(b) contains [“a mandatory directive that funds proposed for rescission be made available for obligation.”](#) GAO locates this mandatory directive in the portion of Section 1012(b) that states that any [“amount of budget authority proposed to be rescinded . . . as set forth in such special message shall be made available for obligation.”](#) In GAO's reading, Section 1012(b) then identifies the [“single exception to this requirement,”](#) which is Congress [completing action](#) on a rescission bill within the 45-day period so that the funds are canceled permanently. Thus, GAO argues that there is an [“implicit”](#) requirement in Section 1012(b) that withheld budget authority be released before it expires, even if before the end of the 45-day period, because funds that are allowed to expire cannot [“be made available for obligation.”](#) The time required to prudently obligate funds before they expire [would vary by program](#).

OMB [reads the ICA to permit pocket rescissions](#). OMB's argument begins by noting that Section 1012 does not expressly prohibit the President from transmitting a rescission special message [near the end of a fiscal year](#), when fixed-period appropriations typically expire. Moreover, OMB argues that Section 1012(b) provides 45 days of withholding authority but does not expressly require [“the President to make withheld budget authority available for obligation”](#) earlier than the end of the 45-day period if withheld funds would expire in the meantime. OMB contends that [“the text of the ICA,”](#) and in particular Section 1013(a) as compared with Section 1012(b), [“indicates that Congress considered the possible effects of withholding funds close to the end of the fiscal year.”](#) Section 1013(a) of the ICA requires the President to transmit a special message to Congress whenever he or an executive branch officer or employee [proposes to defer](#) (i.e., [temporarily withhold from obligation or expenditure](#)) budget authority. However, a President may not propose a deferral that [begins in one fiscal year and extends into the next](#). Congress did not include similar language in Section 1012(b) to expressly prohibit withholdings that begin in one fiscal year from continuing into the next. Thus, OMB contends that Congress [“decided to limit”](#) withholding funds close to the end of the fiscal year [“only with respect to deferrals, not with respect to rescissions.”](#)

The debate over pocket rescissions is not confined to questions of the ICA's interpretation. GAO contends that reading the statute to authorize pocket rescissions would [conflict with the bicameralism and presentment requirements of Article I, § 7 of the Constitution](#). GAO likens pocket rescissions to the Line Item Veto Act of 1996, which the Supreme Court held unconstitutional in *Clinton v. City of New York* because the statute authorized the President to [“effect the repeal of laws”](#) without securing new legislation. The Trump Administration, for its part, casts pocket rescissions as occurring [because of the operation of law, rather than its repeal](#).

## The August 2025 Special Message: Old and New Questions

The President's August 2025 special message raises many of the frequently asked questions examined in this two-part Legal Sidebar series. Assuming that the ICA authorizes pocket rescissions, the special message appears to meet the prerequisites for a pocket rescission with respect to at least some of the funds it concerns. [All of the funds](#) that the President proposes to rescind expire at the end of FY2025 (i.e., on October 1, 2025). Fewer than 45 calendar days separate August 28 and October 1. Moreover, Section 1001(4) [does not appear to cover any of the funds](#) at issue.

The special message also raises the recurring question of whether the ICA authorizes pocket rescissions. As noted above, the White House has said it [intends to withhold the funds from obligation through their expiration](#) unless, in the meantime, Congress rescinds the funds. This question has taken on a new aspect, though, because as discussed below, for the first time a federal court has weighed in on the merits of *whether* the ICA permits pocket rescissions. Moreover, recent developments in ICA case law pose new questions about *who* may litigate pocket rescissions questions.

In February 2025, nonprofit groups that receive grants from foreign assistance funds [filed two lawsuits](#)—which have been adjudicated together—in the U.S. District Court for the District of Columbia (D.C. district court) challenging the withholding of such funds. Part of the litigation involves the Executive’s failure to take steps necessary to obligate foreign assistance appropriations, such as soliciting applications for grant awards, prior to their expiration on October 1, 2025.

In March 2025, the D.C. district court entered a preliminary injunction barring executive branch actors [“from unlawfully impounding congressionally appropriated foreign aid funds”](#) and ordering them to “make available for obligation the full amount of funds that Congress appropriated for foreign assistance programs in the Further Consolidated Appropriations Act of 2024.” The D.C. district court held that the plaintiffs were likely to prevail on claims that the withholding violated [the separation of powers](#) and was final agency action that was [contrary to law](#), within the meaning of the [Administrative Procedure Act](#) (APA) because the President had not then transmitted a special message under the ICA proposing either a rescission or deferral of the withheld funds.

On August 28, 2025, the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit) [vacated the preliminary injunction in part](#). The appellate court held that the plaintiffs’ claims were statutory in nature, and, under Supreme Court case law, [could not be maintained as constitutional claims](#). The D.C. Circuit also decided that the plaintiffs lacked an APA cause of action. While the APA generally allows judicial review of final agency action, review under the APA is not available to the extent [“statutes preclude judicial review.”](#) The D.C. Circuit held that the nonprofit plaintiffs [could not enforce](#) the ICA through the APA because Congress’s decision to [authorize suits by the Comptroller General](#) to enforce the ICA precluded APA enforcement by other parties. However, the D.C. Circuit [declined to decide](#) “whether the ICA precludes suits under the APA to enforce appropriations acts,” rather than the ICA itself.

Within hours of the D.C. Circuit’s decision, President Trump sent his August 2025 special message to Congress. The special message included funds that the now-vacated preliminary injunction had required to be obligated. OMB followed up the special message’s transmission by [reapportioning all relevant appropriations](#) to render them unavailable for obligation. Thus, funds that the plaintiffs were (and are) seeking to have made available for obligation were withheld under Section 1012(b).

On remand from the D.C. Circuit, plaintiffs [asked the D.C. district court for a new preliminary injunction](#). They [argued that the executive’s failure to make foreign assistance funds available](#) for obligation violates the Further Consolidated Appropriations Act, 2024—the act that made the appropriations at issue. Plaintiffs assert that this APA claim does not depend on the ICA and thus is not affected by the D.C. Circuit’s decision because, [they claim](#), it can be decided without reference to the ICA. Though the federal government defendants [rely on Section 1012\(b\) as one of several defenses to the claim](#), plaintiffs argue that that fact does not transform their claim into a claim to enforce the ICA. They also argue that the defense fails on the merits because the ICA [does not authorize pocket rescissions](#).

On September 3, the D.C. district court entered a [new preliminary injunction](#) requiring defendants to obligate the \$10 billion in foreign assistance appropriations that are set to expire at the end of September, including funds proposed for rescission in the August 2025 special message. The decision contains the only judicial construction of Section 1012(b) to date. The D.C. district court appeared to conclude that Section 1012(b) provides no authority to withhold funds that are proposed for rescission in a special message. In the court’s view, [“unless and until Congress votes to rescind the budget authority”](#) as

proposed in a special message, “the funds appropriated ‘shall be made available for obligation.’” This construction of Section 1012(b) appears to differ from both GAO’s and OMB’s interpretations, as [both](#) recognize Section 1012(b) [withholding authority](#). (As noted above, though, GAO and OMB disagree on the extent of withholding authority in the pocket rescission context.) The D.C. district court’s construction is also inconsistent with past practice. [Presidents](#) of [both parties](#) have withheld budget authority that they had proposed for rescission in a special message.

Defendants [appealed](#) the preliminary injunction to the D.C. Circuit. On September 5, the appellate court [denied defendants’ request for a stay pending appeal](#) of the preliminary injunction. Defendants then [applied](#) to the Supreme Court for a partial stay. On September 9, Chief Justice John Roberts [granted an administrative stay](#) of the preliminary injunction to the extent it concerned the appropriations that were included in the August 28, 2025, special message. In other words, the Chief Justice’s order allows the funds to be withheld from obligation until the Court can adjudicate the question raised in the stay application. The Court has not yet decided the application.

## How Might Congress Respond to Executive Uses of the ICA?

Congress has a range of options for responding to special messages. Congress may consider whether to adopt the proposals included in the special message, using [either the ICA’s special legislative procedures or other lawmaking processes](#). It may also choose to amend the ICA. A Congress interested in preventing pocket rescissions could amend the statute to ensure that Section 1012(b) withholding does not extend through the withheld funds’ expiration. Such changes could take a variety of forms, from limiting when in a fiscal year a rescission special message may be transmitted, to directing that funds proposed for rescission [be recorded as obligated](#) so that the funds do not expire in an unobligated state, to requiring that funds withheld under Section 1012(b) be released from withholding in [sufficient time for them to be prudently obligated](#). Conversely, a Congress interested in affirming pocket rescission authority could add to the statute express language that affirms the President’s ability to impound funds proposed for rescission through their expiration.

Congress might also seek to amend the ICA as it relates to the statute’s enforcement. With regard to Comptroller General suits, Congress might choose to shorten or eliminate the [25-day waiting period](#) that is part and parcel of the litigation authority. Congress might instead require the Comptroller General to [secure congressional approval](#) for a proposed ICA enforcement suit. Congress might also seek to legislate as to a private party’s ability to enforce the ICA, either by expressly precluding such suits or by clarifying that the Comptroller General’s litigation authority does not bar other parties’ efforts to enforce the statute.

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