



## **BACKGROUND: RESCISSIONS UNDER THE IMPOUNDMENT CONTROL ACT**

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### **WHAT IS A RESCISSION?**

A [rescission](#) is “Legislation enacted by Congress that cancels the availability of budget authority previously enacted before the authority would otherwise expire.” This reduces future spending.

### **WHAT IS THE IMPOUNDMENT CONTROL ACT?**

Title X of the Congressional Budget and Impoundment Control Act of 1974 ([2 U.S.C. 682-688](#)) allows the President to propose specific rescissions to Congress and establishes expedited procedures to consider the proposed rescissions in both the House and the Senate.

### **WHAT CAN THE IMPOUNDMENT CONTROL ACT BE USED FOR?**

When [budget authority](#) is provided to an agency pursuant to the enactment of an [appropriation](#), those funds are not necessarily [obligated](#), or set aside to be [expended](#) right away. While the funds remain [unobligated](#), the budget authority can be rescinded by a new law passed by Congress and signed by the President, thus stopping the funds from being spent. The Impoundment Control Act allows the President to delay obligation of funds he has proposed to rescind for up to 45 days of [continuous session](#) of Congress.

The President could propose to rescind unnecessary non-defense discretionary [spending](#) included as a part of the [FY 2018 Omnibus](#), particularly spending contained the bill’s \$63 billion increase.

The President could also propose to rescind old, unneeded budget authority that is not actually planned to be spent for its intended purpose. This type of old budget authority is sometimes rescinded in appropriations bills to “[offset](#)” new, higher spending, even if the rescission has no effect on outlays.

The Office of Management and Budget provides regular reports of [Unobligated Balances in Unexpired Accounts for Executive Branch Agencies](#). As of [January 2018](#) (prior to the enactment of the Omnibus, but the most recent report available at this time), there were \$377.5 billion in Discretionary Balances Subject to Rescission, including \$109 billion in no-year appropriations that will not expire.

### **WHY USE THE IMPOUNDMENT CONTROL ACT?**

The primary advantage of the Impoundment Control Act is that it establishes an expedited, majority vote process with for considering a rescission bill in both the House and the Senate.

The rescission bill would not be subject to the filibuster in the Senate. Both the motion to proceed and final passage of the bill are subject to simple majority votes, and time for debate is limited to ten hours.

In the House, the consideration of a rescission bill that has been reported or discharged from the Appropriations Committee is privileged on the floor, meaning any Member can move to call it up. If the Appropriations Committee has not reported a rescission bill after 25 days, any Member can make a motion to discharge the bill from the Committee that would be adopted by one-fifth of the House.

### **IF THE PRESIDENT PROPOSES RESCISSIONS, HOW COULD CONSERVATIVES RESPOND?**

First, Conservatives should be pleased that that the President is taking fiscal responsibility seriously, and applaud his taking action to start the rescissions process.

Conservatives could request that the House and Senate leadership bring a rescission bill that consists of the President's full request to the floor in a timely manner. Conservatives could set the expectation that leadership will do its best to build support for the entire rescission package proposed by the President. If the rescission bill brought to the floor does not include all of the President's requested rescissions, conservatives could reserve their right to insist on votes on the full amount of rescissions.

If the rescission bill consisting of the President's full request gets stuck in Committee for longer than the 25-day threshold, conservatives could lead an effort to make a motion to discharge the bill from committee. It worth noting that the threshold to discharge the bill is only one-fifth of the Members (87 in the House, 20 in the Senate, without vacancies), while 90 House Republicans and 23 Republican Senators voted against Omnibus.

### **HOW IS THE IMPOUNDMENT CONTROL ACT USED?**

The Impoundment Control Act requires the process to be initiated by the President to trigger expedited procedures. The expedited procedures in the House and Senate are only available before the end of the first period of 45 calendar days of continuous session of the Congress after the date on which the President's message is received by the Congress. A detailed CRS Memo prepared for the RSC on the floor procedures prescribed by the law can be found [here](#).

The Impoundment Control Act requires that whenever the President determines that all or part of any budget authority:

1. will not be required to carry out the full objectives or scope of programs for which it is provided;
2. 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
3. whenever all or part of budget authority provided for only one fiscal year is to be reserved from obligation for such fiscal year;

that the President transmit to Congress a special message specifying:

1. the amount of budget authority proposed to be rescinded or reserved;
2. the account and department for which the budget authority is available, and the specific project or governmental functions involved;
3. the reasons why the budget authority should be rescinded or reserved;
4. the estimated fiscal and economic effects of the proposed rescission or reservation; and
5. all facts, circumstances, and considerations relating to the proposed rescission or reservation.

The funds proposed to be rescinded or reserved may be withheld from obligation for up to 45 days of continuous session of Congress, or until Congress has completed action on the rescission bill.

The GAO is required to review the proposals in the special message and inform Congress as promptly as practicable “the facts surrounding the proposed rescission or reservation of budget authority (including the probable effects thereof).”

After the President transmits a special message, any Member of Congress may introduce a rescission bill. The bill may consist only of language to rescind all or part of the budget authority included in the special message. Traditionally, a leader of the President’s party has introduced the legislation. If a bill includes anything other than something requested by the President, it would not be eligible for the expedited procedures.

The rescission bill will be referred to the House Appropriations Committee or the Senate Appropriations Committee and Senate Budget Committee. The Committee(s) may mark up and report the rescission bill.

If a Committee does not report a rescission bill that has been referred to it within 25 calendar days of continuous session, it is in order on the floor for any Member supporting the bill to make a motion to discharge the Committee from further consideration of the bill, or any other rescission bill from the same special message. The threshold to discharge the bill is one-fifth of the Members (87 in the House, 20 in the Senate, without vacancies). Debate on the motion is limited to one hour divided equally between supporters of the bill to be discharged and those opposing (or the Majority and Minority Leaders or their designees in the Senate). The motion to discharge does not automatically bring up the bill for floor consideration.

In the House, the Impoundment Control Act prescribes expedited procedures for consideration of a rescission bill, however, such a bill is most often considered under a special order of business, such as a rule like most other legislation. The rule could allow amendments, or close down the process. Conservatives could reserve the right to insist that the rights provided to rank and file members under the law are not obviated by a rule.

If a special order of business has not been adopted, it is in order for any Member to make a privileged motion to proceed to a rescission bill that has been reported or discharged from Committee. If the

privileged motion is made, two hours of debate is provided, equally divided. Amendments are in order, but only to:

1. strike a rescission in the bill;
2. change the amount of a rescission, but only up to an amount proposed by the President; or
3. add a rescission proposed by the President but that is not already included in the bill.

In the Senate, rescission bills are considered privileged and are not subject to the filibuster. The motion to proceed is decided by a majority vote. Debate on a rescission bill is limited to ten hours. Amendments are in order, and must be germane. After debate is exhausted, a vote-a-rama, like at the end of debate on a budget resolution, would occur. Final passage would be decided by a majority vote.

Expedited procedures are also established in the Senate for consideration of a conference report on a rescission bill or for considering amendments in disagreement with the House on a rescission bill.

### **WHY WAS THE IMPOUNDMENT CONTROL ACT ENACTED?**

The Impoundment Control Act was enacted as a part of the Congressional Budget and Impoundment Control Act of 1974, which established the modern budgetary process, in an effort to bring more Congressional control and transparency to the federal budget.

Prior to the law being enacted, Presidents had claimed the power to [impound](#), or to refuse to spend funds appropriated by Congress. President Nixon expanded the use of impoundment in a way that thwarted the will of Congress. The Supreme Court unanimously ruled in a 1975 decision that the President may not impound funds appropriated by Congress unless the power is provided by law.

The Impoundment Control Act limits the President's ability to use impoundment, but gives the President the authority to recommend that previously appropriated funds be rescinded and for Congress to consider those recommendations in an expedited way. The law gives Congress a way to work with the President to impose fiscal responsibility in a way that helps empower Article I.

### **ADDITIONAL RESOURCES**

- [CRS Memo for the RSC](#): Expedited Procedure for Considering Presidential Rescission Messages Under Section 1017 of the Impoundment Control Act of 1974
- [CRS Report](#): Rescission Actions Since 1974: Review and Assessment of the Record
- [CRS Issue Brief](#): FY 1992 Rescission Actions
- [Jefferson Manual](#): Title X of the Congressional Budget and Impoundment Control Act of 1974
- [Deschler's Precedents](#): Canceling Budget Authority
- [Kimberly Strassel Wall Street Journal Op-Ed](#): In for a Penny, in for Impound: How Trump and the congressional GOP can undo the worst of the omnibus
- [Washington Post](#): White House considers plan to slash spending from budget bill
- [Heritage Action](#): GOP Should Exercise Fiscal Restraint through the Impoundment Control Act

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