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Rescission Explained: A Primer on the Impoundment Control Act

Rescission: *A provision of law that cancels budget authority prior to when it would otherwise expire, making it unavailable for future obligation and, as such, it is a permanent cancellation of budget authority.*

Presidential authority to propose a rescission

The Impoundment Control Act (ICA), Title X of the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344, 99 Stat. 297), provides the President with the authority to propose a rescission.

Federal spending would be impacted whether or not Congress acts

This week, President Trump is expected to send the first in a possible series of rescissions to Congress for their deliberation, given his overall concern with the total funding provided in the Consolidated Appropriations Act of 2018 -- the fiscal year (FY) 2018 omnibus bill. Earlier, it was reported that the maximum amount the President would propose to rescind is \$25 billion. More recently, it's been reported that the Trump Administration has decided to request no more than \$11 billion. The focus of the initial White House proposal will be to rescind unspent funding from prior years. Whatever activities would normally be funded by those accounts will likely be dramatically affected, given that the **law requires such funds to be held (not obligated or spent) for 45 days to allow Congress to act**. In addition, the move could undermine ongoing bipartisan negotiations on FY19 appropriations bills.

What spending could be included

By definition, rescissions can only apply to **discretionary funding**, not mandatory funding. Discretionary funding includes programs that are directly appropriated by Congress (e.g., NIH, CDC, AHRQ).

The Government Accountability Office (GAO) has explained that the special rescission procedures are also off limits for formula grants to states or localities, even if they're in the discretionary part of the budget (e.g., the Child Care and Development Block Grant, Community Development Block Grant, and certain Ryan White CARE Act grants). The key distinction with these programs is that the authorizing law for these grants mandates the distribution of funds by a set formula once annual appropriations bills have been determined.

Rescission process

Upon receipt of a special message from the executive branch, Congress may consider a rescission bill, which rescinds, in whole or in part, the budget authority that the president requests. This rescission bill is referred to the appropriate committee (e.g., the Committee on Appropriations). If after 25 days, the relevant committee has not reported the rescission bill to the floor of the respective house of Congress, members may enter a motion to discharge the bill from the relevant committee if one-fifth of the members of the respective house of Congress support the motion. The rescission bill also receives expedited consideration on the floor of both the House and the Senate. It is important to note that debate of a rescission bill in the Senate is limited to 10 hours, meaning it cannot be filibustered.

Unavailability of funds during process

The funds, which the President proposes to rescind as part of the special message to Congress, are **held for 45 days of a continuous session of Congress** to allow Congress to act on the proposed rescissions. In practice, this usually means that funds proposed for rescission not approved by Congress must be made available for obligation after 60 calendar days, although the period can extend for 75 days or longer. Congressional deliberation may result in Congress approving the total amount, approving a different amount, or opting not to approve any of the rescissions. However, at the end of that period, if Congress has not acted, then they are made available for obligation. **Funds made available for obligation under this procedure may not be proposed for rescission again.** It's worth noting that the House of Representatives is scheduled to be in session for 51 days between May 1 and September 30, the end of FY 2018, and the Senate is scheduled to be in session for 71 days between the same period of time. This is significant because funds could be held for the remainder of the current fiscal year.

Timing

OMB Director Mulvaney has said he hopes the House will vote on a rescission package before the July 4 recess. Congress returns to session on May 7, and an initial rescission package is expected to be transmitted to Congress soon after. Director Mulvaney has mentioned that additional rescission packages could follow.

Precedent

Since 1974, presidents have proposed 1,178 rescissions, totaling more than \$76 billion. Of these, Congress has accepted 461, totaling more than \$25 billion. However, the last president to propose a formal rescission package to Congress was Bill Clinton, who proposed three rescissions in FY 2000 asking to rescind \$128 million. The highest number of rescission requests in a single year occurred during the Reagan Administration in FY 1985, with 245. Over his eight years as president, Reagan requested 602 rescissions of \$43 billion.