

# CRS Report for Congress

## Rescission Actions Since 1974: Review and Assessment of the Record

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# Rescission Actions Since 1974: Review and Assessment of the Record

## Summary

The Impoundment Control Act (ICA) was included as Title X of the Congressional Budget and Impoundment Control Act of 1974, signed into law on June 12, 1974 (88 Stat. 332). Under the ICA, unless Congress takes action to approve a rescission request from the President within the 45-day review period prescribed by the law, the funds must be released. With respect to a presidential rescission message, Congress may approve more or less than the amount requested by the President. In addition, absent a specific request from the President, Congress on its own accord may initiate rescission actions, by cancelling previously appropriated funds in a subsequent law.

According to data compiled by the Government Accountability Office (GAO), from FY1974 to FY2006, Presidents requested 1,178 rescissions under the ICA, totaling somewhat over \$76 billion. Close to a third of the proposals were approved by Congress, with approximately 40% of the total dollar amount of presidential rescission requests (\$25 billion) enacted by Congress. The sum of rescissions requested by the President and subsequently enacted exceeded \$1 billion in only four of the 30-plus years (FY1981, FY1982, FY1992 and FY1994). During this period Congress initiated 1,610 rescission actions amounting to \$143.5 billion, over five times the total of presidentially requested rescission subsequently enacted, reflecting a trend toward an increasing number of rescissions being initiated by Congress.

The Line Item Veto Act of 1996 (P.L. 93-344), in effect for less than eighteen months before being overturned by the Supreme Court in 1998, gave the President enhanced rescission authority by reversing the burden of action regarding rescission proposals; cancellations of the President became permanent unless disapproved by Congress (ultimately requiring rejection by a 2/3 majority in both chambers). During this time, the President also had authority to cancel new items of direct spending and certain targeted tax benefits as well as items of discretionary spending. Figures from the Congressional Budget Office indicate that the 82 cancellations made by President Clinton in FY1998 (including those overturned) totaled some \$355 million, with a projected five-year savings just under \$1 billion. President Clinton's use of the short-lived enhanced rescission authority thus was not notably different from the prior annual record of presidential rescissions under the ICA framework.

During his first seven years in office, President George W. Bush sent no formal ICA rescission requests to Congress, but some controversy developed over his use of alternative means to propose spending reductions. President Bush, while evidently reluctant to use existing rescission authority contained in the ICA, has called repeatedly for enactment of a measure that would give the President greater authority to reject items of spending. Such a bill passed the House in the 109<sup>th</sup> Congress and was reported in the Senate. A contentious issue is whether such a measure might give preference to presidential spending priorities over congressional spending priorities, arguably affecting the legislative power of the purse.

This report will be updated as necessary.

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# Rescission Actions Since 1974: Review and Assessment of the Record

## Introduction

The federal budget process involves both Congress and the executive branch. The Constitution provides in Article I that “no money shall be drawn from the Treasury but in consequence of appropriations made by law....” Article II stipulates that the President “shall take care that the laws be faithfully executed.” The practice of impoundment reflects this sharing of powers between the branches in the implementation of the federal budget.

The term “impoundment” refers to executive actions to withhold or delay the spending of funds provided in law. The term “rescission” denotes one type of impoundment, that involving permanent cancellation of the funds.

While instances of presidential impoundment date back to the early 19<sup>th</sup> century, Presidents usually sought accommodation rather than confrontation with Congress.<sup>1</sup> This changed during the Nixon Administration (1969-1974), when impoundment of funds developed into a major conflict, eventually involving the courts as well as Congress and the President.<sup>2</sup>

This report begins by reviewing the framework for handling rescissions established by the Impoundment Control Act of 1974 (ICA, 88 Stat. 332) and by amendments to it in 1987 (101 Stat. 786). A section with review and analysis of data on rescission requests and outcomes pursuant to the 1974 law follows, including comparisons among the respective Administrations. Attention then turns to actions which took place during the brief period that the Line Item Veto Act of 1996 (LIVA, P.L. 104-130, 110 Stat. 1200) was in force. During his first six years as President, George W. Bush sent no formal ICA rescission requests to Congress, but some

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<sup>1</sup> For a history of presidential impoundment before 1974, see Louis Fisher, *Presidential Spending Power* (Princeton, NJ: Princeton University Press, 1975), pp. 147-201; and Ralph S. Abascal and John R. Kramer, “Presidential Impoundment Part I: Historical Genesis and Constitutional Framework,” *Georgetown Law Journal*, vol. 62 (July 1974), pp. 1549-1618.

<sup>2</sup> In contrast to previous impoundment actions, President Nixon impounded larger amounts of funds, ignored explicit expressions of intent by Congress that funds be spent, tried to terminate entire programs rather than just selected projects, systematically attempted to withhold funds from programs not included in the President’s budget, and asserted formal constitutional power to impound. See James P. Pfiffner, *The President, the Budget, and Congress: Impoundment and the 1974 Budget Act* (Boulder, CO: Westview Press, 1979), pp. 40-44.

controversy developed over his use of “cancellation statements” proposing spending reductions. The final section of the report provides some concluding observations.

## Impoundment Control Act of 1974

The Impoundment Control Act (ICA) was included as Title X of the Congressional Budget and Impoundment Control Act of 1974, signed into law on June 12, 1974 (88 Stat. 332). The act established two categories of impoundments: deferrals, or temporary delays in funding availability; and rescissions, or permanent cancellation of the designated budget authority.

The ICA also established new reporting requirements that remain in effect.<sup>3</sup> The 1974 law required the President to inform Congress of all proposed rescissions and deferrals and to submit specified information regarding each such action in a special message. The President may combine several rescission requests in a single impoundment message. Section 1014 of the 1974 law also stipulated that the President transmit to Congress each month a cumulative report on the status of impoundment actions. In 1975, various of these reporting duties were transferred from the President to the Director of the Office of Management and Budget (OMB) via Executive Order 11845.<sup>4</sup> The ICA also required the Comptroller General of the General Accounting Office (GAO, now the Government Accountability Office), to oversee executive compliance with the law and report to Congress if the President fails to report an impoundment or improperly classifies an action. Both messages from the President and communications from the Comptroller General are published in the *Federal Register* and subsequently printed as House documents.<sup>5</sup>

The act further stipulated different procedures for congressional review and control of the two types of impoundment. With a rescission, the funds must be made available for obligation unless both Houses of Congress take action to approve of the

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<sup>3</sup> See Appendix for further discussion of reporting requirement for presidential impoundment actions and of sources for impoundment data.

<sup>4</sup> Specifically, President Gerald Ford conferred upon the OMB Director the functions of transmitting copies of the special rescission and deferral messages to the Comptroller General and to the Office of the Federal Register, and also the responsibility of submitting to Congress the monthly cumulative report. U.S. President, 1974-1976 (Ford), Executive Order 11845, “Delegating Certain Reporting Functions to the Director of the Office of Management and Budget,” Mar. 24, 1975, *Weekly Compilation of Presidential Documents*, v. 11, Mar. 31, 1975, p. 304; also see 40 *F.R.* 13299.

<sup>5</sup> For example, see U.S. Congress, House, *Rescissions: Message from the President of the United States Transmitting Six New Rescission Proposals Affecting Programs in the Departments of Housing and Urban Development, Interior, Justice, and Labor*, Pursuant to 2 U.S.C. 683(a)(1), H. Doc. 101-20, 101<sup>st</sup> Cong., 1<sup>st</sup> sess., (Washington: GPO, 1989); and *Review of Rescissions, Deferrals and Revised Deferrals: Communication from the Comptroller General of the United States Transmitting a Review of the Seventy-three Rescission Proposals, Three New Deferrals and Three Revised Deferrals Reported in the President’s Third Special Message for Fiscal Year 1987*, Pursuant to 2 U.S.C. 685, H. Doc. 100-60, 100<sup>th</sup> Cong., 1<sup>st</sup> sess., (Washington: GPO, 1987).

rescission request within 45 days of “continuous session.”<sup>6</sup> Recesses of more than three days are not counted. In practice, this usually means that funds proposed for rescission not approved by Congress become available for obligation after about 60 calendar days, although the period can extend to 75 days or longer.<sup>7</sup> The funds may be withheld from obligation until the 45-day period elapses or Congress disapproves the rescission. Congress may alter the amount proposed for rescission by the President, either increasing or decreasing it, as well as approving or disapproving the rescission request in toto. Section 1017 of the ICA establishes expedited procedures for congressional action on “any rescission bill introduced with respect to a special message” submitted by the President.

In the fall of 1987, as a component of legislation to raise the limit on the public debt (P.L. 100-119) that also included changes in the Gramm-Rudman-Hollings Act, Congress enacted several other budget process reforms as well. Section 206 effectively eliminated presidential deferrals for policy reasons.<sup>8</sup> Section 207 involved the use of rescission authority. It provides a statutory prohibition against the practice, sometimes used by Presidents when Congress failed to act on a rescission proposal within the 45-day period, of resubmitting a new rescission proposal covering identical or very similar matter. By using such resubmissions repeatedly, the President might continue to tie up the funds even though Congress, by its inaction, had already rejected virtually the same proposal. The legislative history of the 1974 act suggests that prohibiting this practice of seriatim rescission proposals may be consistent with the original intent of Congress. The prohibition on seriatim rescissions in Section 207 applies for the duration of the appropriation, so that it may remain in effect for two or more fiscal years.<sup>9</sup>

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<sup>6</sup> In contrast, the original provisions of Title X allowed a deferral to continue in effect for the period proposed by the President (not to extend beyond the end of the fiscal year so as to become a de facto rescission), unless either the House or Senate took action to disapprove it. Such procedures, known as a one-house legislative veto, were invalidated by the 1983 Supreme Court decision in *INS v. Chadha* (462 U.S. 919). *City of New Haven v. United States* (809 F.2d 900, D.C. Cir. 1987) held that the deferral authority conveyed to the President in the 1974 law was inseparable from the one-house veto provision. Thus, the invalidation of the legislative veto also invalidated the deferral authority, except for what were considered to be “routine” deferrals, authorized by sources predating the ICA.

<sup>7</sup> In the past OMB sometimes expanded the 45-day period during which the funds were unavailable by initiating a deferral prior to formally reporting the rescission to Congress. In one case in 1986, nearly six months elapsed between the effective date of a specific appropriation and the submission of the ICA-required rescission message. See CRS Report RL33365, *Line Item Veto: A Constitutional Analysis of Recent Proposals*, by Morton Rosenberg, p. 9.

<sup>8</sup> Section 206 of P.L. 100-119 served to codify the Appeals Court decision in the *New Haven* case. The provision in the 1974 law, as amended, now authorizes the President to defer funds only for contingencies, efficiency, or where specifically provided by law. Section 206 also reaffirmed certain provisions of the 1974 law relating to enforcement responsibilities of the Comptroller General, who is empowered to sue the executive for violations of the Impoundment Control Act.

<sup>9</sup> See “Joint Explanatory Statement of the Committee of Conference,” in U.S. Congress, *Increasing the Statutory Limit on the Public Debt*, Conference Report to Accompany (continued...)

## Rescission Actions Since 1974<sup>10</sup>

The Impoundment Control Act has been in effect for over 30 years. According to an assessment of congressional power over impoundments since 1974, coauthored by a former director of the Congressional Budget Office (CBO), “Although the courts did much to curb presidential impoundments, through Title X of the new Budget Act, Congress also helped itself to recapture its influence over the impoundment of funds.”<sup>11</sup>

In the first few years following enactment of the 1974 law, Congress approved presidential requests in a number of separate rescission bills. Subsequently, Congress tended to act upon rescission messages from the President in supplemental and regular appropriations measures, rather than in individual rescission bills. Under the ICA, unless Congress takes action to approve of a rescission request from the President within the 45-day period, the funds must be released. In practice, however, congressional action on rescission requests has often occurred after the expiration of the 45-day review period, so that funds are formally available for obligation for some time before being permanently rescinded.

As noted previously, Congress may approve more or less than the amount requested by the President. In addition, absent a specific request from the President, Congress of its own accord may initiate rescission actions, by cancelling previously appropriated funds in a subsequent law. Such factors can create ambiguities in interpreting data on rescissions proposed by the President and congressional action on them. For example, are funds originally proposed for rescission in a special message, but which again become available for obligation before Congress permanently rescinds them, to be considered as “congressional approval of a President’s request” or as a “rescission initiated by Congress”? **Table 1** provides data on rescissions from FY1974 through FY2005 as compiled by GAO. According to GAO’s methodology, eventual congressional action on a rescission proposed by the President is generally considered as “approval of a President’s request” even if the 45-day period has elapsed.<sup>12</sup> Data in **Table 2** reflect the outcome of rescission requests of the Presidents since 1974, providing percentages of their respective requests approved by Congress, both in relation to total dollars requested for rescission and to the number of separate proposals, by year and by Administration.

In the early months under the new framework, the number of presidentially proposed rescissions increased. In particular, President Ford attempted to rescind funding that Congress had added to the President’s budget, mainly involving

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<sup>9</sup> (...continued)

H.J.Res. 324, H.Rept. 100-313, 100<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1987), pp. 67-68.

<sup>10</sup> This section updates and expands upon previous work of the author. See Virginia A. McMurtry, “The Impoundment Control Act of 1974: Restraining or Reviving Presidential Power?” *Public Budgeting & Finance*, vol. 17, fall 1997, pp. 42-47.

<sup>11</sup> Rudolph G. Penner and Alan J. Abramson, *Broken Purse Strings: Congressional Budgeting, 1974-88* (Washington: Urban Institute, 1988), p. 19.

<sup>12</sup> See Appendix for further discussion of GAO’s methodology.

domestic social programs, but the effort met with limited success. As characterized by Louis Fisher, “Instead of performing as a restriction on Presidential power, it [the new law] was interpreted by the [Ford] Administration as a new source of authority for withholding funds.... Rescission proposals came up by the bushel; wholesale they were rejected.”<sup>13</sup> As indicated in **Table 2**, some 34% of President Ford’s rescission proposals were accepted by Congress. In terms of the percentage of the total dollar amount requested during the Administration and approved by Congress, President Ford had less overall success (16%) than any of his successors.

**Table 1. Rescissions of Appropriated Funds, FY1974-FY2005**

Fiscal Year	Number Proposed by the President	Total Amount Proposed by President for Rescission	Number Approved by Congress	Total Amount of Presidential Requests Approved by Congress	Number Initiated by Congress	Total Amount of Rescissions Initiated by Congress
1974	2	\$495,635,000	0	\$0	3	\$1,400,412,000
1975	87	\$2,722,000,000	38	\$386,295,370	1	\$4,999,704
1976	50	\$3,582,000,000	7	\$148,331,000	0	\$0
1977	20	\$1,926,930,000	9	\$813,690,000	3	\$172,722,943
1978	12	\$1,290,100,000	5	\$518,655,000	4	\$67,164,000
1979	11	\$908,700,000	9	\$723,609,000	1	\$47,500,000
1980	59	\$1,618,100,000	34	\$777,696,446	33	\$3,238,206,100
1981	133	\$15,361,900,000	101	\$10,880,935,550	43	\$3,736,490,600
1982	32	\$7,907,400,000	5	\$4,365,486,000	5	\$48,432,000
1983	21	\$1,569,000,000	0	\$0	11	\$310,605,000
1984	9	\$636,400,000	3	\$55,375,000	7	\$2,188,689,000
1985	245	\$1,856,087,000	98	\$173,699,000	12	\$5,458,621,000
1986	83	\$10,126,900,000	4	\$143,210,000	7	\$5,409,410,000
1987	73	\$5,835,800,000	2	\$36,000,000	52	\$12,359,390,875
1988	0	\$0	0	\$0	61	\$3,888,663,000
1989	6	\$143,100,000	1	\$2,053,000	11	\$325,913,000
1990	11	\$554,258,000	0	\$0	71	\$2,304,986,000
1991	30	\$4,859,251,000	8	\$286,419,000	26	\$1,420,467,000
1992	128	\$7,879,473,690	26	\$2,067,546,000	131	\$22,526,953,054
1993	7	\$356,000,000	4	\$206,250,000	74	\$2,205,336,643
1994	65	\$3,172,180,000	45	\$1,293,478,548	81	\$2,374,416,284

<sup>13</sup> Fisher, *Presidential Spending Power*, pp. 200-201.



Fiscal Year	Number Proposed by the President	Total Amount Proposed by President for Rescission	Number Approved by Congress	Total Amount of Presidential Requests Approved by Congress	Number Initiated by Congress	Total Amount of Rescissions Initiated by Congress
1995	29	\$1,199,824,000	25	\$845,388,805	248	\$18,868,380,121
1996	24	\$1,425,900,000	8	\$963,400,000	104	\$4,974,852,131
1997	10	\$407,111,000	6	\$285,111,000	96	\$7,381,253,000
1998	25	\$25,260,000	21	\$17,276,000	43	\$4,180,814,234
1999	3	\$35,040,000	2	\$16,800,000	105	\$5,081,426,930
2000	3	\$128,000,000	0	\$0	61	\$3,757,774,500
2001	0	\$0	0	\$0	67	\$5,148,137,497
2002	0	\$0	0	\$0	76	\$4,621,092,342
2003	0	\$0	0	\$0	47	\$3,123,436,524
2004	0	\$0	0	\$0	49	\$10,515,464,056
2005	0	\$0	0	\$0	77	\$6,351,133,468
Total 1974-2005	1,178	\$76,022,349,690	461	\$25,006,704,719	1,610	\$143,493,143,006
Average per FY	37	\$2,375,698,428	14	\$78,145,922	50	\$4,484,160,719

**Source:** Government Accountability Office, *Updated Rescission Statistics, Fiscal Years 1974-2005*, GAO Report B-306473, November 4, 2005.

In contrast to the record in the Ford Administration, President Carter requested far fewer rescissions, but enjoyed much greater success in gaining congressional approval. During the Carter Administration, the same political party (Democrats) controlled both Houses of Congress along with the White House. Allen Schick has suggested that given the common party identity, President Carter was “reluctant to propose rescissions, and Congress [was] reluctant to disapprove those proposed.” Some 90% of the rescissions proposed by President Carter involved defense programs, including the cancellation of the B-1 bomber.<sup>14</sup>

The Administration of President George W. Bush (“Bush II”) provides a special case with respect to the record of rescissions since 1974. The Republican Party maintained a majority in the House for the first six years of this Administration, and likewise in the Senate for over four years, but President Bush submitted no rescission requests to Congress. Although the figures of zero are duly entered in the accompanying **Tables 1 and 2**, comparisons in this section generally refer to the

<sup>14</sup> Allen Schick, *Congress and Money* (Washington: Urban Institute Press, 1980), pp. 405-406.

Ford through Clinton administrations. Developments during the “Bush II” Administration are addressed separately, below.

**Table 2. Rescissions Requested by the President and Approved by Congress, 1974-2005**

<b>Fiscal Year/ Administration</b>	<b>Number of Rescissions Requested by President</b>	<b>Total Dollar Amount of Rescissions Requested by the President</b>	<b>Percent of President’s Proposals Accepted by Congress</b>	<b>Percent of Total \$ Amount Requested Approved by Congress</b>
1974	2	\$495,635,000	0%	0%
1975	87	\$2,722,000,000	44%	14%
1976	50	\$3,582,000,000	14%	4.1%
1977	20	\$1,926,930,000	45%	42%
1978	12	\$1,290,100,000	42%	40%
1979	11	\$908,700,000	82%	80%
1980	59	\$1,618,100,000	58%	48%
1981	133	\$15,361,900,000	76%	71%
1982	32	\$7,907,400,000	16%	55%
1983	21	\$1,569,000,000	0	0
1984	9	\$636,400,000	33%	9%
1985	245	\$1,856,087,000	40%	19%
1986	83	\$10,126,900,000	5%	1%
1987	73	\$5,835,800,000	3%	1%
1988	0	\$0	0	0
1989	6	\$143,100,000	17%	1%
1990	11	\$554,258,000	0	0
1991	30	\$4,859,251,000	27%	6%
1992	128	\$7,879,473,690	20%	26%
1993	7	\$356,000,000	57%	58%
1994	65	\$3,172,180,000	69%	41%
1995	29	\$1,199,824,000	86%	71%
1996	24	\$1,425,900,000	33%	68%
1997	10	\$407,111,000	60%	70%

Fiscal Year/ Administration	Number of Rescissions Requested by President	Total Dollar Amount of Rescissions Requested by the President	Percent of President's Proposals Accepted by Congress	Percent of Total \$ Amount Requested Approved by Congress
1998	25	\$25,260,000	67%	48%
1999	3	\$35,040,000	68%	48%
2000	3	\$128,000,000	0	0
2001	0	\$0	0	0
2002	0	\$0	0	0
2003	0	\$0	0	0
2004	0	\$0	0	0
2005	0	\$0	0	0
Ford (FY1974- FY1977)	152	\$7,935,013,000	34%	16%
Carter (FY1977- FY1981)	122	\$5,750,816,000	56%	44%
Reagan (FY1981- FY1989)	604	\$43,436,587,000	36%	36%
G.H.W. Bush (FY1989- FY1993)	169	\$13,292,982,690	20%	18%
Clinton (FY1993- FY2001)	166	\$6,749,315,000	67%	54%
G.W. Bush (FY2001- FY2005)	0	0	0	0
Average per FY, 1974-2005	38	\$2,452,333,861	39%	33%

**Source:** Government Accountability Office, 2005.

The decline in rescission requests during the Carter Administration proved only temporary. During his first year in office President Reagan submitted more rescission proposals (133) than had President Carter during his entire administration. The largest number of rescission requests in any year (245 in 1985) occurred during the Reagan Administration, as did the greatest amount in terms of total dollars involved (more than \$15 billion in 1981). Somewhat coincidentally, President Reagan saw the same percentage acceptance overall of his rescission proposals as the total dollar value — 36% (see **Table 2**). While President Reagan's rescission

requests focused almost exclusively on domestic programs, most of the Reagan proposals reflected program cuts rather than targeted terminations via rescissions as during the Nixon Administration.

The aggregate percentage approval figure of slightly over a third for the Reagan Administration's requests masks substantial differences from year to year, however. As one assessment concluded,

Although President Reagan was, nevertheless, reasonably successful in using this [rescission] device in fiscal years 1981-1982, obtaining congressional approval for almost 70 percent of the dollar value of his requested rescissions, the tool was essentially useless to the president in fiscal years 1983-87, when Congress approved less than 2 percent of the value of his rescission requests.<sup>15</sup>

The absence of any rescission requests in FY1988, for the first time since enactment of the ICA, reflected a special situation. In November of 1987 a compromise agreement was announced, resulting from the "Budget Summit" between the White House and Congress. The summit deal specified two-year limits on discretionary spending for domestic programs, international affairs, and defense. Provisions of the agreement were implemented as a part of an omnibus appropriations measure (P.L. 100-202, 101 Stat.1329-1) and a reconciliation bill (P.L. 100-203, 101 Stat. 1330). Apparently, President Reagan decided not to submit formal rescission requests for fiscal 1988, which might have been perceived in Congress as violating the spirit if not the letter of the agreement. He did, however, send a message to Congress identifying "wasteful items earmarked in the FY1988 full-year continuing resolution," with a transmittal letter stating the following:

Accordingly, I am informally asking that the Congress review these projects, appropriations, and other provisions line by line and either rescind or repeal them as soon as possible. I reserve the option of transmitting at a later date either formal rescission proposals or language that would make the funds available for more worthwhile purposes, for any or all of these items.<sup>16</sup>

President Reagan refrained from using the rescission mechanism only temporarily. Before he left office, in January of 1989, the President transmitted a package of six new rescission proposals affecting FY1989.<sup>17</sup>

The Administration of George H.W. Bush had an approval rating for rescission requests considerably below that for President Reagan, and about the same overall as that of President Ford, with 20% of the total dollars requested approved, and 18%

<sup>15</sup> Rudolph G. Penner and Alan J. Abramson, *Broken Purse Strings* (Washington: Urban Institute Press, 1988), p. 120.

<sup>16</sup> U.S. President, *Message Transmitting a Request to Consider the Rescission or Repeal of Spending Projects that were Included in the 1988 Continuing Resolution (P.L. 100-202)*, March 14, 1988, H. Doc. 100-174, 100<sup>th</sup> Cong. 2<sup>nd</sup> sess. (Washington: GPO, 1988), p. 1.

<sup>17</sup> U.S. President, *Message Transmitting Six New Rescission Proposals Affecting Programs in the Departments of Housing and Urban Development, Interior, Justice, and Labor, Pursuant to 2 U.S.C. 683(a)(1)*, Jan. 19, 1989, H. Doc. 101-20, 101<sup>st</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1989).

of the total proposals accepted. During the presidential election year of 1992, however, the use of rescissions became a controversial and highly partisan political issue to an extent not seen since the conflicts of the Nixon Administration.<sup>18</sup>

During the first four months of calendar year 1992, President Bush requested 128 rescissions, totaling almost \$7.9 billion, while reportedly attempting to portray the Democratic-Party-controlled Congress as more interested in securing domestic “pork” projects for their constituents than in reducing the budget deficit. Over \$7 billion of these proposed rescissions affected the Defense Department, mainly for weapons programs that the Administration wanted to terminate or items that Congress added to earlier defense budgets.<sup>19</sup> Many of the nondefense rescissions were for small earmarked projects, added by Congress.

In response to the four packages of rescissions requested by President Bush in 1992, the House and Senate Appropriations Committees devised their own alternative packages. A conference version with an \$8.2 billion package of rescissions was signed into law on June 4, 1992 (P.L. 102-298). Although the conference agreement contained over \$7 billion in defense funds, only about \$1.7 billion of that total came from programs that the Administration had wanted to rescind. In toto, the law approved less than \$2.1 billion of the rescissions requested by President Bush, but added more than \$6 billion in congressionally initiated cuts.<sup>20</sup>

As indicated in **Table 2**, the Clinton Administration ranked at the top of the list of Presidents since 1974 with respect to the percentage of rescission proposals accepted (67%) and percentage of the total dollar amounts requested that were approved by Congress (54%). During his first two years (1993-1994) the Democratic Party controlled both houses of Congress as well as the White House, while in the remainder of his term, Republicans controlled the House and Senate. Yet President Clinton achieved his greatest success rate with rescissions, with respect to percentage of total dollar amount requested that was ultimately rescinded, in FY1995, when Congress was controlled by the opposition party.

As reflected in columns on the right side of **Table 2**, President Clinton submitted relatively fewer rescission requests per year than did his predecessors. In seven of his eight years in office, the number of rescissions requested by President Clinton was below the 1974-2005 average of 38 per year. Further, the ranking of the Administrations by average number of rescissions requested per year (to adjust for terms ranging from roughly two and a half to eight years), places President Clinton (annual average of 21 rescissions) only above George W. Bush (with zero). President Reagan not only submitted the most rescissions in toto (604), but was also number

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<sup>18</sup> See CRS Issue Brief (archived) IB92077, *Rescission of Funds for FY1992: Presidential Proposals and Congressional Actions*, Virginia A. McMurtry, Coordinator (available from author).

<sup>19</sup> See CRS (archived) Report 92-415, *Rescissions of Department of Defense Funds During the Bush Administration*, by Stephen Daggett and Paul Potamianos.

<sup>20</sup> See U.S. Congress, *Rescinding Certain Budget Authority, and for other purposes*, conference report to accompany H.R. 4990, 102<sup>nd</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 102-530 (Washington: GPO, 1992).

one with respect to a yearly average (76 rescission requests), followed by President Ford (61), President George H. W. Bush (42), and President Carter (31).

**Table 3** presents data on the total dollar amount of all enacted rescissions, and of the amounts, respectively, proposed by the President and initiated by Congress. During the Ford Administration, virtually all rescissions were congressionally initiated. In contrast, during the first three years President Carter was in office, a preponderance of enacted rescissions came from presidential messages (FY1977, 82.5%; FY1978, 88.5%; and FY1979, nearly 94%). Rescissions requested by President Reagan likewise predominated during the first two years of his term; in FY1981, over 74% of the total amount rescinded came from presidential proposals, and in FY1982, nearly 99%.

**Table 3. Summary of Enacted Rescissions, 1974-2005**

Fiscal Year	Amount Requested by President, Enacted	Amount of Enacted Rescissions, Initiated By Congress	Total Dollar Amount of Budget Authority Rescinded	% of Total Enacted, Requested by President
1974	\$0	\$1,400,412,000	\$1,400,412,000	0%
1975	386,295,370	4,999,704	391,295,074	1.3%
1976	148,331,000	0	148,331,000	0%
1977	813,690,999	172,722,943	986,412,943	82.5%
1978	518,655,000	67,164,000	585,819,000	88.5%
1979	723,609,000	47,500,000	771,109,000	93.8%
1980	777,696,446	3,238,206,100	4,015,902,546	19.4%
1981	10,880,935,550	3,736,490,600	14,617,426,150	74.4%
1982	4,365,486,000	48,432,000	4,413,918,000	98.8%
1983	0	310,605,000	310,605,000	0%
1984	55,375,000	2,188,689,000	2,224,064,000	1.6%
1985	173,699,000	5,458,621,000	5,632,320,000	3%
1986	143,210,000	5,409,410,000	5,552,620,000	2.6%
1987	36,000,000	12,359,390,875	12,395,390,876	0.3%
1988	0	3,888,663,000	3,888,993,000	0%
1989	2,053,000	325,913,000	327,966,000	0.6%
1990	0	2,304,986,000	2,304,986,000	0%
1991	286,419,000	1,420,467,000	1,706,886,000	16.8%
1992	2,067,546,000	22,526,953,054	24,594,499,054	8.4%
1993	206,250,000	2,205,336,643	2,411,586,643	8.6%

Fiscal Year	Amount Requested by President, Enacted	Amount of Enacted Rescissions, Initiated By Congress	Total Dollar Amount of Budget Authority Rescinded	% of Total Enacted, Requested by President
1994	1,293,478,548	2,374,416,284	3,687,894,832	35.6%
1995	845,388,805	18,868,380,121	19,713,768,926	4.3%
1996	963,400,000	4,974,852,131	5,938,252,131	16.2%
1997	\$285,111,000	\$7,381,253,000	\$7,666,364,000	3.7%
1998	\$17,276,000	\$4,180,814,234	\$4,198,090,234	0.4%
1999	\$16,800,000	\$5,081,426,930	\$5,098,226,930	0.3%
2000	\$0	\$3,757,774,500	\$3,757,774,500	0%
2001	\$0	\$5,148,137,497	\$5,148,137,479	0%
2002	\$0	\$4,621,092,342	\$4,621,092,342	0%
2003	\$0	\$3,123,436,524	\$3,123,436,524	0%
2004	\$0	\$10,515,464,056	\$10,515,464,056	0%
2005	\$0	\$6,351,133,468	\$6,351,133,468	0%
Total	\$25,006,704,719	\$143,493,143,006	\$168,499,847,523	

**Source:** Government Accountability Office, 2005.

The variations from year to year within administrations, as compared with the record of the respective Presidents overall, constitute a noteworthy feature of the data in **Tables 1 and 2**. Both the number and dollar amount of rescission requests submitted by the President have fluctuated widely in the 30-plus years of experience under the Impoundment Control Act. While President Clinton had the most success during a single year — 86% of rescission proposals approved by Congress in 1995 — none of his requests were approved in 2000. Reflecting on rescissions under the ICA from the perspective of the mid-1990s, Allen Schick concluded,

Rescissions invite conflict between the President and Congress. Every one is a presidential demand that Congress cancel resources it had previously appropriated. By implication, rescissions tell Congress that it erred the first time around and that it wasted government funds. This is not a message that appeals to legislators, especially when it comes from a president who has different budget priorities.<sup>21</sup>

The experience during the 1992 election year provided a prelude to a very significant development in rescissions since 1974, the increase in number of congressionally initiated rescissions. By the end of FY 1992, Presidents had proposed over 1,000 rescissions under the ICA, with Congress approving about a third of the

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<sup>21</sup> Allen Schick, *The Federal Budget: Politics, Policy, Process* (Washington: The Brookings Institution, 1995), p. 175.

Presidential requests, along with over 300 congressionally initiated rescissions.<sup>22</sup> During the period from 1974-1992, the total amount rescinded came to nearly \$107.7 billion, of which over 80% came from congressionally initiated rescissions.

In 1993 testimony, Milton Socolar, from the GAO Office of General Counsel, called attention to this development:

The data suggest an evolution in the use of rescissions as a budgetary tool.... (T)he share of total enacted rescissions originally proposed by the president has fallen and the share originating in the Congress has increased.... As the Congress has come to embrace an equivalent or greater amount of reductions than proposed by presidents, the debate has shifted from deciding whether to cut to deciding where to cut [emphasis in original].<sup>23</sup>

According to Mr. Socolar, however, these enacted rescissions often had no effect in reducing total spending if an equivalent amount of budget authority was added to another program, thereby reflecting a shift in priorities rather than a reduction in total spending.

The proportion of enacted rescissions initiated by Congress rather than by presidential request has continued to expand (see **Table 3**). The share of total dollars rescinded originating with Congress exceeded 91% in FY1992 and FY1993, and by FY1997 and FY1998, over 99%. Since FY1982, the percentage of total rescissions enacted included in presidential messages reached double digit figures in only three years: almost 17% in FY1991, nearly 36% in FY1994, and 16% in FY1996. Since FY2000, all rescissions enacted have been congressionally initiated. President George W. Bush has submitted no rescission requests to Congress.

One factor that may have contributed to the growth of rescissions initiated by Congress relates to the limits on discretionary spending dating to the Budget Enforcement Act (BEA) of 1990.<sup>24</sup> As noted previously, Congress came to include rescission provisions in regular or supplemental appropriations measures. An appropriations measure could include rescissions of previously appropriated funds in order to accommodate additional monies for other purposes. The rescission mechanism on occasion might have proved useful in efforts to avoid breaching a particular spending cap and possibly triggering across-the-board cuts.

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<sup>22</sup> See CRS Issue Brief (archived) IB92077, *Rescission of Funds for FY1992: Presidential Proposals and Congressional Actions*, Virginia A. McMurtry, Coordinator (available from author).

<sup>23</sup> Milton Socolar, *Use and Impact of Rescission Procedures*, GAO Testimony, T-OCG-93-5 (Washington: Mar. 10, 1993), pp. 2-3, 6.

<sup>24</sup> The BEA was enacted as Title XIII of the Omnibus Budget Reconciliation Act of 1990 (104 Stat. 1388, 1-630). See "Budget Enforcement Acts of 1990 and 1997," in CRS Report RL30795, *General Management Laws: A Compendium*, Clinton Brass, Coordinator.



## Developments in the Clinton and George W. Bush Administrations

In the last decade, other presidential actions relevant to the review of rescissions have occurred. For a brief period President Clinton had new authority to rescind funds under the Line Item Veto Act of 1996. President George W. Bush has refrained from requesting rescissions under the ICA, but has issued presidential statements calling for “cancellation” of certain funding. President Bush also has supported amending the ICA to provide for expedited rescissions.

### Line Item Veto Act (LIVA) of 1996

The Line Item Veto Act of 1996 amended the ICA to give the President “enhanced rescission authority” to cancel certain items in appropriations and entitlement measures and also certain narrowly applicable tax breaks. The act authorized the President to cancel in whole any dollar amount of discretionary budget authority (appropriations), any item of new direct spending (entitlement), or limited tax benefits with specified characteristics, contained in a bill otherwise signed into law. The cancellation was to take effect upon receipt in the House and Senate of a special notification message. “Cancellation” in this context meant to prevent from having legal force; in other words, provisions canceled never were to become effective unless Congress reversed the action of the President by enacting a “disapproval bill.” The President was only to exercise the cancellation authority if he determined (1) that such cancellation would reduce the federal budget deficit, and (2) it would not impair essential government functions or harm the national interest; and (3) he notified the Congress in a special message of any such cancellation within five calendar days after enactment of the law providing such amount, item, or benefit. The act provided 30 days for the expedited congressional consideration of disapproval bills to reverse the cancellations contained in the special messages received from the President. Detailed provisions for expedited consideration of the disapproval bill in the House and Senate were outlined. Since the President would presumably veto the disapproval bill, a 2/3 majority in both the House and Senate ultimately would be necessary to override and disapprove of cancellations. The law became effective on January 1, 1997, but was subsequently overturned by the Supreme Court on June 25, 1998 (*Clinton v. New York City*).<sup>25</sup>

### LIVA Cancellations by President Clinton

On August 11, 1997, President Clinton exercised his new veto authority for the first time by transmitting two special messages to Congress, reporting his cancellation of two limited tax benefit provisions in the Taxpayer Relief Act of 1997 (P.L. 105-34, 111 Stat. 788) and one item of direct spending in the Balanced Budget Act of 1997 (P.L. 105-33, 111 Stat. 251).<sup>26</sup>

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<sup>25</sup> For further background on the LIVA, see CRS Report RL33635, *Item Veto and Expanded Impoundment Proposals: Legislative History and Current Status*, by Virginia A. McMurtry.

<sup>26</sup> The cancellation messages were published in the *Federal Register* and also as (continued...)

On October 6, 1997, President Clinton exercised the new authority to veto items in appropriations bills by cancelling 38 projects contained in the FY1998 Military Construction Appropriations Act (P.L. 105-45, 111 Stat. 1142).<sup>27</sup> On October 14, 1997, President Clinton vetoed 14 projects in the Department of Defense Appropriations.<sup>28</sup> On October 16, 1997, he used the cancellation authority on a provision in the Treasury and General Government Appropriations relating to pension systems for federal employees.<sup>29</sup> On October 17, 1997, the President applied his veto to eight more projects, this time in the Energy and Water Appropriations Act.<sup>30</sup> On November 1, 1997, President Clinton exercised his line item veto authority in two appropriations acts, canceling seven projects in the VA/HUD measure and three projects in the Transportation Act. On November 20, 1997, the President canceled two projects from Interior and five from the Agriculture Appropriations Act. On December 2, 1997, President Clinton exercised his line item veto authority one last time by canceling a project in the Commerce-Justice-State appropriations measure.

All together in FY1997, President Clinton issued 11 special messages containing 82 cancellations under the LIVA. The 38 cancellations in the Military Construction Appropriations bill, however, were rejected with the congressional override of the presidential veto of the bill disapproving the cancellations.<sup>31</sup> The cancellation of the provision in the Treasury bill providing for an open season for federal employees to switch pension plans was held impermissible under the law, and

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<sup>26</sup> (...continued)

congressional documents. See Office of Management and Budget “Cancellation Pursuant to the Line Item Veto Act: Taxpayer Relief Act of 1997,” *Federal Register*, vol. 62, no. 155, Aug. 12, 1997, p. 43265; and Message from the President transmitting “A Cancellation of Two Limited Tax Benefits Contained in the Taxpayer Relief Act of 1997, pursuant to Public Law 104-130 Sec. 2(a),” 105<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Doc. 105-116 (Washington: GPO, 1997). The Office of the Federal Register, Archives and Records Administration assembled and continues to maintain a site with the “History of Line Item Veto Notices,” providing links to all 82 of the cancellation notices as they appeared in the *Federal Register*, along with other relevant information, available electronically at [<http://www.access.gpo.gov/nara/nara004.html>].

<sup>27</sup> See CRS Report 97-210, *Appropriations for FY1998: Military Construction*, by Mary T. Tyszkiewicz, for further discussion of these cancellations.

<sup>28</sup> See CRS Report 97-205, *Appropriations for FY1998: Defense*, by Stephen Daggett, for further discussion of these cancellations.

<sup>29</sup> See CRS (archived) Report 97-991, *President Clinton’s Use of the Line Item Veto: Assessing Cancellation No. 97-56, Pertaining to Retirement Systems for Federal Employees*, by Virginia A. McMurtry, for further discussion of this cancellation.

<sup>30</sup> See CRS Report 97-207, *Appropriations for FY1998: Energy and Water Development*, by Marc Humphries and Carl E. Behrens, for further discussion of these cancellations.

<sup>31</sup> On November 13, 1997, the President vetoed H.R. 2631, the first disapproval bill to reach his desk under the provisions of the 1996 law. The House voted to override on Feb. 5, 1998 (347-69), and the Senate did likewise on Feb. 25, 1998 (78-20); so the disapproval bill was enacted over the President’s veto (P.L. 105-159).

a District Court judge ordered its reinstatement early in 1998.<sup>32</sup> So slightly more than half of the original cancellations (43 of 82) remained in effect when the Supreme Court overturned the LIVA in June 1998.

According to figures provided by the Congressional Budget Office (CBO), President Clinton's cancellations in FY1998 under the LIVA amounted to about \$355 million out of a total budget of \$1.7 trillion (less than 0.02%). Of this total, about \$30 million came from the 39 cancellations overturned, leaving a net budgetary effect for FY1998 of \$325 million. CBO estimated total savings over a five-year period from the FY1998 cancellations as less than \$600 million.<sup>33</sup>

**Table 4** presents data for FY1998 both from rescission requests under the Impoundment Control Act and from cancellation actions under the Line Item Veto Act. The figures are not entirely comparable, since cancellations under the LIVA included not only actions affecting items in appropriations acts, but also items of new direct spending and targeted tax benefit provisions. The combined totals are of course larger than those for the ICA or LIVA alone.

**Table 4. Rescission Requests and Cancellation Actions by the President and Approval by Congress, FY1998**

Authority for Rescission/Cancellation	Number of Rescissions/Cancellations	Total Dollar Amounts of President's Requests/Cancellations	Total Dollar Amounts of President's Proposals Accepted by Congress	Percent of President's Proposals Accepted by Congress	Percent of Total \$ Amount Requested Approved by Congress
Impoundment Control Act	25	\$25,260,000	\$17,276,000	67%	48%
Line Item Veto Act of 1996	82	\$355,000,000	\$325,000,000	52%	92%
<b>TOTAL</b>	<b>107</b>	<b>\$380,260,000</b>	<b>\$342,276,000</b>	<b>60%</b>	<b>90%</b>

**Source:** Government Accountability Office, 2005; Congressional Budget Office, 1998.

Nonetheless, if the bottom line totals in **Table 4** were substituted for the ICA-only data for FY1998 in **Tables 1 and 2**, the most notable feature, arguably, is that the larger combined totals only marginally impact the broader picture of the data over the three decades. The number of rescissions/cancellations, total dollar amounts from the President, and total dollar amounts accepted by Congress would not become

<sup>32</sup> U.S. District Court for the District of Columbia, Order by Judge Thomas Hogan regarding Civil Action No 97-2399, Jan. 6, 1998. Judge Hogan's order found that the President lacked authority under the LIVA to make this cancellation, and so it was "invalid and without legal force and effect."

<sup>33</sup> Congressional Budget Office, "The Line Item Veto Act After One Year," CBO Memorandum, April 1998, pp. 12-13. Had the 39 cancellations that were no longer in force as of April 1998 been included, CBO estimated the total five-year savings as just under \$1 billion.

anywhere near the highest during the period. The percentage of the President's proposals accepted by Congress actually drops slightly when the LIVA cancellations are included (from 67% to 60%). Only the percentage of the combined total dollar amount called for by the President and accepted by Congress would set a new high of 90%, as compared with 80% for President Carter in FY1979, the prior record. With respect to comparing figures across administrations (see bottom of **Table 2**), the addition of the LIVA data would leave the percentage of President Clinton's proposals accepted by Congress unchanged, but increase the percentage of total dollar amount requested and approved by Congress to 56%.

## Developments in the George W. Bush Administration

As noted previously, President Bush submitted no formal rescission requests under the ICA during the first seven years of his Administration. Some controversy occurred, however, regarding presidential statements calling for "cancellation" of certain funds.

On October 28, 2005, President Bush forwarded to Congress a package of \$2.3 billion in rescissions. As explained in an OMB press release, "Unused balances in 55 Federal programs would be rescinded in keeping with the President's pledge to reduce unnecessary spending elsewhere in the budget as hurricane recovery efforts continue."<sup>34</sup> In a press briefing, OMB Director Joshua Bolten further explained:

The unobligated balances that I referred to are — is money that has not been spent in programs which — into accounts into which it as appropriated. We have stepped in, and where the program was either a low priority, or where we believe it's clear that the amount of money in that account is not necessary to fulfill the purpose of the program, we've gone in and proposed to take that money out and use it as savings to the federal treasury.<sup>35</sup>

Congress eventually approved \$400 million of the proposed \$2.3 billion in cancellations forwarded by the President.<sup>36</sup>

According to OMB staff, the October package constituted a proposal for cancellations, not rescission requests under the ICA, and agencies were told not to withhold funds in anticipation of an impending rescission. The Comptroller General, however, deemed it necessary to contact each agency affected by the President's proposal, since GAO has responsibility under the ICA to monitor possible impoundments of budget authority. In a letter to then OMB Director Bolten, the

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<sup>34</sup> OMB, "President Bush Requests Rescission and Reallocation Packages," Oct. 28, 2005. Available electronically at [[http://www.whitehouse.gov/omb/pubpress/2005/factsheet\\_rescission.pdf](http://www.whitehouse.gov/omb/pubpress/2005/factsheet_rescission.pdf)].

<sup>35</sup> White House, "Press Briefing by Conference Call with OMB Director Joshua Bolten, "Oct. 28, 2005. Available electronically at [<http://www.whitehouse.gov/news/releases/2005/10/20051028-9.html>].

<sup>36</sup> OMB, "Fiscal Year 2006: Keeping the Commitment to Restrain Spending," Dec. 22, 2005. Available electronically at [[http://www.whitehouse.gov/omb/pubpress/2005/fact\\_sheet\\_restraining\\_spending\\_122205.pdf](http://www.whitehouse.gov/omb/pubpress/2005/fact_sheet_restraining_spending_122205.pdf)].

Comptroller General “identified 12 instances where agencies withheld budget authority from obligation in direct response to the October 28 proposal totaling over \$470 million,” with an attachment table detailing each case in point. In what arguably amounted to an indirect admonishment of OMB, the letter closed with this advice:

In the future, 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 in anticipation of a possible rescission. Agencies that withhold budget authority in this manner violate the Impoundment Control Act.<sup>37</sup>

In an apparent effort to avoid any further confusion, an OMB memorandum went out to all federal agencies the following month, emphasizing the important distinction between proposed cancellations like those contained in the FY2007 Budget and rescission requests identified in special messages from the President pursuant to the ICA. Under the ICA, funds requested to be rescinded may be withheld for 45 days of continuous congressional session. In contrast, cancellations such as those in the FY2007 budget “are proposals subject to the normal legislative process” and should not be withheld “pending congressional action on the President’s proposed legislation.”<sup>38</sup> The revised version of OMB Circular A-11, “Preparation, Submission, and Execution of the Budget,” issued on June 30, 2006, reiterated the differences between a rescission under the ICA and cancellation proposals by the President to reduce budgetary resources, with the latter such amounts not to be withheld from obligation and “subject to the normal apportionment instructions.”<sup>39</sup>

Meanwhile, GAO found that agencies were not improperly withholding funds proposed for cancellation in the President’s FY2007 budget submission. The Chairman and Ranking Minority Member of the Senate Appropriations Committee requested such an assessment from GAO in March 2006. In a letter sent in early August 2006, the Comptroller General reported that GAO identified proposed cancellations in the FY2007 Budget affecting 40 programs. According to GAO, in only one instance were funds “mistakenly” withheld by an agency, and the funds were released following GAO’s inquiry about them.<sup>40</sup>

The George W. Bush Administration has offered no public explanation as to why the President chooses to propose cancellations rather than formal rescissions under the ICA. As noted already, an apparent advantage of the rescission request option is that under the ICA, the funds identified in a special message from the

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<sup>37</sup> GAO, Comptroller General, “Impoundments Resulting from the President’s Proposed Rescissions of October 28, 2005,” B-307122, Mar. 2, 2006, p. 2.

<sup>38</sup> OMB, Memorandum M-06-10, “Reminder: Treatment of the Cancellation Proposals in the President’s FY2007 Budget,” Apr. 7, 2006.

<sup>39</sup> OMB Circular No. A-11 (2006), Section 112, p. 2.

<sup>40</sup> The Maritime Administration had withheld \$2 million from a guaranteed loan program. See GAO, Comptroller General, “Status of Funds Proposed for Cancellation in the President’s Fiscal Year 2007 Budget,” B-308011, Aug. 4, 2006, pp. 1-2.

President typically may be withheld from obligation for a period of about two months.

President Bush, while evidently reluctant to use existing rescission authority provided in the ICA, has repeatedly called for enactment of a measure that would give the President greater authority to reject items of spending and that also would pass constitutional muster.<sup>41</sup> On March 6, 2006, President Bush sent a draft bill titled the “Legislative Line Item Veto Act of 2006” to Congress,<sup>42</sup> and the measure was introduced the next day as H.R. 4890 and S. 2381 (109<sup>th</sup> Congress). Title notwithstanding, the bills would have amended the Impoundment Control Act of 1974 (ICA) to incorporate a typical expedited rescission framework, intended through procedural provisions to require an up-or-down vote on presidential requests to cancel certain previously enacted spending or tax provisions. In testifying on H.R. 4890, Edward Lorenzen, Policy Director of the Concord Coalition, stated, “President Bush has never used his authority under current law to submit rescissions of earmarks or other spending he considers low priority, so it is unclear whether granting him this additional authority would have much of an impact at all.”<sup>43</sup> The House passed H.R. 4890 by vote of 247-172 on June 22, 2006,<sup>44</sup> but floor action on a companion measure did not occur in the Senate before the 109<sup>th</sup> Congress adjourned.<sup>45</sup> On January 24, 2007, the Senate failed to invoke cloture in order to vote on similar expedited rescission provisions, offered by Senator Judd Gregg as a floor amendment to H.R. 2, the Fair Minimum Wage Act of 2007.<sup>46</sup>

## Some Concluding Observations

According to GAO data, from FY1974 to FY2006, Presidents requested 1,178 rescissions under the ICA, totaling somewhat over \$76 billion. Close to a third of the proposals were approved by Congress, with approximately 40% of the total dollar amount of presidential rescission requests (\$25 billion) enacted by Congress. The sum of rescissions requested by the President and subsequently enacted exceeded \$1 billion in only four of the 30-plus years since the ICA was enacted (FY1981, FY1982, FY1992 and FY1994).

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<sup>41</sup> See CRS Report RL33635, *Item Veto and Expanded Impoundment Proposals: Legislative History and Current Status*, by Virginia A. McMurtry.

<sup>42</sup> President’s message, along with press briefing and fact sheet available electronically at [<http://www.whitehouse.gov/news/releases/2006/03/20060306-5.html>].

<sup>43</sup> U.S. Congress, House Committee on the Budget, *Line-Item Veto: Perspectives on Applications and Effects*, hearing on H.R. 4890, 109<sup>th</sup> Cong., 2<sup>nd</sup> sess., May 25, 2006 (Washington: GPO, 2006), pp. 18-19.

<sup>44</sup> “Legislative Line Item Veto Act of 2006,” debate and vote in the House, *Congressional Record*, daily edition, vol. 152, June 22, 2006, pp. H4433-41, H4467-93.

<sup>45</sup> For further discussion of legislative consideration of H.R. 4890 and related Senate bills in the 109<sup>th</sup> Congress, see CRS Report RL33635, *Item Veto and Expanded Impoundment Proposals: Legislative History and Current Status*, by Virginia A. McMurtry.

<sup>46</sup> Floor vote was 49-48; 60 votes are needed to invoke cloture. See *Congressional Record* vol 153, Jan. 24, 2007, p. S1019.

During the same period Congress initiated 1,610 rescission actions amounting to \$143.5 billion, over five times the total dollar amount of presidentially requested rescissions enacted. The trend toward an increasing number of rescissions being initiated by Congress has already been noted.

Whether considering rescissions requested by the President, presidential rescission proposals enacted by Congress, and/or rescissions initiated directly in Congress, from FY1974 to FY2006, the totals appear modest compared with annual budget outlays topping \$2.5 trillion in FY2006 and federal budget deficits exceeding \$300 billion in three of the last four years.<sup>47</sup> Acting CBO Director Donald Marron provided this assessment at a 2006 hearing:

Presidents have made very little use of the authority to recommend rescissions. From 1976 through 2005, Presidents proposed about \$73 billion in rescissions, about one-half of 1 percent of the more than \$15 trillion in total discretionary budget authority legislated in those years.<sup>48</sup>

Supporters of changing the ICA framework to make it easier for the President's rescission proposals to prevail point to limitations in the current process as contributing to the low number of rescissions in the last 30 years. Under the ICA, there is no requirement that Congress even consider a President's rescission requests. Funds proposed for rescission by the President in a special message must be made available for obligation unless Congress acts to approve the President's requested rescission(s) within 45 days of continuous session. The ICA, moreover, allows the President to request rescissions only of discretionary spending, a portion of the budget which accounts for 38% of annual outlays, while 62% of outlays go to mandatory spending (controlled by law other than appropriations acts, including net interest).<sup>49</sup>

The record of cancellations during the brief time in FY1997 and FY1998 that the 1996 LIVA was in effect arguably serves to rebut such criticisms of the current ICA process. As discussed above, the LIVA reversed the burden of action regarding rescission proposals; cancellations of the President became permanent unless disapproved by Congress (ultimately requiring rejection by a 2/3 majority in both chambers to override a presidential veto of a disapproval bill). During this period the President also had authority to cancel new items of direct (mandatory) spending and certain targeted tax benefits as well as items of discretionary spending. CBO figures indicate that all the cancellations made by President Clinton in FY1998 (including those overturned) totaled some \$355 million, with a projected five-year savings just

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<sup>47</sup> U.S. Treasury Department, Monthly Treasury Statement, October 2006, and OMB, *Fiscal Year 2007 Historical Tables* (Washington: GOPO, 2006), p. 26.

<sup>48</sup> U.S. Congress, Senate Budget Committee, *To Consider S. 2381, A Bill to Amend the Congressional Budget & Impoundment Control Act of 1974 to provide Line Item Rescission Authority*, hearing, 109<sup>th</sup> Cong., 2<sup>nd</sup> sess., May 2, 2006, p. 2. Available electronically at [<http://budget.senate.gov/republican/hearingarchive/testimonies/2006/2006-05-01Marron.pdf>]. Note that the CBO total covers FY1976-FY2005, whereas the GAO data cited above encompasses FY1974-FY2005.

<sup>49</sup> CRS Report RL32812, *The Budget for Fiscal Year 2006*, by Philip D. Winters.

under \$1 billion. When the cancellations disapproved by Congress are excluded, the estimated amount to be saved over five years was less than \$600 million.<sup>50</sup> The brief experience in the Clinton Administration does not necessarily reflect how enhanced rescission authority might be exercised by other Presidents in other circumstances. Still, “President Clinton’s use of the 1996 line-item veto statute is consistent with how little the 1974 law’s rescission system has been used.”<sup>51</sup>

Another concern, in terms of budgetary impact of rescissions under the ICA, is that funds rescinded do not necessarily reduce outlays; monies rescinded may simply allow for increased spending elsewhere. As Acting CBO Director Marron testified in 2006, “Under current practice, rescissions seem to have been used primarily to pay for other spending, rather than to reduce spending overall.”<sup>52</sup> Some proposals to modify the ICA framework have sought to avoid this outcome. The LIVA provided for a “lockbox” mechanism to ensure that deficit reduction would result from cancellations. In 2006 the Legislative Line Item Veto Act (H.R. 4890, 109<sup>th</sup> Congress) as passed by the House and Title I of the Stop Over Spending Act (S. 3521, 109<sup>th</sup> Congress) as reported in the Senate both specified that amounts rescinded would be dedicated only to deficit reduction and not be used as an offset for a spending increase elsewhere.<sup>53</sup>

Although many observers do not view modifying the ICA framework to give the President expanded rescission authority as an effective means to achieve significant savings or deficit reduction, a number of studies indicate that governors use the stronger item veto mechanism to favor executive priorities over legislative priorities.<sup>54</sup> In 1995, during hearings on the Line Item Veto Act, then CBO Director Robert Reischauer testified that, rather than generating much budgetary savings, granting the President item veto or enhanced rescission authority would have a more important impact in giving presidential spending a preference over congressional spending. Presidents could use expanded rescission authority to redirect greater resources to their own spending agendas.<sup>55</sup>

A similar perspective on possible effects of proposals such as those to expand the President’s rescission authority appeared in testimony by GAO Assistant Comptroller General Harry Havens in 1992. According to Mr. Havens, the most significant impact would likely be in the balance of power between the legislative and executive branches and not in budgetary savings. Various item-veto or rescission

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<sup>50</sup> Ibid.

<sup>51</sup> *To Consider S. 2381...*, p. 3.

<sup>52</sup> Ibid.

<sup>53</sup> See CRS Report RL33517, *Legislative Line Item Veto Act of 2006: Background and Comparison of Versions*, by Virginia A. McMurtry.

<sup>54</sup> U.S. Congress, House Committee on Rules, *Item Veto: State Experience and Its Application to the Federal Situation*, Comm. Print, 99<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1986).

<sup>55</sup> *Line Item Veto*, joint hearings before the House Committee on Government Reform and Oversight and the Senate Committee on Governmental Affairs, 104<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1995), p. 62.



proposals “would represent a major shift of power from Congress to the President in an area that was reserved to Congress by the Constitution and which has historically been one of clear legislative primacy.”<sup>56</sup>

The experiences in 1992 with the George H.W. Bush Administration’s rescission proposals and the congressional response, as discussed above, arguably prove illustrative regarding the subject of competing spending priorities between the President and Congress. Using the existing ICA framework, President Bush transmitted four special messages proposing 128 rescission and totaling almost \$7.9 billion. The House and Senate Appropriations Committees reviewed the President’s request, and each chamber reported and passed substitute packages. A conference version containing \$8.2 billion was signed into law, containing less than \$2.1 billion of the President’s proposals but over \$6 billion in congressionally initiated cuts.

During Senate floor debate on its substitute rescission package in 1992, Senator Robert Byrd, Chairman of the Appropriations Committee, referred to the President’s recent reference to the “wasteful spending” of Congress, and stated the following:

So to hear the Chief Executive speak on that occasion, to the effect that only Congress is guilty of wasteful spending — and the President singled out some examples of what he considered to be wasteful spending, and the Senate has gone along with some of them, but the President did not say anything about wasteful spending in the executive branch. Let me bring a few examples of wasteful spending to the attention of my colleagues, and to the attention of the American people.<sup>57</sup>

Senator Byrd then proceeded to describe examples of what he termed “wasteful executive branch spending” included in the Senate substitute, such as a grant from the National Science Foundation to study sexual aggregation of fish in Nicaragua, or from NIH to study the incidence of dental fear in the population.<sup>58</sup>

Supporters of the existing ICA framework might note that in 1992 the President was able to gain public attention for his proposed rescissions. When Congress crafted an alternative package of rescissions, largely congressionally initiated and saving more than the President’s requested rescissions, the spending priorities of Congress ultimately prevailed, arguably upholding the power of the purse.

Reviewing the history of impoundments, a law review article in 1974 stated, “Every President from George Washington to Richard Nixon almost certainly has impounded appropriated funds.”<sup>59</sup> The framework established by the ICA in 1974 has provided the opportunity for greater accountability in reporting of rescissions and

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<sup>56</sup> U.S. Congress, House Committee on Rules, *Legislative Line-Item Veto Proposals*, hearing, 102<sup>nd</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1992), p. 274.

<sup>57</sup> Sen. Robert Byrd, “Rescission of Certain Budget Authority,” remarks in the Senate, *Congressional Record*, vol. 138, May 5, 1992, p. 10143.

<sup>58</sup> *Ibid.*

<sup>59</sup> Niles Stanton, “History and Practice of Executive Impoundments of Appropriated Funds,” *Nebraska Law Review*, vol. 53, no. 1, 1974, p. 207.

for increased congressional oversight and control of impoundment actions. Although budgetary savings realized from rescissions since 1974 appear modest, any budgetary tool that helps restrain spending, even in a small way, may prove useful in a time of large budget deficits.

## Appendix: Impoundment Data and Reporting Requirements

Until the 1970s, accurate and systematic data concerning impoundments were often lacking.<sup>60</sup> Congress first attempted to facilitate the availability of relevant data by stipulating reporting requirements in the Federal Impoundment and Information Act of 1972.<sup>61</sup> However, there was an initial delay in OMB's compliance with the law, and subsequent concerns in Congress about the completeness of the information provided.<sup>62</sup> On March 8, 1973, Congress sought to tighten up the requirements by requiring quarterly reports on impoundment actions from OMB.<sup>63</sup>

The Impoundment Control Act of 1974 established the current reporting requirements. As noted above, the law requires the President to inform Congress of all proposed rescissions and to submit certain information regarding each such action. The President may combine several rescission requests in a single impoundment message. The law also requires the Comptroller General of the Government Accountability Office (GAO) to oversee executive compliance with the law and report to Congress if the President fails to report an impoundment or improperly classifies an action. Both the messages from the President and the communications from the Comptroller General are to be printed in the *Federal Register* and issued as House documents.<sup>64</sup> Section 1014 of the 1974 law also stipulated that the President transmit to Congress each month a cumulative report on the status of impoundment

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<sup>60</sup> For example, the Senate Subcommittee on the Separation of Powers under the late Sen. Sam Ervin in 1968 requested a complete listing of impoundment actions since 1945 from the Bureau of the Budget, but received only a listing of selected examples. See Frank Church, "Impoundment of Appropriated Funds: The Decline of Congressional Control over Executive Discretion," *Stanford Law Review*, vol. 22, June 1970. p. 1243.

<sup>61</sup> This requirement was enacted as an amendment to a measure increasing the public debt ceiling, P.L. 92-599, 86 Stat. 1325.

<sup>62</sup> U.S. Congress, Senate Committee on Governmental Affairs, *Office of Management and Budget: Evolving Roles and Future Issues*, Committee Print., 99<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1986), p. 29.

<sup>63</sup> P.L. 93-9, 87 Stat. 7.

<sup>64</sup> For example, see U.S. Congress, House, *Rescissions: Message from the President of the United States Transmitting Six New Rescission Proposals...* Pursuant to 2 U.S.C. 683(a)(1), H. Doc. 101-20, 101<sup>st</sup> Cong., 1<sup>st</sup> sess. (Washington, GPO, 1989); and *Review of Rescissions, Deferrals and Revised Deferrals: Communication from the Comptroller General of the United States Transmitting a Review of the Seventy-three Rescission Proposals, Three New Deferrals and Three Revised Deferrals Reported in the President's Third Special Message for Fiscal Year 1987*, Pursuant to 2 U.S.C. 685, H. Doc. 100-60, 100<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1987).

actions.<sup>65</sup> In 1975 various of these reporting duties were transferred from the President to the Director of OMB via Executive Order 11845.<sup>66</sup>

Although President George W. Bush has submitted no rescission requests to Congress, there were two deferral requests from the Administration in FY2001, and the monthly cumulative reports from OMB appeared through September, 2001. There have been no cumulative reports on rescissions and deferrals since June 17, 2002, because there have been no presidential messages. OMB stated in the last report that as of June 1, 2002, no funds were being deferred.<sup>67</sup> Therefore, according to OMB, “Pursuant to P.L. 93-344, until such time as the President transmits a special message on Congress on subsequent rescission proposals or deferrals no cumulative reports are required to be transmitted to the Congress.”<sup>68</sup>

For a number of years OMB prepared informal reports at the end of each fiscal year, which provided a convenient resource for compiling aggregate data on rescissions. These year-end reports also proved useful as research reference documents, since the October cumulative report would commence with the new fiscal year and would not capture actions occurring during September, the final month of the previous fiscal year. These reports were apparently discontinued in the 1990s.<sup>69</sup>

The House Appropriations Committee also has compiled data on rescissions. In interpreting the respective sources, it is necessary to keep in mind that the Appropriations Committee includes in “rescissions approved by Congress” congressionally initiated actions to cancel funds previously appropriated, even in the absence of a rescission request by the President. The approach used by the Appropriations Committee makes sense from the perspective of tracking the status of appropriations law and any amendments thereto. On the other hand, OMB, in reporting rescissions pursuant to the 1974 law, only considers the outcome of rescissions proposed by the President — what was requested by the President and what action was taken by Congress, if any.

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<sup>65</sup> The cumulative reports are published in the *Federal Register* and issued as House documents.

<sup>66</sup> Specifically, President Ford conferred upon the OMB Director the functions of transmitting copies of the special rescission and deferral messages to the Comptroller General and to the Office of the Federal Register, and also the responsibility of submitting to the Congress the monthly cumulative report. U.S. President, 1974-1976 (Ford), Executive Order 11845, “Delegating Certain Reporting Functions to the Director of the Office of Management and Budget,” Mar. 24, 1975, *Weekly Compilation of Presidential Documents*, v. 11, Mar. 31, 1975, p. 304; 40 *F.R.* 13299.

<sup>67</sup> OMB explained that on May 31, 2002, two previously reported FY2002 deferrals were reapportioned, “removing the deferral designations based on a recent analysis that determined that the funds do not meet the definition for deferrals contained in P.L. 93-344.” See OMB, *Report on Rescissions and Deferrals*, printed as H. Doc. 107-226, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 17, 2002 (Washington: GPO, 2002), p. 3.

<sup>68</sup> *Ibid.*, p.3.

<sup>69</sup> The last End-of Year Report contained in the CRS files was dated of Oct. 9, 1996.

From 1974 until 1992 GAO on occasion informally provided a variety of statistical data on rescissions proposed and enacted pursuant to the ICA. Following the increased level of interest in rescissions, GAO decided in 1992 to regularize the data collection and reporting processes with respect to rescissions. Beginning with a submission dated April 30, 1992, GAO has periodically provided to Congress updated rescission data in a standardized format. One table shows by fiscal year from 1974 to the present the aggregate number and amount of rescissions: proposed by the President, enacted by Congress, and initiated by Congress, with grand totals for each category. A second table indicates by fiscal year from 1974 to the present, by administration, the aggregate number and amount of rescissions proposed and enacted, as well as those congressionally initiated, with grand totals for each category. GAO acknowledged that the 1992 compilation reflected

a number of revisions and adjustments to previously submitted historical tables. For example, we have added several rescissions which were not styled as such in the applicable legislation; credited certain rescissions to a different fiscal year than we had previously credited them; and added additional rescissions which our initial search, for various reasons, did not discover.<sup>70</sup>

In the letter accompanying the tables, GAO noted that should the need for further adjustments be identified, they would be included in future submissions. There was also a discussion of scope and methodology for the compilations by GAO of the historical data on rescissions.<sup>71</sup>

The most recent submission from GAO covers the period from FY1974 to FY2005.<sup>72</sup> Most of the figures presented in this report are derived from that 2005 compilation. Since no rescissions were requested in FY2006, discussion sometimes refers to the first six years of the George W. Bush Administration, although the formal GAO update covering FY2006 has not yet appeared.

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<sup>70</sup> Letter from Comptroller General to Sen. Robert Byrd, Chairman, Senate Appropriations Committee, Apr. 30, 1998. Reprinted in *Congressional Record*, vol. 138, May 5, 1992, p. 10145.

<sup>71</sup> *Ibid.*, pp. 10145-10148.

<sup>72</sup> See GAO, Comptroller General, B-306473, *Updated Rescission Statistics, Fiscal Years 1974-2005*, Nov. 4, 2005.