



**Subcommittee on Federal Financial Management, Government Information,
Federal Services, and International Security
Senate Homeland Security and Governmental Affairs Committee**

**Hearing
March 15, 2011**

**Enhancing the President's Authority to Eliminate Wasteful Spending
and Reduce the Deficit**

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Chairman Carper, Ranking Member McCain, and Members of the Subcommittee:

My name is Virginia McMurtry, and I am a Specialist in American National Government in the Government and Finance Division of the Congressional Research Service at the Library of Congress. Thank you for inviting me to testify today in conjunction with the subcommittee's consideration of S.102. Specifically, you asked that I provide data regarding the use of rescission authority by Presidents since 1974, including the number of rescissions requested, their amounts, and the number and amounts of those rescissions subsequently approved by Congress. You also requested that I offer an assessment of the comparative effectiveness of previous administrations in using existing rescission authority to eliminate spending they viewed as unnecessary, and of whether expedited rescission authority for the President (as provided in S. 102), would facilitate efforts by an administration to curtail nonessential expenditures by the federal government.

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 19th century, Presidents usually sought accommodation rather than confrontation with Congress.¹ This changed during the Nixon

¹ 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.

Administration (1969-1974), when impoundment of funds developed into a major interbranch conflict, eventually requiring judicial involvement.²

The Impoundment Control Act (ICA), enacted as Title X of the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344, 88 Stat. 332) established a new framework for congressional notification and review of rescissions requested by a President. The 1974 law requires the President to inform Congress of any proposed rescissions in a special message, containing specified information on each envisioned rescission. With regard to congressional participation, after receiving rescission proposals from the President, the ICA provides that the funds must be made available for obligation unless both houses of Congress take action to approve a rescission request included in the message received from the President within 45 days of “continuous session”; days in which either chamber is in recess for more than three days are not counted.³

Congress may alter the amount proposed for rescission by the President, either increasing or decreasing it, as well as approving the requested rescission in toto. In addition, independent of a specific request from the President, Congress may initiate rescission actions, by cancelling previously appropriated funds in a subsequent law. In the first few years following enactment of the 1974 law, Congress approved presidential requests in a number of separate rescission bills. Subsequently, Congress has tended to act upon rescission messages from the President in supplemental and regular appropriations measures, rather than in individual rescission bills.

Rescission Activity Since 1974

The Impoundment Control Act has been in effect for more than 35 years. **Table 1** provides data on rescissions from FY1974 through FY2008, as compiled by the Government Accountability Office (GAO).⁴ 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.

With regard to aggregate figures, from FY1974 through FY2008, Presidents requested 1,178 rescissions under the ICA, totaling somewhat over \$76 billion. Close to 40% of the proposals were approved by Congress, with slightly more than a third 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 since 1974 exceeded \$1 billion in only four years (FY1981, FY1982, FY1992 and FY1994). Meanwhile, from FY1974 to FY2009, Congress initiated 1,880 rescission actions totaling over \$197 billion, nearly eight times the total of presidentially requested rescissions subsequently enacted, reflecting a trend toward the increasing number of rescissions and amounts of rescinded funds originating in Congress.

² 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.

³ The continuity of a congressional session is considered broken by an adjournment of the Congress sine die, and by the days on which either chamber is in adjournment for more than three days to a date certain (ICA, section 1011(5)). In practice, this usually means that funds proposed for rescission not approved by Congress must be made available for obligation after about 60 calendar days, although the period can extend to 75 days or longer.

⁴ U.S. Government Accountability Office, *Updated Rescission Statistics, Fiscal Years 1974-2008*, B-310950.2, March 12, 2009, <http://www.gao.gov/decisions/appro/3109502.htm>.

Table I. Rescissions of Appropriated Funds, FY1974-FY2008

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
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
2006	0	\$0	0	\$0	89	\$33,361,184,156
2007	0	\$0	0	\$0	56	\$8,035,711,005

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
2008	0	\$0	0	\$0	126	\$12,201,184,028
Total 1974-2008	1,178	\$76,022,349,690	461	\$25,006,704,719	1,880	\$197,091,221,995
Average per FY	34	\$2,172,067,134	14	\$78,145,922	54	\$5,611,177,771

Source: Government Accountability Office, *Updated Rescission Statistics, Fiscal Years 1974-2008*, GAO Report B-310950.2, March 12, 2009.

Ford and Carter Administration (1974-1981)

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 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.”⁵ As indicated in Table 2, some 34% of President Ford’s rescission proposals were agreed to 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 who made use of the ICA framework.

Table 2. Rescissions Requested by the President and Approved by Congress, 1974-2008

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
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%

⁵ Fisher, *Presidential Spending Power*, pp. 200-201.

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
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%
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
2006	0	\$0	0	0
2007	0	\$0	0	0
2008	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)	602	\$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%

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
G.W. Bush (FY2001-FY2009)	0	\$0	0	0

Source: Compiled from GAO data.

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. It has been 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.⁶ The other President since 1974 who enjoyed a Congressional majority of his party in both chambers during at least half of the Administration was President George W. Bush, who submitted no proposed rescissions.

Reagan Administration (1981-1989)

The decline in rescission requests during the Carter Administration proved only temporary. During his first year in office President Ronald 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 36% 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.⁷

The absence of any rescission requests in FY1988, for the first time since enactment of the ICA, reflected a special situation. In November 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

⁶ Allen Schick, *Congress and Money* (Washington: Urban Institute Press, 1980), pp. 405-406.

⁷ Rudolph G. Penner and Alan J. Abramson, *Broken Purse Strings* (Washington: Urban Institute Press, 1988), p. 120.

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.⁸

As indicated in the message, out of \$1.064 trillion in outlays for FY1988, he would have eliminated \$336.1 million in appropriations, \$403.1 million in programs repealed or amended, and \$801 million in loan assets sales, for a total of \$1.540 billion.⁹

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 FY1989.¹⁰

Administration of George H.W. Bush (1989-1993)

Table 2 shows that President George H. W. Bush had approval rates for rescission requests below those for President Reagan, with 18% of the total dollars requested approved, and of 20% 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.

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 majority party in Congress (Democrat) 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. Many of the nondefense rescissions were for relatively 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. Altogether, 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.¹¹

⁸ 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, 100th Cong. 2nd sess. (Washington: GPO, 1988), p. 1.

⁹ H. Doc. No. 100-174, 100th Cong., 2d Sess. (1988).

¹⁰ 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, 101st Cong., 1st sess. (Washington: GPO, 1989).

¹¹ See U.S. Congress, *Rescinding Certain Budget Authority, and for other purposes*, conference report to accompany H.R. 4990, 102nd Cong., 2nd sess., H.Rept. 102-530 (Washington: GPO, 1992).

During Senate floor debate on its substitute rescission package in 1992, the late 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.¹²

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.¹³

Clinton Administration (1993-2001)

As indicated in **Table 2**, President Bill Clinton 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 a column on the left side of **Table 2**, President Clinton submitted relatively fewer rescission requests per year than was the average for all Presidents under the ICA, except for President George W. Bush who submitted none. In seven of his eight years in office, the number of rescissions requested by President Clinton was below the 1974-2008 average of 34 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 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).

Rescission Actions under the Line Item Veto Act of 1996

The Line Item Veto Act (LIVA) of 1996 (P.L. 104-130, 110 Stat. 1200), in effect for less than 18 months before being overturned by the Supreme Court, amended the ICA to give the President "enhanced rescission authority," thereby changing the burden of action between the branches.¹⁴ Under enhanced rescission, spending reductions identified in special presidential messages remained permanently cancelled unless Congress enacted a disapproval bill. Should the President veto that disapproval bill, a two-thirds majority in both chambers would have been needed to override the veto and restore the funding. Specifically, the LIVA granted the President authority to cancel certain items in entitlement

¹² Sen. Robert Byrd, "Rescission of Certain Budget Authority," remarks in the Senate, *Congressional Record*, vol. 138, May 5, 1992, p. 10143.

¹³ *Ibid.*

measures and in narrowly applicable tax breaks, as well as to rescind amounts of discretionary spending found in appropriations measures. The act provided 30 days for congressional consideration of disapproval bills to reverse the cancellations. Since the President would presumably have vetoed any disapproval bill, a 2/3 majority in both the House and Senate ultimately would have been 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, 1998.¹⁵

All together, during the 18 months that the LIVA was in effect, President Clinton issued 11 special messages containing 82 cancellations.¹⁶ 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.¹⁷ 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 a District Court judge ordered its reinstatement early in 1998.¹⁸ 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 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 cancellations in FY1998 funding as less than \$600 million.¹⁹

Table 3 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.

¹⁵ *Clinton v. City of New York*, 524 U.S. 417 (1998). The decision is available online at <http://supct.law.cornell.edu/supct/html/97-1374.ZS.html>

¹⁶ For information on the respective messages and cancellations, see National Archives and Records Administration, "History of Line Item Veto Notices," <http://www.access.gpo.gov/nara/nara004.html>.

¹⁷ 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).

¹⁸ 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."

¹⁹ 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.

Table 3. 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%
TOTAL	107	\$380,260,000	\$342,276,000	60%	90%

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

Nonetheless, if the bottom line totals in **Table 3** were substituted for the ICA-only data for FY1998 in **Table 1** and **Table 2** the most notable feature, arguably, would be that the larger combined totals only marginally affect the broader picture of the data over the three decades. The number of rescissions and cancellations, total dollar amounts from the President, and total dollar amounts accepted by Congress would not come close to constituting 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%.

From FY1974 to FY2009, rescissions proposed by the Administrations under the ICA totaled a little over \$76 billion, and Congress approved some \$25 billion, or 33% of the amounts requested. During the same period rescission actions initiated by Congress amounted to nearly \$197.1 billion, over eight times the total dollar amount of presidentially requested rescissions enacted. Whether considering rescissions requested by the President, presidential rescission proposals enacted by Congress, rescissions initiated directly in Congress, or the sum total of all rescissions enacted from FY1974 to FY2009, the amounts appear modest compared with total federal outlays topping \$3.5 trillion in FY2008.²⁰

Rescissions Since 2001

In the last decade, Congress received no rescission requests submitted by a President pursuant to the ICA, but discussion regarding the President's impoundment authority continues.

²⁰ Congressional Budget Office, *The Budget and Economic Outlook: An Update*, Washington, DC, August 2010, p. 4, <http://www.cbo.gov/ftpdocs/117xx/doc11705/08-18-Update.pdf>

George W. Bush Administration

As noted previously, President Bush submitted no formal rescission requests under the ICA during 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.”²¹ 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.²²

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 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.²³

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 such as those contained in the October 2005 message and rescission requests presented in special messages from the President pursuant to the ICA. In contrast to the ICA procedures, the 2005 cancellations “are proposals subject to the normal legislative process” and should not be withheld “pending congressional action on the President’s proposed legislation.”²⁴

It is somewhat unclear as to why there were no formal rescissions proposed pursuant to the ICA during the George W. Bush Administration. Some have conjectured that this reflected deference to his Republican colleagues in Congress. The Republican Party, controlled both the House and the Senate from

²¹ OMB, “President Bush Requests Rescission and Reallocation Packages,” Oct. 28, 2005. Available electronically at http://www.whitehouse.gov/omb/pubpress/2005/factsheet_rescission.pdf.

²² White House, “Press Briefing by Conference Call with OMB Director Joshua Bolten,” Oct. 28, 2005.

²³ GAO, Comptroller General, “Impoundments Resulting from the President’s Proposed Rescissions of October 28, 2005,” B-307122, Mar. 2, 2006, p. 2.

²⁴ OMB, Memorandum M-06-10, “Reminder: Treatment of the Cancellation Proposals in the President’s FY2007 Budget,” Apr. 7, 2006.

2001-2006 (107th through 109th Congresses). The use of the “cancellations” instead of ICA rescission proposals did occur during the time that the Republicans were in control of Congress. One explanation proffered for the dearth of vetoes exercised by George W. Bush might arguably be applicable to the absence of rescission proposals. As related in a news story from 2006, “One-party control of both sides of Pennsylvania [Avenue] has never ensured a veto-free Presidency; Democrat Franklin D. Roosevelt vetoed 635 bills enacted by Democratic Congresses. But unlike Roosevelt and the fractious Democrats of his era, Bush and the Republican leaders in Congress for the most part agree....” The writer went on to quote Vin Weber, then a lobbyist and former GOP House member, stating “This was the first time Republicans had full control since the ‘50s; we wanted to show we could work together as a governing majority....Coming this far without a veto [read rescission request], that’s a sign of the party’s cohesion and the president’s strength.”²⁵

Developments During the Obama Administration

President Obama, akin to his predecessor, submitted no rescission proposals in the 111th Congress. On May 24, 2010, however, the President transmitted an Administration draft bill providing for expedited rescission procedures in Congress, called the Reduce Unnecessary Spending Act of 2010. On May 28, 2010, the Administration proposal was introduced as H.R. 5454 by Representative Spratt. On June 9, 2010, Senator Feingold, along with eight original cosponsors (Senator Carper and Senator McCain included), introduced S. 3474; the bill contained two changes from the Administration draft. S. 3474 would reduce the timeframe between enactment of a law and submission of a rescission message from within 45 days of congressional session after the enactment date of the funding to 45 calendar days. The other change would require that any amounts rescinded be devoted to deficit reduction (or increasing a budget surplus).

On June 17, 2010, the House Budget Committee held a hearing focused explicitly on the “Administration’s Expedited Rescission Proposal.” The sole witness was the Dr. Jeffrey Liebman, then serving as Acting Deputy Director of the Office of Management and Budget (OMB).

At the June hearing, some Members urged OMB to submit rescission requests under the existing framework in the Impoundment Control Act, suggesting that it could at least send a “useful signal” and help to build consensus on the need to reduce spending. Initially, Dr. Liebman replied that OMB decided instead to focus energy on the spending cuts and terminations that were included as a separate volume in the President’s FY2011 budget submission and on advancing the expedited rescission proposal. In response to a direct question as to whether the Administration would transmit rescission messages pursuant to the ICA, proposing spending to be eliminated from FY2011 appropriations once enacted, Dr. Liebman implied that OMB viewed submission of rescission requests under current procedures as an ineffectual endeavor, noting

We’ve [OMB] already indicated which programs we want eliminated from the budget [in a special volume included with the President’s Budget Submission for FY2011]. In terms of whether we would make a formal rescission request under the existing rescission authority, we are concerned that when one does that, one doesn’t get an up-or-down vote. And that basically that it’s a fruitless process. So we want to work at any point in time in whatever the best way is to accomplish the terminations and reductions that we’ve proposed.²⁶

²⁵ Michael Grunwald, “Why Bush Has Trouble Just Saying No,” *Washington Post*, February 26, 2006, <http://www.npr.org/templates/story/story.php?storyId=6933766&ft=1&f=1001>.

²⁶ “Rep. John Spratt Jr. Holds a Hearing on the Administration’s Expedited Rescission Proposal,” *Political Transcript Wire*, June 18, 2010

The Member responded that he was asking whether OMB might submit some rescission proposals in FY2011 anyway, and stated “Because I think highlighting the spending is often times as powerful as actually the legislative act itself.”²⁷

The impact of earmark disclosure arguably has similarities to increased attention to particular provisions in appropriation measures included as part of a package of rescissions subject to expedited procedures in Congress. Both the House and the Senate established new earmark transparency procedures in 2007.²⁸ An analysis of data in the requisite earmark disclosure lists, typically included in the explanatory statement from a conference committee, found that in the 12 regular appropriations, the “number and value of Member-only earmarks decreased since FY2008, from 11,117 earmarks worth \$12.5 billion in FY2008, to 9,281 earmarks worth \$10.2 billion in FY2010, down 17% by number and 19% by value.”²⁹

On January 25, 2011, Senator McCain, along with Senator Carper and 21 other original cosponsors, introduced S. 102, the Reduce Unnecessary Spending Act of 2011, which is identical to S.3474 from the 111th Congress. The 112th Congress measure would amend the ICA of 1974 to provide an expedited process for consideration of certain rescission requests from the President. Within 45 days after signing a bill into law, the President would be able to submit a package of rescissions for reducing or eliminating discretionary appropriations or non-entitlement mandatory spending contained in the bill as enacted. Such proposed rescissions from the President would be considered as a group and would be subject to expedited procedures in Congress, designed to make an up-or-down vote on the package more likely.

Some Concluding Thoughts

When reviewing data on rescission actions since 1974, one may ponder the dearth of rescission proposals that have been transmitted to Congress by the executive branch. Why have Presidents employed the ICA framework so infrequently? A variety of factors may be involved here, such as limitations in the ICA framework allowing Congress to ignore rescission messages to the consternation of the executive branch. There are also factors such as collegial solidarity when the executive and legislative branches are controlled by the same political party, or a President’s disinclination to cut funding for agencies or departments under his control. Other possibilities include the incalculability of the deterrent effect, and the challenge of coming up with agreed upon objective criteria on which to base rescission decisions.

Advocates of changing the ICA framework to make it easier for the President’s rescission proposals to prevail, or at least to receive an up-or-down vote in Congress, sometimes point to limitations in the current process as contributing to the low number of rescissions in the last 35 years.³⁰ Under the ICA, there is no requirement that Congress consider a President’s rescission requests. Funds proposed for

²⁷ Ibid.

²⁸ The spending earmark definitions in House Rule XXI, clause 9, and Senate Rule XLIV are identical, except the identification of earmark requesters. A spending earmark is a provision in legislation or report language that meets specific criteria. First, the provision or language is primarily included at the request of a Member. Second, the provision or language provides, authorizes, or recommends a specific amount of spending authority for certain purposes to an entity, or to a specific state, locality, or congressional district. The purposes are a contract, grant, loan, loan guarantee, loan authority, or other expenditure. Finally, any of the above spending set asides that are selected through a statutory or administrative formula-driven or competitive-award process are excluded. Derived from CRS Report RL34462, *House and Senate Procedural Rules Concerning Earmark Disclosure*, by Sandy Streeter, p. 2.

²⁹ CRS Report R40976, *Earmarks Disclosed by Congress: FY2008-FY2010 Regular Appropriations Bills*, by Carol Hardy Vincent and Jim Monke.

³⁰ For example, see the testimony from OMB at the House Budget Committee hearing in June 2010 on the Administration’s expedited rescission proposal, already cited.

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 are mandatory spending (controlled by law other than appropriations acts, including net interest).

The record of cancellations during the brief period that the 1996 LIVA was in effect arguably serves to discount such criticisms of the current ICA process. As discussed above, the LIVA reversed the burden of action regarding rescission proposals; cancellations proposed by 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. Yet all of the cancellations made by President Clinton in FY1998 (including those overturned) totaled some \$355 million, with a projected five-year savings just 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. The brief experience in the Clinton Administration does not necessarily reflect how expedited rescission authority might be exercised by other Presidents in other circumstances. The limited use of the LIVA, however, seems consistent with the infrequency with which the rescission framework provided in the ICA has been used.

This observation is consistent with another consideration in assessing the effectiveness of the ICA since 1974 or the potential force of expedited rescission authority for the President — the so-called deterrent effect. OMB's Acting Deputy Director, Jeffrey Liebman, referred to this potential effect in his statements at a Senate hearing in May and at the House hearing in June, 2010: "Knowing this [expedited rescission] procedure exists may also discourage policymakers from enacting such [unnecessary] spending in the first place."³¹ At the House Budget Committee hearing, Representative Etheridge agreed with Dr. Liebman that "we're all concerned about wasteful tack-ons," but then asked, "But how would you envision the administration working with Congress before they issue a rescission package?" Dr. Liebman suggested that the "sense of saving" would occur more through the deterrent effect than through the approval of rescission packages from the President, noting

...If this [expedited rescission] provision works like it should, its biggest impact will not be in passing rescission packages, but I think it will be in preventing wasteful spending from being added on in the first place. It will be enough of a deterrent that in the lead-up to passing bills, one will be able to avoid getting those tack-ons added.³²

The scope of the deterrent effect ultimately depends on political calculations by each Member of Congress. If lawmakers decide that a project is of value to their district or state and will be appreciated by their constituents, they arguably will not be deterred by the prospect of a President singling out their project in a rescission bill. From this perspective the President's action may serve to highlight their efforts to provide assistance to their district or state.

The issue of establishing objective criteria to be used by the executive branch in reviewing enacted appropriations measures for items to be included in a rescission package was discussed at some length during the 2010 hearing by the House Budget Committee on the Administration's expedited rescission proposal. Attention focused on the meaning of "unnecessary spending," which was not defined or

³¹ Statement of Jeffrey B. Liebman before the House Budget Committee, June 17, 2010, http://budget.house.gov/hearings/2010/06.17.2010_Liebman_Testimony.pdf.

³² "Rep. John Spratt Jr. Holds a Hearing on the Administration's Expedited Rescission Proposal," *Political Transcript Wire*, June 18, 2010.

mentioned in the Administration bill aside from the title. Some Members objected to the possible implication that somehow the executive branch knows how to spend federal monies better than does Congress, so that earmarks found in the President's budget are "necessary" whereas congressional earmarks are "unnecessary." At one point in such an exchange, Dr. Liebman stated: "Let me be clear. This [expedited rescission bill] is not meant to go after every earmark. It's meant to go against low-value spending. And one would have to evaluate each proposal on its merits." Cosponsors of the Administration bill, as well as those uncommitted, pressed for some statutory guidelines to reduce the current subjectivity of "unnecessary." Representative Minnick, who has served as sponsor or cosponsor of various expedited rescission measures and attended the hearing as a guest, provided this commentary:

What the executive branch or the particular occupant of the executive branch in the White House may deem unnecessary may be deemed quite warranted here or to the sponsors of that particular spending. So it is a matter of viewpoint.... There have to be some guidelines... After all, when a spending item gets into a bill, in most cases it's had some review process, some thought has gone into it, and it has stakeholders. It has, you know, advocates. And so I do think there has to be some kind of definition of what we mean by unnecessary spending or low-value spending, and what those guidelines would be.³³

The OMB spokesman acknowledged the Members' concern and promised to consider possible remedies.

The enactment of a disapproval bill in 1997 pursuant to the LIVA of 1996, by overriding President Clinton's veto by a two-thirds majority in both chambers, showed that controversy may arise even when specified criteria are purportedly used in reviewing appropriations measures for possible rescission proposals. President Clinton sought to cancel 38 projects in the military construction bill, estimating that this would save \$290 million over a five-year period. He identified three criteria that guided the selections:

1. the Defense Department concluded that the projects were not a priority at the time;
2. the projects did not make an immediate contribution to the housing, education, recreation, child care, health, or religious life of the military service; and
3. they would not have been built in FY1998 in any event.³⁴

These justifications came under substantial criticism. Disapproval resolutions were introduced in both chambers. The Senate Appropriations Committee held hearings and took testimony from the Air Force, the Navy, and the Army. The military witnesses told the committee that the canceled projects were mission-essential and could be commenced in 1998.³⁵ On October 30, 1997, the Senate vote on S. 1292, to disapprove the cancellations, was 69-30. On November 8, 1997, the House voted 352 to 64 for its disapproval resolution, H.R. 2631, which then passed the Senate by unanimous consent the following day. President Clinton vetoed the resolution, but a strong bipartisan majority overrode him by the necessary two-thirds margin. The vote was 78 to 20 in the Senate and 347 to 69 in the House.³⁶

The framework established by the ICA in 1974 has provided the opportunity for greater accountability in reporting of rescissions and for increased congressional oversight and control of impoundment actions. Total budgetary savings of \$25 billion from presidential rescission requests approved by Congress since 1974 may appear rather inconsequential with total federal outlays and annual budget deficits both in the

³³ Ibid.

³⁴ See *Weekly Compilation of Presidential Documents*, vol. 33, (Washington: GPO, 1997), pp. 1501-02.

³⁵ Sen. Ted Stevens, "S. 1292, Disapproval Legislation," Senate Debate, *Congressional Record*, vol. 143, part 15 (October 7, 1997), pp. 22133-22134.

³⁶ P.L. 105-159, 112 Stat. 19, February 25, 1998.

trillions. Yet any budgetary mechanism that helps restrain spending, even in a small way, may prove useful for deficit reduction. It remains an open question whether providing the President with expedited rescission authority would increase the employment or effectiveness of the rescission tool in reducing unnecessary spending.

This concludes my prepared statement. I would be happy to respond to questions.