

# CBO TESTIMONY

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Statement of  
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on  
Proposals to Change the Rescission Process

before the  
Subcommittee on Legislative and Budget Process  
Committee on Rules  
U.S. House of Representatives

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## NOTICE

This statement is not available for public release until it is delivered at 9:30 a.m. (EDT), Friday, July 30, 1999.



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Mr. Chairman and Members of the Subcommittee, I am pleased to appear before you today to offer the Congressional Budget Office's (CBO's) views on the rescission process and various proposals to change it.

In my testimony today, I will make two observations:

- o The current process of rescissions (cancellations of budget authority) has very little impact on the overall budget; and
- o The major proposals to change the process might improve fiscal discipline or strengthen accountability, but each proposal has drawbacks. In considering them, the Congress would need to determine whether the gains would be worth the costs.

## THE RESCISSION PROCESS

The Congressional Budget and Impoundment Control Act of 1974 created the rescission process as a Congressional check on unilateral action by the President to impound appropriated funding. More recently, however, rescissions have been used to accommodate changed priorities, helping to offset new spending with cancellations of funding previously made available. In that respect, the rescission process can promote fiscal discipline and help to limit spending.

Under the provisions of the 1974 act, the President can propose to rescind spending authority provided by the Congress. The Congress has 45 days of continuous session to approve the President's request, but it does not have to act on his proposals. During the 45-day period, the President can withhold the funds proposed for rescission. Once that period has expired, however, the funds must be made available for obligation.

The Congress can also initiate rescissions. Between 1990 and 1999, rescissions initiated by the Congress accounted for more than 60 percent of all rescinded budget authority and resulting first-year outlays.

Rescission proposals generally fall into two categories. Most enacted rescissions are included in supplemental appropriation acts and are explicitly intended to offset the spending contained in those acts (see Table 1). The other general type of rescission is enacted in regular appropriation acts for a variety of purposes. (All of the rescissions shown in Table 1 cancel either discretionary budget authority or contract authority.)

TABLE 1. RESCISSIONS OF BUDGET AUTHORITY AND ESTIMATED FIRST-YEAR OUTLAYS, 1990–1999 (By fiscal year, in millions of dollars)

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
<b>Rescissions in Supplemental Appropriations</b>										
Budget Authority	2,045	331	8,433	2,499	3,159	18,940	2,402	7,980	2,726	499
Estimated First-Year Outlays	1,042	25	2,505	247	555	1,824	568	204	34	39
<b>Rescissions in Regular Appropriations</b>										
Budget Authority	988	0	1,574	584	1,051	781	1,442	762	1,892	2,977
Estimated First-Year Outlays	451	0	391	5	210	110	621	249	244	291
<b>Total Rescissions</b>										
Budget Authority	3,033	331	10,007	3,083	4,210	19,721	3,844	8,742	4,618	3,476
Estimated First-Year Outlays	1,493	25	2,896	252	765	1,934	1,189	453	278	330
First-Year Outlays as a Percentage of Budget Authority	49.2	7.6	28.9	8.2	18.2	9.8	30.9	5.2	6.0	9.5

SOURCE: Congressional Budget Office.

## RATIONALE FOR CHANGING THE CURRENT PROCESS

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The Congress passed the Congressional Budget and Impoundment Control Act to protect its constitutional prerogatives over the appropriation process from intrusion by the executive branch. The act resulted from increasingly frequent conflicts between Presidents and the Congress over funding priorities. Those disputes peaked during the Nixon Administration. The impoundment controls in the act were designed to strengthen Congressional spending control by preventing the President from unilaterally canceling funds passed by the Congress and signed into law.

More recent efforts to reform the rescission process, in contrast, would shift authority back to the executive branch. In the 1980s and 1990s, interest in rescissions and a line-item veto coincided with persistent and growing budget deficits. Those measures were viewed as potential means to reduce the deficit. President Reagan advocated a line-item veto, which he had exercised while Governor of California. The Reagan and Bush Administrations also called for expanded rescission authority. President Clinton, another former governor, advocated a line-item veto while a candidate.

The Congress last considered changing the rescission process during the 104th Congress. Those efforts culminated in enactment of the Line Item Veto Act of 1996. A little over two years later, the Supreme Court held the act to be

unconstitutional—a decision that has generated renewed interest in other approaches to canceling spending.

Proponents argue that strengthening the executive branch’s ability to cancel funding would enhance fiscal discipline and improve accountability.

### Enhancing Fiscal Discipline

By reducing spending, rescissions can contribute to deficit reduction or the preservation of surpluses. Today’s improved budgetary outlook may appear to lessen the need for a more effective rescission process. But tools to promote fiscal discipline are necessary in times of surplus as well as in times of deficit. Rescissions are not likely to affect bottom-line surpluses or deficits, however. In practice, rescissions generally have provided a means to offset other spending within the limits on discretionary spending enacted in the Balanced Budget Act of 1997. Having already agreed on those limits, the Congress is unlikely to enact rescissions to reduce spending below the level of the caps, but it can use rescissions as a tool to help stay within those limits.

## Enhancing Accountability

Strengthening the President's role in the rescission process could also serve as a deterrent to lawmakers who might insert provisions of little benefit to the general public interest into larger legislation. Supporters argue that a more effective rescission process would make it easier for the President to eliminate "pork-barrel" provisions that Members of Congress passed to benefit narrow constituencies. Supporters contend that the President, who is elected by the nation as a whole, is better able to decide whether particular budgetary provisions would serve the national interest.

Under the current process, the Congress is free to ignore the President's rescission proposals. Members never have to go on record in favor of or against items that the President has identified as unnecessary or wasteful. Proponents of changing the process argue that Members might be more reluctant to add special-interest items if they knew that they eventually might have to vote explicitly to maintain funding for those items. Their constituents who did not benefit from the items in questions would then be able to hold them accountable for such votes.

## ASSESSING THE CURRENT RESCISSION PROCESS RELATIVE TO FISCAL GOALS

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The rescission process enables the Congress to review and control Presidential proposals to cut spending and serves as a framework for lawmakers to reconsider and modify current spending priorities. However, it contributes only modestly to the fiscal goals that proponents of reform and others advocate.

### Enacted Rescissions May Not Reduce Spending

When new spending is proposed, its sponsors often claim that the new costs would be offset by rescissions. Between 1990 and 1994, the Congress tried to offset most nonemergency supplemental budget authority with rescissions. Since 1994, it also has been able to offset certain emergency supplemental appropriations. Such rescission proposals may make new spending proposals appear less costly, but they can be misleading. Frequently, the resulting outlay savings are not commensurate with the rescinded budget authority.

CBO estimates that the budget authority rescinded during the past decade resulted in first-year outlays that ranged from a high of 49 percent of rescinded budgetary authority in 1990 to a low of 5 percent in 1997 (see Table 1). Sometimes,

for a variety of reasons, the first-year outlay rate for a particular rescinded item can be estimated at zero.

Most of the rescissions with low or zero outlays were small shares of rescinded budgetary resources. Some, however, were larger. In 1995, for example, the Congress rescinded more than \$8 billion in budget authority for the Department of Housing and Urban Development and the Federal Aviation Administration. The estimated first-year outlays associated with those rescissions were about \$19 million.

Looking beyond first-year outlays, the extent to which rescissions eventually constitute full offsets is unclear. Many of the rescissions during the past decade that had zero outlays in the first year were also estimated at zero for the next four years. CBO's data indicate that a significant portion of the enacted rescissions of contract authority fell into that category. The amount of budget authority of zero-outlay rescissions ranged from a few million dollars in 1993 to about \$6 billion in 1997. Over the past decade, zero-outlay rescissions represented about 30 percent of the budget authority rescinded.

### Rescinded Amounts Are Relatively Insignificant

Rescissions are generally limited to discretionary spending, which is shrinking as a share of the overall budget. Discretionary spending constitutes one-third of the budget in 1999 but will decline to less than 30 percent of the budget by 2009, according to CBO's July baseline. Partly as a result, the amounts associated with enacted rescissions are small compared with total federal spending. CBO estimates that the \$61 billion in budget authority rescinded over the past decade will result in more than \$35 billion in outlay savings over the same period. That amount represents less than 0.2 percent of the \$15 trillion in total federal spending during that period.

### Rescissions May Reflect Congressional Prerogatives More Than Those of the President

Although the executive branch may favor a stronger role in making rescissions, critics argue that such a change would shift power from the Congress to the President. A review of enacted rescissions reveals that the Congress initiated rescissions that matched or exceeded amounts proposed for rescission by the President in all but one of the past 10 years. In each of the past five years (1995 through 1999), the amount of budget authority actually rescinded exceeded the amount requested by the President by 70 percent or more. Associated outlay

reductions were 60 percent to 90 percent greater than the President proposed. In most instances, it appears that the Congress agreed that funds should be rescinded but may have rescinded them from different activities and initiated substantially greater rescission amounts.

### PROPOSALS TO CHANGE THE RESCISSION PROCESS

Of approaches to modifying the rescission process, four are most frequently suggested. They are:

- o A constitutional amendment to allow the President to veto portions of bills presented to him for signature.
- o Separate enrollment of funding provisions as discrete “bills” once a larger bill is passed by the Congress. Each provision would be presented separately to the President for signature, allowing him to veto some “bills” according to constitutional procedures while signing the rest.

- o Enhanced rescission, which would allow the President to continue to withhold funds unless the Congress acted to overturn his rescission proposals.
  
- o Expedited rescission, which would establish “fast-track” procedures to help ensure that the President’s proposed cancellations received an up-or-down vote by the Congress within a specified period of time. (The procedures could apply to proposed repeals of tax benefits as well as of spending.) Although the President would not have unilateral authority to cancel provisions of law, his proposals could not be ignored by the Congress.

Proposals to strengthen the rescission process face common hurdles. As the Supreme Court ruling on the Line Item Veto Act shows, constructing a process that will pass constitutional muster is difficult. Determining what “items” or provisions of a bill would be subject to rescission or veto is also challenging.

#### Line-Item Veto Constitutional Amendment

An amendment to the Constitution allowing a line-item veto would avoid the constitutionality issues raised by statutory proposals. Amending the Constitution,

however, is a more difficult process than making statutory changes. Despite several proposals for an item-veto amendment, none have passed the Congress.

An item veto would shift power to the executive branch. Because a two-thirds majority of each House is required to overturn a veto, the President would be in a stronger position with a line-item veto than under other approaches. The resulting power shift could change behavior in subtle ways. Identifying the items subject to veto would be difficult, and some proposals would attempt finer definitions than others. Whatever the definition, the Congress could seek to consolidate earmarked appropriations in ways that would reduce the number of items subject to cancellation. The threat of cancellation by the President could restrain the Congress from including some “pork-barrel” provisions. Conversely, the Congress might respond by accommodating some of the President’s priorities in exchange for his pledge not to veto certain of those provisions. Thus, overall spending could increase.

### Separate Enrollment

Proposals for separate enrollment seek to overcome constitutional constraints by separating a single bill into hundreds (possibly thousands) of discrete bills—one “bill” per item or provision—to present to the President for signature. That approach would also run into the problem of how to define the items to be separately enrolled. The

enrolling clerks would need clear guidance so they would know how to break the larger bill into smaller ones.

Separate enrollment could alter the legislative process in fundamental ways. Currently, numerous related and unrelated provisions are combined into a single bill around which a political consensus forms. Policymakers decide that the overall bill is desirable even if they disagree with some of its components. Separate enrollment could reduce incentives to compromise and reach consensus within the Congress and between the Congress and the President. Although the Congress could try to accommodate the President's priorities within the overall package, the President would be free to veto individual Congressional items.

In addition, separate enrollment would create administrative burdens. Each larger bill would have to be divided into separate "bills," printed on parchment, and presented to the Speaker of the House and the President pro tem of the Senate for individual, original signature. Then those "bills" would have to be transported to the White House for consideration by the President. Finally, the President would have to sign hundreds (or thousands) of individual "bills."

### Enhanced Rescission

Enhanced rescission proposals also would shift power to the executive branch. The approach would allow the President to cancel funding items (keep them from becoming legally effective) unless the Congress acted to reverse his action. The President could choose which items to rescind, as he can under the current process. The shift of power would not be as great as the one that would result from a constitutional amendment to give the President a line-item veto.

Despite its name, the Line Item Veto Act provided a form of enhanced rescission authority. It allowed the Congress to overturn the President's action by passing a disapproval bill by a simple majority vote of both Houses. However, if the President vetoed that bill, a two-thirds majority would be required to override the veto. The act was held to be unconstitutional because it violated the presentment clause.

### Expedited Rescission

Proposals for expedited rescission are designed to make the Congress address the President's rescission requests and to consider them more quickly. Some would require the President to submit rescission proposals within a specified number of days

after signing an appropriation act into law. The fast-track process would decrease Congressional leaders' control over the legislative process by forcing the President's requests to the top of the list of matters that the Congress has to consider. The House passed expedited rescission proposals in the 102nd and 103rd Congresses.

Expedited rescission would not shift as much power to the executive branch as other approaches described above. The Congress would still have to vote in favor of the President's proposals before funding could be permanently canceled. Although those proposals would most likely be voted on by the Congress, an up-or-down vote would not be guaranteed. For those reasons, expedited rescission would probably not result in substantially different budgetary outcomes than the current process. However, supporters of this approach argue that once Members were forced to vote, they would be more likely to approve such requests than risk being portrayed as voting down a Presidential proposal to cancel wasteful spending.

## CONCLUSION

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It is hard to conclude that any of the proposed changes to the rescission process would greatly affect the budget's bottom line. There is, however, always room for more tools of fiscal discipline, and improved accountability should always be desirable, whether the budget is in surplus or deficit and whether the amounts involved are large

or small. The Congress will have to weigh the potential for modest budget benefits from proposed changes against possible drawbacks, which include shifts of power to the executive branch and effects on the legislative process.