

## RESCISSION OF BUDGET AUTHORITY

§ 1012(a) **SEC. 1012.**<sup>1020</sup> (a) **TRANSMITTAL OF SPECIAL MESSAGE.** — Whenever the President determines that all or part of any budget authority<sup>1021</sup> will not be required to carry out the full objective or scope of programs for which it is provided or that such budget authority should be rescinded for fiscal policy or other reasons (including the termination of authorized projects or activities for which budget authority has been provided), or whenever all or part of budget authority provided for only one fiscal year is to be reserved from obligation for such fiscal year, the President shall transmit to both Houses of Congress a special message specifying —

§ 1012(a)(1) (1) the amount of budget authority which he proposes to be rescinded or which is to be so reserved;

§ 1012(a)(2) (2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific project or governmental functions involved;

§ 1012(a)(3) (3) the reasons why the budget authority should be rescinded or is to be so reserved;

§ 1012(a)(4) (4) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed rescission or of the reservation; and

§ 1012(a)(5) (5) all facts, circumstances, and considerations relating to or bearing upon the proposed rescission or the reservation and the decision to effect the proposed rescis-

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<sup>1020</sup> Section 1012 is codified as amended at 2 U.S.C. § 683 (1988).

<sup>1021</sup> Section 3(2) defines "budget authority." *See supra* pp. 11-13.

**sion or the reservation, and to the maximum extent practicable, the estimated effect of the proposed rescission or the reservation upon the objects, purposes, and programs for which the budget authority is provided.**

§ 1012(b)      **(b) REQUIREMENT TO MAKE AVAILABLE FOR OBLIGATION. — Any amount of budget authority<sup>1022</sup> proposed to be rescinded or that is to be reserved as set forth in such special message shall be made available for obligation unless, within the prescribed 45-day period,<sup>1023</sup> the Congress has completed action on a rescission bill<sup>1024</sup> rescinding all or part of the amount proposed to be rescinded or that is to be reserved.<sup>1025</sup>**

<sup>1022</sup> Section 3(2) defines "budget authority." *See supra* pp. 11-13.

<sup>1023</sup> Section 1011(5) defines this 45-day period. *See supra* p. 376.

<sup>1024</sup> Section 1011(3) defines "rescission bill." *See supra* p. 376.

<sup>1025</sup> The Senate has repeatedly rejected attempts to change this law. *See, e.g.*, 138 CONG. REC. S2457-78 (daily ed. Feb. 27, 1992) (McCain motion to waive Sasser point of order under section 306 rejected 44-54 regarding his amendment no. 1698 to enhance the President's rescission authority); *id.* at S2268-312 (daily ed. Feb. 26, 1992) (further debate on same); 136 CONG. REC. S7457-78 (daily ed. June 6, 1990) (McCain motion to waive point of order under section 306 rejected 43-50 regarding his amendment no. 1995 to enhance the President's rescission authority); 135 CONG. REC. S15,336-58 (daily ed. Nov. 9, 1989) (Coats motion to waive point of order under section 306 rejected 40-51 regarding his amendment no. 1092 to enhance the President's rescission authority). On February 26 and 27 of 1992, on the occasion of one of these attempts to change the law, Senator Byrd's delivered a series of exhaustive statements on the subject. *See* 138 CONG. REC. S2278-86 (daily ed. Feb. 26, 1992) (history of the congressional power of the purse); *id.* at S2286-95 ("The Item Veto; Why Follow the States"); *id.* at S2295-300 ("Enhanced Rescission Power Means Enhanced Executive Power"); *id.* at S2300-02 ("The GAO Report on the Line-Item Veto"); *id.* at S2304-11 ("The Real Issue Is Power"); *id.* at S2465-68, S2476-77 (daily ed. Feb. 27, 1992) (closing arguments). *See also id.* at S3737-50 (daily ed. Mar. 17, 1992) (statement of Sen. Byrd: "A Line-Item Veto in the Constitution? 'It Is Not There'").

Several bills introducing in the 101st Congress sought to change what would happen if the Congress failed to act. *See* S. 6, 101st Cong., 1st Sess., 135 CONG. REC. S206-08 (daily ed. Jan. 25, 1989) (Sen. Dole, "To grant the power to the President to reduce appropriated funds within ten days after the date of enactment of a bill appropriating such funds"); S. Con. Res. 9, 101st Cong., 1st Sess., 135 CONG. REC. S770-72 (daily ed. Jan. 25, 1989) (Sen. Humphrey, "Establishing procedures for expedited consideration by the Congress of certain bills and joint resolutions submitted by the President"); S. 21, 101st (continued...)

**Funds made available for obligation under this procedure may not be proposed for rescission again.<sup>1026</sup>**

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<sup>1025</sup>(...continued)

Cong., 1st Sess., 135 CONG. REC. S283-84 (daily ed. Jan. 25, 1989) (Sen. Roth, "To provide the President with line-item veto authority"); S. 155, 101st Cong., 1st Sess., 135 CONG. REC. S500-01 (daily ed. Jan. 25, 1989) (Sen. Armstrong, "To amend the Impoundment Control Act of 1974 to provide for enhanced rescission procedures"); S. 207, 101st Cong., 1st Sess., 135 CONG. REC. S614-17 (daily ed. Jan. 25, 1989) (Sen. Dixon, "To amend the Congressional Budget and Impoundment Control Act of 1974 to require expeditious consideration by the Congress of a proposal by the President to rescind all or part of any item of budget authority if the proposal is transmitted to the Congress on the same day on which the President approves the bill or joint resolution providing such budget authority"); S. 829, 101st Cong., 1st Sess., 135 CONG. REC. S4183-84 (daily ed. Apr. 18, 1989) (Sen. Roth, "To provide the President with enhanced rescission authority at such time as the debt of the United States Government held by the public exceeds \$2,378,000,000,000"); S. 1553, 101st Cong., 1st Sess., 135 CONG. REC. S10,293-96 (daily ed. Aug. 4, 1989) (Sen. Coats, "To grant the power to the President to reduce budget authority").

<sup>1026</sup> Section 207 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, entitled "Clarification of Congressional Intent Regarding Rescission Authority," added the sentence "Funds made available for obligation under this procedure may not be proposed for rescission again." Pub. L. No. 100-119, § 207, 101 Stat. 754, 786 (1987). The joint statement of managers accompanying the conference report on that bill explained:

10. Clarification of Congressional Intent  
Regarding Rescission Authority

*Current Law*

Section 1012(b) of the 1974 Impoundment Control Act empowers the President to withhold spending appropriated funds during a period of 45 days of continuous session while Congress considers a rescission proposal. Under General Accounting Office interpretations which allow preparation time for the submittal message, and because certain days are not counted as days of continuous session, rescission proposals sometimes result in appropriated funds being withheld for up to 75 or more calendar days. Seriatim proposals covering the same subject matter have the effect of extending indefinitely the period of unavailability.

*Senate Amendment*

The Senate amendment (Section 230) adds language to Section 1012(b) to prohibit the Executive practice of submitting seriatim rescission messages covering similar matter when Congress fails to act on such proposals within the statutory 45-day period. The Senate amendment limits the

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**PROPOSED DEFERRALS OF BUDGET  
AUTHORITY<sup>1027</sup>**

§ 1013(a) **SEC. 1013.<sup>1028</sup> (a) TRANSMITTAL OF SPECIAL MESSAGE.** — Whenever the President, the Director of the Office of Management and Budget, the head of any department or agency of the United States, or any officer or employee of the

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<sup>1026</sup>(...continued)

Executive to one rescission proposal in any year regarding substantially the same budget authority.

*Conference Agreement*

The conference agreement amends Section 1012(b) of the Impoundment Control Act of 1974 to prohibit proposals to rescind budget authority which were the object of a previous rescission proposal not accepted by Congress. The conferees intend that the President be allowed to propose one rescission for any given activity. If the rescission proposal for that activity is not agreed to by Congress, no further rescission proposal for that activity would be allowed during the availability of that appropriation.

The conference agreement is not meant to diminish the restriction on the Executive from the Senate amendment. The conferees intend that the conference agreement will cover cases in which the Executive seeks to rescind substantially the same budget authority, not just exactly the same budget authority.

The conferees intend that authority granted to the President under this Act regarding the sequestration process shall in no way augment the authority available to him, and the requirements imposed on him, under existing law regarding the deferral or rescission of funds.

H.R. CONF. REP. No. 100-313, 100th Cong., 1st Sess. 67-68 (1987), reprinted in 1987 U.S.C.C.A.N. 739, 767-68.

<sup>1027</sup> Section 1011(1) defines "deferral of budget authority." See *supra* p. 375. Section 3(2) defines "budget authority." See *supra* pp. 11-13.

<sup>1028</sup> Section 1013 is codified as amended at 2 U.S.C. § 684 (1988).