
PROPOSED DEFERRALS OF BUDGET AUTHORITY¹⁰²⁷

§ 1013(a) **SEC. 1013.**¹⁰²⁸ (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

¹⁰²⁶(...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.

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

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

United States proposes to defer any budget authority¹⁰²⁹ provided for a specific purpose or project, the President shall transmit to the House of Representatives and the Senate a special message specifying —

- § 1013(a)(1) (1) the amount of the budget authority proposed to be deferred;**
- § 1013(a)(2) (2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific projects or governmental functions involved;**
- § 1013(a)(3) (3) the period of time during which the budget authority is proposed to be deferred;**
- § 1013(a)(4) (4) the reasons for the proposed deferral, including any legal authority invoked to justify the proposed deferral;**
- § 1013(a)(5) (5) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed deferral; and**
- § 1013(a)(6) (6) all facts, circumstances, and considerations relating to or bearing upon the proposed deferral and the decision to effect the proposed deferral, including an analysis of such facts, circumstances, and considerations in terms of their application to any legal authority, including specific elements of legal authority, invoked to justify such proposed deferral, and to the maximum extent practicable, the estimated effect of the proposed deferral upon the objects, purposes, and programs for which the budget authority is provided. A special message may include one or more proposed deferrals of budget author-**

¹⁰²⁹ Section 1011(1) defines "deferral of budget authority." See *supra* p. 375. Section 3(2) defines "budget authority." See *supra* p. 11-13.

ity. A deferral may not be proposed for any period of time extending beyond the end of the fiscal year in which the special message proposing the deferral is transmitted to the House and the Senate.

§ 1013(b) (b)¹⁰³⁰ **CONSISTENCY WITH LEGISLATIVE POLICY. — Deferrals¹⁰³¹ shall be permissible only —**

§ 1013(b)(1) (1) **to provide for contingencies;**

§ 1013(b)(2) (2) **to achieve savings made possible by or through changes in requirements or greater efficiency of operations; or**

§ 1013(b)(3) (3) **as specifically provided by law.**

No officer or employee of the United States may defer any budget authority¹⁰³² for any other purpose.¹⁰³³

¹⁰³⁰ Section 206 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, entitled "Codification of Law Regarding Deferral Authority," revised subsection (b) to read as it currently does. Pub. L. No. 100-119, § 206, 101 Stat. 754, 785-86 (1987). Compare the similar provisions of 31 U.S.C. § 1512(c)(1) (1988). For legislative history of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, see *infra* note 1033.

¹⁰³¹ Section 1011(1) defines "deferral of budget authority." See *supra* p. 375.

¹⁰³² Section 3(2) defines "budget authority." See *supra* pp. 11-13.

¹⁰³³ Section 206 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, entitled "Codification of Law Regarding Deferral Authority," revised subsection (b) to read as it currently does. Pub. L. No. 100-119, § 206, 101 Stat. 754, 785-86 (1987). The Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 patterned its revision on the similar provisions of 31 U.S.C. § 1512(c)(1) (1988). The joint statement of managers accompanying the conference report on the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 explained:

9. Codification of Law Regarding Deferral Authority

Current Law

(continued...)

§ 1013(e) (c) **EXCEPTION.** — The provisions of this section do not apply to any budget authority¹⁰³⁴ proposed to be rescinded or that is to be reserved as set forth in a special message required to be transmitted under section 1012.¹⁰³⁵

¹⁰³³(...continued)

The Supreme Court in *Immigration and Naturalization v. Chadha*, 462 U.S. 919 (1983), held legislative vetoes unconstitutional. Applying *Chadha*, the Court of Appeals in *City of New Haven v. United States*, 809 F. 2d 900 (D.C. Cir. 1987), struck down Section 1013 of the 1974 Impoundment Control Act, dealing with deferrals, thereby denying the President his sole statutory authority to make deferrals for policy reasons. The Court noted its view that the Executive's power to defer was now limited to so-call programmatic deferrals under the Antideficiency Act, which it characterized as dealing with "routine" and "trivial" matters "relating to the normal and orderly operation of the Government that Congress expected to present little controversy." The reporting requirements of Section 1013 have continued in force by virtue of other statutory reference to that section.

....

Senate Amendment

The Senate amendment (Section 229) enacts a new Section 1013 that codifies the *New Haven* decision and General Accounting Office administrative interpretations by prohibiting policy deferrals and providing that deferrals will be permissible only: (1) for contingencies, (2) for efficiency, or (3) as specifically provided for by law. Programmatic deferrals must be reported to the Congress and be accompanied by a detailed description and justification of the proposal. Deferrals may not be proposed for any period extending beyond the end of the fiscal year in which the proposal is reported.

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Conference Agreement

The House recedes and concurs in the Senate amendment.

H.R. CONF. REP. No. 100-313, 100th Cong., 1st Sess. 66-67 (1987), reprinted in 1987 U.S.C.A.N. 739, 766-67.

¹⁰³⁴ Section 3(2) defines "budget authority." See *supra* pp. 11-13.

¹⁰³⁵ See *supra* pp. 378-380.