

TO THE CONGRESS OF THE UNITED STATES:

Today, I am pleased to submit to the Congress the enclosed legislative proposal, the "Reduce Unnecessary Spending Act of 2010," along with a section-by-section analysis of the legislation.

This proposal will be another important step in restoring fiscal discipline and making sure that Washington spends taxpayer dollars responsibly. It will provide a new tool to streamline Government programs and operations, cut wasteful Government spending, and enhance transparency and accountability to the American people. The legislation will create an expedited procedure to rescind unnecessary spending and to broadly scale back funding levels if warranted. The legislation would require the Congress to vote up or down on legislation proposed by the President to rescind funding. This new, enhanced rescission authority will not only empower the President and the Congress to eliminate unnecessary spending, but also discourage waste in the first place.

Now more than ever, it's critical that taxpayer dollars are not wasted on programs that are ineffective, duplicative, or out-dated. In a time when American families and small business owners are conscious of every dollar and make sure that they manage their budgets wisely, the Federal Government can do no less. The American people expect and demand that we spend their money with the same discipline. Allowing taxpayer dollars to be wasted is both an irresponsible use of taxpayer funds and an irresponsible abuse of the public trust.

Recently, the Congress has taken welcome steps to curb wasteful spending. In 2007, when I served in the Senate, a bipartisan group worked together to eliminate anonymous earmarks

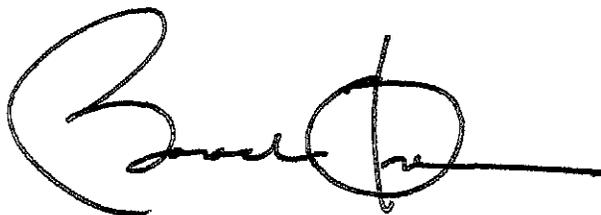
and brought new measures of transparency to the process so Americans can better follow how their tax dollars are being spent. Consequently, we have seen progress -- with earmarks declining since these reforms were passed, including during this past fiscal year.

In addition, my Administration undertook a line-by-line review of the Budget, and put forward approximately \$20 billion of terminations, reductions, and savings both for Fiscal Year 2010 and 2011. While recent administrations have seen between 15 to 20 percent of their proposed discretionary cuts approved by the Congress, for FY 2010, we worked with the Congress to enact 60 percent of proposed cuts.

Despite the progress we have made to reduce earmarks and other unnecessary spending, there is still more work to be done. The legislation I am sending to you today provides an important tool. The legislation allows the President to target spending policies that do not have a legitimate and worthy public purpose by providing the President with an additional authority to propose the elimination of wasteful or excessive funding. These proposals then receive expedited consideration in the Congress and a guaranteed up-or-down vote. This legislation would also allow the President to delay funding for these projects until the Congress has had the chance to consider the changes. In addition, this proposal has been crafted to preserve the constitutional balance of power between the President and the Congress.

Overall, the "Reduce Unnecessary Spending Act of 2010" provides a new way for the Congress and the President to manage taxpayer dollars wisely. That is why I urge the prompt and

favorable consideration of this proposal, and look forward to working with the Congress on this matter in the coming weeks.

A handwritten signature in black ink, appearing to be "Barack Obama". The signature is written in a cursive style with a large, looping initial "B" and a circular "O".

THE WHITE HOUSE,

May 24, 2010.

1 A bill to provide an optional fast-track procedure the President may use when submitting rescission  
2 requests, and for other purposes.

3

4 *Be it enacted by the Senate and House of Representatives of the United States of America in*  
5 *Congress assembled,*

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## **CHAPTER 1: EXPEDITED RESCISSIONS**

7

### **SECTION 1. TITLE AND PURPOSES.**

9 (a) Short Title.—This Act may be cited as the “Reduce Unnecessary Spending Act of 2010”.

10 (b) Purpose.—This Act creates an optional fast-track procedure the President may use when  
11 submitting rescission requests, which would lead to an up-or-down vote by Congress on the President’s  
12 package of rescissions, without amendment.

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### **SECTION 2. RESCISSIONS OF FUNDING.**

15 Part C of the Impoundment Control Act of 1974 is amended to read as follows.—

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17 “SECTION 1021. APPLICABILITY AND DISCLAIMER.—The rules, procedures, requirements, and  
18 definitions in this Part apply only to executive and legislative actions explicitly taken under this Part.  
19 They do not apply to actions taken under Part B or to other executive and legislative actions not taken  
20 under this Part.

21

22 “SECTION 1022. DEFINITIONS.

23 (1) The terms “appropriations Act”, “budget authority”, and “new budget authority” have the same  
24 meanings as in section 3 of the Congressional Budget Act of 1974.

25 (2) The terms “account”, “current year”, “CBO”, and “OMB” have the same meanings as in  
26 section 250 of the Balanced Budget and Emergency Deficit Control Act of 1985 as in effect on September  
27 30, 2002.

28 (3) Under this Part, “days of session” shall be calculated by excluding weekends and national  
29 holidays; and any day during which a chamber of Congress is not in session shall not be counted as a day  
30 of session of that chamber; and any day during which neither chamber is in session shall not be counted as  
31 a day of session of Congress.

32 (4) The term “entitlement law” means the statutory mandate or requirement of the United States to  
33 incur a financial obligation unless that obligation is explicitly conditioned on the appropriation in

1 subsequent legislation of sufficient funds for that purpose, and the Supplemental Nutrition Assistance  
2 Program.

3 (5) The term “funding” refers to new budget authority and obligation limits except to the extent  
4 that the funding is provided for entitlement law.

5 (6) The term “rescind” means to eliminate or reduce the amount of enacted funding.

6 (7) The terms “withhold” and “withholding” apply to any executive action or inaction that  
7 precludes the obligation of funding at a time when it would otherwise have been available to an agency  
8 for obligation. The term does not include administrative or preparatory actions undertaken prior to  
9 obligation in the normal course of implementing budget laws.

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11 “SECTION 1023. TIMING AND PACKAGING OF RESCISSION REQUESTS.

12 (a) Timing.—Whenever the President proposes that Congress rescind funding under the  
13 procedures in this Part, OMB shall transmit a message to Congress containing the information specified in  
14 section 1024, and the message transmitting the proposal shall be sent to Congress no later than 45 days of  
15 session of Congress after the date of enactment of the funding.

16 (b) Packaging and Transmittal of Requested Rescissions.—Except as provided in subsection (c),  
17 for each piece of legislation that provides funding, the President shall request at most one package of  
18 rescissions and the rescissions in that package shall apply only to funding contained in that legislation.  
19 OMB shall deliver each message requesting a package of rescissions to the Clerk of the House of  
20 Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in  
21 session. OMB shall make a copy of the transmittal message publicly available, and shall publish in the  
22 Federal Register a notice of the message and information on how it can be obtained.

23 (c) Special Packaging Rules.—After enactment of

24 (1) a joint resolution making continuing appropriations,

25 (2) a supplemental appropriations bill, or

26 (3) an omnibus appropriations bill,

27 covering some or all of the activities customarily funded in more than one regular appropriations bill, the  
28 President may propose as many as two packages rescinding funding contained in that legislation, each  
29 within the 45-day period specified in subsection (a). OMB shall not include the same rescission in both  
30 packages, and, if the President requests the rescission of more than one discrete amount of funding under  
31 the jurisdiction of a single subcommittee, OMB shall include each of those discrete amounts in the same  
32 package.

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1 “SECTION 1024. REQUESTS TO RESCIND FUNDING.

2 For each request to rescind funding, the transmittal message shall specify—

3 (1) the dollar amount to be rescinded;

4 (2) the agency, bureau, and account from which the rescission shall occur;

5 (3) the program, project, or activity within the account (if applicable) from which the rescission  
6 shall occur;

7 (4) the amount of funding, if any, that would remain for the account, program, project, or activity  
8 if the rescission request is enacted; and

9 (5) the reasons the President requests the rescission.

10 In addition, OMB shall designate each separate rescission request by number and shall include proposed  
11 legislative language to accomplish the requested rescission. The proposed legislative language shall not  
12 include any changes in existing law other than the rescission of funding, and shall not include any  
13 supplemental appropriations, transfers, or reprogrammings.

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15 “SECTION 1025. GRANTS OF AND LIMITATIONS ON PRESIDENTIAL AUTHORITY.

16 (a) Presidential Authority to Withhold Funding.—If the President proposes a rescission of funding  
17 under this Part, then notwithstanding any other provision of law, OMB is hereby authorized, subject to the  
18 time limits of subsection (c), to temporarily withhold that funding from obligation.

19 (b) Expedited Procedures Available only Once per Bill.—The President may not invoke the  
20 procedures of this Part, or the authority to withhold funding granted by subsection (a), on more than one  
21 occasion for any Act providing funding.

22 (c) Time Limits.—OMB shall make available for obligation any funding withheld under  
23 subsection (a) on the earliest of—

24 (1) the day on which the President determines that the continued withholding or reduction  
25 no longer advances the purpose of legislative consideration of the rescission request;

26 (2) starting from the day on which OMB transmitted a message to Congress requesting the  
27 rescission of funding, 25 calendar days in which the House of Representatives has been in session  
28 or 25 calendar days in which the Senate has been in session, whichever occurs second; or

29 (3) the last day after which the obligation of the funding in question can no longer be fully  
30 accomplished in a prudent manner before its expiration.

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32 “SECTION 1026. CONGRESSIONAL CONSIDERATION OF RESCISSION REQUESTS.

1 (a) Preparation of Legislation to Consider a Package of Expedited Rescission Requests.—When  
2 the House of Representatives receives a package of expedited rescission requests, the Clerk shall prepare  
3 a House bill that only rescinds the amounts requested. The bill shall read as follows:

4 “There is hereby enacted the rescissions numbered [insert number or numbers] as set forth in the  
5 Presidential message of [insert date] transmitted under Part C of the Impoundment Control Act of  
6 1974 as amended.”

7 The Clerk shall include in the bill each numbered rescission request listed in the Presidential package in  
8 question, except that the Clerk shall omit a numbered rescission request if the Chairman of the House  
9 Budget Committee, after consulting with the Senate Budget Committee, CBO, GAO, and the House and  
10 Senate committees that have jurisdiction over the funding, determines that the numbered rescission does  
11 not refer to funding or includes matter not permitted under a request to rescind funding.

12 (b) Introduction and Referral of Legislation to Enact a Package of Expedited Rescissions.—The  
13 majority leader or the minority leader of the House or Representatives, or a designee, shall (by request)  
14 introduce each bill prepared under subsection (a) not later than 4 days of session of the House after its  
15 transmittal, or, if no such bill is introduced within that period, any member of the House may introduce  
16 the required bill in the required form on the fifth or sixth day of session of the House after its transmittal.  
17 When such an expedited rescission bill is introduced in accordance with the prior sentence, it shall be  
18 referred to the House committee of jurisdiction. A copy of the introduced House bill shall be transmitted  
19 to the Secretary of the Senate, who shall provide it to the Senate committee of jurisdiction.

20 (c) House Report and Consideration of Legislation to Enact a Package of Expedited  
21 Rescissions.—The House committee of jurisdiction shall report without amendment the bill referred to it  
22 under subsection (b) not more than 5 days of session of the House after the referral. The Committee may  
23 order the bill reported favorably, unfavorably, or without recommendation. If the Committee has not  
24 reported the bill by the end of the 5-day period, the Committee shall be automatically discharged from  
25 further consideration of the bill and it shall be placed on the appropriate calendar.

26 (d) House Motion to Proceed. —After a bill to enact an expedited rescission package has been  
27 reported or the committee of jurisdiction has been discharged under subsection (c), it shall be in order to  
28 move to proceed to consider the bill in the House. A Member who wishes to move to proceed to  
29 consideration of the bill must announce that fact, and the motion to proceed shall be in order only during a  
30 time designated by the Speaker within the legislative schedule for the next calendar day of legislative  
31 session or the one immediately following it. If the Speaker does not designate such a time, then 3 or more  
32 calendar days of legislative session after the bill has been reported or discharged, it shall be in order for  
33 any Member to move to proceed to consider the bill. A motion to proceed shall not be in order after the

1 House has disposed of a prior motion to proceed with respect to that package of expedited rescissions.  
2 The previous question shall be considered as ordered on the motion to proceed, without intervening  
3 motion. A motion to reconsider the vote by which the motion to proceed has been disposed of shall not  
4 be in order. If 5 calendar days of legislative session have passed since the bill was reported or discharged  
5 under this subsection and no Member has made a motion to proceed, the bill shall be removed from the  
6 calendar.

7 (e) House Consideration.—A bill consisting of a package of rescissions shall be considered as  
8 read. All points of order against the bill are waived, except that a point of order may be made that one or  
9 more numbered rescissions included in the bill would enact language containing matter not requested by  
10 the President or not permitted under this Act as part of that package. If the Presiding Officer sustains such  
11 a point of order, the numbered rescission or rescissions that would enact such language are deemed to be  
12 automatically stripped from the bill and consideration proceeds on the bill as modified. The previous  
13 question shall be considered as ordered on the bill to its passage without intervening motion, except that 4  
14 hours of debate equally divided and controlled by a proponent and an opponent are allowed, as well as  
15 one motion to further limit debate on the bill. A motion to reconsider the vote on passage of the bill shall  
16 not be in order.

17 (f) Senate Consideration.—If the House of Representatives approves a House bill enacting a  
18 package of rescissions, that bill as passed by the House shall be sent to the Senate and referred to the  
19 Senate Committee of jurisdiction. That Committee shall report without amendment the bill referred to it  
20 under this subsection not later than 3 days of session of the Senate after the referral. The Committee may  
21 order the bill reported favorably, unfavorably, or without recommendation. If the Committee has not  
22 reported the bill by the end of the 3-day period, the Committee shall be automatically discharged from  
23 further consideration of the bill and it shall be placed on the appropriate calendar. On the following day  
24 and for 3 subsequent calendar days in which the Senate is in session, it shall be in order for any Senator to  
25 move to proceed to consider the bill in the Senate. Upon such a motion being made, it shall be deemed to  
26 have been agreed to and the motion to reconsider shall be deemed to have been laid on the table. Debate  
27 on the bill in the Senate under this subsection, and all debatable motions and appeals in connection  
28 therewith, shall not exceed 10 hours, equally divided and controlled in the usual form. Debate in the  
29 Senate on any debatable motion or appeal in connection with such a bill shall be limited to not more than  
30 1 hour, to be equally divided and controlled in the usual form. A motion to further limit debate on such a  
31 bill is not debatable. A motion to amend such a bill or strike a provision from it is not in order. A motion  
32 to recommit such a bill is not in order.

1 (g) Senate Point of Order.—It shall not be in order for the Senate to employ the procedures in this  
2 Part while considering a bill approved by the House enacting a package of rescissions under this Part if  
3 any numbered rescission in the bill would enact matter not requested by the President or not permitted  
4 under this Act as part of that package. If a point of order under this section is sustained, consideration of  
5 the bill shall no longer be governed by subsection (f); instead, consideration shall be governed by the  
6 Standing Rules of the Senate and any other rules applicable to Senate consideration of legislation.

### 7 8 **SECTION 3. TECHNICAL AND CONFORMING AMENDMENTS**

9 (a) Table of Contents.—Subsection 1(b) of the Congressional Budget Act of 1974 is amended by  
10 altering the section numbers and names in accordance with the amendments made by this Act.

11 (b) Title.—The title of Part C of the Impoundment Control Act of 1974 is amended to read  
12 “Expedited Consideration of Proposed Rescissions”.

13 (c) Temporary Withholding.— In section 1013(c) of the Impoundment Control Act of 1974, strike  
14 “section 1012.” and insert “section 1012 or section 1025.”

15 (d) Rulemaking.—Section 904(a) of the Congressional Budget Act of 1974 is amended by striking  
16 “and 1017” and inserting “1017, and 1026” and section 904(d)(1) is amended by striking “or section  
17 1017” and inserting “or section 1017 or 1026”.

### 18 19 **SECTION 4. EXPIRATION.**

20 Part C of the Impoundment Control Act of 1974 (as amended by this Act) shall expire on  
21 December 31, 2014.

### 22 23 **CHAPTER 2. AMENDMENTS TO PART A OF THE IMPOUNDMENT CONTROL ACT.**

24 Immediately after section 1001 of the Impoundment Control Act of 1974, insert the following—  
25 “SECTION 1002. RESCINDED FUNDS.

26 If budget authority is rescinded under Part B or funding is rescinded under Part C, the amount so  
27 rescinded shall revert to the fund whence it came (general fund, trust fund, special fund, revolving fund,  
28 and so on as applicable), except to the extent legislation specifies otherwise.

29  
30 “SECTION 1003. SEVERABILITY.

31 If the judicial branch of the United States finally determines that one or more of the provisions of  
32 Parts B or C violate the Constitution of the United States, the remaining provisions of those Parts shall  
33 continue in effect.”

## Section-by-Section Analysis and Explanation of the “Reduce Unnecessary Spending Act of 2010”

May 24, 2010

### Summary.

Chapter 1 establishes a special process under which the President may request the rescission of funding contained in a newly enacted bill. This commonly occurs in appropriations bills, but sometimes other bills include non-entitlement funding, which is also subject to this act. The Congress must then consider those requests in a package (generally one package per newly enacted bill) under an expedited procedure leading to a guaranteed, up-or-down vote on the entire package without amendment. While the Congress cannot amend the package, it would omit from the bill any proposed rescission containing matter that goes beyond the limited types of rescission requests permitted under this new process.

This new process takes the place of Part C of the Impoundment Control Act (the Line-Item Veto Act of 1996, which the Supreme Court struck down in 1998), and expires at the end of 2014.

Chapter 2 clarifies legal questions.

Nothing in this bill affects the President’s right to propose whatever legislation he chooses under standard procedures, or the Congress’s right to consider (or not consider) standard legislative proposals under standard procedures.

Under this bill, the President would have two procedures to choose between, as well as the standard procedures, if he wants the Congress to take a second look at funding legislation: a) the new, expedited, up-or-down procedures created by this Act, and b) the procedures under the existing Impoundment Control Act of 1974. There are four main differences between the procedures under this new Act and the Impoundment Control Act:

- The new Act requires that proposed rescissions be submitted relatively shortly after an appropriations law or other law providing non-entitlement funding is enacted;
- The new Act requires the Congress to consider proposed rescissions stemming from such a new law in a *package*;
- The new Act does not permit the Congress to amend the President’s package of rescissions; and
- The new Act guarantees the President an up-or-down-vote on his package.

## Section-by-Section Analysis and Explanation.

### Chapter 1: Expedited Rescissions

**Section 1** creates a short title, the Reduce Unnecessary Spending Act of 2010, and briefly states the purpose: creating a new option for the President, a guaranteed up-or-down vote on his package, without amendment.

**Section 2** repeals the unconstitutional Line-Item Veto Act of 1996 by replacing it in its entirety with the new, expedited process described in the summary. The Line-Item Veto Act had been created in 1996 as Part C of the Impoundment Control Act (ICA), so the new expedited process becomes the new Part C of the ICA. Within this new Part C of the ICA, the new process is set forth in six sections:

- Section 1021. Applicability and Disclaimer
- Section 1022. Definitions
- Section 1023. Timing and Packaging of Rescission Requests
- Section 1024. Requests to Rescind Funding
- Section 1025. Grants of and Limitations on Presidential Authority
- Section 1026. Congressional Consideration of Rescission Requests

*Section 1021, Applicability and Disclaimer*, makes clear that the new fast-track process created by the new Part C of the ICA is an optional alternative to standard executive-legislative procedures and to Part B of the ICA, the process created in 1974. Section 1021 also says that any definitions of terms, or any requirements or limitations on the President or on the Congress, apply *only* for the purposes of this new fast-track process; that is, they apply only if the President explicitly invokes Part C when requesting the Congress to consider a package of rescissions.

*Section 1022, Definitions*, sets forth and defines the terms used under the new section. The majority are defined by simple cross-references to the standard definitions used in other budget laws. Three definitions deserve comment.

*First*, “funding” covers new budget authority and obligation limits, except to the extent that the funding is used to pay entitlement benefits. Discretionary appropriations are therefore the most common form of funding. However, the term also covers budget authority provided by legislation other than appropriations acts as long as that funding does not pay entitlement benefits.

*Second*, the term “entitlement law” is defined. This is essential to the definition of “funding” (which is defined as not covering entitlement law). The key to the definition is that an entitlement exists when a provision of law mandates that payments be made even if the funding needed to make those payments, to be provided in a subsequent law, is inadequate or nonexistent.<sup>1</sup> In addition, the term is applied to the Supplemental Nutrition Assistance Program

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<sup>1</sup> Sometimes the same law that establishes a mandate in one provision conditions that mandate on the availability of funding – and then provides the funding in a separate section of the same law. In this case, the law is an entitlement if the first

(formerly the food stamp program), which does not meet the definition of entitlement but has been treated as mandatory by every administration for the last three decades and was defined that way in the Budget Enforcement Act of 1990.

*Third*, “rescind” means to eliminate *or reduce*. This is the standard interpretation. Thus, if an appropriations Act provides \$185 million for a program, the President can request the Congress to reduce that amount to, for instance, \$170 million by rescinding \$15 million of the appropriated funds. Or he could request the amount be reduced to zero – and the program eliminated – by rescinding all \$185 million.

Section 1023, Timing and Packaging of Rescission Requests, describes how the new process starts. After enactment of funding, the President has 45 days during which the Congress is in session (excluding weekends and national holidays) to decide whether to invoke the new procedures laid out in Part C by requesting the Congress to enact one or more rescissions, to prepare the legislative language that would accomplish the rescissions, and to transmit the rescission requests in a package to the Congress. Only by adhering to the time limits and other procedures and constraints specified in Part C does the President trigger the fast-track consideration described in section 1026.

Section 1023(b) limits the President to a single package of rescissions per bill, and the rescissions he requests must be limited to provisions in that bill. For example, when an appropriations bill is enacted, the President may choose to invoke Part C and transmit a package of one or more rescissions of the funding provided in that bill.

There are exceptions to the packaging rule just described when a single appropriations bill includes funding that is in the jurisdiction of more than one subcommittee of the Appropriations Committees. This most commonly happens in supplemental, omnibus, or continuing appropriations. In this case, the President may (but need not) send up two rather than one package of rescission requests after the enactment of that appropriations bill. If he chooses two packages, one package would address rescissions related to one set of subcommittees and the other package would address rescissions related to the other subcommittees.<sup>2</sup>

Section 1024, Requests to Rescind Funding, lists the explanatory information required to be included for each individual rescission request contained within a package of rescissions, including the President’s reason for requesting the rescission. The section requires the President to number each separate rescission request and to propose the precise legislative language needed to effectuate it. Importantly, it restricts that language to accomplishing the rescission but to no other purpose: for example, the language cannot change how remaining funds are used or include supplemental funding. Since the Congress is required to vote on the rescission requests without amendment, each request must be clean: the request must do no more than reduce or eliminate an amount of funding that the underlying bill had provided for a specific budget account or for a program, project, or activity within that account. Frequently, funding provided within a budget account is intended for multiple programs, projects, or activities that are spelled out in report language or elsewhere. Just as report language

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provision is a clear mandate *aside from* the conditionality, but is not an entitlement if the first condition merely establishes the purposes for which the funding provided elsewhere in the statute is authorized to be used.

<sup>2</sup> The President could not propose rescissions of some programs or amounts provided by a single subcommittee in one package and other programs or amounts provided by the same subcommittee in the other package; neither could he propose the same rescissions twice, once in one package and once in the other.

spells out the intended use of appropriated funding, the message transmitted by the President spells out the program, project, or activity to which the rescission of funding is intended to apply.

Section 1025, Grants of and Limitations on Presidential Authority, authorizes but does not require the President to withhold funding from obligation while the Congress considers his rescission request under Part C.

This section is analogous to existing authority under Part B. The authority exists because there is little point in allowing funds that are about to be rescinded by the Congress to instead be obligated by an agency, making their rescission impossible. But because the process is expedited, any withholding is limited to 25 calendar days in which the House or Senate is in session (whichever is greater).<sup>3</sup> Weekends and national holidays do not count. The President is explicitly required to release funds once that period expires, and is encouraged to release them if either House defeats his rescission package. This section also states that if the President proposes a specific rescission under Part C, he may do so only once; if he is turned down, he cannot ask again. However, if he is turned down under Part C, he can invoke the regular ICA (Part B) or his general authority to request legislation.

Moreover, section 1025(c)(3) says that the authority to withhold funds does not apply so late in a fiscal year that a withholding would lead to the funds expiring or to an agency no longer being able to prudently obligate the funds before they expire. Late withholding would be a rarity in any case, because regular appropriations bills are normally enacted before the start of the fiscal year or shortly thereafter and section 1023 requires any presidential rescission package to be transmitted within 45 days of session after enactment of the bill. However, a supplemental appropriations bill enacted late in the fiscal year (for example) could conceivably provide funds that would be subject to paragraph 3.

Section 1026, Congressional Consideration of Rescission Requests, sets forth the expedited procedures in the House and Senate for consideration of proposed rescission packages. In general, these procedures are designed to insure that the President gets a vote, without amendment, on the package of rescissions he transmits.<sup>4</sup>

Because appropriations legislation originates in the House by longstanding tradition, the House turns each presidential rescission package into a statute and considers it first. The Senate acts on the package only if the House passes it, since even under expedited procedures Senate action proceeds at a slower pace and votes take longer. The Senate is not required to vote on a package the House has already defeated.

There are three principal ways in which the House and Senate fast-track procedures differ from other fast-track, no-amendment procedures that exist or have existed in recent decades.

First, the House clerk – who turns the presidential rescission package into a bill – omits individual rescissions that are not eligible for the fast track procedure. The rescission bill itself will be very short, since it will simply list the items in the President’s package by number and state that they are enacted into law. The clerk omits numbered rescissions that the Chairman of the House Budget Committee

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<sup>3</sup> The expedited procedures under §1026 mean that Congress will reach a final resolution on the President’s rescission package before the 25 days expire.

<sup>4</sup> There is no method to provide an absolute guarantee of a vote, because all rules of the House and Senate are implemented by persons making motions under the rules. If *no one* moves to consider a piece of legislation, it will not be considered.

determines are not permissible for the fast track procedure. The Chairman is required to consult widely, including with the Senate Budget Committee, the committees of jurisdiction in both Houses, CBO, and GAO in making determinations. Examples of impermissible rescission requests include but are not limited to:

- a request to rescind funding that was not provided in the recently enacted funding bill in question but rather in some other bill;
- a request to rescind funding where the account from which the funding is to be cut is not adequately specified in legislative language, or the program, project, or activity within an account from which the funding is to be cut is not adequately identified in the presidential message;
- a request to rescind funding for an entitlement program;
- a request to rescind funding that is by itself a valid request but for which the President's legislative text includes other matter (such as transfer authority, or supplemental funding, or changes in authorizing legislation).

Second, any individual House member may raise a point of order against any numbered rescission in the package on the grounds that it contains impermissible matter, and if the point of order is sustained, the item is automatically knocked out of the package.

Finally, any individual Senator may raise a point of order claiming that the House-passed package contains impermissible matter; if sustained, the package is not altered but does immediately lose its fast-track, no-amendment protection; at that point, the special procedures in section 1026(f) cease to apply. Continued debate on the package would take place under standard Senate rules.<sup>5</sup> This approach gives the Senate (including the Senate minority) equal weight with the House in determining whether rescission requests go beyond the clear limitations of Part C.

These provisions may prompt a consultation between the branches before a package of rescissions is submitted and between the House and Senate after it is submitted, leading to a package that is clearly within the boundaries set forth in this Part. The intent is that each bill employing the fast-track procedures of this Act be a "clean" bill.

**Section 3** makes technical and conforming amendments.

Subsections (a) and (b) make conforming amendments to the titles and table of contents of the Congressional Budget and Impoundment Control Act of 1974, Title X of which constitutes the ICA.

Subsection (c) is a conforming amendment to section 1013 of the ICA, a part of which specifies that the President's general authority to temporarily defer the use of funding is limited to routine administrative actions and certain defined circumstances. The existing ICA specifies that a temporary

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<sup>5</sup> At that point, the Senate could (for example) amend the bill, or filibuster it, or table it. If the Senate amends and then passes the bill, the parliamentary situation with respect to both the House and Senate is normal: a bill has been passed in different form by the two bodies, and differences can be resolved through conference or amendments between the bodies in the normal fashion.

deferral is permissible during the 45-day period when the Congress may be considering a rescission request under Part B. This new subsection conforms the new Part C to Part B by adding the analogous 25-day withholding period created by section 1025 of the new Part C.

Subsection (d) specifies that the portions of this Act that establish or alter rules and procedures of the House and Representatives or the Senate are themselves amendable by the House and Senate in the normal fashion, for example, by agreement to a simple or concurrent resolution. This is the standard interpretation of the Constitution in any case.

**Section 4** sunsets the new procedures by saying that Part C of the ICA, which is where Section 2 of this Act locates the new procedures, expires at the end of 2014.

## **Chapter 2: Amendments to Part A of the Impoundment Control Act**

This chapter creates two new sections of the ICA, to address legal issues that were ambiguous or may have become so over time. It places these sections in Part A of the ICA since they apply generally.

*Section 1002, Rescinded Funds*, specifies that if budget authority (the term used in Part B) or funding (the analogous Part C term) is rescinded, the rescinded amounts return to the funds from which they had been provided. For example, money rescinded from a special-fund account would return to that special fund rather than being placed in the general fund of the Treasury. This approach keeps faith with laws dedicating specific revenues or offsetting collections to specific funds. Without this new section, the issue would have been unclear.

*Section 1003, Severability*, specifies that the various provisions of the ICA are severable if any are held unconstitutional. Constitutional law regarding issues of congressional-executive relations has changed to some extent since the ICA was enacted in 1974, so what was clear at the time may be less clear now. The intent, though, is that if the courts determine that some duty, authority, procedure, or requirement under the ICA is held unconstitutional, the remaining portions of the ICA should continue in place.