RESCISSIONS AND UNINTENDED CONSEQUENCES

There have been reports that President Trump may propose a list of “rescissions,” or cuts, to programs funded in the Consolidated Appropriations Act of 2018 — the omnibus spending bill that was signed into law March 23, 2018. The law governing this process is the Impoundment Control Act of 1974 (the ICA).

How Do Rescissions Work under the ICA?

The ICA put in place an optional process for the President to propose the rescission of appropriations. Under this procedure, the Senate considers the proposed cuts under a fast-track, no-filibuster rule. Thus, the measure needs only a simple majority to move forward, not the 60 votes that are required to overcome a filibuster.

The President can package one or more rescission requests into one or more of what are referred to as “special messages.” While he chooses which rescissions to package into which special message, he can’t propose the same rescission in more than one special message.

The package is then sent to Congress for consideration, a process that begins with the appropriations committees. Once Congress receives the request, the appropriations committees have 25 calendar days of continuous session to either approve, disapprove, or amend the request. If the committees do not take action within those 25 days, the measure can be discharged easily, and if so, it goes to the full House and Senate for consideration.

In total, members have 45 “calendar days of continuous session” to respond to the request under the ICA’s special procedures. And starting when his rescission “special message” is received by Congress, the President can “impound” the funding he proposes to rescind for that 45-day period. In other words, the president is able to withhold the funding specified in his rescissions package while Congress considers his proposal. Normally, such a withholding of funding is not permitted.

How Does the Process End?

If either the House or Senate Appropriations Committees vote down the bill, the congressional process ends.

If the bill is not considered by these committees within 25 days of continuous session, a motion can be made to discharge the bill and bring it to the full House or Senate for consideration. If it fails in either full chamber, the congressional process ends.

If 45 days of continuous session elapse, the president must release the funding. If the president does not, the Government Accountability Office can sue for its release in the U.S. District Court. The president cannot then propose the same rescission and withhold it a second time.
Unfortunately, the president likely gets to keep impounding the funds until the 45-day period expires, even if the congressional process has already ended.

If the 45 days elapse and Congress has not completed action on the bill, it loses its fast-track protection. However, the Senate could proceed with the bill under normal rules.

Are There Rules Worth Noting?
As with many procedures requiring a simple majority in the Senate, there are additional restraints on what can be considered in a rescission bill. Most notably:

1. The President can only propose rescinding existing appropriations. He can’t add riders, change the purpose of existing funding, or propose any new funding. Congress can’t, either — otherwise, the bill loses its fast-track protection.

2. After the President’s special message arrives, if the Senate Appropriations Committee has not come to an agreement and moved a bill out of Committee within 25 days\(^1\), a Senator can move to discharge the original bill. If 20 Senators support this motion, it is then placed on the calendar and can proceed under fast track and pass with only a simple majority.

What Can You Do About It?
The use of the rescission tool in this way is dangerous for the future funding of all programs, and for the appropriations process itself. Given that the President can begin impounding funds as soon as the rescissions request is sent to Congress, it is best that the special message never be sent at all. Thus, we are encouraging our partners to reach out to Senate offices to urge them to denounce the use of the rescission process and discourage the President from using it. Below are talking points you may use in your correspondence:

1. Congress reached a bipartisan deal in March to fund the government, which the President signed into law. Rescissions would be a step back from that deal and would make further bipartisan compromise, which is needed to complete any work in the Senate, extremely difficult.

2. A special message would allow the President to impound federal funding until the time limit runs out, despite need and the will of Congress. Given the calendar, this could allow funds to be impounded for months.

3. The appropriate time to make changes to spending bills is during the annual appropriations process. Congress has already begun work on fiscal 2019 bills. Any time wasted rehashing fiscal 2018 — funding that was itself six months late — will delay the fiscal 2019 process and make it difficult to pursue regular order and complete appropriations on time. It will also make it harder to secure future two-year bipartisan deals that allow appropriations bills to move forward with more realistic funding levels.

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\(^1\) The 45-day period and the 25-day period each count weekends and holidays but do not count any day when either body has recessed for 4 or more days.