

Evading the Impoundment Control Act (ICA): The Use of So-Called “Pocket Rescissions” to Unlawfully Impound Funds

Congress [passed](#) the ICA to “reach all the past and future mechanisms which this President or any other Executive has devised or will devise” to impound funds. Presidents trying to find loopholes to evade the law is not new, but neither is it lawful. So-called “pocket rescissions” are in fact unlawful item vetoes — efforts by the president to unilaterally cut funds Congress enacted.

“Pocket rescissions” are unlawful impoundments and cannot codify DOGE cuts.

- A so-called “pocket rescission” is when the president proposes a funding cut to Congress so late in the fiscal year that the funding expires before Congress has had 45 days of session to consider it. By definition, such a maneuver evades the law. It cannot codify any DOGE cut, and it is closer to an unlawful line-item veto than it is to a lawfully proposed rescission.

The executive branch has long recognized that Congress's power of the purse requires the president to spend appropriations — even if he disagrees with them.

- As Charles Dawes, the first director of the Bureau of the Budget (later the Office of Management and Budget), [wrote](#) in 1923: “Much as we love the President, if Congress, in its omnipotence over appropriations and in accordance with its authority over policy, passed a law that garbage should be put on the White House steps, it would be our regrettable duty, as a bureau, in an impartial, nonpolitical and nonpartisan way to advise the Executive and Congress as to how the largest amount of garbage could be spread in the most expeditious and economical manner.”

So-called “pocket rescissions” are rare and have not been proposed since 1983.

- No president has proposed a rescission to Congress within the last fiscal quarter before the funds in question were set to expire [since 1983](#).
- While presidents have proposed a handful of rescissions within the last fiscal quarter before the funds were set to expire, these cases account for less than 2% of all the rescissions presidents have proposed since 1974.*
- In [2018](#) and [2019](#), President Trump considered proposing rescissions in August in order to cancel billions of dollars in foreign aid by withholding the funds through their expiration date. Both [times](#), however, he backed down.

"Pocket rescission" is not a provision in the Impoundment Control Act. It is an abuse of power, an effort to evade the law, and akin to an item veto.

- During a debate over the ICA, Sen. Sam Ervin, the chair of the committee with jurisdiction over the bill, explained that "both Houses of Congress must pass a rescission bill in order for the President to . . . delay the obligation of 1-year appropriations to the end of the fiscal year in which they are available." [120 Cong. Rec. S20464-65 \(June 21, 1974\)](#).
- Sen. Ervin made clear that in enacting the ICA, Congress intended the law to apply to "any action by the executive branch which would have the effect of establishing a reserve, or otherwise delaying or making unavailable for obligation or expenditure appropriations made by the Congress in a manner inconsistent with achieving the full scope, intent, and objectives of Congress in enacting that appropriation." [120 Cong. Rec. S7913 \(Mar. 22, 1974\)](#).

Past examples of late-in-the-year rescission proposals from Presidents Ford and Carter were limited and often driven by extenuating circumstances.

- Carter [proposed](#) a rescission on July 7, 1977, because the National Transportation Safety Board was facing delays in hiring additional permanent staff that Congress had given it funding to hire. The president asked Congress to rescind \$850,000 of the \$13.8 million appropriation because those delays prevented the agency from spending the funds.
- Second, Carter proposed a [rescission](#) on July 19, 1977, cutting \$21 million from the foreign military sales credit program because a change in financing from direct credit to loan guarantees *enabled the government to fulfill the full level authorized by Congress* while spending less.
- In 1975, Ford [proposed](#) a number of rescissions and deferrals on July 25, 1975, but all but two of those involved funds that were set to expire at the end of the fiscal year or after multiple years — well beyond the window of time Congress needed to act on the rescissions.
 - Reviewing the July rescissions, GAO [noted](#) funding from two of the rescissions would lapse before the end of the "45 days of continuous session the Congress normally has to review the proposed rescissions."

- Even with less time than normal, Congress passed a [bill](#) on October 2, 1975, rejecting \$141 million of the rescissions, including the \$10 million in funds for the Community Services Administration which lapsed on September 30. Although the House and Senate Appropriations Committees urged the administration to take immediate steps to obligate the funds, they ultimately [lapsed](#).
- Late-in-the-year rescission proposals driven by savings realized from a change in financing method, or some delays in hiring permanent staff that resulted in about 6% of funds unable to be spent, is a far cry from a mandate for the president to impound millions or even billions of dollars because of policy disagreements with the law or the Congress.

*To arrive at this 2% figure — which is the result of a preliminary analysis Protect Democracy conducted — we reviewed every special message proposing rescissions pursuant to the ICA since 1974. We found that of the more than 1300 rescissions presidents have proposed, fewer than 20 were proposed within three months of when the funds were set to expire. This three-month cutoff is conservative. That is, it sweeps in more potential ‘pocket rescissions’ than does the 45-day standard [OMB](#) has used, and [several scholars](#) have referenced, or the “75 or more calendar days” GAO estimated that “rescission proposals sometimes resulted in appropriated funds being withheld.” See [H.R. Rep. No. 100-313, at 67–68 \(1987\) \(Conf. Rep.\)](#).