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IMPOUNDMENT CONTROL ACT OF 1974—RELEASE OF WITHHELD AMOUNTS DUE TO WITHDRAWAL OF RESCISSION PROPOSALS

COMMUNICATION

FROM

THE GENERAL COUNSEL, THE U.S. GOVERNMENT ACCOUNTABILITY OFFICE

TRANSMITTING

IMPOUNDMENT CONTROL ACT OF 1974—RELEASE OF WITHHELD AMOUNTS DUE TO WITHDRAWAL OF RESCISSION PROPOSALS



MARCH 19, 2021.—Referred to the Committee on Appropriations and ordered to be printed

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February 24, 2021

The Honorable Kamala Harris
President of the Senate

The Honorable Nancy Pelosi
Speaker of the House of Representatives

Subject: *Impoundment Control Act of 1974—Release of Withheld Amounts Due to Withdrawal of Rescission Proposals*

On January 14, 2021, pursuant to the Congressional Budget and Impoundment Control Act of 1974 (ICA),[1] then-President Trump transmitted to Congress a special message proposing rescissions from 73 appropriation accounts.[2] Where the President properly transmits a special message, an agency may withhold corresponding amounts from obligation for up to 45 calendar days of continuous congressional session.[3] *See* ICA § 1012(b), 2 U.S.C. § 683(b). If Congress does not, within the 45-day period, complete action on a bill rescinding the budget authority, then the budget authority proposed to be rescinded must be made available for obligation. ICA § 1012(b), 2 U.S.C. § 683(b). The Office of Management and Budget (OMB) apportioned funds included in the January 14, 2021, special message as withheld pending rescission.[4]

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[1] Pub. L. No. 93-344, title X, § 1012, 88 Stat. 297, 333–34 (July 12, 1974); 2 U.S.C. § 683.

[2] 167 Cong. Rec. H197–98 (daily ed. Jan. 15, 2021); 167 Cong. Rec. S72 (daily ed. Jan. 20, 2021); 86 Fed. Reg. 6673 (Jan. 22, 2021).

[3] For the purposes of the ICA, continuity of a session of Congress is broken "only by an adjournment of the Congress *sine die*, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain." ICA § 1011(5); 2 U.S.C. § 682(5).

[4] OMB Bulletin No. 21-02, *Apportionment of Special Message* (Jan. 14, 2021) (stating that funds proposed for rescission are temporarily withheld from obligation).

On January 31, 2021, President Biden submitted a supplementary special message withdrawing the 73 rescission proposals.[5] *See* ICA § 1014(c), 2 U.S.C. § 685(c). We have contacted the agencies whose budget authority was affected by the proposed rescissions and have confirmed that they have made the budget authority available for obligation, as required by section 1012(b) of the ICA.[6] 2 U.S.C. § 683(b).

If you have any questions, please contact Shirley Jones, Managing Associate General Counsel, at (202) 512-8156, or Shari Brewster, Assistant General Counsel for Appropriations Law, at (202) 512-6398.

Sincerely,

Thomas H. Armstrong
General Counsel

[5] 167 Cong. Rec. H256 (daily ed. Feb. 1, 2021); 167 Cong. Rec. S212 (daily ed. Feb. 1, 2021); 86 Fed. Reg. 8223 (Feb. 4, 2021). OMB released funds withheld. OMB Bulletin No. 21-03, *Release of Funds Withheld from Obligation Pursuant to Special Message dated January 14, 2021* (Jan. 20, 2021) (apportionment stating that funds are no longer apportioned as withheld from obligation).

[6] Consistent with usual practice, some of the amounts that are available for more than one fiscal year have been apportioned into future fiscal years. *See* OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, § 120.13 (Dec. 2020).