

THE CONCORD COALITION



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Tools to Combat Deficits and Waste: Enhanced Rescission Authority

Senate Homeland Security and Government Affairs Committee

**Subcommittee on Federal Financial Management, Government Information, Federal
Services and International Security**

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I. Introduction

Chairman Carper, Senator McCain, and members of the Subcommittee, thank you for inviting me to discuss the role of enhanced rescission in combating budget deficits and waste. Given our nation's unsustainable fiscal outlook and rising public concern about projected debt levels, this is a very relevant and timely discussion.

I am here representing The Concord Coalition, a nonpartisan grassroots organization advocating generationally responsible fiscal policy. Concord's co-chairs are former senators, Warren B. Rudman (R-NH) and Bob Kerrey (D-NE). They, along with Concord's President former Commerce Secretary Peter G. Peterson and our nationwide membership, have consistently urged Washington policymakers to adopt credible policies for achieving fiscal sustainability.

The Concord Coalition believes that the current budget process suffers from a lack of transparency and accountability. This has contributed to the unsustainable fiscal path we are on and engendered corrosive public cynicism about government finances.

Yet, too few of our elected leaders in Washington are willing to acknowledge the seriousness of the problem and even fewer are willing to put budget process reform on the political agenda. By focusing attention on this critical issue you are setting a very positive example.

In my testimony today, I want to emphasize four key points:

- The public is increasingly frustrated with how federal tax dollars are spent
- Restoring public trust is essential to winning broad support for needed hard choices
- Enhanced rescission can help to restore public trust in the budget process
- Enhanced rescission alone will not have a meaningful effect on the budget deficit

In addition to these points, I will make a few observations on S. 907, *The Budget Enforcement Legislative Tool Act of 2009* and how it might be strengthened.

II. The Fiscal Context

Faced with the sudden return of deep budget deficits and the realization that these deficits are likely to persist without congressional action, there is a growing consensus that specific steps must be taken to stem the tide of red ink. Instead of hoping that deficits go away as the economy grows, the political debate must begin to focus on doing something about them.

The economic and moral case for fiscal policy reform is clear. An unprecedented demographic transformation is taking hold against the backdrop of steadily rising health care costs and steadily falling national savings. This is a dangerous combination for the future health of the economy. The baby boomers' imminent retirement is ushering in a permanent shift to an older population and a permanent rise in the cost of programs such as Social Security, Medicare and Medicaid, which already comprise 41 percent of the federal budget, excluding recent financial bailouts. There is no plan to pay for it all other than running up the national debt.

This has ominous implications for the size of government relative to the nation's Gross Domestic Product (GDP). By the time today's 20-year-olds reach retirement age, the overall cost of government as a share of GDP is on track to reach levels not seen since World War II. But

instead of spending the money on a temporary emergency, we would be spending it on a permanent stream of rising benefit payments and interest on the accumulating debt.

Borrowing our way through the problem is not a viable option because the rising costs of Social Security, Medicare and Medicaid are not simply a temporary blip. A permanently rising debt would eventually result in snowballing interest costs, a falling value for the dollar and, ultimately, a debt burden that would crush the economy.

No one can say when all this might end up in a crisis, nor what a crisis would look like. Indeed, there may be no crisis at all — just a long slow erosion in our nation's standard of living. In either case, it is a dismal prospect and doing nothing now to avoid it would be an act of fiscal and generational irresponsibility.

Getting the deficit under control and stabilizing the debt will require a good deal more than process reform. Economic conditions play both negative and positive roles. But policy makers themselves make the biggest contribution toward fiscal restraint. The most essential ingredient in any budget enforcement mechanism is political will. Budget enforcement measures can help by stiffening political spines. That is why interest in reforming the budget process, particularly provisions that would strengthen budget discipline, is likely to increase as public concern about deficits and debt grows.

III. The Role of Enhanced Rescission in Addressing Fiscal Problems

Under Title X of the Budget Control and Impoundment Act , the President may propose to rescind all or part of any item at any time during the fiscal year. If Congress does not take action on the proposed rescission within 45 days of continuous session, the funds must be released for obligation. Presidents have not made frequent use of this authority and when they have Congress has routinely ignored their rescission requests. The discharge procedure for forcing a floor vote on Presidential rescissions is cumbersome and has never been used. Most Presidential rescission messages have died without a floor vote.

That said, the Concord Coalition believes that giving the President enhanced rescission authority could have a positive impact on the budget process. Strengthening the rescission process would bring greater accountability and transparency to the budget process so that individual items within appropriations bills could be subjected to scrutiny and reconsideration on their own merits. The current rescission process does not make the President or Congress accountable. Congress can ignore the President's rescissions, and the President can blame Congress for ignoring his rescissions. Meanwhile, narrowly targeted items can be slipped into larger bills with no real risk of exposure or scrutiny.

This reform would have a very real cleansing effect on the legislative process and will take a step toward reducing the public cynicism about the budget process. Granting the President enhanced rescission authority would send a signal to the public that politicians in Washington are willing to set aside narrow parochial interests for the common good.

This reform will not, however, make a significant dent in our deficit. It is not realistic to expect that the looming fiscal crisis can be avoided by trimming everyone's favorite target: waste, fraud and abuse. To be sure, these things exist throughout the federal government, and every effort should be made to reduce them — including enhanced rescission authority. Unfortunately, there is no line-item in the budget labeled "waste, fraud and abuse."

Moreover, defining these terms is often a matter of subjective judgment, particularly among members of Congress who want large amounts of federal money flowing to their districts. What may seem like waste to some — from farm subsidies to transportation projects to community development programs — can seem like vital government services to those who directly benefit from them.

Stories about "bridges to nowhere" and other such earmarked spending justifiably diminishes public confidence in the willingness of Congress to exercise fiscal discipline. But even if all such earmarks were eliminated, it would only save a tiny portion of all federal spending.

According to the Congressional Research Service (CRS), appropriations earmarks totaled roughly \$30 billion in each of Fiscal Years 2008 and 2009. By contrast, total discretionary budget authority in those years was \$1.2 trillion and \$1.5 trillion respectively. All federal spending totaled about \$3 trillion in 2008 and \$3.5 trillion in 2009.

Moreover, enhanced rescission authority would do nothing to address the underlying structural deficit resulting from existing tax and entitlement laws. Discretionary spending growth is a relatively minor part of our overall fiscal problems. The legislative actions which have the greatest impact on the deficit are expansions of entitlement programs or tax cuts that go well beyond the special interest provisions of discretionary spending bills. This does not mean, however, that enhanced rescission would be a waste of time. Its value comes from the transparency and accountability it would bring to the budget process — a value that cannot be measured in dollars alone.

IV. Issues That Often Arise in Enhanced Rescission Proposals

The Budget Enforcement Legislative Tool Act of 2009 (S 907) embodies the approach of legislation passed by the House of Representatives in 1993 and 1994 requiring Congress to vote up or down by majority vote on rescissions submitted by the President. This approach, known as “expedited rescission authority” or “modified line item veto,” has received support from members on both sides of the aisle over the years.

One notable effort in this regard was led by Chairman Carper in the early 1990's, when he was serving in the House of Representatives. The Chairman worked with former Congressmen Dick Armey, Tim Johnson and others to find a bipartisan agreement on consensus legislation establishing expedited rescission authority. The House of Representatives overwhelmingly approved this consensus language in October of 1992.

The legislation was introduced in the 103rd Congress by former Congressman Charlie Stenholm. The House of Representatives passed a version of this legislation in April of 2003 with several modifications and improvements made in cooperation with Congressman Spratt based on consultations with leaders of the Appropriations Committee, the Clinton administration and other

Members. The House again passed an expedited rescission proposal authored by Congressman Stenholm and former Congressmen Tim Penny and John Kasich in July of 1994.

Enactment of the Line Item Veto in 1996 made expedited rescission a moot issue while it was in effect. Congress rejected proposals to provide expedited rescission authority as a fallback option if full line item veto authority was struck down. There was little interest in the issue immediately following the Supreme Court decision striking down the Line Item Veto law, perhaps because the budget was in surplus by then. However, the proposal has resurfaced in recent years, most notably in 2006 when President Bush made expedited rescission one of his main budget process initiatives.¹

Expedited rescission bills must be carefully crafted to comply with the Constitutional requirements established by the courts in *I.N.S. v. Chada*, 462, U.S. 919 (1983), the case that declared legislative veto provisions unconstitutional. Legislative vetoes allow one or both Houses of Congress (or a Congressional committee) to stop executive actions by passing a resolution that is not presented to the President. The *Chada* case held that legislative vetoes are unconstitutional because they allow Congress to exercise legislative power without complying with Constitutional requirements for bicameral passage of legislation and presentment of legislation to the President for signature or veto.

Unlike the line item veto law struck down by the Supreme Court, expedited rescission meets the *Chada* tests of bicameralism and presentment by requiring that both chambers of Congress pass a motion enacting the rescission and send it to the President for signature or veto, before the funds are rescinded. Expedited rescission does not provide for legislative review of a preceding executive action, but expedited consideration of an executive proposal. Thus, it represents a so-called 'report and wait' provision that the Court approved in *Sibbach v. Wilson and Co.*, 312 U.S. 1 (1941) and reaffirmed in *Chada*.

¹ This struck many observers as odd because it was inconsistent with his actions. As Ed Lorenzen, then Policy Director of The Concord Coalition, stated in testimony before the House Budget Committee, "President Bush has never used his authority under current law to submit rescissions of earmarks or other spending he considers low priority, so it is unclear whether granting him this additional authority would have much of an impact at all."

Most of the previous expedited rescission proposals granted the President the authority to submit one rescission package per bill for expedited consideration within a limited time after enactment. All of the proposed rescissions for each bill would be bundled into one package for Congressional consideration. This limitation was included to prevent the President from tying up the legislative schedule with dozens of rescission proposals that would receive priority consideration. The President would be free to submit additional rescissions throughout the year as under current law, but they would not be eligible for expedited consideration.

The requirement that all rescissions in each bill be bundled together led to concerns that individual items would not get an up or down vote on its merits but could be eliminated because it was packaged with other less meritorious items. This led to the inclusion of a process to divide up a package of rescissions. The Stenholm-Spratt legislation passed by the House in 1993 allowed 10 Senators or 45 Members of the House of Representatives to demand a separate vote to strike an item from the package. That way, if the President proposed to rescind an item with strong Congressional support in a package with a dozen other lower priority items, Congress would have the option of striking the popular provision from the package and approving the rest of the package instead of being forced to choose between rejecting the entire package or approving the rescission of an item with strong support.

Concerns have also been raised that the President could abuse the authority granted under these proposals. Specifically, it has been suggested that a President could use this authority not to reduce the deficit but to punish his opponents and increase his leverage with Members of Congress. In fact, some have argued that granting the President this authority could just as easily increase spending if the President threatens to veto items unless programs he favors are increased. I believe that these dangers are mitigated by the fact that the President must get a majority of the House and Senate to support his rescissions for them to take effect. He would not be able to impose his legislative priorities but instead would be given an opportunity to have Congress take a second look at narrow items that may well lack majority support but were included in an overall measure that members felt compelled to vote for. The ultimate decision would remain in congressional hands. Moreover, a President who blatantly abused the authority for political purposes would risk political repercussions with the public as well as Congress.

Nonetheless, these are very serious and legitimate concerns and it is impossible to determine whether or not these fears are founded until the President has the authority. Some previous expedited rescission proposals, including S. 907, have addressed the concern by including a provision sunseting the authority after two years. If a President abused the authority, Congress almost certainly would not approve an extension. This is similar to the approach that Congress took when it granted the executive branch additional authority in the Patriot Act.

V. Two Suggestions for Strengthening S.907

A. Apply rescission authority to targeted tax provisions and mandatory spending

The Concord Coalition strongly supports reinstatement of budget enforcement rules for all tax and spending legislation that would increase the deficit, as well as mechanisms which would force Congress to address existing structural fiscal problems.

The Budget Enforcement Legislative Tool Act of 2009 would not allow the President to propose rescission of targeted tax benefits for expedited consideration in Congress. As a general principle, The Concord Coalition believes that budget enforcement rules should apply equally to taxes and spending. Since spending and tax decisions both have consequences for the budget, there is no good reason to exempt either from budget discipline. It would therefore be very appropriate to extend expedited rescission authority to special interest tax breaks. Special interest provisions in tax bills have as much if not more of an impact on the federal budget than earmarks in appropriations bills. Exempting tax cuts from modified line item veto authority would also encourage an expansion of so-called 'tax entitlements' where benefits are funneled through the tax code rather than by direct spending, a far less efficient approach. In addition to including tax provisions, the authority should also be expanded to include items of mandatory spending increases.

B. Ensure that savings go to deficit reduction

Some prior proposals have linked rescissions to deficit reduction so that any savings achieved would not be available to offset increases in other programs. The Concord Coalition strongly supports the requirement that all savings from enhanced rescission would go to deficit reduction.

This requirement ensures that the authority will be used to improve the overall fiscal condition instead of simply reducing the priorities of Congress in order to fund the President's priorities.

This goal could be implemented by providing for an adjustment of spending allocations under the budget resolution to reflect enacted rescissions and requiring the Director of the Office of Management and Budget (OMB) to adjust any statutory spending limits. Without these provisions the enactment of a rescission package would simply free up additional room within budget allocations and spending limits for other spending.

This language is very useful as far as it goes. However, I would also encourage the Committee to take it a step further and clarify that any savings from rescinding a tax or entitlement provision would not be credited to the paygo scorecard for purposes of Congressional rules or statutory budget enforcement rules. The principal that the purpose of the modified line item veto should be to improve the budget's bottom line and not rearrange budgetary priorities should apply to tax and entitlement legislation as well.

VI. Enhanced rescission as a tool for restoring public trust

The Concord Coalition's experience with the Fiscal Wake-Up Tour, which has now been to 30 states, is that the public is hungry for a nonpartisan dialogue on the fiscal challenge. When presented with the facts, they appreciate that each of the realistic options comes with economic and political consequences that must be carefully weighed, and that there must be tradeoffs. Enhanced rescission authority can help to clarify those trade-offs and better inform the process for resolving them.

One consistent finding in our public engagement initiatives is that restoring public confidence in the budget process is essential in gaining the support that will be necessary to make the difficult choices required to address our fiscal challenges. We have found that even after we present information regarding the magnitude of our fiscal challenges and point out that pork barrel spending pales in comparison to the rapid growth in entitlement spending and lagging revenues, audience members still feel strongly about the need to cut wasteful spending.

It is not that they believe that the budget can be balanced by eliminating waste, fraud and abuse. They fully appreciate that addressing our fiscal problems will require tough choices restraining entitlement spending or increasing revenues and they are willing to accept the necessary sacrifices. But before they accept sacrifices in terms of lower entitlement benefits, reduced services or higher taxes they want to be assured that those savings will go toward the greater good of balancing the budget and not diverted to special interest spending or tax items.

In our most recent project, The Fiscal Stewardship Project, community leaders from around the country expressed

- **Disappointment and frustration with Washington**
- **A preference for broad, sweeping reforms rather than piecemeal efforts**
- **A sense of urgency**
- **The essential need for improvements in the health care system**
- **A willingness to consider significant changes in Social Security**
- **Deep concern for future generations**
- **The need to better educate the public**
- **Commitments to future action**

See http://www.concordcoalition.org/files/FAC_ReportFINAL.pdf

They were disappointed that Washington has failed to exercise greater responsibility in handling the nation's finances. They decried a long and continuing pattern of elected and appointed federal officials failing to set meaningful budget priorities, borrowing more than was necessary, and refusing to pursue obviously needed reforms in both the public and private sectors.

The Milwaukee Fiscal Advisory Council, for example, complains of "an overarching failure in the management of the nation's business." It found that the fiscal crisis facing the nation "was not inevitable but rather is the result of the government's failure to take steps that could have ameliorated or avoided it. "

Advisory councils also expressed resentment at budget gimmicks, misleading rhetoric and dubious financial projections in Washington that so frequently cloud the public's understanding of the critical choices that are being made – or not made. Elected officials in particular should be working to make government more accountable and transparent, not less so. Otherwise they can hardly expect the public's trust and support when difficult fiscal choices must be made.

Around the country, people complained about the harsh tones and overly partisan rhetoric in Washington, noting that this made it more difficult for political leaders to build consensus and forge the compromises necessary for constructive action.

The proposed modified line item veto and similar proposals would not remotely begin to address the magnitude of our fiscal challenges. Budget enforcement tools such as pay-as-you-go rules for all tax and spending legislation which would increase the deficit would have a much greater impact on fiscal policy. Balancing the budget and establishing a fiscally sustainable course for the future will require Congress and the President to confront tough choices regarding tax and entitlement policy. However, granting the President modified line item veto authority could be a useful tool in improving the accountability of the budget process and achieving greater public confidence in the budget process that will be necessary to make the tough choices on much larger fiscal issues.