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**Testimony of Jeffrey B. Liebman,  
Acting Deputy Director of the Office of Management and Budget  
Before the Committee on the Judiciary, Subcommittee on The Constitution  
United States Senate  
May 26, 2010**

Chairman Feingold, Ranking Member Coburn, and Members of the Committee, thank you for inviting me to testify this morning about the President's new proposal, the Reduce Unnecessary Spending Act of 2010. This legislation would create an expedited procedure that guarantees an up or down vote on certain rescissions proposed by the President, helping to eliminate unnecessary spending and discouraging waste in the first place.

Since taking office, the Administration has made a priority of identifying and cutting unnecessary spending, proposing approximately \$20 billion of terminations, reductions, and savings both for fiscal year 2010 and 2011. While recent administrations have seen between 15 and 20 percent of their proposed discretionary cuts approved by Congress, we worked with Congress to enact 60 percent of proposed discretionary cuts for FY 2010. For that, I thank you and your colleagues.

Further, the Administration has worked with Congress to curb earmarks, and the appropriations bills for this year saw a significant decline in earmarks—a drop of 17 percent in volume and 27 percent in dollar value. These reductions build on the progress that Congress has made on earmarks since 2006, reductions prompted by a series of reforms that then-Senator Obama helped to write with Senator Coburn and others, which helped to bring more transparency and disclosure to the process.

In this year's Budget, the Administration also committed to restraining spending more broadly and has proposed a three-year freeze on non-security discretionary funding, saving \$250 billion over the next ten years relative to continuing the 2010 funding levels for these programs adjusted for inflation. This spending restraint complements other measures in the Budget that, together, produce more deficit reduction over the next ten years than any Budget has proposed in over a decade. Furthermore, the Administration proposed, and Congress enacted, statutory pay-as-you-go (PAYGO) legislation. PAYGO forces us to live by a simple but important principle—the Federal Government can only spend a dollar on an entitlement increase or tax cut if it saves a dollar elsewhere, which encourages the types of tough choices necessary to restore fiscal sustainability.

Significant progress has been made on cutting unnecessary spending, including earmarks, but more can be done. The President's proposal for expedited rescission would create an important tool for

reducing such spending. In short, the bill would provide the President with additional authority to propose a package of rescissions that would then receive expedited consideration in Congress and a guaranteed up-or-down vote.

In more detail, here's how it works:

- *Scope.* Under this new authority, the President can propose fast-track consideration of rescissions of discretionary and non-entitlement mandatory spending. The President is limited to proposing changes that reduce funding levels and cannot use this authority to propose other changes in law, including new transfer authority, supplemental funding, or changes in authorizing legislation. The fast-track process is thus limited only to simple funding reductions, for which a straight up-or-down vote is desirable.
- *Proposing a rescission package.* After enactment of funding, the President has 45 days during which Congress is in session (excluding weekends and national holidays) to decide whether to submit a rescission package using this expedited procedure. The President is also limited to a single package of rescissions per bill under this procedure, and the requested rescissions must be limited to provisions in that bill.<sup>1</sup>
- *Congressional procedure.* A rescission package submitted under this authority receives fast-track consideration in Congress. Debate is limited in both houses and the package is guaranteed an up-or-down vote without amendment. The package is first introduced and considered in the House and, if approved there, is taken up in the Senate. From the package's introduction to its final vote in the Senate, the process can take no more than 25 days. Note that, while Congress cannot amend the package, our proposal enables Congress to omit from the bill any proposed rescission that it believes goes beyond the scope allowed.
- *Withholding funding.* Following submission of a rescission request using this expedited procedure, the President may withhold funding for up to 25 days, after which the funding must be released. This ensures that agencies do not obligate funds before Congress has had an opportunity to consider the rescission package.

In sum, the proposal provides the President with important, but limited, powers that will allow the President and Congress to work together more effectively to eliminate unnecessary spending including earmarks. Knowing this procedure exists may also discourage policymakers from enacting such spending in the first place.

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<sup>1</sup> There is one exception to the packaging rule: when a single appropriations bill includes funding that is in the jurisdiction of more than one appropriations subcommittee such as in an omnibus appropriations bill. In that case, the President may submit up to two packages.

The proposal has been crafted to preserve the constitutional balance of power between the President and Congress. In 1996, Congress granted the President “line item veto” power over certain spending and tax bills, allowing the President to use his veto authority to strip out select provisions of legislation while signing the rest into law. The Supreme Court found this to violate the constitutional procedure for presenting a bill to the President for approval or veto of the entire bill. The Administration’s proposal is fundamentally different from this. Under our proposal, Congress, which is empowered to set its own rules, changes those rules under which it considers rescission packages proposed by the President—using well-established fast-track procedures. Rescissions only occur if Congress affirmatively enacts them into law. In other words, our proposal does not expand the Presidential veto authority in any way.

Our proposal also preserves the President’s two existing authorities for proposing rescissions. First, the President would retain the Constitutional authority to recommend legislation such as rescission packages to be considered under regular order in Congress. Second, the President would retain the power to recommend rescissions under the procedure already established under the Impoundment Control Act of 1974. This existing authority provides more limited fast-track protections to a Presidential rescission package than what we have proposed and, specifically, allows committee and floor amendments and so does not guarantee a clean up-or-down vote on a package submitted by the President.

A number of members from both parties, including the Chairman and Senator Carper who testified on the first panel, have introduced proposals that would, like our proposal, target unnecessary spending by fast-tracking consideration of rescissions. We applaud these efforts, and look forward to working with Congress to hammer out the details and enact this authority into law. In considering these proposals, one important issue is scope and, in particular, whether the new rescission authority is limited largely to earmarks. The Administration believes it is important to enable the President and Congress not only to reduce earmarks using expedited procedures but also to cut unnecessary spending more broadly, including from duplicative or overfunded programs.

We recognize that our proposal is not a magic bullet. While it lifts procedural barriers, the President and Congress will still have to make the tough choices to cut back unnecessary spending. Furthermore, restoring fiscal sustainability in the medium and long term will require not only targeting unnecessary spending in specific programs, which our proposal aids, but also making larger choices about overall budget priorities and revenue levels—a process now being facilitated by the President’s Fiscal Commission.

The Reduce Unnecessary Spending Act provides a new and important way for Congress and the President to ensure that taxpayer dollars are spent wisely. The Administration urges prompt and favorable consideration of our proposal, and we look forward to working with you on this matter in the coming weeks.