



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

The Honorable John Thune
Majority Leader
United States Senate

The Honorable Charles E. Schumer
Democratic Leader
United States Senate

The Honorable Mike Johnson
Speaker
United States House of Representatives

The Honorable Hakeem Jeffries
Democratic Leader
United States House of Representatives

January 27, 2025

Re: Potential Impoundment Control Act violations

Dear Leader Thune, Democratic Leader Schumer, Speaker Johnson and Democratic Leader Jeffries:

On January 20, President Trump issued a series of executive orders establishing the president's policy agenda for his second term. Among those orders were several directives to "pause," or withhold, funds appropriated by Congress.¹ Because the president has not reported any withholdings under the Congressional Budget and Impoundment Control Act of 1974,² we are writing to alert you to the directives in these executive orders and possible violations of Title X of that Act (ICA).³ We urge you to immediately investigate whether these directives have been implemented and, if so, whether they violate the ICA and the

¹ *Executive Order: Reevaluating And Realigning United States Foreign Aid* (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/reevaluating-and-realigning-united-states-foreign-aid/>; *Executive Order: Unleashing American Energy* (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/unleashing-american-energy/>; *Executive Order: Protecting the American People Against Invasion* (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-american-people-against-invasion/>.

² Pub. L. No. 93-344, 88 Stat. 297 (1974).

³ *Id.* title X, 88 Stat. at 332, codified at 2 U.S.C. § 681-88.

president's constitutional duty to take care to faithfully execute the laws passed by Congress.⁴

Our constitutional system of checks and balances gives Congress the power of the purse.⁵ Congress exercises this authority by appropriating funds for the federal government, including through annual appropriations, permanent legislation and supplemental funding packages that provide much-needed federal support during emergencies.⁶ In drafting these laws, Congress may give the president discretion regarding *how* to implement the programs for which it appropriates money. But in general, the executive branch does not have discretion *whether* to implement such programs. Put simply, it is illegal and contrary to our constitutional structure for the president to disobey appropriations acts duly enacted after Congress publicly considers and determines funding levels for the federal government.

When Congress passed the ICA, it created two procedures to allow the president to temporarily withhold funds. First, under the Act the president can temporarily withhold funds by sending a special message to Congress proposing to defer the obligation or expenditure of budget authority.⁷ But this authority is limited: the ICA outlines specific circumstances under which the president can defer funds,⁸ the president cannot defer funds for policy reasons⁹ and the president must release any withheld funds in time for the funds to be prudently obligated.¹⁰

Second, the ICA permits the president to temporarily withhold funds if the president sends a special message to Congress proposing to rescind those amounts.¹¹ The president can propose to rescind funds for any reason, and once the president sends Congress the special message the president generally can withhold funds for a 45-day period while Congress considers whether to rescind the funds using fast-track procedures outlined in the ICA.¹² However, if the funds are set to expire during the 45-day withholding period, then the president must release the funds in time to prudently obligate them. Additionally, the president cannot withhold funds if the law requires the obligation of budget authority, such as funds for formula grants.¹³

⁴ U.S. Const., art. II, § 3.

⁵ U.S. Const., art. I, § 9, cl. 7.

⁶ GAO, *Principles of Federal Appropriations Law*, GAO-16-463SP, at 1-7 (4th ed. 2016); *see also* Pub. L. No. 118-50, 138 Stat. 895 (2024) (emergency supplemental appropriations act).

⁷ 2 U.S.C. § 684.

⁸ *Id.* § 684(b) (permitting deferrals “to provide for contingencies,” “to achieve savings made possible by or through changes in requirements or greater efficiency of operations,” or “as specifically provided by law”).

⁹ *Id.*; *see also* GAO, B-241514.5 (May 7, 1991).

¹⁰ GAO, GAO-10-320T, at 2 (Dec. 16, 2009).

¹¹ 2 U.S.C. § 683.

¹² *Id.* §§ 683(b), 688.

¹³ *Id.* § 681(4); GAO, B-329092, at 2 n.5 (Dec. 12, 2017); GAO, B-330330, at 5-6 (Dec. 10, 2018) (holding that the president must release funds in time to prudently obligate them before they expire, even if the 45-day withholding period has not elapsed).

President Trump could use these special message procedures to lawfully alert Congress to circumstances that warrant a delay in spending, or to ask Congress to rescind funds using expedited procedures if he determines that funds are no longer needed. But the ICA allows the president to temporarily withhold funds in only these limited circumstances. And critically, the ICA requires transparency throughout the process, giving Congress and the public important information about exactly what funding the president proposes to temporarily withhold or rescind and why.¹⁴ Failure to transmit a required special message under the ICA not only violates the law, but damages public trust in our institutions and impedes Congress's ability to effectively fulfill its own constitutional responsibilities.

In his Day One executive orders, President Trump explicitly directed the executive branch to withhold funds for certain purposes. He ordered a "90-day pause" in foreign development assistance,¹⁵ instructed the Attorney General and Secretary of the Department of Homeland Security to ensure that "sanctuary" cities do not receive federal funds,¹⁶ "[p]ause[d]" the distribution of funds to certain NGOs that receive federal funding under contracts, grants, or other agreements¹⁷ and mandated that agencies "immediately pause the disbursement of funds appropriated through the Inflation Reduction Act of 2022 (Public Law 117-169) or the Infrastructure Investment and Jobs Act (Public Law 117-58)."¹⁸ Even assuming Congress gave the executive branch discretion in implementing some of the affected appropriations, these blanket declarations are extraordinary.¹⁹ Not only is the president directing agencies to withhold funds entirely outside the statutory scheme established by Congress, but the

¹⁴ See 2 U.S.C. §§ 683(a), 684(a) (outlining requirements for the contents of a special message); see also *id.* § 686 (requiring that GAO review and submit to Congress a report on each special message).

¹⁵ *Reevaluating and Realigning United States Foreign Aid*, *supra* note 1; see also *Executive Order: Withdrawing The United States From The World Health Organization* (Jan. 20, 2025) (directing the Secretary of State and Director of OMB to "pause the future transfer of any United States Government funds, support, or resources to the WHO"), <https://www.whitehouse.gov/presidential-actions/2025/01/withdrawing-the-united-states-from-the-worldhealth-organization/>; *Executive Order: Putting America First In International Environmental Agreements* (Jan. 20, 2025) (revoking the U.S. International Climate Finance Plan and instructing the Director of OMB to issue guidance "for the rescission of all frozen funds" within ten days), <https://www.whitehouse.gov/presidential-actions/2025/01/putting-america-first-in-international-environmental-agreements/>.

¹⁶ *Protecting the American People Against Invasion*, *supra* note 1; see also OMB, M-25-11, *Memorandum to the Heads of Departments and Agencies* (Jan. 21, 2025).

¹⁷ *Id.* (also initiating the "clawback" of funds, "if appropriate").

¹⁸ *Unleashing American Energy*, *supra* note 1.

¹⁹ During the first Trump administration, OMB apportioned as unavailable funds for the Department of State and the U.S. Agency for International Development "until 3 days after OMB received an accounting of the unobligated balances." GAO, B-331564.1, at 4-5 (Feb. 10, 2022). The agencies provided OMB the information "quickly," and OMB made the funds available "shortly" after the agencies did so. *Id.* at 9. Under these facts, GAO held that OMB's apportionment action did not constitute an improper impoundment under the ICA, reasoning that OMB did not intend to prevent or delay the obligation of funds but, rather, effected a "brief" delay so that it could base its ultimate apportionment decision on current information. *Id.* at 13. In stark contrast to those apportionment actions, the president's executive orders include a potential withholding period of either 90 days or no time limit, and explicitly cite the president's policies as a reason for the withholdings. See *id.*; see also GAO, B-331564.2 (Mar. 17, 2022) (holding that a delay was programmatic when there was "no evidence that the President or OMB delayed funds because of a disagreement with the policy underlying" the law).

president explicitly and repeatedly explains that the withholdings serve to align use of the funds with his policy preferences—an unauthorized basis for a deferral under the ICA.²⁰

Any evaluation of an executive branch action under the ICA requires a fact-specific analysis. But as a general matter, it is unclear whether there is any legal basis for withholding these congressionally appropriated funds. The Constitution does not give the president unilateral authority to withhold enacted funding, and these across-the-board funding holds do not seem to reflect the type of programmatic delay that would fall outside the scope of the ICA's procedures.²¹ Moreover, President Trump has not transmitted a special message to Congress proposing to defer or rescind funds, which could permit the temporary withholding of certain amounts. Finally, even if the president did transmit a special message to Congress proposing to delay the obligation of funds, the policy-driven language in the executive orders raises questions about whether the deferral would be legal at all.

At bottom, President Trump's actions and his subsequent failure to communicate with Congress under the ICA leaves the legislative branch in the vulnerable position of having to investigate and evaluate potentially illegal withholdings without any meaningful information from the president. This disregard for Congress's authority and the transparency requirements in the ICA is an affront to the hundreds of representatives who fulfilled their own constitutional duties by participating in vigorous public funding debates on behalf of their constituents. As in the first Trump administration, the executive branch may face lawsuits challenging these actions.²² But Congress also must serve as a check on the president's executive overreach. Below, we suggest three ways that Congress should exercise its authority to review these potential legal violations and facilitate oversight of the executive branch's implementation of duly enacted appropriations laws.

U.S. Government Accountability Office investigations

To facilitate Congress's review of the executive branch's withholding of appropriated funds, Congress gave the U.S. Government Accountability Office (GAO) important investigatory responsibilities under the ICA.²³ Among GAO's other responsibilities, GAO must report to

²⁰ *Unleashing American Energy*, *supra* note 1 (“It is the policy of the United States . . . to ensure that no Federal funding be employed in a manner contrary to the principles outlined in this section.”); *id.* (“No funds identified in this subsection (a) shall be disbursed by a given agency until the Director of OMB and Assistant to the President for Economic Policy have determined that such disbursements are consistent with any review recommendations they have chosen to adopt.”); *see also* OMB, M-25-11, *Memorandum to the Heads of Departments and Agencies* (Jan. 21, 2025) (stating that the “pause” applies to funds “that may be implicated by the policy” established in the executive order); *Reevaluating and Realigning United States Foreign Aid*, *supra* note 1 (“It is the policy of United States that no further United States foreign assistance shall be disbursed in a manner that is not fully aligned with the foreign policy of the President of the United States.”).

²¹ In some instances, the obligation or expenditure of funds is delayed through no fault of the executive branch. These types of delays, which result despite legitimate efforts to execute programs, are programmatic and do not raise concerns under the ICA. GAO, B-291241, at 12 (Oct. 8, 2002); *see also supra* note 19 (describing an apportionment action that GAO determined was a programmatic delay).

²² *See, e.g., San Francisco v. Barr*, 965 F.3d 753 (9th Cir. 2020).

²³ GAO, B-333181, GAO-21-538T, at 7-8 (Apr. 29, 2021).

Congress if it determines that the president has withheld funds and should have, but failed, to notify Congress of the proposed deferral or rescission under the ICA.²⁴ When GAO sends a report to Congress on such an unreported impoundment, GAO's report serves as a special message, permitting the president to temporarily withhold the funds in accordance with the Act.²⁵

Critical to GAO's work under the ICA is its ability to access agency materials. In testimony before the House Budget Committee in 2021, GAO detailed some of the challenges it faced receiving information from agencies, explaining that in some instances it did not receive "timely" responses and, in others, did not receive a response at all.²⁶ Given the fact-intensive and time-sensitive nature of impoundment review, it is imperative that the Office of Management and Budget and executive branch agencies provide timely and responsive replies to any GAO inquiry under the ICA.²⁷ We urge Congress to exercise its oversight function to ensure that GAO receives prompt and accurate information in response to any requests for information.

Apportionment transparency

The Office of Management and Budget (OMB) plays a significant role in budget execution, including apportioning funds appropriated by Congress to the relevant agencies.²⁸ The apportionment process generally serves to ensure that agencies do not spend more money than Congress appropriates.²⁹ But during the first Trump administration, OMB stretched the limits of this power, violating the ICA by apportioning funds as unavailable for the purpose of furthering the president's own policy agenda.³⁰

The president has now directed OMB to attempt to use its limited apportionment authority to again withhold funds to further the president's policies.³¹ This directive, if implemented, would likely violate the ICA. But unlike the first Trump administration, federal law now requires OMB to publish apportionments.³² We urge Congress to ensure that OMB continues to comply with the law requiring apportionment transparency, which will facilitate

²⁴ 2 U.S.C. § 686(a).

²⁵ *Id.*

²⁶ B-333181, at 14; *see also* GAO, B-331564, at 2, 8 (Jan. 16, 2020).

²⁷ *See* Protecting our Democracy Act, H.R. 5048, 118th Cong., § 503(a).

²⁸ 31 U.S.C. § 1513; Exec. Order No. 6,166, § 16 (June 10, 1933), as amended by Exec. Order 12,608 § 2 (Sept. 9, 1987).

²⁹ 31 U.S.C. § 1512(a). For certain appropriations, such as no-year funds, funds must be apportioned to "achieve the most effective and economical use" of the funds. *Id.*

³⁰ B-331564, at 6-7.

³¹ *See Reevaluating and Realigning United States Foreign Aid*, *supra* note 1.

³² 31 U.S.C. § 1513 note; OMB, *Approved Apportionments* (last visited Jan. 23, 2025), <https://apportionment-public.max.gov/>.

Congress's and GAO's review of any withholdings at OMB,³³ and to direct OMB to release any improperly withheld amounts.

Additionally, federal law requires agencies to tell Congress if OMB does not apportion funds in the time required by law, conditions the availability of an appropriation on further action, or approves an apportionment that would hinder either program execution or the prudent obligation of funds.³⁴ We encourage Congress to exercise its oversight and investigatory authority to examine whether any agencies affected by the president's executive orders and resulting apportionments are complying with this requirement.

Executive branch reporting

Most concerning is the president's declaration that the ICA—a law that gives the executive and legislative branches the opportunity to work together to decrease federal spending—is unconstitutional. During his 2024 campaign, President Trump described the ICA as “the source of Congress's usurpation of Executive Branch powers.”³⁵ And now, President Trump's nominee for Director of the Office of Management and Budget has adopted the same position.³⁶

The president's espousal of an inherent “impoundment authority” reflects a complete dismissal of any notion of checks and balances. Under this theory, the president could stop spending for any congressionally approved program for any reason, for any amount of time, without a single communication to Congress—and Congress would have effectively no redress. This radical theory of the separation of powers inverts the constitutional balance, misappropriating an explicitly legislative authority to an executive branch whose concomitant constitutional responsibility is to faithfully execute the law. The Framers gave Congress, not the president, the power of the purse, “the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people.”³⁷

Putting aside the lack of a legal or historical basis for the president's assertions, if the Trump administration decides to contend in any proceeding that the Impoundment Control Act or any other law is unconstitutional, or refuses to defend the ICA or any other law on that same

³³ Federal law also requires OMB to report any Impoundment Control Act violations to Congress. Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, div. B, tit. VII, § 748, 138 Stat. 460, 586 (2024); *see also* Continuing Appropriations and Extensions Act, 2025, Pub. L. No. 118-83, div. A, 138 Stat. 1524, 1524 (2024); American Relief Act, 2025, Pub. L. No. 118-158, div. A (2024).

³⁴ Pub. L. No. 118-47, div. B, tit. VII, § 749, 138 Stat. at 586-87.

³⁵ Trump Vance 2025, *Agenda47: Using Impoundment to Cut Waste, Stop Inflation, and Crush the Deep State* (last visited Jan. 22, 2025), <https://www.donaldjtrump.com/agenda47/agenda47-using-impoundment-to-cut-waste-stop-inflation-and-crush-the-deep-state>.

³⁶ C-SPAN, *White House Budget Director Nominee Russell Vought Testifies at Confirmation Hearing*, at 49:05 (Jan. 15, 2025), <https://www.c-span.org/program/senate-committee/white-house-budget-director-nominee-russell-vought-testifies-at-confirmation-hearing/654448>.

³⁷ The Federalist No. 58 (James Madison).

basis, by law the Attorney General must report this determination to Congress.³⁸ We urge Congress to ensure that the administration complies with this requirement, and to take appropriate steps to ensure continued execution of duly enacted funding legislation.

In alerting you to these directives to withhold funds, we express no view on Congress's policy reasons for appropriating these funds or President Trump's competing policy reasons for withholding them. But we urge you to take immediate steps to investigate, and ensure that the executive branch does not obstruct any GAO review of the administration's actions. These brazen "pauses" in congressionally appropriated funding, President Trump's declarations of a nonexistent impoundment authority and the administration's disregard of duly enacted procedures show the administration's waning allegiance to the separation of powers and laws passed by Congress. This is but one of many power grabs by an unleashed executive branch. It will not be the last.

Sincerely,



Noah Bookbinder
President and Chief Executive Officer
Citizens for Responsibility and Ethics in
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Cc: Gene Dodaro, Comptroller General of the United States

³⁸ 28 U.S.C. § 530D; H.R. Rep. 107-685, at 175 (2002); DOJ Office of Information Policy, *Letters Submitted to Congress Pursuant to 28 U.S.C. § 530D* (last visited Jan. 22, 2025), <https://www.justice.gov/oip/letters-submitted-congress-pursuant-28-usc-530d>.