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KEY CONCEPTS RELATED TO THE IMPOUNDMENT CONTROL ACT OF 1974

The Constitution gives Congress the [authority](#) to pass laws appropriating funding for the federal government and requires the executive branch to [faithfully execute](#) the laws Congress passes. So when the Nixon administration [refused](#) to spend appropriated funds due to policy disagreements with the legislative branch, Congress [rebuked](#) Nixon's attempts to thwart Congress's [power of the purse](#) by passing the [Congressional Budget and Impoundment Control Act of 1974](#). [Title X](#) of the Act reflected Congress's constitutional authority to control spending and rejected the executive branch's improper, unilateral withholding of funds, permitting the president to temporarily withhold funding only in specified circumstances and establishing procedures for the executive branch to report, and the legislative branch to review, executive branch spending delays or proposals to cancel previously enacted budget authority. The concepts and examples below illustrate how this process works and why the Impoundment Control Act is critical to safeguarding Congress's constitutional authorities.

Impoundment: When Congress appropriates funds for the executive branch, it typically specifies how much budget authority is available, for what period of time and for what purpose. An impoundment is any withholding or delay in the obligation (legal commitment or duty to pay) or expenditure (spending or outlay) of such budget authority. An impoundment can be permanent or temporary, can result from executive action or inaction and can take place at the Office of Management and Budget or agency level.

Example of an unlawful impoundment: In fiscal year 2017, Congress appropriated funds for the Advanced Research Projects Agency-Energy (ARPA-E), an agency within the Department of Energy. After President Trump proposed to eliminate ARPA-E in his budget request, the Department of Energy directed ARPA-E to withhold \$91 million in unobligated balances pending potential congressional action on the president's proposal. The president did not propose to rescind the funds under the Impoundment Control Act, however, and no other law authorized ARPA-E's actions. Because the agency deliberately withheld these amounts without legal authority to do so, ARPA-E [unlawfully impounded](#) the funds.¹

Deferral: If a president wishes to temporarily withhold or delay the obligation or expenditure of budget authority, the president can send a [special message](#) to Congress

¹ After the Department of Energy's Office of the General Counsel found out about the withholding and informed ARPA-E of the Impoundment Control Act's requirements, ARPA-E released the improperly withheld amounts.

proposing a [deferral](#). A president may defer budget authority only to provide for contingencies, to achieve savings made possible by changes in requirements or greater efficiency of operations or as specifically provided by law. Budget authority may not be deferred for any other reason, including policy reasons, and withheld amounts must be released in time to be [prudently obligated](#) before the funding expires.

Contents of a special message proposing to defer funds: When a president proposes to defer funds, the president must include in the special message the amount of budget authority proposed for deferral, the account and projects involved, the proposed time period for the deferral, the reason for the deferral, the estimated fiscal, economic and budgetary effect of the proposed deferral and a statement and analysis of the relevant facts and circumstances. Presidents across the [political spectrum](#) have used this authority to defer the obligation of funds.

Example of an impermissible policy deferral: In fiscal year 1991, Congress appropriated funds to the Department of Defense for advance procurement of a particular aircraft, the V-22. But the Department sought to focus on an alternative, helicopters, instead, so the president repeatedly proposed to cancel or transfer the V-22 funding through the budget request process and by proposing the rescission of the funds. The Department explained to Congress that it “ha[d] no intention of proceeding” with the V-22 program, and the Department continued to withhold the V-22 funds even after Congress declined to act on the president’s requests. Because the Department withheld the V-22 amounts in “an attempt to replace the policy decision already made by the Congress with its own,” the Department’s withholding was an unauthorized [policy deferral](#).

Programmatic delay: Whether a delay is a deferral, which must be reported under the Impoundment Control Act, or a programmatic delay, which does not need to be reported under the Act, depends on whether there was an [intent](#) to withhold the funds. Programmatic delays, which are unavoidable due to legitimate programmatic reasons or other forces outside of the agency’s control, are not “deferrals” and do not require the president to send a special message to Congress.

Example of a programmatic delay: Congress appropriated funding to the Department of Housing and Urban Development for grants that would increase affordable housing for low- and middle-income households. Before launching the grant program, however, HUD needed to issue implementing regulations. The development of these regulations resulted in a delay in obligating the funds, but the president [did not](#) have to report the delay as a “deferral” under the Impoundment Control Act because HUD was taking the necessary steps to implement the grant program.

Rescission: If a president wishes to permanently cancel budget authority, the president can send a [special message](#) to Congress proposing a [rescission](#). A president may propose a rescission for any reason, including policy reasons, and while Congress considers whether to pass a rescission bill the president generally can withhold the funds for up to 45 days. At the end of the 45-day period, the president must make available for obligation any withheld funds that Congress has not rescinded.

However, there are exceptions to the 45-day withholding period. First, if a president transmits a special message proposing to rescind funds that are available for a fixed time period, and the 45-day withholding period approaches or spans the expiration date for those funds, the president [must release](#) the funds in time for the agency to prudently obligate them. Second, the president cannot withhold funds proposed for rescission if the law falls under what is [referred to](#) as the “[fourth disclaimer](#).” Under such a law, such as an appropriation for a formula grant that allocates specific amounts to recipients, the executive branch does not have any discretion over the obligation of the funds.

Contents of a special message proposing to rescind funds: When a president proposes to rescind funds, the president must include in the special message the amount of budget authority proposed for rescission, the account and projects involved, the reason for the rescission, the estimated fiscal, economic and budgetary effect of the proposed deferral, and the relevant facts and circumstances. As shown in the U.S. Government Accountability Office’s (GAO) [statistical data](#) on rescissions, presidents across the political spectrum have used this authority to propose the rescission of budget authority.

Example of a proposed rescission: In fiscal year 2018, President Trump sent a [special message](#) to Congress proposing to rescind budget authority from dozens of appropriation accounts. GAO [reviewed](#) the president’s proposal and determined that two of the proposed rescissions affected accounts falling under the “fourth disclaimer” because the laws made line-item appropriations for specified transportation projects. Following GAO’s determination, Trump released those withheld amounts and continued to lawfully [withhold](#) other amounts proposed for rescission while Congress considered whether to pass a [rescission bill](#). When Congress failed to pass a rescission bill after 45 days, Trump [released](#) all withheld amounts.

Congress’s role: Although the House of Representatives can pass a bill with a [simple majority](#), because of the Senate [filibuster](#) a 60-vote supermajority is effectively required to pass most legislation. The Impoundment Control Act, however, sets forth a fast-track process for congressional consideration of rescission bills. These expedited [procedures](#) set limits for debate and amendments, permitting the Senate to avoid the filibuster and pass a rescission bill with a simple majority vote.

Congress also conducts oversight of executive branch spending or, in the context of impoundments, the executive branch's failure to spend funds. In recent [appropriations acts](#), Congress has enhanced its oversight over impoundments by requiring the executive branch to notify Congress of any violations of the Impoundment Control Act, and by mandating that executive branch departments and agencies notify Congress of certain actions by the Office of Management and Budget that prevent or constrain the agency from obligating funds.

Office of Management and Budget's role: After Congress appropriates funds for the executive branch, the Office of Management and Budget generally is responsible for [apportioning](#) those funds to the relevant agency. Apportionments are legally binding documents, and the apportionment process generally serves to ensure that agencies do not spend more money than Congress appropriates. Certain appropriations, such as [no-year](#) funds, must be apportioned to "achieve the most effective and economical use" of the funds. At the agency level, an official cannot [authorize](#) an obligation or expenditure that exceeds the amount OMB apportions, and an official who knowingly and willfully does so could be subject to [criminal penalties](#). Additionally, while there may be legitimate programmatic reasons for a delay in apportioning funds, OMB cannot refuse to apportion funds for policy reasons.

OMB also must publish each apportionment online. The public can view apportionments starting from fiscal year 2022 on OMB's [website](#) or can search published apportionments on [OpenOMB.org](#).

Example of an OMB apportionment that was a programmatic delay: In 2002, Congress directed the Department of Agriculture to use Commodity Credit Corporation funds for several conservation programs. OMB declined to apportion funds for two of these programs, however, because it believed that doing so would violate a separate law. But following "vigorous and healthy internal legal discussion" with the agency, OMB approved the Department of Agriculture's subsequent apportionment requests. Because OMB temporarily delayed the apportionment of the funding only because of legal questions about the applicability of a statutory restriction, the delay was [programmatic](#) and did not have to be reported under the Impoundment Control Act.

Example of an OMB apportionment that was an impermissible policy deferral: Congress appropriated funds to the Department of Defense for security assistance to Ukraine. In 2019, OMB issued a series of apportionments in which OMB withheld about \$214 million of that funding "to determine the best use of such funds." According to OMB, the purpose of the withholding was to "ensure the funds were not spent 'in a manner that could conflict with the President's foreign policy.'" Because

OMB withheld the funds for policy reasons, the withholding constituted an [impermissible deferral](#).

GAO's role: GAO [assists](#) Congress in its [oversight](#) of the executive branch's use or withholding of appropriated funds. Under the Impoundment Control Act, GAO must [review](#) each special message the president sends to Congress, and must [report](#) to Congress if the president incorrectly classifies a special message as a deferral or rescission. GAO also must [report](#) to 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 Impoundment Control Act. 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.

But if a withholding is not authorized by the Impoundment Control Act, or if the president fails to release withheld funds after the limited time period permitted by the Act, the Impoundment Control Act permits GAO to [sue](#) in the United States District Court for the District of Columbia for the release of the funds. Twenty-five days before filing suit, however, GAO must send a [statement](#) to Congress explaining the circumstances for the lawsuit.