



Decision

Matter of: Department of Energy—Application of the Impoundment Control Act to Agency Actions in Response to Presidential Memorandum on Wind Energy

File: B-337142.1

Date: June 16, 2025

DIGEST

On January 20, 2025, a Presidential Memorandum directed the Secretary of Energy and Secretary of the Interior to limit various agency activities related to wind energy development and undertake certain reviews of federal practices related to wind energy.

The Department of Energy (DOE) Office of Energy Efficiency and Renewable Energy receives a line-item appropriation specific to wind energy technologies. Because DOE has explained that this funding is not being withheld and DOE does not interpret the Presidential Memorandum to prevent it from “obligating or expending funds for current programs, projects or activities under current Departmental authorities,” we find no violation by DOE of the Impoundment Control Act with respect to this funding.

DECISION

On January 20, 2025, the President issued a Memorandum to the Secretary of Energy and Secretary of the Interior directing “a comprehensive review of the ecological, economic, and environmental necessity of terminating or amending any existing wind energy leases.”¹ The Memorandum further stated that the Secretaries of Energy and the Interior “shall not issue new or renewed approvals, rights of way, permits, leases, or loans for onshore or offshore wind projects pending the

¹ Presidential Memorandum, *Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects*, 90 Fed. Reg. 8363 (Jan. 29, 2025).

completion of a comprehensive assessment and review of Federal wind leasing and permitting practices.”²

We reviewed whether the Department of Energy (DOE) took any actions to implement the Memorandum that would prevent or delay obligation of appropriated funds.³ This decision addresses whether DOE complied with the Impoundment Control Act (ICA) as it implemented the Memorandum’s directives.⁴ As explained below, we find no violation of the ICA by DOE.

In carrying out the Comptroller General’s responsibility to report to Congress when the President impounds funds without adhering to the procedural constraints of the ICA,⁵ GAO reviews publicly available documents and requests information and legal views from relevant agencies. In accordance with our regular practice, we contacted DOE to seek factual information and legal views.⁶ DOE responded to our letter on April 25, 2025.⁷ As explained below, we determined we have sufficient information to reach a conclusion.

BACKGROUND

Department of Energy

DOE operates the Wind Energy Technologies Office (WETO) within the Office of Energy Efficiency and Renewable Energy (EERE). WETO “funds wind energy research and development (R&D) activities that enable and accelerate the innovations needed to advance wind energy systems; reduce the cost of wind energy; drive deployment in an environmentally conscious manner; and facilitate the integration of high levels of wind energy within the electric grid.”⁸

² *Id.* at 8364.

³ We conducted this work pursuant to our role under the ICA. See Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, title X, 88 Stat. 297, 336 (July 12, 1974), 2 U.S.C. § 686.

⁴ We are separately reviewing the Department of the Interior’s compliance with the ICA as it pertains to the agency’s implementation of the Presidential Memorandum.

⁵ 2 U.S.C. § 686(a).

⁶ GAO, *GAO’s Protocols for Legal Decisions and Opinions*, GAO-24-107329 (Washington, D.C.: Feb. 2024), available at <https://www.gao.gov/products/gao-24-107329>; Letter from General Counsel, GAO, to Acting General Counsel, DOE (Mar. 27, 2025) (DOE Development Letter).

⁷ Email from Assistant General Counsel for Finance and Information Law, DOE, to General Counsel, GAO (Apr. 25, 2025) (DOE Response Email).

⁸ Department of Energy, *Wind Energy Technologies Office: Our Role at DOE*, available at <https://www.energy.gov/eere/wind/wind-energy-technologies-office> (last visited June 11, 2025).

In fiscal year (FY) 2024, DOE received an appropriation for energy efficiency and renewable energy activities, to remain available until expended.⁹ A portion of that appropriation was designated by law for “Wind Energy Technologies.”¹⁰ Because DOE received a line-item appropriation for WETO that bore a relationship to the directives in the Memorandum, we sought additional facts and legal views from DOE to determine whether it was taking any action to implement the Memorandum that would impact obligation of this funding.¹¹

DOE responded to our inquiry with information from offices, including WETO, that it determined most likely to have responsive information related to the Memorandum.¹² DOE explained that because WETO deals mainly with research and development (R&D), the Memorandum did not significantly impact its work.¹³ DOE also stated that none of the offices it reviewed issue the types of approvals, rights of way, permits, or leases to which the Memorandum applies.¹⁴ ARPA-E also explained that

⁹ Consolidated Appropriations Act, 2024, Pub. L. No. 118-42, div. D, title III, 138 Stat. 25, 196 (Mar. 9, 2024) (appropriating \$3.46 billion). \$223 million of this amount was available until September 30, 2025, for program direction.

¹⁰ *Id.* at 138 Stat. 206, § 301(d) (incorporating by reference amounts specified in tables within the explanatory statement accompanying the Act); 170 Cong. Rec. S1581 (daily ed. Mar. 5, 2024) (containing amounts incorporated by reference, including \$137 million for “Wind Energy Technologies”). These amounts were carried forward without amendment in the FY 2025 full year continuing resolution. Full-Year Continuing Appropriations and Extensions Act, 2025, Pub. L. No. 119-4, div. A, title I, § 1101, 139 Stat. 9, 10-11 (Mar. 15, 2025).

¹¹ DOE Development Letter.

¹² DOE Response Email. Other offices included in the scope of DOE’s response included the Advanced Research Projects Agency – Energy (ARPA-E), the Office of Clean Energy Demonstrations (OCED), the Grid Deployment Office (GDO), and the Loans Program Office (LPO).

¹³ *Id.*; *see generally* 42 U.S.C. § 16237 (providing statutory authority under which DOE established WETO).

¹⁴ DOE Response Email; *see generally* 42 U.S.C. § 16538 (describing ARPA-E goals and authorities); 42 U.S.C. § 18861 (describing OCED goals and authorities); 42 U.S.C. §§ 17386, 18712 (providing grid development authorities administered by GDO). LPO administers five loan programs: the Title XVII Clean Energy Financing Program (42 U.S.C. 16511-16513 – describing loan authority and eligible projects), Title XVII Energy Infrastructure Reinvestment Program (42 U.S.C. § 16517); Tribal Energy Financing Program (25 U.S.C. §§ 3501, 3502(c), 3502 note), Advanced Technology Vehicles Manufacturing Program (42 U.S.C. § 17013), Carbon Dioxide Transportation Infrastructure Finance and Innovation Act Program (42 U.S.C. §§ 16371-16378).

active R&D projects related to wind energy had all been awarded before issuance of the memorandum and their funding was unaffected.

According to DOE, none of these offices were withholding funds pursuant to the Memorandum, and DOE was “unaware of any Departmental plans to support a Presidential message to send to Congress” related to the Memorandum.¹⁵

DISCUSSION

Impoundment Control Act

It is important to understand the constitutional and historical underpinnings of the ICA with respect to the critical role of Congress in exercising its constitutional powers. The Constitution specifically vests Congress with the power of the purse, providing that “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.”¹⁶ The Constitution also vests all legislative powers in Congress and sets forth the procedures of bicameralism and presentment, through which the President may accept or veto a bill passed by both houses of Congress and Congress may subsequently override a presidential veto.¹⁷ The President is not vested with the power to ignore or amend any such duly enacted law.¹⁸ Instead, the President must “faithfully execute[]” the law as Congress enacts it.¹⁹

An appropriations act is a law like any other; therefore, unless Congress has enacted a law providing otherwise, the President must take care to ensure that appropriations are prudently obligated during their period of availability.²⁰ In fact, Congress was concerned about the failure to prudently obligate according to its congressional prerogatives when it enacted and later amended the ICA.²¹

¹⁵ DOE Response Email. The ICA permits the President to send a “special message” proposing the rescission or deferred obligation of appropriated funds in limited circumstances. See 2 U.S.C. §§ 683–684.

¹⁶ U.S. Const. art. I, § 9, cl. 7.

¹⁷ *Id.*, art. I, § 7, cl. 2, 3.

¹⁸ See *Clinton v. City of New York*, 524 U.S. 417, 438 (1998) (the Constitution does not authorize the President “to enact, to amend, or to repeal statutes”).

¹⁹ See U.S. Const., art. II, § 3.

²⁰ See B-331564, Jan. 16, 2020; B-329092, Dec. 12, 2017 (the ICA operates on the premise that the President is required to obligate funds appropriated by Congress, unless otherwise authorized to withhold).

²¹ See *generally*, H.R. Rep. No. 100-313, at 66–67 (1987); see also S. Rep. No. 93-688, at 75 (1974) (explaining that the objective was to assure that “the practice of reserving funds does not become a vehicle for furthering Administration policies and priorities at the expense of those decided by Congress”).

The Constitution grants the President no unilateral authority to withhold funds from obligation.²² Instead, Congress has vested the President with strictly circumscribed authority to impound, or withhold, budget authority only in limited circumstances as expressly provided in the ICA.²³ The ICA separates impoundments into two exclusive categories—deferrals and rescissions. The President may temporarily withhold funds from obligation—but not beyond the end of the fiscal year in which the President transmits the special message—by proposing a “deferral.”²⁴ The President may also seek the permanent cancellation of funds for fiscal policy or other reasons, including the termination of programs for which Congress has provided budget authority, by proposing a “rescission.”²⁵

In either case, the ICA requires that the President transmit a special message to Congress that includes the amount of budget authority proposed for deferral or rescission and the reason for the proposal.²⁶ These special messages must provide detailed and specific reasoning to justify the withholding, as set out in the ICA.²⁷ The burden to justify a withholding of budget authority rests with the executive branch.

GAO’s institutional role is to support the Congress, including in Congress’s exercise of its constitutional power of the purse. This includes GAO’s responsibilities under the ICA, such as reviewing special messages and reporting impoundments the President has not reported.²⁸

While the ICA does not circumscribe when funds can be proposed for rescission, it only permits deferral of budget authority in a limited range of circumstances: 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.²⁹

Application of the ICA to the Department of Energy

At issue is whether DOE complied with the ICA and continued to obligate and expend amounts appropriated for wind energy technologies in FY 2024 as it implemented the Presidential Memorandum’s directives. Based on information provided by Energy, we conclude that it did comply with the ICA.

²² See B-135564, July 26, 1973.

²³ See 2 U.S.C. §§ 681–688.

²⁴ *Id.* § 684.

²⁵ *Id.* § 683.

²⁶ *Id.* §§ 683–684.

²⁷ See *Id.*; B-237297.4, Feb. 20, 1990 (vague or general assertions are insufficient to justify the withholding of budget authority).

²⁸ 2 U.S.C. §§ 685-656.

²⁹ *Id.* § 684(b).

Our inquiry to DOE focused on WETO because it is the only DOE office that received an appropriation specific to wind energy, and the language of the Memorandum therefore raised particularized impoundment questions.

When analyzing whether an agency has complied with the ICA, we look for actions that are required by law or instances where an agency's discretion is limited with respect to the obligation of funds.³⁰ Where an agency shows it is not withholding funds or its actions are within its statutory authority, we may not find an improper impoundment.³¹ In this case, DOE explained that funding for WETO is not being withheld and that, based on the agency's implementation and interpretation, it "does not construe [the Presidential Memorandum] to forbid the Agency from obligating or expending funds for current programs, projects or activities under current Departmental authorities."³² ARPA-E identified R&D projects related to wind energy that were awarded before issuance of the memorandum and explained that it did not take any actions to change those awards and their funding was unaffected. Furthermore, DOE has provided its rationale for not withholding funds based on the authorities and functions of the other offices involved. Those offices do not take actions that involve the obligation of funds for approving the types of actions or projects identified in the Memorandum. We find that DOE has met the threshold to show that funds are not being withheld pursuant to the Memorandum.

In the past, in addition to requesting the agency's factual assertions and legal views, we have typically analyzed apportionment schedules and obligational data from an appropriation to determine whether there is any indication of an improper withholding.³³ Having access to such information aids in our review of ICA issues and to support congressional oversight of programs. In this case, while we did not receive all of the information we requested, we did receive sufficient information from DOE to make a determination. Based on the information and response we received from DOE, we were able to determine that no improper withholding or delay has occurred and that the Executive actions within the scope of our inquiry have not precluded the obligation or expenditure of DOE budget authority.³⁴ We therefore find no violation of the ICA.

CONCLUSION

³⁰ See B-335747, Apr. 22, 2024

³¹ *Id.*

³² DOE Response Email.

³³ See B-335747, Apr. 22, 2024 (reviewing obligation data from three years of funding to assess whether DHS improperly withheld amounts appropriated for border barrier construction).

³⁴ See DOE Response Email.

DOE has not taken actions to withhold funding under the amounts appropriated to EERE for wind energy technologies in FY 2024. Active R&D wind energy projects were awarded by ARPA-E before issuance of the memorandum and DOE did not take any steps to change those obligations or awards. Furthermore, other DOE offices are not involved in actions obligating funds for approving the types of actions or projects identified in the Memorandum. Therefore, we find that DOE has complied with the ICA in implementing the Memorandum.

Our analysis and conclusions here help ensure compliance with the ICA and advance congressional oversight including in Congress's exercise of its constitutional power of the purse. We do not take a position on the policy goals of the directives and programs at issue. Changes to these policies and priorities can be addressed through the legislative process with Congress and the Administration.

A handwritten signature in cursive script, reading "Edda Emmanuelli Perez".

Edda Emmanuelli Perez
General Counsel